

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable R. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOSHUA LENARD POACHER,

APPELLANT

APPELLATE CASE NO 2017-000918

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 10-13, 2017	1
JACKSON V. DENNO HEARING	7
TESTIMONY	
RICHARD JOHNSON	8
KATIE MCCALLISTER	31
HARDIK PATEL	37
OPENING STATEMENT BY MR. STONE	117
OPENING STATEMENT BY MR. PLEXICO	119
TESTIMONY	
PHILLIP COTHRAN	123
RAJ VYAS	127
ANDY WILLIAMS	136
TREY TALLON	141
MARTHA SUE ANDERSON	163
WILLIAM ANDERSON	169
JENNIFER TURNO	174
DIANNE ECHOLS	184
LAURIE BLACKWOOD	195
HARDIK PATEL	202
KATIE MCCALLISTER	216

RICHARD JOHNSON	221
TREY TALLON	225
SEAN BURWELL	245
KIMBERLY MEARS	249
TYFFANIE EDWARDS	282
SUZANNE CROMER	285
RICHARD JOHNSON	306
NICHOLAS BATALIS	335
JOSHUA LENARD POACHER	360
CLOSING ARGUMENT BY MR. STONE	405
CLOSING ARGUMENT BY MR. PLEXICO	417
VERDICT	480
SENTENCING	510
INDICTMENTS	512
CERTIFICATE OF COUNSEL	520

1 In the Court of General Sessions for the
2 State of South Carolina, County of Jasper

3
4 Case No.: 2015-GS-27-00378+

5 State of South Carolina,
6 Plaintiff(s),

7 vs. **Transcript of Record**

8 Joshua Lenard Poacher,
9 Defendant(s).

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15 April 10, 2017 -- April 13, 2017

16 Ridgeland, South Carolina

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21 BEFORE:

22 The Honorable R. Lawton McIntosh

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1 INDEX

2	WITNESSES:	PAGE:
3		
4	RICHARD JOHNSON	
4	Direct Examination By Mr. Stone	8
5	KATIE MCCALLISTER	
5	Direct Examination By Ms. Jones	31
6	Cross Examination By Mr. Plexico	36
7	HARDIK PATEL	
7	Direct Examination By Ms. Jones	37
8	Cross Examination By Mr. Plexico	43
9	PHILLIP COTHRAN	
9	Direct Examination By Mr. Stone	123
10	RAJ VYAS	
11	Direct Examination By Mr. Stone	127
11	Cross-Examination By Mr. Plexico	135
12	ANDY WILLIAMS	
13	Direct Examination By Mr. Stone	136
14	TREY TALLON	
14	Direct Examination By Mr. Stone	141
15	Cross Examination By Mr. Plexico	162
16	MARTHA SUE ANDERSON	
16	Direct Examination By Mr. Stone	163
17	Cross Examination By Mr. Plexico	167
17	Redirect Examination By Mr. Stone	168
18	Re-Cross Examination By Mr. Plexico	168
19	WILLIAM ANDERSON	
19	Direct Examination By Mr. Stone	169
20	Cross Examination By Mr. Plexico	173
21	JENNIFER TURNO	
21	Direct Examination By Ms. Jones	174
22	Cross Examination By Mr. Plexico	181
23	DIANNE ECHOLS	
23	Direct Examination By Ms. Jones	184
24	LAURIE BLACKWOOD	
24	Direct Examination By Ms. Jones	195
25	Cross Examination By Mr. Plexico	201

1	(Contd)	
	HARDIK PATEL	
2	Direct Examination By Ms. Jones	202
	Cross Examination By Mr. Plexico	215
3		
	KATIE MCCALLISTER	
4	Direct Examination By Ms. Jones	216
5	RICHARD JOHNSON	
	Direct Examination By Mr. Stone	221
6		
	TREY TALLON	
7	Direct Examination By Mr. Stone	225
	Cross Examination By Mr. Plexico	243
8		
	SEAN BURWELL	
9	Direct Examination By Mr. Stone	245
	Cross Examination By Mr. Plexico	248
10		
	KIMBERLY MEARS	
11	Direct Examination By Mr. Stone	249
	Voir Dire Examination By Mr. Plexico	251
12	Direct Examination Contd.By Mr. Stone	255
	Cross Examination By Mr. Plexico	266
13	Redirect Examination By Mr. Stone	279
	Re-Cross Examination By Mr. Plexico	281
14		
	TYFFANIE EDWARDS	
15	Direct Examination By Mr. Stone	282
16	SUZANNE CROMER	
	Direct Examination By Mr. Stone	285
17		
	RICHARD JOHNSON	
18	Direct Examination By Mr. Stone	306
	Cross Examination By Mr. Plexico	319
19	Redirect Examination By Mr. Stone	331
	Re-Cross Examination By Mr. Plexico	332
20		
	NICHOLAS BATALIS	
21	Direct Examination By Mr. Stone	335
	Cross Examination By Mr. Plexico	351
22	Redirect Examination By Mr. Stone	352
23		
	JOSHUA LENARD POACHER	
24	Examination By The CourtThe Court	360
25		

1 INDEX AS TO EXHIBITS

2 COURT'S EXHIBITS:

3	Ex. No.:	Description:	Marked:	Received:
4	3	Miranda form	10	10
	4	Miranda form	17	17
5	5	Miranda form	20	20
	6	interview 3 CD	28	28
6	8	Interview 1 CD	30	30
	1	line-up affidavit	33	33
7	2	line-up	41	41
	7	Foreperson	100	100
8	9	Charge Requests	394	394
	10	Jury Question	480	480

9

10 STATE'S EXHIBITS:

11	22	911 CD	127	127
	23	drone photo	129	129
12	2	Marker 1 & 2	133	133
	15	Photo-Room	134	134
13	3	Photo-hotel	139	139
	4	Photo-bodies	140	140
14	45	sketches	143	
	1	Photo-Marker 1	146	146
15	10	Photo-Marker 10	147	147
	11	Photo-Marker 11	149	149
16	12	Photo-Marker 12	150	150
	13	Photo-Marker 13	151	151
17	14	Photo-Marker 14	152	152
	9	Photo-Marker 9	153	153
18	9A-14A	shell cases	157	157
	28	Bank Report	177	177
19	29-30	Receipts	187	187
	31	Station Video	191	191
20	32-33	Station Photo	194	194
	34	Station Photo	199	199
21	7A	Indian money	205	205
	36	Line-up Affidavit	210	210
22	35	Line-up	213	213
	46	Sketches	226	
23	5-6	Photo-Room	228	228
	7	Photo-Currency	229	229
24	8	Photo-Glasses	232	232
	8A	glasses	232	232
25	16	Photo-Pants	234	234
	21	Photo-Receipt	234	234

1	(Contd)		
2	21A Receipt	235	235
	20-20A Photo/Receipt	237	237
3	17-18 photos	238	238
	18A firearm	240	240
4	38 Prints	246	246
	24 AARP	257	257
5	25 Ring Box	262	262
	39 Print Chart	263	263
6	10A shell case	290	290
	11A shell casing	291	291
7	12A shell casing	292	292
	13A shell casing	293	293
8	14A \shell casing	293	293
	1A unfired Bullet	294	294
9	9A bullet	296	296
	27 Bullet in Shirt	297	297
10	26 Bullet-Under Body	297	297
	37 Bullet-Autopsy	298	298
11	40 Aug 16 Rights	311	311
	41 Aug. 19 Rights	314	314
12	42 Aug. 21 Rights	317	317
	43 Interview 4	317	317
13	44 Pathology Chart	339	339

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
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PROCEEDINGS

MR. STONE: Your Honor, we are here in the matter of a trial that we are going to start this afternoon. Indictments 2015-GS-27-00490, 379, 378, and 491. These are charging Joshua Poacher with the crime of armed robbery, murder, a second count of murder, and possession of a weapon during a violent crime, respectively. Those just follow along to those numbers that I gave you.

There are a number of pretrial motions we need to take up. We are prepared at this point to go forward on -- I believe on all of them. We have a Neal versus Biggers hearing, we have one hearing on a photograph that I'd like to introduce, that we need to have. But first, we are prepared to go forward with Jackson Denno.

We have the copies of the rights forms. The originals I'm going to put in at trial, but I'd like to go ahead and mark -- I'll mark the copies as the Court's Exhibit for the purpose of this hearing. And I'd like to show the entire video to Your Honor, from the very beginning of the rights on. So that's going to take about an hour and a half for that entire video.

May try to shorten that for the purpose of the trial itself, but I think it's probably fair for the

PRE-TRIAL PROCEEDINGS

1 Defendant to show all of that today.

2 THE COURT: All right.

3 MR. STONE: Your Honor, the State calls Richard
4 Johnson to the stand.

5 Thereupon,

6 RICHARD JOHNSON

7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STONE:

11 Q Agent Johnson, you are with the South Carolina Law
12 Enforcement Division, commonly known as SLED; is that
13 correct?

14 A That's correct.

15 Q And what is your rank with them?

16 A Special Agent.

17 Q How long have you been with SLED?

18 A Approximately 12 years with SLED.

19 Q Okay. And your job, as far as the investigation
20 of this case and the arrest of Joshua Poacher, what -- what
21 was your job in this case?

22 A I was lead investigator on this case.

23 Q Okay. Now, you made -- you were actually the one
24 that made the arrest in this; is that correct?

25 A That's correct.

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 Q And when was that?

2 A That was August 16th of 2015.

3 Q Sometime in the morning, afternoon, or evening?

4 A In the late evening hour.

5 Q After you made the -- first of all, where did you
6 make the arrest?

7 A At the Travel Lodge hotel, which at that point in
8 time he was transported to the Jasper County Criminal
9 Investigation Division unit.

10 Q Okay. Is that at the Jasper sheriff's office
11 right down or --

12 A That's at the substation.

13 Q That's at the substation. Okay.

14 A Uh-huh. (Indicating affirmatively.)

15 Q He was transported there, and then at some point
16 in time afterwards, did you then meet up with him to see if
17 you could get a statement from him?

18 A That's correct. Yes, I did.

19 Q Now, what time was that?

20 A The -- it would have been approximately sometime
21 after 9:00 p.m. on August 16th.

22 THE COURT: What time was his arrest, I'm sorry?

23 THE WITNESS: The arrest was approximately 10:30.

24 Somewhere around that area, 10:30 p.m.

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

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 *identification and received in evidence.)*

2 BY MR. STONE:

3 Q Let me hand you what's been marked as State's --
4 this is actually a Court's Exhibit at this point, No. 3, ask
5 if you could identify that for me, please.

6 A This is a Miranda rights form that I read to
7 Mr. Poacher.

8 Q And did you read him those rights, right when you
9 walked in to talk to him?

10 A Yes, sir.

11 Q All right. The time on that, what time does that
12 indicate?

13 A 10:17 p.m.

14 Q And that is August the 16th; is that correct?

15 A August 16th, that's correct.

16 Q All right. So you were at the substation. That
17 form you have with you, I'm assuming, at that point?

18 A That's correct.

19 Q And you fill it out?

20 A I just read it and he filled -- he put his
21 initials on each line as I read through them.

22 Q Okay. Let me then ask you, if you can, go through
23 that with us and tell us what exactly that form does and
24 what did you do?

25 A Well, the form reads as follows: "Before we ask

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 you a question, you must understand your rights. You have a
2 right to remain silent. Anything you say can be used in
3 court as evidence against you. You are entitled to talk to
4 a lawyer now and have him present now or at any time during
5 questioning. If you cannot afford an attorney, one will be
6 appointed for you without cost. If you decide to answer
7 questions now without a lawyer present, you will still have
8 a right to stop answering at any time. You also have the
9 right to stop answering at any time until you talk to a
10 lawyer. Do you understand these rights? Do you wish to
11 talk to us at this time?"

12 The waiver of rights section reads as
13 follows: "I have read this statement of my rights and I
14 understand what my rights are. I am willing to talk now
15 without a lawyer present. I understand and know what I'm
16 doing. No promises or threat have been made to you and no
17 pressure or coercion of any kind has been used against me."

18 As I've read through this, I asked the
19 Defendant to place his initial on each line as I read
20 through it, acknowledging that he understood those rights.

21 When we get down to the waive the rights
22 form, I asked him if he wishes to continue to talk with us
23 now, just sign and acknowledge that he wish to continue
24 talking.

25 He signed it, I then signed it as a witness,

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 and Detective Evan Wright signed as a witness also.

2 Q The initials along these rights form, those are
3 his?

4 A Yes, sir.

5 MR. STONE: And, Your Honor, I hand these up so
6 you can see it.

7 BY MR. STONE:

8 Q Now, he has signed and indicated that he does wish
9 to speak to you. Did you threaten him, promise him
10 anything, coerce him in any way to get him to give you a
11 statement?

12 A No, sir.

13 Q At that point, did he give you a statement?

14 A Yes, sir, he did.

15 Q What did he tell you?

16 A He told me that he got up on August 16th,
17 approximately seven or 8:00 a.m. Met with an individual
18 named Roy Ryan. They smoked a blunt. When he left Roy
19 Ryan, he came across an individual he knew as a crackhead
20 named Darryl. And at that point, he acknowledged that
21 Darryl provided him with a debit card or a credit card and
22 told him there was about \$200 on it.

23 Q All right. Let me stop you there. What is the
24 significance of the credit card? Why are you asking him
25 about the credit card?

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 A Well, during the course of the investigation, we
2 received information that the Defendant was at -- I think it
3 was a Handy Dan and a Gulf store, at which time he had used
4 a debit card that was registered or belonged to the
5 Defendant in this case.

6 Q The victim.

7 A The victim. I'm sorry.

8 Q Okay. Does he acknowledge during this statement
9 at all any involvement in the murder of the Patels?

10 A No, he denied any involvement.

11 Q Okay. And at some point, did you stop this
12 questioning?

13 A Yes, I did.

14 Q Now, what did -- at that -- about what time was
15 that; do you know?

16 A It would have been around 10:57 p.m.

17 Q Okay. What did do you after that?

18 A We interviewed his girlfriend. I believe her name
19 is Shatera -- I want to say Shatera Walker. Yes, sir. We
20 interviewed Shatera Walker, all at the same location.

21 Q After you finished with your interview with
22 Ms. Walker, did you go back and talk to -- talk to the
23 Defendant?

24 A Yes, we did.

25 Q All right. At that point, he is still in the same

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 location he was before?

2 A That's correct.

3 Q So you're continuing the first interrogation
4 basically?

5 A That's correct.

6 Q All right. At this point, does he tell you
7 anything?

8 A No, sir. Just he received the credit card, the
9 Indian money, the pistol, all from Darryl for approximately
10 \$50 and three beers. And that Darryl also provided him with
11 the pin number to the credit card.

12 Q Okay. Now, at this point, does he invoke his
13 rights?

14 A Yes, he did.

15 Q And how did he do that?

16 A He simply just said he don't want to talk any more
17 until he talks with a lawyer.

18 Q Okay. And did you honor that?

19 A Yes, we did.

20 Q And so did you ask him any more questions at that
21 point?

22 A No, sir.

23 Q All right. Now, at some point, August the 21st,
24 you go back and speak to him, again; is that correct?

25 A That is correct.

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 Q Why did you do that? And, I'm sorry, I said,
2 "21st." I meant August the 19th.

3 A Yes. Well, I received a call from then Major
4 Donald Hipp, that he received information that Mr. Poacher
5 requested to speak with the agents or the law enforcement
6 named on the --

7 MR. PLEXICO: I object. I don't think there's a
8 proper foundation for that, Your Honor.

9 THE COURT: Overruled.

10 MR. PLEXICO: And it would be hearsay.

11 MR. STONE: Thank you.

12 BY MR. STONE:

13 Q Go ahead.

14 A Mr. Poacher acknowledged -- request that he wanted
15 to speak with the agent's name on the arrest warrant and/or
16 Major Donald Hipp.

17 Q Okay. And he is at the detention center at that
18 point, Poacher is?

19 A That's correct. He's at the Jasper County
20 Detention Center.

21 Q Who had he given that information to, that he
22 wanted to speak to you, or speak to somebody -- the officer
23 on the warrant?

24 A He initially told -- one second, please. Let me
25 get her name. She was a jailer at the Jasper County

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 Detention Center.

2 MR. PLEXICO: I would object to this, too, Your
3 Honor. This is all hearsay that they don't have a
4 witness on.

5 THE COURT: Noted for the record. Overruled.

6 THE WITNESS: Just a second.

7 I don't know why I'm thinking that Wright is the
8 name.

9 BY MR. STONE:

10 Q Let me help you out. This is Jailer Batiste, is
11 her last name?

12 A Batiste. That's the name.

13 MR. PLEXICO: I'll object to the leading, Your
14 Honor.

15 THE COURT: Overruled.

16 MR. STONE: Thank you.

17 BY MR. STONE:

18 Q Now, you don't speak to her, you actually are
19 talking to him; is that correct?

20 A That's correct.

21 Q Did you confirm at any -- did you ask him to go
22 back and check again on that?

23 A I asked Major Hipp to call her to make certain
24 that this information came from Mr. Poacher to Batiste.

25 Q And after that, did you then go talk to

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 Mr. Poacher?

2 A Myself and Major Hipp.

3 *(Whereupon, Court's Exhibit No(s). 4 marked for*
4 *identification and received in evidence.)*

5 BY MR. STONE:

6 Q Okay. Let me show you what's been marked as
7 State's Exhibit 4 -- excuse me, Court's Exhibit 4, ask if
8 you can tell us what that is.

9 A It's another Miranda rights form.

10 Q Is this the one that you filled out, or that you
11 had the Defendant fill out on August the 19th?

12 A That's correct.

13 Q And who is with you when you talk to Mr. Poacher
14 on the 19th?

15 A Major Donald Hipp.

16 Q All right. And what time is this?

17 A Approximately 4:39 p.m. on August 19th.

18 Q Did you read that rights form just the same as you
19 had before previously?

20 A Yes, I did.

21 Q And are those initials on that rights form, are
22 those his?

23 A Yes, sir.

24 Q And is the signature on that yours?

25 A Yes, sir.

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 Q Did you discuss with him, as either before or
2 during reading the rights or after the rights, that he had
3 asked to talk to you?

4 A I believe it was before I read him the right. But
5 I asked him -- confirmed with him that he request to speak
6 with law enforcement, he acknowledged that he did request
7 it.

8 Q Okay. So you go through his rights again.

9 A That's correct.

10 Q Did you promise him or threaten him in any way to
11 get him to sign that rights form and agree to talk to you?

12 A No, sir. I didn't promise him anything.

13 MR. STONE: Okay. I'll hand that up to Your
14 Honor. This would be the same rights form as the
15 previous one.

16 THE COURT: Okay.

17 BY MR. STONE:

18 Q Now, after he tells you that he wants to talk to
19 you, does he give you another statement?

20 A Yes, he does.

21 Q And what is this statement?

22 A It was essentially the same thing, just a slight
23 difference in terms of dollar amount of what he provided in
24 exchange for the money and credit card and the pistol.

25 Q Does he tell you then at this point -- does he

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 admit any involvement in the murder of the Patels?

2 A No, he had -- he denied any involvement in it.

3 Q Okay. So even this new statement that he's asked
4 for, he still doesn't tell you that he killed them.

5 A He still doesn't tell me.

6 Q All right. What does he tell you exactly?

7 A Exactly that he came across Darryl after he left
8 Ryan's house. And he gave Darryl a hundred dollars worth of
9 crack and \$25 in cash for a .40 caliber and a -- and the
10 credit card and some Indian money.

11 Q So basically the same thing he'd already told you?

12 A That's correct.

13 Q Just the money amount had changed?

14 A That's correct.

15 Q Did you terminate this interview?

16 A Yes, I did.

17 Q At what time was that?

18 A Well, at approximately 5:06 p.m.

19 Q And you started it at 4:39; is that correct?

20 A That's correct.

21 Q All right. Did you -- when you ended it, did you
22 tell him or ask him if you could come back and talk to him
23 again?

24 A Yes, I did. I asked could I come back after doing
25 some follow-up investigation based on this information that

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 he provided. He agreed for me to come back and meet with
2 him.

3 *(Whereupon, Court's Exhibit No(s). 5 marked for*
4 *identification and received in evidence.)*

5 BY MR. STONE:

6 Q All right. Now, I'll show you what's been marked
7 as Court's Exhibit 5. Can you tell me what that is, please,
8 sir?

9 A It's another Miranda rights form.

10 Q Is that the same form as that you had him fill out
11 in the first two times?

12 A That's correct.

13 Q Tell me -- tell me specifically, this is a -- this
14 one we are going to put into evidence eventually anyway.
15 But as far as what's on there, tell me what's on there
16 again.

17 A It has GSC over to Jasper County Sheriff's Office,
18 CID, dated August 21, 2015, start time is 3:02 p.m.

19 Q All right. Let me make sure I got that right.
20 That's August the 21st, and the previous time you had spoken
21 to him was August the 19th; is that correct?

22 A That's correct.

23 Q Okay. Go ahead. I'm sorry to interrupt you.

24 A And it reads: "Before we ask you any questions,
25 you must understand your rights. You have the right to

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 remain silent. Anything you say can and will be used in
2 court as evidence against you. You are entitled to talk to
3 a lawyer now and have him present now or at any time during
4 questioning. If you cannot afford an attorney, one will be
5 appointed for you without cost. If you decide to answer
6 questions now without a lawyer present, you will still have
7 a right to stop answering at any time. You also have the
8 right to stop answering at any time until you talk to a
9 lawyer. Do you understand these rights? Do you wish to
10 talk to us at this time?"

11 The last line reads, to waive their rights:
12 "I have read the statement of my rights and I understand
13 what my rights are. I am willing to talk now without a
14 lawyer present. I understand and know what I'm doing. No
15 promises or threat have been made to me, and no pressure or
16 coercion of any kind has been used against me."

17 Q Now, at this point -- and all those initials, are
18 those his as well? Along those?

19 A Those are his -- those are his initials.

20 Q Okay. And did you promise him or threaten him,
21 coerce him in any way to get him to fill out that?

22 A No, sir.

23 Q And did he give you a statement?

24 A Yes, a verbal statement.

25 Q Okay.

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 MR. STONE: I'll hand this up to Your Honor.

2 This would be Court's Exhibit No. 5.

3 THE COURT: Okay. Thank you, sir.

4 MR. STONE: Yes, sir.

5 BY MR. STONE:

6 Q Now, this statement on August 21st, starting at
7 3:02 p.m., that is on video; is that correct?

8 A That is correct.

9 Q All right. And you reviewed that video here
10 today -- or not today, but you've reviewed this video?

11 A Yes, sir.

12 Q And is that a fair and accurate depiction of the
13 event as it took place on that day?

14 A Yes, sir.

15 MR. STONE: Your Honor, at this time, I'd like to
16 go ahead and play that. It starts, I believe, the
17 very beginning of this entire thing, so it will
18 include the Miranda rights that he's already testified
19 to.

20 THE COURT: Okay.

21 MR. STONE: And we have -- now, I hand you up,
22 Your Honor, a transcript of it. You may or may not
23 need it, but you will have it anyway.

24 THE COURT: All right. Thank you.

25 MR. PLEXICO: Your Honor, if I may, I would have

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 an objection because unless they have a witness that
2 shows they respected his right to counsel, this is a
3 Fifth Amendment right to have counsel present during
4 an in-custody interrogation. They don't have the
5 witness because he has to initiate the contact. They
6 do not have a witness, the jailer, to show that my
7 client is the one that initiated the contact.

8 The issue is not whether or not he continued
9 talking to them after they went and got him, but who
10 initiated the contact. And at this point they have no
11 one to testify.

12 My client, according to this, is the one that
13 initiated the contact. Therefore, the third
14 interview -- anything after the first interview when he
15 asked for counsel -- well, now that they have the
16 second, third, and fourth interviews, they're not going
17 to be admissible, because they did not scrutinously
18 observe his right to counsel for an in-custody Fifth
19 Amendment right interview, which he asked for.

20 And they can't get to him for two, three, and
21 four, so I think it's a waste of the Court's time,
22 unless they have a witness to show Mr. Poacher, the
23 Defendant, initiated contact back with the law
24 enforcement requesting to talk to them. And all they
25 have through here is inadmissible hearsay.

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 Therefore, I think this is just a wild goose chase
2 and a waste of the court's time. And I would object to
3 it.

4 THE COURT: Mr. Stone, any response?

5 MR. STONE: Yes, sir. Interestingly enough, I'm
6 not sure that's the proper analysis anymore. I think
7 it used to be under the Michigan rule with Edwards
8 versus Arizona. But here's the rule as I see it now.

9 Number one, once the Defendant wishes to invoke
10 his rights, the police have to terminate, which they
11 did in this case. And they can only go back if the
12 Defendant re-initiates.

13 Although, if you look at United States versus
14 Montenegro, I'm not sure that's the rule anymore. I
15 think now the question is, what exactly took place as
16 you read him the rights in that last time?

17 But let me back up and just cover it even
18 regardless of that. You now have testimony from the
19 SLED agent that, number one, he received word that --
20 from the jailer through his detective, that the
21 Defendant wanted to talk to him. He then gets that
22 confirmed again through Detective Hipp.

23 But regardless of that, when he gets there to
24 interview the Defendant, he asks him, my understanding
25 is you want to talk to me again, which at the time he

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 says yes. So you have the testimony of Richard Johnson
2 on the witness stand testifying as to what the
3 Defendant told him. So you have testimony that he
4 wishes to re-initiate.

5 What's interesting is that the Defendant, despite
6 that, and despite having his rights read to him,
7 doesn't give him any new information. Basically
8 doesn't give him the confession that we're planning on
9 using at trial. That takes place two days later, when
10 Johnson goes back, reads him his rights one more time,
11 and at that point is when he eventually, as you'll see
12 on the video, eventually gives a confession.

13 The way the case law, I think, is pretty clear.
14 In Re Tracy, and I have copies of all of this for Your
15 Honor. Let me go ahead and get Tracy and read.

16 In Re Tracy, it's probably the best analysis of
17 it. And really what In Re Tracy says is that: The
18 Defendant, once he invokes his right to an attorney,
19 can re-initiate through a third party, which in the in
20 re Tracy case, he actually did through his mother.

21 The issue, and what really is focused on it, I
22 think you can see in Page 5 of in re Tracy, is the
23 purpose of the Edwards Rule, which is the rule that
24 initially said once they initiate -- once they invoke
25 their rights, they -- you can't go back unless they

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 re-initiate it.

2 The issue is whether or not law enforcement
3 badgers them, and if they stay on them and try to keep
4 getting them, saying like, I know you said you want a
5 lawyer, but I don't want to listen to that and they
6 start badgering them to get them to do it.

7 If you go to Page 5, the third paragraph, it
8 basically talks about the Defendant invoking the Fifth
9 Amendment right, but an officer, a police officer,
10 receives information from a third party, which might
11 evoke a willingness and a desire to talk to the
12 suspect.

13 Well, they've already got that, and then he goes
14 back and confirms it. So I think that's pretty clear
15 as far as in re Tracy that he can go back and
16 re-initiate.

17 State versus Reed is really the State's latest
18 affirmation of the whole Montenegro case, which
19 basically that case is, as you remember, caused United
20 States United Supreme Court case in which a defendant
21 invokes his right to counsel at the bond setting, the
22 police go and get him out of jail, put him in the back
23 of a patrol car and take him to the murder scene just
24 to help find the victim. In transit, the Defendant
25 writes an apology letter in the back of the patrol car.

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 All this being said, the United States Supreme
2 Court, in a very lengthy opinion, basically comes out
3 and says, that's not the issue. The issue is what
4 happens immediately prior to -- or immediately at
5 police contact. And that is cited in State versus Reed
6 on Page 8.

7 What happened the moment the police initiated
8 contact is what's relevance, not what happened
9 previously.

10 So, number one, he re-initiated, you got testimony
11 he re-initiated. Number two, even if he hadn't have
12 re-initiated, the issue still goes to August the 21st,
13 what happened at that time during the confession. And
14 that's what you have, a confessions right statement
15 here as well as on video.

16 So I don't think that even the issue of
17 re-initiation really comes to play because I think it's
18 covered not only from the Defendant himself, but also
19 two days later when he goes back and gives the
20 statement.

21 THE COURT: All right. Thank you, sir. I'll
22 overrule the objection.

23 MR. PLEXICO: Just for the record, could I
24 briefly respond to that?

25 THE COURT: Sure.

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 MR. PLEXICO: Your Honor, I think that is a
2 misreading of Montenegro. That is a Sixth Amendment
3 case. That is not -- has nothing to do with an
4 in-custody interrogation. An in-custody
5 interrogation, we're talking about the Fifth
6 Amendment. Then we're talking about evidence.

7 In here, they have glossed over -- they have no
8 proof from the jailers over at the jail today, who
9 they're relying on, Ms. Batiste, they cannot bring her
10 in to say that my client requested -- he initiated a
11 talk back with the police. That just can't be done.
12 And that's the break. They can't go back and get him
13 and go back and get him and ask him anything after
14 there's that break asking for counsel during the Fifth
15 Amendment situation where you're in custody. And
16 that's why it's different. That's the whole thing.
17 They're mixing apples and oranges, Montenegro and
18 Edwards. That's my response.

19 THE COURT: I note your objection for the record.
20 It's overruled.

21 MR. STONE: Thank you. At this point, we'll go
22 ahead and introduce the video.

23 *(Whereupon, Court's Exhibit No(s). 6 marked for*
24 *identification and received in evidence.)*

25 THE COURT: Yes, sir.

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 (The video was played.)

2 MR. STONE: Can you hear that, Your Honor? It's
3 -- can you hear it?

4 THE COURT: It's tough. I can read it fine.

5 MR. STONE: Turn one down. Can you hear it?

6 MR. PLEXICO: I can't hear it at all.

7 MR. STONE: Another reason we transcribe.

8 (Video restarted.)

9 THE COURT: Let's take five minutes, please.

10 (Whereupon, the Court was in recess.)

11 THE COURT: Please be seated. All right, sir.

12 MR. STONE: Yes, sir. That's all we have on this
13 issue, Your Honor.

14 THE COURT: All right. Do you wish to present
15 any testimony?

16 MR. PLEXICO: Your Honor, I'd just like to put in
17 the first interview, where he invokes the --
18 in-custody interview, where he asked for an attorney
19 at that time and they cut off the interview. And I
20 think, unless they concede that that is what happened.

21 THE COURT: Okay. Any objection to that?

22 MR. ELLIS: No, sir. We -- I think we covered
23 that, in fact, put that testimony in ourselves.

24 THE COURT: Go ahead. We'll go ahead and do
25 that.

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 *(Whereupon, Court's Exhibit No(s). 8 marked for*
2 *identification and received in evidence.)*

3 MR. PLEXICO: Could I make a copy of this before
4 I put it in?

5 THE COURT: Sure.

6 Anything further, Mr. Plexico?

7 MR. PLEXICO: We don't have anything -- no. I
8 have no evidence to put forward on this, Your Honor.

9 THE COURT: All right. Just going over the
10 factors of this. In State versus Miller, whether or
11 not there's any coercion, the length of the
12 interrogation, the location of the interrogation,
13 maturity of the Defendant, his education, his physical
14 condition, his mental health condition, his experience
15 in misrepresentation by the police, threats and
16 violence, promises of leniency, and isolation -- the
17 closest I saw to threats -- I mean, not promises of
18 leniency, but that's not sufficient to take it out of
19 a voluntary statement made. I specifically find that
20 the Defendant specifically requested to speak to the
21 special agent in charge, or other agents in charge of
22 this case, after he invoked the right to counsel.
23 Therefore, it is admissible and will be up to the jury
24 to give what weight they think it's due.

25 That being said, do we have a Biggers matter now;

DIRECT EXAMINATION OF JOHNSON BY STONE.

1 is that correct?

2 MR. STONE: Yes, sir.

3 THE COURT: Okay.

4 MR. STONE: Could we go ahead and get Agent
5 Johnson off the stand?

6 THE COURT: Sure. Sorry.

7 Are you ready?

8 MS. JONES: Thank you, Your Honor. The State
9 calls Agent Katie McCallister.

10 Thereupon,

11 KATIE MCCALLISTER

12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. JONES:

16 Q Good afternoon, Agent McCallister. You work for
17 SLED?

18 A I do.

19 Q And in what capacity do you work with SLED?

20 A I'm a special agent with Lowcountry investigative
21 region.

22 Q Were you involved in the investigation of the case
23 we're here for today?

24 A Yes.

25 Q And what part did you play in that investigation?

DIRECT EXAMINATION OF MCCALLISTER BY JONES

1 A I assisted the lead agent, Special Agent Johnson.

2 Q Okay. As part of that assistance, did you have an
3 opportunity to show a photo line-up to somebody?

4 A I did.

5 Q Who did you show a photo line-up to?

6 A Hardik Patel.

7 Q And where did this happen?

8 A At the Travel Lodge in Ridgeland.

9 Q And who was with you when this took place?

10 A Myself and Mr. Patel.

11 Q Okay. Nobody else was present?

12 A No.

13 Q Can you explain the circumstances surrounding your
14 showing of this line-up?

15 A We had made contact with Mr. Patel. Someone had
16 come to exchange Indian currency and he thought it was odd,
17 because it's very rare for someone who is not Indian to have
18 Indian currency.

19 And after interviewing him and speaking with
20 him, we showed him the line-up to identify who tried to
21 exchange the money.

22 Q Okay. Was anything said to Mr. Patel prior to
23 showing the photo line-up?

24 A I showed him the affidavit of photographic
25 identification.

DIRECT EXAMINATION OF MCCALLISTER BY JONES

1 Q Okay.

2 MS. JONES: Permission to approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 *(Whereupon, Court's Exhibit No(s). 1 marked for*
5 *identification and received in evidence.)*

6 BY MS. JONES:

7 Q Agent McCallister, I'm going to show you what's
8 been marked Court's 1. What is that?

9 A This is the SLED affidavit of photograph
10 identification.

11 Q And what does that say?

12 A It has the case number, the date, which is
13 8/16/15, the time, 5:25 p.m. at the Travel Lodge in
14 Ridgeland. It says, "I've been asked to review a set of
15 photographs. I understand that it is just as important to
16 clear innocent persons from suspicion as to identify guilty
17 parties. I understand that individuals depicted in a
18 line-up may not appear exactly as they did on the date of
19 the incident because features such as head and facial hair
20 are subject to change. I understand that the person who
21 committed the crime may or may not be in the set of
22 photographs being presented. I understand that regardless
23 of whether identification is made, the police will continue
24 to investigate the incident. I understand that I shall
25 state in my own words how certain I am of the

DIRECT EXAMINATION OF MCCALLISTER BY JONES

1 identification."

2 Q And did Mr. Patel indicate on that form that he
3 understood those?

4 A He did, with his initials.

5 Q Okay. And speaking with him, did you believe he
6 understood those --

7 A Yes.

8 Q -- that you read to him?

9 Okay. After reading that to him, did you, in fact,
10 show him the photo line-up?

11 A I did.

12 Q And how did you present that to him?

13 A In a manila folder. The line-up was in it, and I
14 just handed him the entire folder.

15 Q Aside from what you read on the affidavit, did you
16 or anybody else say anything else to Mr. Patel?

17 A I did not.

18 MS. JONES: Permission to approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. JONES:

21 Q Agent McCallister, I'm showing you what's been
22 marked as Court's 2. What is that?

23 A This is the six-pack photograph line-up.

24 Q Okay. And is that the actual photo line-up you
25 showed Mr. Patel? Or appear to be a copy of it, perhaps?

DIRECT EXAMINATION OF MCCALLISTER BY JONES

1 A I believe it's a copy.

2 Q Okay. Aside from it being a copy, is it as it
3 appeared that day?

4 A Yes.

5 Q And did he indicate on that line-up in any way
6 that he did recognize somebody?

7 A He did.

8 Q And who did he identify?

9 A The No. 3 in the top right corner.

10 Q Okay. And who is No. 3?

11 A Joshua Poacher.

12 Q Okay. Did he show any hesitation?

13 A He did not.

14 Q How certain was he?

15 A Absolutely certain.

16 Q Did you or anybody else -- well, you, you said you
17 were alone -- did you influence Mr. Patel, suggest anybody
18 to him?

19 A I did not.

20 Q Did you threaten or coerce him to pick out this
21 No. 3?

22 A I did not.

23 Q Okay. He picked that out on his own accord?

24 A He did.

25 Q Did he say anything to you or indicate on that

DIRECT EXAMINATION OF MCCALLISTER BY JONES

1 affidavit after he picked out No. 3?

2 A He did. He circled the entire picture and wrote,
3 "This is the man I saw trying to change money."

4 He signed it and put the date of August 16th,
5 2015.

6 Q Okay. And, again, you didn't influence him, he
7 did that on his own accord?

8 A He did.

9 MS. JONES: I have no further questions for this
10 witness, Your Honor.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. PLEXICO:

14 Q Do you know the -- do you have this photo line-up
15 in front of you, ma'am?

16 A Yes, sir.

17 Q Do you know any of these other individuals?

18 A I do not.

19 Q Okay. Do you know where any of these pictures,
20 what county they were taken from?

21 A I do not.

22 Q Could he be the only local person that is on this
23 six-pack line-up?

24 A I cannot answer that.

25 Q Okay.

CROSS EXAMINATION OF MCCALLISTER BY PLEXICO

1 MR. PLEXICO: I don't have anything further.

2 THE COURT: Redirect.

3 MS. JONES: None, Your Honor.

4 THE COURT: Thank you. You may step down.

5 MS. JONES: And, Your Honor, we're attempting to
6 put the line-up up there. So --

7 THE COURT: I'm sorry?

8 MS. JONES: We're attempting to put the line-up
9 on the screen as well up there.

10 THE COURT: Okay.

11 MS. JONES: State calls Hardik Patel.

12 Thereupon,

13 HARDIK PATEL

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. JONES:

18 Q Thank you, Mr. Patel.

19 Have you ever testified here in court before?

20 A No, ma'am.

21 Q This is your first time?

22 A Yes, ma'am.

23 Q Okay. Do you remember August 16th of 2025 being
24 shown a photo line-up?

25 A Yes.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 Q Okay. By Agent McCallister, who just testified?

2 A Yes.

3 Q What were you doing prior to being shown that
4 line-up?

5 A Well, I had worked the night shift the day before,
6 and I got up the next -- that day and --

7 THE COURT: Would you speak more in the
8 microphone, please.

9 A Okay. I'm sorry. What was your question again?

10 Q You can continue, what you were doing prior to
11 being shown the line-up.

12 A I was about to go somewhere that day and she did
13 come in. We were outside first, I circled, and then we went
14 in the room and I circled again, and I wrote it down.

15 Q Okay. Why was she asking you to look at these
16 photographs?

17 A About the money. So I would -- before I went to
18 sleep, he did come in and he tried to exchange the money.

19 Q Okay. What kind of money?

20 A It was Indian money.

21 Q Okay. That's what made it stick out to you?

22 A Uh-huh. (Indicating affirmatively.)

23 Q Okay. You say "he," did you know this person?

24 A Oh, no, but they got a room over there earlier
25 that day.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 Q Okay. Had you seen this man before?

2 A I believe he stayed at the hotel quite a few times
3 before.

4 Q Okay. Did you know him personally?

5 A No.

6 Q Did you know his name?

7 A I kind of known the name. I could have looked it
8 up from the registry.

9 Q Okay. Did you recognize him when he came in with
10 the Indian money?

11 A Yeah.

12 Q Okay. How long are you and this man speaking
13 about the Indian money?

14 A Probably not more than five minutes.

15 Q Okay. And how close are you to him?
16 Face-to-face?

17 A Yeah. I was at the desk and he was right there at
18 the desk as well.

19 Q Okay. Right on the other side of the desk?

20 A Uh-huh. (Indicating affirmatively.)

21 Q Did you have any problem seeing him that
22 afternoon?

23 A Not really, no.

24 Q Do you know about what time that was?

25 A Well, it was after breakfast, so the breakfast

DIRECT EXAMINATION OF H. PATEL BY JONES

1 ends at nine. So it has to be after nine.

2 Q Okay.

3 MS. JONES: Permission to approach the witness?

4 THE COURT: Okay.

5 BY MS. JONES:

6 Q Mr. Patel, I'm going to show you Court's 1. Do
7 you recognize that?

8 A Yes, ma'am.

9 Q And what is that?

10 A This is the one that the agent gave me. And it
11 shows that I circled it there and put my initials on there.

12 Q Okay. And are those your initials to the left of
13 those statements?

14 A Yes, ma'am.

15 Q Did you -- did you write anything additional on
16 that form?

17 A What I wrote on there.

18 Q What did you write?

19 A "I, Hardik Patel, have viewed a group of six
20 photographs, the 16th day of August 2015, from which I have
21 positively identified Photograph No. 3 displayed to me by
22 S.A. McCallister," and then my initials.

23 I wrote, "Joseph Poacher," for some reason,
24 as being the person who tried to exchange money, Indian
25 rupee with me. I'm hundred percent certain that No. 3 is

DIRECT EXAMINATION OF H. PATEL BY JONES

1 the man who had the money.

2 Q Okay.

3 MS. JONES: Permission to approach?

4 THE COURT: Yes.

5 *(Whereupon, Court's Exhibit No(s). 2 marked for*
6 *identification and received in evidence.)*

7 BY MS. JONES:

8 Q Mr. Patel, I'm going to show you what's been
9 marked as Court's 2. Do you recognize that?

10 A Yes, ma'am.

11 Q And what is that?

12 A This is the person that I circled. When I was
13 outside, I circled the No. 3 first, and to be a hundred
14 percent sure, she told me to circle the whole picture, and I
15 did that afterwards.

16 Q Okay. How is -- how does Agent McCallister give
17 you this set of photographs?

18 A It was in a -- it was in a folder.

19 Q Does she in any way suggest to you or point out a
20 picture that you need to identify?

21 A No, ma'am.

22 Q Are you ever influenced by anybody else to pick
23 out this picture?

24 A No.

25 Q Why do you pick out No. 3?

DIRECT EXAMINATION OF H. PATEL BY JONES

1 A I mean, that's the person I saw, and that was the
2 person that exchanged -- that wanted to exchange the money.

3 Q Okay. And how certain were you back then that
4 that was the person who wanted to exchange the money?

5 A A hundred percent.

6 Q Hundred percent. And still today, are you a
7 hundred percent?

8 A Yes, ma'am.

9 Q Okay. And you chose that person out of your own
10 will and accord?

11 A Yes, ma'am.

12 Q Do you see that person in the courtroom today?

13 A Yeah.

14 Q Can you please identify him for the Court.

15 A That's him. (Indicating.)

16 Q What is he wearing?

17 A He is wearing white shirt.

18 MS. JONES: Okay. May the record reflect the
19 witness did identify the Defendant.

20 THE COURT: So reflect.

21 MS. JONES: Thank you, Your Honor.

22 Mr. Patel, I have no further questions for you.
23 Thank you.

24 THE COURT: Cross-examination.

25 CROSS EXAMINATION

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 BY MR. PLEXICO:

2 Q You said that you identified, even wrote down that
3 he was Joseph?

4 A Yes.

5 Q Okay. All right. May I get Exhibit 1, Judge?

6 MR. PLEXICO: Do y'all have Court's Exhibit 1?

7 THE COURT: You want the affidavit or you want
8 the photographs, or you want both of them?

9 MR. PLEXICO: Yes.

10 BY MR. PLEXICO:

11 Q Did -- were they telling you the individual's
12 name, that you were talking to?

13 A I don't believe so, but I could have looked it up
14 in the system. Because they did check in at the hotel and
15 they stayed there before as well.

16 Q Okay. You had already looked them up in the
17 system, you're saying?

18 A Right. I mean, as we were going through like who
19 was -- and who came in to have the money exchanged and stuff
20 like that, I did look in the system because I believed I --
21 because they did get a room that day at the hotel.

22 Q But wasn't the room gotten in his girlfriend's
23 name, and not in the name of Poacher?

24 A I think so.

25 Q Okay. So you didn't have a -- you did not

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 remember his name at that time, correct?

2 A I don't think I believed the name, but he stayed
3 there before.

4 Q Okay. But you didn't remember who stays there
5 with the thousands of people who stay there?

6 A I mean, at that time, it was not really that big
7 of a hotel, and most of the people that come in there are
8 repeat customers.

9 Q Right. So you have thousands of customers a year,
10 right?

11 A Along with other customers that are repeat
12 customers.

13 Q Okay. All right. But you didn't remember his
14 name at the time; is that correct?

15 A I don't believe so, no.

16 Q Okay. All right. So when you talked with the
17 police, are they the ones who suggested the name, "Joshua
18 Poacher," and that's the name you looked up?

19 A I don't remember exactly, no.

20 Q But it could have been that sequence?

21 A I don't -- I don't think they suggested any names.
22 It could have been me because of my -- I could have looked
23 it up in the system because of what happened.

24 Q But you would need a name to start with, correct?

25 A Correct.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 Q Is that what happened?

2 A No, not really a name. I could have looked it up
3 by the room number that they stayed in before, not exactly
4 that date.

5 Q So you remember the room numbers of where people
6 stay?

7 A Sometimes, if they're repeat customers, yes.

8 MR. PLEXICO: I don't have anything further, Your
9 Honor.

10 THE COURT: Redirect.

11 MS. JONES: No, Your Honor.

12 THE COURT: Thank you, sir. You may step down.
13 Anything further?

14 MS. JONES: Not from the State.

15 THE COURT: Anything in response?

16 MR. PLEXICO: I don't have anything further, no.

17 THE COURT: All right. I'll be glad to hear from
18 you, Mr. Plexico.

19 MR. PLEXICO: I said -- I'm sorry, Your Honor, I
20 don't have any other -- we don't have any witnesses to
21 put up now.

22 THE COURT: No, I'd like to hear your position
23 with regard to the line-up.

24 MR. PLEXICO: Well, I think it may have been
25 unduly suggestive because I find it hard to believe,

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 with thousands of customers on a -- you know, on an
2 interstate, where you've got people coming in and out,
3 you're going to remember when somebody stays in a
4 room, and you're going to put that person in the same
5 room every time. It just doesn't -- it doesn't seem
6 to add up.

7 And I wouldn't believe the photo line-up because
8 it had to be suggested to him from the -- from the
9 agent in charge. And I believe that there's no other
10 local person there, so essentially he had a choice of
11 one.

12 Thank you, Your Honor.

13 THE COURT: I will find that the procedure they
14 used was not unduly suggestive. There's nothing to
15 suggest, other than mere speculation from names given,
16 that the photographs on observation looked fairly
17 similar. They're drawn from a computer. They didn't
18 have any suggestibility to them. They don't have to
19 get into the second aspect of the other factors in
20 there, so I'm going to find that would be admissible.

21 Anything further from the State? Do you have a
22 picture or a photograph?

23 MR. STONE: We do, Your Honor. We have a number
24 of photographs, and I'll show these to the defense.
25 I've already provided all these photographs that are

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 at issue. And we have one in particular that I would
2 assume the Defense is going to object to, which is the
3 crime scene photo.

4 I'll hand that up to you in just a moment and make
5 our argument concerning that.

6 I mean, I don't have a witness to say that the
7 photograph is a fair and accurate depiction of how the
8 crime scene occurred. Of course, if I don't do that
9 and lay the foundation, it's not admissible, but
10 assuming that it is admissible, here's an extra copy,
11 if I may hand that up to you.

12 THE COURT: Thank you.

13 MR. STONE: Yes, sir.

14 MR. PLEXICO: I would on an additional one -- I
15 would have an objection to that one and an additional
16 one, Judge.

17 THE COURT: What would be your objection to the
18 long range picture?

19 MR. PLEXICO: It -- well, the long range picture,
20 well, I think that should -- it is not gruesome in and
21 of itself, and I think that it should substitute for
22 the other one, Judge.

23 THE COURT: So you're saying use the long range
24 as opposed to the close-up?

25 MR. PLEXICO: Right. Because the other one --

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE COURT: Your objection is the close-up is
2 just too graphic?

3 MR. PLEXICO: Yes, Your Honor. It's very, very
4 gruesome.

5 THE COURT: All right. I don't need to have any
6 argument on this. This is admissible. I don't think
7 it'll make the jury make a decision based on the wrong
8 factors. So I'm going to find that it is admissible.

9 MR. STONE: Thank Your Honor. I think that's all
10 we have for pretrial, Your Honor, before we go ahead.
11 Certainly nothing else from the State.

12 THE COURT: All right. Anything from the
13 Defense?

14 MR. PLEXICO: They have a feral production, a
15 virtual realty, and I'm going to oppose that because
16 that's an enhanced --

17 MR. STONE: We're not using it.

18 MR. PLEXICO: Okay. No issue.

19 THE COURT: Oh, there was some issue about
20 criminal record. Have you shown him that record?

21 MR. STONE: We checked the criminal history, Your
22 Honor. He does not have one. So there's no issue as
23 to that.

24 THE COURT: Okay. All right. We will take a
25 lunch break and come back at 2:00.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 (Lunch recess.)

2 THE COURT: All right. Madam Clerk, thank you.

3 Good morning, ladies and gentlemen. My name is
4 Lawton McIntosh. I am a circuit court judge from
5 Anderson County. It's my pleasure to be with you here
6 in the low state, here in Ridgeland or Jasper County.
7 I know that you all have noted that it's a little bit
8 warm in here today. That's being worked on. This has
9 been something that we're having to deal with, so just
10 bear with us, if you don't mind.

11 Let me welcome you this week, though, to a term of
12 what we refer to as general sessions court, which is
13 our criminal court. This trial should be over with by
14 the end of the week, so we'll not go into next week,
15 from what I'm told.

16 Let me thank each and every one of you for being
17 here in the court system. We recognize the
18 inconvenience to each and every one of you being held
19 away from your jobs, your family, and being held up
20 here in the courtroom to ostensibly, potentially sit on
21 a jury. I think it's Winston Churchill who said that
22 there's no higher service than a citizen can do for his
23 country during peace time than to sit on a jury.

24 Hopefully, we'll make it as convenient as we
25 possibly can this week. It may be an educational

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 experience for you. We'll certainly try to minimize
2 the inconvenience to you.

3 If anyone has a problem -- will our bailiffs stand
4 up.

5 If you need anything today or at other times
6 during this week, if you're selected or if you need to
7 come back, ask this lady, grab her arm, she knows all
8 about the inner works of the courthouse. She can get
9 you to me, or get you to a clerk of court, or guide you
10 to where you need to know -- need to go.

11 This afternoon, ladies and gentlemen, I'm going to
12 be asking you a series of questions that are required
13 by statute. The first questions will be those to
14 determine whether or not you are qualified to serve as
15 a juror, not whether you want to serve as a juror, but
16 under the statute if you qualify. And number two,
17 whether or not there are any exemptions that may apply
18 to you so that you can say I choose not to serve this
19 week.

20 I remind you, Madamn Clerk, has everybody been
21 sworn?

22 THE CLERK: No, sir.

23 THE COURT: Would you mind swearing the panel,
24 please.

25 (Jury panel sworn.)

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE CLERK: If you took the oath, you can be
2 seated.

3 THE COURT: Thank you.

4 Ladies and gentlemen, let me tell you, some of
5 these questions I'm going to be asking you, quite
6 frankly, are never personal. It may be that you don't
7 want to stand up in front of your peers here in Jasper
8 County and give that information up in court, and
9 that's okay.

10 If a question pertains to you, but you do not wish
11 to stand up, I'll just make a mental note that you will
12 need to come forward at the end of the process, and you
13 can speak to us in a more confidential setting.

14 Just remember, you're under oath. And number two,
15 it's absolutely essential that the court and these
16 attorneys get not only accurate but truthful
17 information about you.

18 With that being said, can everyone hear me okay?

19 (Panel responds.)

20 THE COURT: Normally it's not a problem because I
21 have kind of a big mouth. But if you don't hear me or
22 you can't understand me, raise your hand and I'll
23 rephrase the question such as I do. Okay?

24 Ladies and gentlemen, the first part of these
25 questions have to do with your qualifications to serve.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 The first one is, is there any member of the jury panel
2 who is not a citizen of the United States? If so,
3 would you please stand.

4 (No response.)

5 THE COURT: All right. Also, if you need to
6 stand up and give us a response, if you'll give us
7 your jury number first, if you have that available.
8 If not, will you chase it down and give your response.

9 Next question, is there any member of the jury
10 panel who is not a resident and citizen of Jasper
11 County? If so, would you please stand. I know we had
12 a gentleman earlier.

13 What's your jury number, sir?

14 JUROR: My thing is three --

15 THE COURT: I need you to speak a little louder.

16 JUROR: Three.

17 THE COURT: Three?

18 JUROR: Yes.

19 THE COURT: Oh, you're first on the list. Okay.
20 Mr. Austin. Did I hear you say you live in Georgia?

21 JUROR: Yeah, I live in Richmond Hill, Georgia.
22 Richmond Hill, Georgia, yes.

23 THE COURT: Okay. You hadn't changed your
24 driver's license?

25 JUROR: No, I didn't change my address, I didn't

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 get a chance to do that, but I will.

2 THE COURT: Okay. You need to do that or we're
3 going to bring you back up here again. All right.

4 Thank you, Mr. Austin. You're free to go. And
5 our clerks will send you a check. Don't spend it all
6 in one place. Okay?

7 THE COURT: All right. Anyone else not a
8 citizen?

9 Yes, ma'am, what is your jury number?

10 JUROR: 159.

11 THE COURT: 159. You are Ms. Scott.

12 JUROR: Yes, sir.

13 THE COURT: Where do you live, Ms. Scott?

14 JUROR: I live in Beaufort. I haven't changed my
15 driver's license.

16 THE COURT: You live in Beaufort?

17 JUROR: Yeah.

18 THE COURT: How long have you been there?

19 JUROR: A year.

20 THE COURT: Oh, you have? Why don't you take
21 time today to go on back over there and get it
22 changed. What you think?

23 JUROR: Yes, sir.

24 THE COURT: All right. Ms. Scott, I'm going to
25 let you go. Thank you for coming though.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 Anyone else?

2 JUROR: I don't remember my number. But my name
3 is Julia Felipe.

4 THE COURT: I'm sorry you don't know your number.
5 What is your name?

6 JUROR: Julia Felipe.

7 THE COURT: 57. Oh, good, Felipe. Okay.

8 JUROR: Yeah. I recently moved to Bluffton about
9 a month ago. I recently moved to Bluffton about a
10 month ago.

11 THE COURT: Bluffton?

12 JUROR: Yes.

13 THE COURT: Okay. The same. If you would, would
14 you go ahead and change your paperwork for us, if you
15 don't mind, when you get a chance. And we'll excuse
16 you from service this week. Thank you, Ms. Felipe.

17 Anyone else?

18 (No response.)

19 THE COURT: All right. Next question. Is there
20 any member of the jury panel who is unable to read,
21 write, speak, or understand the English language? If
22 so, would you please stand.

23 (No response.)

24 THE COURT: Next question. Does any member of
25 the jury panel have less than a sixth grade education

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 or its equivalent? If so, would you please stand.

2 (No response.)

3 THE COURT: Is there any member of the jury panel
4 that is unable, because of a physical or intellectual
5 infirmity to render efficient jury service? If you
6 are selected to serve this week, by efficient jury
7 service, you'll need to be able to sit, stand, or some
8 other reasonable combination to listen to the
9 statements by the attorneys, the testimony that's
10 presented, the charge on the law by me, and engage in
11 meaningful deliberations.

12 But if anyone cannot render efficient jury service
13 at this time, if you would please stand. I'll tell you
14 that I normally run court in segments about an hour, or
15 two hours, maybe a little long, maybe a little bit
16 short. But just so you know.

17 Anybody have any inability to render efficient
18 jury service, would you stand up at this juncture?

19 (No response.)

20 THE COURT: Very good.

21 Has any member of the jury panel been convicted by
22 guilty plea or trial in a state or federal court of
23 record of a crime punishable by imprisonment for more
24 than -- for more than one year, and your civil rights
25 have not been restored by pardon or amnesty?

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 Now, by more than one year, I mean that you could
2 have received a sentence in excess of a year regardless
3 of the sentence you actually received. If that applies
4 to you and you don't mind standing, would you please do
5 so.

6 You have a couple on the list?

7 MS. JONES: No, Your Honor.

8 THE COURT: Okay. Is there any member of the
9 jury panel that is a clerk or a deputy clerk of court,
10 a constable, sheriff, or other commissioned law
11 enforcement officer, a probate judge, a county
12 commissioner, magistrate or other county officer, or
13 employed within the walls of any courthouse? If so,
14 would you please stand.

15 (No response.)

16 THE COURT: Is there any member of the jury panel
17 who has previously served in circuit court, as opposed
18 to federal court, city court, or magistrate's court
19 during this calendar year; i.e., during 2017? If you
20 served in state court in 2017, you wouldn't be able to
21 serve here.

22 If that applies, to you, would you please stand.

23 (No response.)

24 THE COURT: All right. Has any member of the
25 jury panel served as a member of the Jasper County

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 grand jury over the last several years? If so, would
2 you please stand.

3 Sir, what is your --

4 JUROR: I'm not sure. My name's Jeffrey Sapp. I
5 want to think I was on grand jury either four or five
6 years.

7 THE COURT: Four or five years ago.

8 JUROR: Yes, sir.

9 THE COURT: Can we you check on that?

10 THE CLERK: Yes, sir.

11 THE COURT: That's Juror No. 155.

12 THE CLERK: In 2012.

13 THE COURT: 2012. When were the indictments
14 issued in this case?

15 MR. STONE: 2015.

16 THE COURT: 2015. Okay. I just wanted to make
17 sure, Mr. Sapp, that you weren't on the grand jury
18 that issued the indictments in this case.

19 JUROR: Thank you.

20 THE COURT: I believe we'll let you stay with us.

21 All right. Ma'am, what is your name and number?

22 JUROR: Brittany West. I don't recall my number.

23 THE COURT: West, 189. And you also served on
24 the grand jury.

25 JUROR: Last year. End of last year.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE COURT: Okay. Let me check something,
2 please, ma'am.

3 THE CLERK: How often did you come, ma'am?

4 JUROR: A day. Then it was dismissed.

5 THE CLERK: She was on a petit jury.

6 THE COURT: You were on a petit jury. Okay.

7 Grand jury meets every week -- once a week, every
8 month of the whole year. Okay.

9 When did she serve on the petit jury?

10 THE CLERK: September 14, 2016.

11 THE COURT: Okay. All right. Ladies and
12 gentlemen, those are all the questions that have to do
13 with your qualifications to serve. Remember, if you
14 didn't speak but need to, make a mental note to come
15 forward at the end of the process.

16 We now move over to exemptions. Again, exemption
17 simply means you're qualified to serve, but you have a
18 right to say I choose not to serve. First of those
19 would be those of you who have reached the age of 65
20 years or older. If you have obtained the age of 65
21 years or older, you have a right to say I choose not to
22 serve this week.

23 Before any of you who may fit that description
24 exercise your exemption, let me urge you to stay with
25 us. If you have reached the age of 65 or more years in

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 this world, you'd be a big benefit to any jury we may
2 pick.

3 But with that being said, the law gives you an
4 absolute right to say, I choose not to. So if
5 anybody's 65 years or older who wishes not to serve
6 this week, would you please stand.

7 Okay. Sir, what is your juror number?

8 JUROR: Juror No. 114.

9 THE COURT: Juror 114, you're Mr. Mitchell?

10 JUROR: Yes, sir.

11 THE COURT: And you are over 65?

12 JUROR: Yes, sir.

13 THE COURT: Okay. Mr. Mitchell, I'm going to
14 excuse you if you don't want to stay. I can't talk
15 you into staying, can I?

16 JUROR: Nope. I'm a bus driver for the school
17 system and they need me. They need my help right now.

18 THE COURT: I gotcha. Go ahead. Thank you.

19 JUROR: Thank you.

20 THE COURT: Yes, ma'am.

21 JUROR: I'm No. 35.

22 THE COURT: Ms. Crosby.

23 JUROR: Yeah, and I'm 75. And if I don't have to
24 stay, I don't care to. If I really thought I was
25 going to be helpful, which I don't know that I would

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 be, but --

2 THE COURT: Well, I think if you've been around
3 for 75 years, you'd be helpful.

4 JUROR: Well, I'm pretty helpful, but I didn't
5 know. And I just wanted you to know.

6 THE COURT: Well, that is fine. You know, my dad
7 is 89 and he's out playing golf and bowling and all
8 kinds of stuff. And he sat on a federal court jury
9 about a month ago, until they found out he was a
10 lawyer and they struck him.

11 JUROR: Oh. Well, my daddy was. Does that
12 count?

13 THE COURT: Thank you.

14 All right. Ma'am, what is your name?

15 JUROR: Nora Riley, Juror No. 145.

16 THE COURT: Okay. Ms. Riley, I know it's
17 indelicate to ask, but you're 65 years old?

18 JUROR: I'm 70.

19 THE COURT: Seventy. Oh, goodness. Now, do you
20 wish to be excused or can I urge you to stay with us?

21 JUROR: Well, I would like to be excused because
22 of conditions at home.

23 THE COURT: All right. Thank you, ma'am, for
24 coming. I'll excuse you from service this week.

25 JUROR: Thank you.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE COURT: Anyone else?

2 (No response.)

3 THE COURT: All right. Ladies and gentlemen,
4 another exemption from service is for prior jury
5 service. If you recall during qualification
6 questions, if you had served in circuit court as
7 opposed to federal court, magistrate court, or city
8 court in 2017, you're not eligible to serve again in
9 2017.

10 In South Carolina, you can only be required to
11 serve in circuit court once in three calendar years.

12 So this question wants to know whether or not any
13 of you served in 2015 or 2016. If you served in
14 circuit court in any of those years, you have a right
15 to say I choose not to serve again in 2017. If that
16 applies to you and you wish to be excused, please
17 stand.

18 (No response.)

19 THE COURT: Also, anyone who has served as a
20 grand juror over the last five years has a right to
21 say I choose not to serve again in circuit court this
22 week. So if anyone else has served as a grand juror
23 anywhere in this state over the last five years, and
24 you wish to be excused, would you please stand.

25 THE COURT: Now, you were on the petit jury,

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 sweetheart.

2 THE CLERK: She served in September of 2015, so
3 she can meet the exemption.

4 THE COURT: Okay. Let me go back.

5 Now, let me ask you this. I had one about prior
6 jury service, and she served in 2016. Now, do you
7 want -- ma'am, would you stand up. What's your jury
8 number?

9 JUROR: No. 189.

10 THE COURT: And are you trying -- I know you're
11 trying your best to get off jury duty. But you served
12 in 2016, according to the clerk, in circuit court. So
13 you have the right to choose to be excused this week,
14 if you would like to.

15 JUROR: I would like to.

16 THE COURT: Okay. Persistence pays off, I guess.

17 All right. Take care. Thank you for being here,
18 you're free to go.

19 All right. Ladies and gentlemen, those of you who
20 have small children, this exemption may apply to you.
21 It has four sub parts, all of which must apply before
22 you can exercise your exemption. But you may be
23 exempted if you have a small child or children under
24 the age of seven, you have legal custody of your child
25 or children, you are the primary caretaker of your

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 child or children, and No. 4, you would be unable to
2 make suitable arrangements for their care if you were
3 required to serve this week.

4 If all four of those so far apply to you and you
5 wish to be excused, would you please stand.

6 Okay. What is your name, please.

7 JUROR: Valerie Singletary, and I'm Juror No.
8 165.

9 THE COURT: No. 165, and you have a child or
10 children under seven?

11 JUROR: Yes. I have a granddaughter that I pick
12 up every afternoon.

13 THE COURT: I need you to come talk to you at the
14 end of this process, please. That's not your child or
15 children --

16 JUROR: Yeah, but I'm responsible for picking her
17 up, yes. Okay.

18 THE COURT: Yes, ma'am, what's your name?

19 JUROR: Naquandra McPherson.

20 THE COURT: Ms. McPherson, you have a child or
21 children under seven?

22 JUROR: Yes. I have a five-year-old.

23 THE COURT: And she's at home with you and you're
24 her primary caretaker?

25 JUROR: Yes, he is.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE COURT: Are you asking to be excused?

2 JUROR: Yes.

3 THE COURT: All right. Ms. McPherson, you are
4 excused. Thank you so much.

5 Anyone else with regard to small children?

6 All right. The next exemption has to do with
7 those of you who may be attending school on a full time
8 basis or working in some capacity at a school. It
9 applies, whether or not it's a private school,
10 technical school, or a public school. Under this --
11 under this particular exemption, you will not be
12 excused from jury service, you'll simply be transferred
13 to another term of court, which will not interfere with
14 your work or studies at an educational institution.

15 But if there's any member of the jury panel who is
16 a full time student, and teachers, school crossing
17 guard, bus driver, or who works in some public,
18 private, or technical school in some other capacity who
19 wishes to be transferred to another term of court,
20 would you please stand.

21 (No response.)

22 THE COURT: Very good. Is there any member of
23 the jury panel who's employed with the Department of
24 Corrections at a penitentiary who wishes to be excused
25 this week? If so, would you please stand.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 (No response.)

2 THE COURT: Ladies and gentlemen, are there any
3 members of the jury panel who perform services for a
4 business, commercial or agricultural enterprise, which
5 are so essential to the operation of that business
6 that that business would have to shut its doors and
7 not operate if you were required to serve in jury
8 service? If that applies to you, and you wish to be
9 excused, please stand.

10 All right, sir. What's your juror number?

11 JUROR: Sixty-three.

12 THE COURT: Sixty-three. You are Mr. Goddard?

13 JUROR: Yes, sir.

14 THE COURT: What kind of business are you in, Mr.
15 Goddard?

16 JUROR: I manage a body shop.

17 THE COURT: Sir?

18 JUROR: I manage a body shop.

19 THE COURT: You manage a body shop?

20 JUROR: Yeah. I'm the only employee.

21 THE COURT: What's going on with the body shop
22 while you're here?

23 JUROR: I'm sorry?

24 THE COURT: What's going on at the body shop
25 right now?

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 JUROR: There's four cars that need to be
2 repaired and painted by the end of the week.

3 THE COURT: Do you have people there working?

4 JUROR: No, sir.

5 THE COURT: You say you don't?

6 JUROR: No. I am the only employee there.

7 THE COURT: Who do you work for?

8 JUROR: Precision Auto at Hilton Head.

9 THE COURT: Precision Auto?

10 JUROR: Yes, sir.

11 THE COURT: I don't know. I want you to come to
12 me at the end of the process.

13 JUROR: Sure.

14 THE COURT: All right. Anyone else?

15 (No response.)

16 THE COURT: Is there any juror who's the primary
17 caretaker of a severely disabled person who cannot be
18 left by him or herself alone, or is the primary
19 caretaker of a person 65 years or older? If you're a
20 primary caretaker of a severely disabled person or
21 somebody 65 years or older and wish to be excused,
22 would you please stand.

23 (No response.)

24 THE COURT: Very good. All right. Ladies and
25 gentlemen, those are all the questions that apply to

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 exemptions. Those of you who didn't stand on these
2 set of questions, remember to come forward. The ones
3 I asked to come forward, please remember to, too.

4 All right. It may be that you are qualified and
5 that no exemption applies to you; however, having
6 served this particular week would cause you extreme
7 hardship because of your particular circumstance. I'm
8 not allowed to excuse qualified and non exempt people,
9 but under compelling circumstances, I can transfer you
10 to another term of court which would not interfere with
11 your services -- with your week this week for whatever
12 particular reason you have.

13 Does anybody want me to consider a transfer
14 request to another term of court? If so, would you
15 please stand.

16 THE COURT: Okay. What is your jury number?

17 JUROR: I'm 84 -- 94.

18 THE COURT: You're Ms. Kuhlman?

19 JUROR: Yes.

20 THE COURT: Okay. Ms. Coleman, do you mind
21 telling me what your particular circumstance is?

22 JUROR: My son is on a heart transplant list in
23 Orlando, Florida. And if he would get the call, we
24 would be going to Orlando.

25 THE COURT: He's on what kind of list, please?

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 JUROR: Heart transplant list.

2 THE COURT: Oh, he is. Okay. And I'll tell you
3 what, come talk to me at the end of this process. I
4 think I'm going to let you go for sure, but I'll need
5 to talk to you more.

6 Yes, ma'am. What's your jury number?

7 JUROR: Yes. I'm Juror No. 9. My daughter is
8 younger -- is older than seven, but she's out of
9 school this week and I do not have someone -- I have
10 her with me --

11 THE COURT: You know, I really am having a hard
12 time hearing. Are you Ms. Berkey?

13 JUROR: Yes, sir.

14 THE COURT: Okay. Tell me again.

15 JUROR: My daughter is nine, but she's actually
16 out of school this week and I don't have anyone
17 watching her.

18 THE COURT: Oh, you're having spring break?

19 JUROR: Yes, sir.

20 THE COURT: So you want to be transferred to
21 another term that doesn't interfere?

22 JUROR: Yes.

23 THE COURT: How about this summer?

24 JUROR: That's perfectly fine.

25 THE COURT: July? Do we have a July term, Madam

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 Clerk?

2 THE CLERK: Yes, sir, we do. July 24th.

3 THE COURT: July 24th.

4 JUROR: I can do that.

5 THE COURT: Okay. She will send you a new
6 notice, and we just need you to report back. Okay.
7 Have fun on spring break.

8 JUROR: Okay. Thank you.

9 THE COURT: All right, sir. What's your jury
10 number?

11 JUROR: Forty-one.

12 THE COURT: Forty-one?

13 THE CLERK: Forty-seven.

14 JUROR: Forty-seven.

15 THE COURT: You're Mr. Dopson?

16 JUROR: Yes. Spring break starts on Thursday and
17 I normally get my grands off the bus until their
18 parents get out of work. And for that reason, I would
19 like to be transferred to July 24th, if that's
20 possible. We don't have anyone to get them off the
21 bus is what I'm saying.

22 THE COURT: And that's Thursday?

23 JUROR: Yes, sir.

24 THE COURT: I tell you what. If I keep you
25 around up until maybe Wednesday or so, I'll let you

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 get out and go get him. Would that be sufficient?

2 JUROR: I mean, that's everyday. We do that
3 everyday.

4 THE COURT: Oh, you do it everyday. I thought
5 you just said it's Thursday.

6 JUROR: I got to get them off the bus everyday
7 and then Thursday and Friday, well, I take care of
8 them.

9 THE COURT: I'm going to move you to July 24th,
10 and you'll come back this summer. Okay?

11 JUROR: Yes, sir.

12 THE COURT: Thank you, Mr. Thompson.

13 JUROR: Thank you.

14 THE COURT: Okay. What else? Yes, ma'am.

15 JUROR: Fifty-eight.

16 THE COURT: Fifty-eight.

17 JUROR: Yeah. Peggy Ferguson. I have a day care
18 center, and we are short on help. I'm in the process
19 of getting somebody else certified to help out. We
20 short of a teacher and I'm the only other teacher.

21 THE COURT: Is your door shut on that business?

22 JUROR: It's not shut, only we have three classes
23 and we only have two teachers there while I'm here.
24 So we short of help.

25 THE COURT: All right. I'm going to move you to

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 July the 24th.

2 JUROR: That'll be fine.

3 THE COURT: Okay. And you'll just come back this
4 summer. Okay.

5 JUROR: All right. That's fine. Thank you.

6 THE COURT: Ma'am?

7 (Discussion off the record.)

8 THE CLERK: Fifty threee.

9 THE COURT: All right.. Anyone else? Those of
10 you that I asked to come forward, talk to us, those
11 who may have a question as to whether or not you're
12 qualified, or there's an exemption that applies to
13 you, or you want me to consider a transfer request, if
14 you'd line up at the bar, I'll speak to you more on an
15 individual basis.

16 Come on up here. What is your juror number?

17 JUROR: Ninety-four.

18 THE COURT: What is your problem this morning?

19 JUROR: My son is on a heart transcript list in
20 Orlando.

21 THE COURT: Let me ask you, if we were -- if that
22 were to happen, and I were to pick an alternate on the
23 jury and let the alternate go, and if you were that
24 alternate, since we are running short, would that be
25 sufficient for you?

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 JUROR: Yes. The problem is that I can't have a
2 phone in here. I wouldn't know if he was getting a
3 call or not.

4 THE COURT: We will make arrangements so that we
5 can get the call to you so we are not in the dark.

6 JUROR: Right now my husband is outside
7 babysitting a phone.

8 THE COURT: We will take care of that. And we
9 will not let you sit here without access. And if the
10 call comes in, you have got to go. Okay. If you can
11 stick around.

12 JUROR: Sixty-three.

13 THE COURT: You are the one that works at
14 Precision?

15 JUROR: Yes, sir.

16 THE COURT: You don't own the place?

17 JUROR: No.

18 THE COURT: You have to stick around, brother.
19 Sorry.

20 JUROR: One sixty-five.

21 THE COURT: One sixty-five. You are Ms.
22 Singleton.

23 JUROR: Yes. I have a granddaughter. Her mom
24 works all morning and we are responsible for picking
25 her up.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE COURT: What time do you pick her up?

2 JUROR: I usually pick her up at 4, and the lady
3 that left, with the day care, that is where my
4 granddaughter goes to day care.

5 THE COURT: Okay. Let me ask you this. If we
6 can make arrangements to get your granddaughter to day
7 care --

8 JUROR: If you do pick me on a jury, I don't want
9 to make a judgment.

10 THE COURT: I don't care about that, I'll sit you
11 on the front row and let you watch. I can get you
12 there, but jury duty is part of your civic duty.

13 JUROR: If I pick her up and my car is not
14 ready --

15 THE COURT: We will send a deputy sheriff to pick
16 you up. I don't mean to be mean to you, but we have a
17 very small jury panel.

18 JUROR: Okay. So, I can leave?

19 THE COURT: What is it?

20 JUROR: One twenty-five.

21 THE COURT: Ms. Orr.

22 JUROR: Yes. I have nerve problems and I cannot
23 sit that long.

24 THE COURT: We will let you stand up. I will let
25 you stick around. You can move around and stuff. And

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 we will take a lot of breaks. I will let you stay.

2 JUROR: Can I get up and walk out?

3 THE COURT: Get up, stand up. And if you need a
4 break, put your hand up and we will take a break.

5 JUROR: Okay. How long?

6 THE COURT: About an hour and a half. We will
7 not start until tomorrow. Okay. Thank you, girl.

8

9 *****No audio for this part -- see note below.)**

10 **NEXT CASE**

11

12 THE COURT: All right. What is your name and
13 number?

14 JUROR: Jess Arzillo.

15 THE CLERK: Number five.

16 THE COURT: What is your issue?

17 JUROR: I am (inaudible.)

18 THE COURT: You are the only one there?

19 JUROR: Yeah.

20 THE COURT: Are you sure you don't want to stay
21 and serve?

22 JUROR: I am good.

23 THE COURT: Excused.

24 How are you doing?

25 JUROR: Number 77 I think she said. Bessie Hugee.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE COURT: Let me ask you this. (Inaudible)

2 Excused.

3 JUROR: (Juror 96) I am trying to get something
4 together. My mom and my dad help.

5 THE COURT: You drive yourself back and forth and
6 run your household?

7 JUROR: I do. And up and down. And I will serve
8 if there's no one else.

9 THE COURT: Let me tell you, I think that you are
10 qualified. Okay. Thank you.

11 THE COURT: Mr. Stone, would you call your case,
12 please, sir.

13 MR. STONE: Yes, sir. The State calls Indictment
14 2015 GS-27-00379, charging Joshua Lenard Poacher with
15 the crime of murder. Indictment No. 2015-GS-27-00378,
16 charging Joshua Lenard Poacher with the crime of
17 murder. 2015 GS 27490 charging Joshua Lenard Poacher
18 with the charge of armed robbery. 2015-GS-27-00491
19 charging Joshua Lenard Poacher with the charge of
20 possession of a weapon during the commission of a
21 violent crime.

22 I'll hand the indictments up to Your Honor.

23 THE COURT: Thank you, sir.

24 All right. Ladies and gentlemen, I'm going to go
25 over some questions with you at this time. You are

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 still under oath. Let me point out that the difference
2 between this question and answer period will be, unless
3 it's just absolutely necessary, I'm gong to ask that
4 you stand up, give me your jury number, where you are
5 in the courtroom, and give me your response there.

6 Remember, try to speak loudly so that the
7 attorneys and the parties can hear you.

8 The first question is, has any member of the jury
9 panel ever been related by blood or marriage to Joshua
10 Poacher, Kantibhai Patel -- that's K-A-N-T-I-B-H-A-I,
11 Hansabel Patel, and that's H-A-N-S-A-B-E-L. Did
12 everybody get those names?

13 Has anybody ever been related by blood or marriage
14 to any of the folks I just gave to you? If so, would
15 you please stand.

16 (No response.)

17 THE COURT: Has any members of the jury panel
18 ever had a close, personal, or social relationship
19 with any of the folks I've just read to you? If so,
20 would you please stand.

21 Okay. Ma'am, what is your jury number?

22 JUROR: Sixty-nine. Sixty-nine.

23 THE COURT: Okay. You're Ms. Henderson?

24 JUROR: Yes, I am.

25 THE COURT: And which one of those individuals do

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 you have a close, personal, social relationship with?

2 JUROR: I'm very much affiliated with the Poacher
3 family.

4 THE COURT: Ma'am?

5 JUROR: I am affiliated with the Poacher family.

6 THE COURT: And how are you affiliated with them,
7 please?

8 JUROR: My family's interrelated to them.

9 THE COURT: They're related? What is your degree
10 of relationship?

11 JUROR: Maybe about a third, fourth cousin.

12 THE COURT: Okay. I mean, I have a third and
13 fourth cousins I've never seen ever in my life.

14 Let me ask you this. Would the fact that you have
15 relationship, third, fourth cousins to the Poacher
16 family, prevent you from being fair and impartial to
17 the State and to Mr. Poacher in this case?

18 JUROR: No, sir.

19 THE COURT: I mean, you could listen to the
20 testimony and make your decision based on that
21 testimony and base it on the law as I give it to you?

22 JUROR: Yes, I will.

23 THE COURT: Thank you so much.

24 All right. Ladies and gentlemen, I'm going to
25 give you a list of potential names. I'm going to read

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 all of them to you, then ask you questions about that
2 following.

3 First is Phillip Cothran, Jasper County Emergency
4 Services. Sergeant Stephon Ashby, Jasper County
5 Sheriff's Office. Andy Williams, Jasper County Fire
6 and Rescue. Rajesh Vyas, Ontario, California. Trey
7 Tallon, South Carolina Law Enforcement Division.
8 William Anderson, Triangle, Virginia. Martha Sue
9 Anderson, Triangle, Virginia. Sean Burwell, Jasper
10 County Detention Center.

11 Dr. Nick Batalis, Medical University of South
12 Carolina. Loretta Blackwood, Yemassee, South Carolina.
13 Richard Johnson, SLED. Suzanne Cromer, SLED. Tracy
14 Thrower, SLED. Karen Milbrodt, Verizon Wireless.
15 Dylan Hightower, 14th Circuit Solicitor's Office.
16 Tyffanie Hezel, SLED. Katie McCallister, SLED. Hardik
17 Patel, Hardeeville, South Carolina.

18 Elvin Wright, Jasper County Sheriff's Office.
19 Kimberly Mears, SLED. Dianne Echols, Handy Dan's, and
20 that's in Ridgeland. Jennifer Turno, Regions Bank.
21 Todd Schenk, SLED. Blake Jernigan, Jasper County Fire
22 and Rescue. And Donald Hipp, 14th Circuit Solicitor's
23 Office, formerly with Jasper County Sheriff's Office.

24 Did everybody get those names?

25 Very good. is there anyone who did not get those

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 names?

2 (No response.)

3 Okay. Has any member of the jury panel ever been
4 related by blood or marriage to any of the people I've
5 just read to you? If so, would you please stand.

6 You must have a big family over here.

7 JUROR: Ashby is my brother-in-law.

8 THE COURT: Who?

9 JUROR: Stephon Ashby.

10 THE COURT: Stephon Ashby, Jasper County
11 Sheriff's Office?

12 JUROR: Yes. And I also know Hipp.

13 THE COURT: Ma'am?

14 JUROR: I also know Officer Hipp.

15 THE COURT: Okay. Well, would your relationship
16 or your knowledge of Mr. Hipp or Mr. Ashby prevent you
17 from listening to the testimony presented and being
18 fair and impartial to both the State and to the
19 Defense.

20 JUROR: No. Got to be honest. No, it won't.

21 THE COURT: Ma'am?

22 JUROR: No, it would not.

23 THE COURT: Okay. I have to ask these questions.
24 You have somebody who's looking at his own trial for
25 their freedom, so it's important that he get a fair

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 jury.

2 JUROR: I do understand.

3 THE COURT: Okay. Thank you so much.

4 And if there's any additional voir dire being
5 requested, let me know.

6 Did I see somebody else standing up back there?

7 JUROR: Yes. I'm related to Elvin Wright.

8 THE COURT: What's your number?

9 JUROR: Seventy-two.

10 THE COURT: Okay. Mr. Heyward. And who are you
11 related to?

12 JUROR: Elvin Wright.

13 THE COURT: Wright. And what is your
14 relationship to Ms. Wright?

15 JUROR: Third cousin?

16 THE COURT: Okay. Would that relationship affect
17 your ability to be fair and impartial to both sides in
18 this case?

19 JUROR: I don't think so, but I really don't want
20 to sit in on this trial, too.

21 THE COURT: Sir?

22 JUROR: I don't think it would, but I really just
23 don't want to sit in on this trial.

24 THE COURT: Well, you -- now, hang on. I'm not
25 going to let you get on a jury if you're going to be

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 not sure. You have to be sure that you can listen to
2 the testimony, you can listen to the evidence, and
3 you're going to give the benefit of the doubt to
4 anybody that comes before you, either be the State or
5 the Defense in this case. And you can't give anybody
6 prejudice or favor. You understand?

7 JUROR: I don't think so.

8 THE COURT: You don't think you could do that?

9 JUROR: Nope.

10 THE COURT: All right. Well, have a seat, please
11 sir.

12 Anyone else?

13 THE COURT: Yes, ma'am.

14 JUROR: Related to Stephon Ashby. Like a third
15 cousin, but I will be able to sit among the jury.

16 THE COURT: And you can be fair and impartial to
17 everyone?

18 JUROR: Yes.

19 THE COURT: Thank you so much. What jury number
20 are you?

21 JUROR: I'm sixty-one.

22 THE COURT: One sixty-one. You are -- sixty-one.
23 Okay. You are Ms. Simmons.

24 JUROR: Yes.

25 THE COURT: Okay. Thank you so much, Ms.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 Simmons.

2 All right. Will counsel for the Defense stand up
3 and introduce yourself and the witness, please, sir --
4 your client.

5 MR. PLEXICO: Yes. My name is Steven Plexico,
6 I'm one of the public defenders Jasper County. This
7 is my client, Joshua Poacher.

8 THE COURT: All right. Mr. Stone, would you do
9 the same for the State.

10 MR. STONE: Yes, sir. I'm Duffy Stone. I'm the
11 Solicitor for the 14th Circuit. This is Mary
12 Concannon Jones, she's an assistant solicitor.

13 THE COURT: All right. Ladies and gentlemen, has
14 any member of the jury panel ever been represented by
15 any of these attorneys here in the courtroom or any
16 member or any attorney that worked for the 14th
17 Circuit Solicitor's -- Public Defender's Office here
18 in Jasper, or the Solicitor's Office here in Jasper?
19 If you have been represented by any of these attorneys
20 here or any members of their respective firms, would
21 you stand.

22 JUROR: Does a member of our family count?

23 THE COURT: No, it doesn't. But stand up and
24 give me your juror number.

25 JUROR: 102.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE COURT: 102, you're Ms. Lowther?

2 JUROR: Yes, sir.

3 THE COURT: And one of your family members was
4 represented by?

5 JUROR: Mr. Hughes.

6 THE COURT: How long ago was that, ma'am?

7 JUROR: About five years ago, when he was 17.

8 THE COURT: Okay. Would that make you be unable
9 to be fair?

10 JUROR: No, sir. No, sir.

11 THE COURT: You can be fair to both sides?

12 JUROR: Absolutely.

13 THE COURT: Okay. Thank you, ma'am.

14 Anyone else?

15 (No response.)

16 THE COURT: Has any member of the jury panel ever
17 been related by blood or marriage, or have you ever
18 had a close, personal, or social relationship with any
19 of these attorneys here in the courtroom, or any
20 member of the 14th Circuit Solicitor's Office or
21 Public Defender's Office? If so, would you please
22 stand.

23 Has any members of the jury panel formed or
24 expressed an opinion about any issue or matter involved
25 in this case? If so, would you please stand.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 (No response.)

2 THE COURT: And the follow-up to that would be,
3 has any member of the jury panel read, heard, or seen
4 anything about the case of the State of South Carolina
5 versus Joshua Poacher prior to coming to court today?
6 If so, would you please stand.

7 Okay. Don't tell me what you saw, or where did
8 you see it?

9 JUROR: Newspaper -- or Internet.

10 THE COURT: Ma'am?

11 JUROR: Read a news account on the Internet.

12 THE COURT: And what is your name and number?

13 JUROR: Tammy Lee, 99.

14 THE COURT: Ninety-nine, okay. All right. Ms.
15 Lee, would the fact that you had some knowledge of
16 this prior today, could you set that aside and be fair
17 and impartial to both the State and to this Defendant?

18 JUROR: Yes. Yes, sir, I could.

19 THE COURT: Okay. Thank you, ma'am.

20 What's your name and number?

21 JUROR: Jenkins, No. 83.

22 THE COURT: Ms. Jenkins, okay. And you saw it or
23 heard it before court?

24 JUROR: Yes, sir.

25 THE COURT: And don't tell me what you saw

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 either, but where did you see it?

2 JUROR: Newspaper.

3 THE COURT: Okay. And would that -- can you set
4 that exposure aside, listen to the testimony and the
5 evidence, and be fair and impartial to both the State
6 and to this Defendant?

7 JUROR: Yes, sir.

8 THE COURT: Thank you so much.

9 Anyone else?

10 (No response.)

11 THE COURT: Is any member of the jury panel aware
12 of any bias or prejudice they may harbor to either the
13 State of South Carolina or to this Defendant in this
14 case, or their respective attorneys? If so, would you
15 please stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel
18 that was a member of the Jasper County grand jury that
19 issued the indictments in this particular case? If
20 so, would you please stand.

21 (No response.)

22 THE COURT: Is there any members of the jury
23 panel who is a member of or a contributor to any group
24 which has as its primary function the advancement of
25 law enforcement or victim's rights? Examples, but

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 certainly not a full list of such groups, would be:
2 MADD, SADD, or CAV. But if you are a contributor of
3 or a member of, current contributor to or a member of
4 any group which has as its primary concern the
5 advancement of law enforcement or victim's rights,
6 would you please stand?

7 (No response.)

8 THE COURT: Does any member of the jury panel
9 know of any reason whatsoever why he or she should not
10 be selected to serve in the trial of this matter with
11 particular emphasis being placed upon your ability to
12 be fair and impartial to both the State and to this
13 Defendant? If you know of any reason why you
14 shouldn't serve, would you please stand.

15 (No response.)

16 THE COURT: Is there any member of the jury panel
17 that's related by blood or marriage or have a close,
18 personal, social acquaintance with any member of any
19 law enforcement agency? If so, would you please
20 stand.

21 JUROR: My wife works for the --

22 THE COURT: What's your jury number?

23 JUROR: It's Patrick Mason, I'm not sure the
24 number.

25 THE CLERK: 107.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE COURT: 107, okay.

2 JUROR: My wife works at the prison as a nurse.

3 THE COURT: Okay. And would that relationship
4 prevent you from being fair and impartial to both
5 sides in this case?

6 JUROR: No, sir.

7 THE COURT: Okay. Thank you so much, Mr. Mason.
8 Anyone else?

9 JUROR: No. 27.

10 THE COURT: You're Mr. Coffey.

11 JUROR: Correct. My brother-in-law is the police
12 officer in Chatham County.

13 THE COURT: Chatham?

14 JUROR: Correct.

15 THE COURT: Would that impact on your ability to
16 give this man a fair and impartial trial, and the
17 State a fair and impartial trial?

18 JUROR: I don't believe so, no.

19 THE COURT: Okay. Thank you, sir.

20 All right. Does any member of the jury panel have
21 family members or close personal or social
22 acquaintances who are employed by any agency tasked
23 with prosecution of cases, whether it be state,
24 federal, or local? And if so, would you please stand.

25 What is your juror number?

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 JUROR: 102.

2 THE COURT: Okay. Ms. Lowther?

3 JUROR: Yeah. Judge Deborah Malphrus is related
4 through marriage. My husband's first cousin.

5 THE COURT: Her son was my law clerk. I tell
6 you, I feel for you -- I'm kidding.

7 Now, would that make you unable to be fair and
8 impartial to both sides, or could you do it?

9 JUROR: No, sir. No, sir.

10 THE COURT: Okay. I was just kidding. I love
11 her.

12 All right. Has any member of the jury panel ever
13 been employed by any civilian or military law
14 enforcement group? If so, would you please stand.

15 (No response.)

16 THE COURT: Has any member of the jury panel, or
17 member of their family or close personal or social
18 acquaintance, ever been the victim of a violent crime
19 or robbery? If so, would you please stand.

20 (No response.)

21 THE COURT: Has any members of the jury panel
22 ever been a witness in a criminal trial before? If
23 so, would you please stand.

24 (No response.)

25 THE COURT: Other than this request, any

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 additional voir dire?

2 MR. STONE: No, sir, not from the State.

3 MR. PLEXICO: Not from the Defense, Your Honor.

4 THE COURT: Okay. Very good.

5 All right. Ladies and gentlemen, in just one
6 moment our clerk is going to run your names through a
7 computer, which will generally run off some names, then
8 she'll call out your names in the courtroom and your
9 juror number.

10 If your name is called, get your personal
11 belongings, walk up here to the front of the desk and
12 face the State and face the Defense, and they'll make a
13 decision as to whether or not you'll be selected.

14 Ten and five, and we'll do one alternate?

15 MR. STONE: Yes, sir. That's fine.

16 THE COURT: Two and one?

17 MR. PLEXICO: Can we agree to get two alternates,
18 now, please?

19 THE COURT: Very good. Two and one and two and
20 one.

21 Let me see the attorneys up here right quick.

22 (Off-the-record discussion held.)

23 THE CLERK: As I call your name, will you please
24 come forward. Stand here, look at the clock.

25 Juror No. 112, Annie Mitchell.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 How says the State?

2 MR. STONE: Please present Ms. Mitchell.

3 THE CLERK: How says the Defense?

4 MR. PLEXICO: Please seat and swear the juror.

5 THE CLERK: Have a seat in the jury box, ma'am.

6 Juror No. 124 Samuel Oquinn, Jr.

7 How says the State?

8 MR. STONE: Please present Mr. Oquinn.

9 THE CLERK: How says the Defense?

10 MR. PLEXICO: Swear the juror.

11 THE COURT: Have a seat in the jury box, sir.

12 THE CLERK: Juror No. 130. Dinah,

13 P-F-L-U-E-G-E-R, Pflueger.

14 How says the State?

15 MR. STONE: Please present Ms. Pflueger.

16 THE CLERK: How says the Defense?

17 MR. PLEXICO: Please excuse the juror from the
18 trial of this case.

19 THE CLERK: Thank you, ma'am. Have a seat back
20 in the audience.

21 Juror No. 156, Sandra Saxon.

22 How says the State?

23 MR. STONE: Please present Ms. Saxon.

24 THE CLERK: How says the Defense?

25 MR. PLEXICO: Please swear the juror.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE CLERK: Have a seat in the jury box, ma'am.

2 Juror No. 59, Cheryl Fisch.

3 How says the State?

4 MR. STONE: Please present Ms. Fisch.

5 THE CLERK: How says the Defense?

6 MR. PLEXICO: Please swear the juror.

7 THE CLERK: Have a seat in the jury box, ma'am.

8 Juror No. 102, Leona Lowther.

9 How says the State?

10 MR. STONE: Please excuse Ms. Lowther for this
11 case.

12 THE CLERK: Have a seat back in the audience,
13 ma'am.

14 Juror No. 26, Thomas Coburn, Jr.

15 How says the State?

16 MR. STONE: Please present Mr. Coburn.

17 THE CLERK: How says the Defense?

18 MR. PLEXICO: Please excuse Mr. Coburn from the
19 trial of this case. juror.

20 THE CLERK: Have a seat back down in the
21 audience. Thank you.

22 Juror No. 107, Patrick Mason.

23 How says the State?

24 MR. STONE: Please present Mr. Mason.

25 THE CLERK: How says the Defense?

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 MR. PLEXICO: Please excuse the juror from the
2 trial of this case.

3 THE COURT: Thank you. Have a seat back in the
4 audience sir.

5 THE CLERK: Thank you. Have a seat in the
6 audience, sir.

7 Juror No 63, Robert Goddard.

8 How says the State?

9 MR. STONE: Please present Mr. Goddard.

10 THE CLERK: How says the Defense?

11 MR. PLEXICO: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, sir.

13 Juror No. 69, Gail Henderson.

14 How says the State?

15 MR. STONE: Please excuse Ms. Henderson for this
16 case?

17 THE COURT: Thank you, ma'am. Have a seat in the
18 audience.

19 Juror No. 171, Mary Smith.

20 How says the State?

21 MR. STONE: Please present Ms. Smith.

22 THE CLERK: How says the Defense?

23 MR. PLEXICO: Please swear the juror.

24 THE CLERK: Have a seat in the jury box, ma'am.

25 Juror 161, Helen Simmons.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 How says the State?

2 MR. STONE: Please present Ms. Simmons.

3 THE CLERK: How says the Defense?

4 MR. PLEXICO: Please swear the juror.

5 THE CLERK: Have a seat in the jury box, ma'am.

6 Juror No. 27, Joshua Coffey.

7 How says the State?

8 MR. STONE: Please present Mr. Coffey.

9 THE CLERK: How says the Defense?

10 MR. PLEXICO: Please excuse the juror from the
11 trial of this case.

12 THE CLERK: Thank you, sir. Have a seat back in
13 the audience.

14 Juror No. 35, Martha Crosby.

15 How says the State?

16 MR. STONE: Please present Ms. Crosby.

17 THE CLERK: How says the Defense?

18 MR. PLEXICO: Please excuse the juror from the
19 trial of this case.

20 THE CLERK: Thank you, ma'am. Have a seat back
21 in the audience.

22 Juror No. 163, Linette Singleton.

23 How says the State?

24 MR. STONE: Please present Ms. Singleton.

25 THE CLERK: How says the Defense?

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 MR. PLEXICO: Please swear the juror.

2 THE CLERK: Have a seat in the jury box, ma'am.

3 Juror No. 132, Robin Pickens.

4 How says the State?

5 MR. STONE: Please present the Ms. Pickens.

6 THE CLERK: How says the Defense?

7 MR. PLEXICO: Swear the juror.

8 THE CLERK: Have a seat in the jury box, ma'am.

9 Juror No. 168, Elizabeth Smith.

10 How says the State?

11 MR. STONE: Please present Ms. Smith.

12 THE CLERK: How says the Defense?

13 MR. PLEXICO: Please excuse the juror from the

14 trial of this case.

15 THE CLERK: Thank you, ma'am. Have a seat back

16 in the audience.

17 Juror No. 155, Jeffery Sapp, Senior.

18 How says the State?

19 MR. STONE: Please present Mr. Sapp.

20 THE CLERK: How says the Defense?

21 MR. PLEXICO: Excuse the juror from the trial of

22 this case.

23 THE CLERK: Thank you, sir. Have a seat back in

24 the audience.

25 Juror No. 40, Duane D-A-M-I-A-N-I, Damiani.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 JUROR: Damiani.

2 THE CLERK: Damiani.

3 How says the State?

4 MR. STONE: Please present Mr. Damiani.

5 THE CLERK: How says the Defense?

6 MR. PLEXICO: Please excuse the juror from the
7 trial of this case.

8 THE CLERK: Thank you, sir. Have a seat back in
9 the audience.

10 Juror No. 96, Leigh Laycock.

11 How says the State?

12 MR. STONE: Please present Mr. Laycock.

13 THE CLERK: How says the Defense?

14 MR. PLEXICO: Please swear the juror.

15 THE CLERK: Have a seat in the jury box, ma'am.

16 Juror No. 125, Stephanie Orr.

17 How says the State?

18 MR. STONE: Please present Ms. Orr.

19 THE CLERK: How says the Defense?

20 MR. PLEXICO: Please swear the juror.

21 THE CLERK: Have a seat in the jury box, ma'am.

22 Juror No. 71, Nathan Hexamer.

23 How says the State?

24 MR. STONE: Please present Mr. Hexamer.

25 THE CLERK: How says the Defense?

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 MR. PLEXICO: Please excuse the juror from the
2 trial of this case.

3 THE CLERK: Thank you, sir. Have a seat back in
4 the audience.

5 Juror No. 169, John Smith.

6 How says the State?

7 MR. STONE: Please present Mr. Smith.

8 THE CLERK: How says the Defense?

9 MR. PLEXICO: Please swear the juror.

10 THE CLERK: Have a seat in the jury box.

11 Alternate No. 1, Juror No. 99, Tammy Lee.

12 How says the State?

13 MR. STONE: Please present Ms. Lee.

14 THE CLERK: How says the Defense?

15 MR. PLEXICO: Please excuse the juror from the
16 trial of this case.

17 THE CLERK: Thank you, ma'am. Have a seat in the
18 audience.

19 Juror No. 21, Gretchen Callejas.

20 How says the State?

21 MR. STONE: Please present Ms. Callejas.

22 THE CLERK: How says the Defense?

23 MR. PLEXICO: Please swear the juror.

24 THE CLERK: Have a seat in Alternate Chair No. 1.

25 Alternate 2. Juror No. 135, Lekeshia Pinckney.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 How says the State?

2 MR. STONE: Please present Ms. Pinckney.

3 THE CLERK: How says the Defense?

4 MR. PLEXICO: Please swear the juror.

5 THE CLERK: Have a seat in Alternate Chair No. 2,
6 ma'am.

7 THE COURT: All right. Ladies and gentlemen of
8 the jury, those of you who were selected for the trial
9 of this matter, I'm going to ask that you go back to
10 the jury room right now and that you select someone to
11 serve as your foreperson.

12 The foreperson, just for your information, will be
13 someone who preside in the case, when you are told to
14 begin your deliberations. Also a foreperson will be
15 responsible for communicating with the court, if ever
16 there's a need to do that.

17 Once the foreperson is selected, doesn't have to
18 be unanimous, our alternates can vote, but they cannot
19 serve as a foreperson, because they're not a part of
20 the primary jury. Once the foreperson is selected, I'm
21 going to ask that person to write their name down on a
22 piece of paper and then query your fellow jurors to
23 see, whom, if anyone, would like to have pad and pen to
24 take notes with during the course of this trial. Once
25 you get that number, would you write it next to your

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 name on a piece of paper and knock on the door, and
2 we'll receive it back here in the courtroom.

3 If you'll go with the bailiff back to your jury
4 room now, please.

5 (Jury exits the courtroom at 3:40 p.m.)

6 THE COURT: All right. Those of you who were not
7 selected, I can see the disappointment across all your
8 faces out there. But, you will have you an
9 opportunity potentially that you may need to come
10 back. So if you would, tomorrow evening and each
11 night until you receive a message from the clerk of
12 court, would you call in after 6:00 in the evening and
13 there'll be a message as to whether or not we need you
14 to return, and is if so, when. Okay. And you have
15 that number in the information you have with you.

16 Does anybody not have that number? Okay. And
17 wait, don't call before six, call after six, and there
18 will be -- tomorrow, Madamn Clerk, after 6:00.

19 THE CLERK: Yes, sir.

20 THE COURT: Okay. Ladies and gentlemen, thank
21 you for coming here today. Thank you for your
22 willingness to serve your state and county, but you're
23 excused for the day.

24 (Unselected jurors exit the courtroom.)

25 THE COURT: All right. Let me ask you this. Any

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 motions toward the jury selection?

2 MR. STONE: No, sir, not from the State.

3 THE COURT: From the Defense?

4 MR. PLEXICO: None, Your Honor.

5 THE COURT: All right. We will just wait for
6 them to come back and we'll be done for the day.

7 Any other business?

8 MR. STONE: Just one, since the jury is in there.
9 This is -- I think we introduced the interview during
10 court, for a Court's Exhibit, Interview No. 4, which
11 is what we're going to introduce at trial.

12 Mr. Plexico introduced, by handing up to the court,
13 the tape of Interviews 1 and 2, which is on the same
14 disc. This is Interview No. 3, which just completes
15 the set, and I'd like to put this in as a Court's
16 Exhibit. I'm not going to introduce it in trial.

17 THE COURT: Sure.

18 MR. PLEXICO: And I have not done that in regards
19 because I was going to record it tonight and bring it
20 back, and I thought everybody was in agreement to
21 that.

22 MR. STONE: I am. I'm not objecting to him
23 putting his in. I just -- this completes the set.
24 This is the only one that's not been put in yet.

25 MR. PLEXICO: Okay. All right.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 THE COURT: No. 169 is your foreperson. And,
2 Madamn Clerk, I think five want to have note pads.
3 I'm just going to bring them in here. I'm not going
4 to swear them until the morning, but I'm going to give
5 them instructions about deliberations early and
6 looking up things and stuff like that. I'm going to
7 let them go today, unless somebody has an objection.

8 MR. STONE: No, sir, that's good. Thank you,
9 Your Honor.

10 THE COURT: Okay. Bring the jury in.

11 *(Whereupon, Court's Exhibit No(s). 7 marked for*
12 *identification and received in evidence.)*

13 (Jury enters the courtroom at 3:45 p.m.)

14 THE COURT: Okay. Where is our foreperson?

15 Okay sir, if you would, you don't have to do it
16 now, but in the morning, when we come back, you see
17 this far right chair where this lady is sitting? If
18 you use that chair for me. And if our alternates, are
19 y'all the alternates over here? If y'all would use
20 those chairs. Okay. That helps us keep up with some
21 things.

22 The rest of you, when you come in and out, those
23 chairs, you sit where you like.

24 Before you go, I'd like to give you a few
25 instructions. And this is kind of the negativity part

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 of my charge to you, but it's necessary.

2 From this point forward, now that you've been
3 selected to serve on this case, you may not engage in
4 any deliberations with anyone else about this case.
5 You can't talk -- I'm married and have a daughter and
6 I'm sure, if I was sitting on the jury, they'd be
7 giving me 20 questions about what I'm doing. You're
8 not to answer any questions from your family, your
9 friends, whether it be by phone, face-to-face, over
10 Twitter or other form of communication. You're not to
11 speak amongst yourselves at any time about this case
12 until you are expressly given the instructions to begin
13 your deliberations.

14 The reason we don't want you to do that, number
15 one, we don't want any outside influences on you, we
16 want your decision to be based on the testimony and
17 evidence you hear here in the courtroom. Also, we
18 don't want you to come to a premature decision about
19 what the facts in the case are until you've heard all
20 the evidence and you've heard the law in the case, so
21 you don't come to a premature decision.

22 Likewise, you're not allowed to engage in or do
23 any independent jury research. That means you can't
24 look up something about a court official, one of the
25 attorneys, one of the parties, myself, our clerk.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 Until the case is over with, any issue involving this
2 case or any issue that you think would be helpful is
3 just not -- you're not to go look it up at any time
4 throughout the course of this trial.

5 And I'm going to each morning when you come in if
6 anyone's read, heard, seen anything about this case
7 during the break, whether or not they've any
8 conversation with anyone about the case in any form or
9 fashion. And I will do that each morning until we get
10 through.

11 Now, I'm told this is going to be a relatively
12 short case. So if you would, tomorrow, when I bring
13 you back here, pay close attention to the attorneys,
14 pay close attention to the testimony and the law, and
15 we will -- it'll be through with before you know.

16 That being said, anything from the State before we
17 excuse?

18 MR. STONE: May we approach briefly on the
19 scheduling?

20 THE COURT: Yes.

21 (Off-the-record discussion held.).

22 THE COURT: All right. I was asked if I could
23 show - point out to you that -- do not watch, listen,
24 or hear any media about this case until after you are
25 excused from your jury service. That means, if it's

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 on TV, radio, blogs, or somewhere else. If somebody
2 tries to question you, you tell them you're a juror.
3 And if they persist in trying to question you, get
4 their information and I'll deal with it. Okay? I
5 don't believe that's going to be a problem -- it never
6 has before -- but I just want you forewarned.

7 That being said, ladies and gentlemen, any reason
8 we can't get started at 9:30 in the morning? Anybody
9 have any problem being in the jury room by like 9:25?

10 Good. We'll excuse you for the night. We will
11 see you in the morning at 9:30, hopefully, sharp.

12 Other than this request, any additions or
13 exceptions to my charge to the jury?

14 MR. STONE: No, sir. Not from the State.

15 MR. PLEXICO: None, Your Honor.

16 THE COURT: All right. Thank you, guys. Any
17 other matters we need to contend with today?

18 MR. STONE: No, sir. Thank you.

19 THE COURT: We'll see y'all in the morning.

20 MR. STONE: Yes, sir. Thank you, sir.

21 (Whereupon, the court recessed for the day.)
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CROSS EXAMINATION OF H. PATEL BY PLEXICO

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1 In the Court of General Sessions for the
2 State of South Carolina, County of Jasper

3

4

Case No.: 2015-GS-27-00378+

5 State of South Carolina,

6 Plaintiff(s),

7 vs.

Transcript of Record

8 Joshua Lenard Poacher,

9 Defendant(s).

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April 11, 2017

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Ridgeland, South Carolina

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21 BEFORE:

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The Honorable R. Lawton McIntosh

23

24

25

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 In the Court of General Sessions for the
2 State of South Carolina, County of Jasper

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4 Case No.: 2015-GS-27-00378+

5 State of South Carolina,

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8 Joshua Lenard Poacher,

9 Defendant(s).

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15 April 11, 2017

16 Ridgeland, South Carolina

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21 BEFORE:

22 The Honorable R. Lawton McIntosh

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CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 PROCEEDINGS

2 THE COURT: Good morning. Please be seated.

3 Anything from the State before we get started?

4 MR. STONE: No, sir.

5 THE COURT: From the Defense?

6 MR. PLEXICO: No, Your Honor.

7 THE COURT: All right. Would you bring the jury
8 in, please.

9 (Jury enters the courtroom)

10 THE COURT: All right. Good morning ladies and
11 gentlemen. I hope you had a nice evening.

12 Let me ask you before we get started, has anyone
13 read, heard, or seen anything about this case before we
14 got here today, during the break? Anybody spoken with
15 anybody about this case?

16 (No response.)

17 THE COURT: Very good.

18 All right. Madam clerk, would you swear the jury,
19 please, ma'am.

20 (Jury sworn.)

21 THE CLERK: If you took the oath, you may be
22 seated.

23 (All take their seats.)

24 THE CLERK: Thank you.

25 THE COURT: All right. Mr. Foreman, ladies and

JURY INSTRUCTIONS

1 gentlemen of the jury, let me just say this, for a few
2 opening remarks.

3 Number one, this is not an endurance contest. And
4 so if we ever ask you to come back to the jury room --
5 or the courtroom before you're ready, you just tell us
6 that you need a little more time, and that's certainly
7 fine. If at any time during the course of these
8 proceedings, any of you can't hear, let us know and
9 we'll stop to make sure that you can. And if anybody
10 blocks your view of what's going on, let us know
11 because we'll make sure that you can see and hear,
12 because it's important that you do.

13 With that being said, ladies and gentlemen, I
14 don't know if any of you have ever been involved with a
15 court proceeding before, whether it be criminal court
16 like we're in today or civil court, as we're in the
17 other side. But I would suspect that each and every
18 one of you have watched on TV or in the movies
19 something that purports to be a criminal trial. First,
20 let me quickly dispel you, this is nothing like you
21 will see on TV. It's not like you see on the movies.
22 Trials are very different. They're often very slow.
23 They're very methodical and very deliberate. They're
24 certainly not here for entertainment, but they are a
25 fundamental part of our democracy.

JURY INSTRUCTIONS

1 Now, these attorneys are here for you, like any
2 and all other attorneys. When they're sworn in, they
3 take an oath to be zealous advocates for their
4 particular side of the case, and you can expect no less
5 of them in this case.

6 With that being said, they're also officers of the
7 court. What that means is that you can count on them
8 to be professional, courteous and confident, and
9 ethical in their dealings with one another, any witness
10 that comes before the court, any dealings with this
11 court.

12 Likewise, ladies and gentlemen, you just took an
13 oath to try to reach a fair and just verdict. What
14 that simply means is the parties, this court, and all
15 the administration here has a right to expect of you
16 that you will be fair, that you'll be impartial, and
17 you'll be ethical in your dealings in this matter.

18 Now, what I'm telling you now is not the law of
19 the case that you will apply. That will be given to
20 you at the end of the case, with clear instructions to
21 begin your deliberations.

22 Now, what I'm about to tell you is basically the
23 procedure you will go through, so you typically
24 understand where you are at any given time throughout
25 this case.

JURY INSTRUCTIONS

1 Those of you who requested pad and pens, do you
2 have them?

3 (Jurors respond.)

4 THE COURT: Very good.

5 All right. Ladies and gentlemen, let me say
6 something about pad and pen. Some people are better
7 note takers than others. Just because at the end of
8 the day, Mr. Foreman, something may appear in a juror's
9 notes doesn't mean it trumps another juror or
10 collective jurors' memory about that particular point.
11 That's why they call them deliberations. You'll just
12 have to hash those out.

13 Also, let me caution you about getting so
14 engrossed in your note taking that you miss the actual
15 way somebody actually stands. Sometimes in making your
16 determination as to which testimony in which to
17 believe, or if there's any you wish not to believe,
18 it's important to see how somebody acts while they're
19 on the stand. In other words, their demeanor.

20 So if you're so engrossed in taking your notes
21 that you miss a summary action, you might miss
22 something that would be helpful in making that
23 determination.

24 Now, ladies and gentlemen, as you heard, Joshua
25 Leonard Poacher has been charged and indicted with two

JURY INSTRUCTIONS

1 counts of murder, one count of armed robbery with a
2 deadly weapon, and possession of a weapon during the
3 commission of a violent crime. The elements of those
4 various charges will be given to you at the end of this
5 case.

6 Let me point out something to you, however. The
7 fact that this gentleman has been arrested and charged
8 and indicted is not in any sense of the word evidence
9 of his guilt. It doesn't raise a presumption or an
10 inference of his guilt. That is simply the mechanism
11 by which the State of South Carolina brings a person
12 such as Mr. Poacher before the court and in trial and
13 in determination of guilt or innocence.

14 In fact, Mr. Poacher says, "I am not guilty to
15 these charges." And under our law, he will be presumed
16 innocent throughout the course of this trial, and also
17 until you begin your deliberations. Therefore, that
18 puts the burden on the State of South Carolina to prove
19 each and every one of these elements by proof beyond a
20 reasonable doubt in order to convict him.

21 At the end of this case, it will be your burden to
22 decide whether or not the State has met its burden of
23 proof as to the various charges.

24 Let me give you, however, what a reasonable doubt
25 is, so you can have it in your mind throughout the

JURY INSTRUCTIONS

1 course of this trial. And this is a shorter
2 definition, but I'll give it to you again.

3 A reasonable doubt, ladies and gentlemen, is the
4 kind of doubt that would cause a reasonable person to
5 hesitate to act in an important matter of their own
6 affairs. Now, as I told you, the State has the burden
7 of proof in each of these charges by proof beyond a
8 reasonable doubt.

9 If you've ever sat in a civil trial, the
10 preponderance of the evidence is the burden necessary
11 in those cases. It's just the greater weight of the
12 evidence. In criminal cases, the burden is much
13 higher. It is proof beyond a reasonable doubt.

14 Now, proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the Defendant's guilt.

16 That being said, ladies and gentlemen, there are
17 very few things in this world that we know with
18 absolute certainty. And in criminal cases, the law
19 does not require proof that overcomes every possible
20 doubt that may exist.

21 At the end of this case, when you're told to begin
22 your deliberations, if you're -- after you consider the
23 evidence, if you are firmly convinced that the
24 Defendant is guilty of one or more of the crimes for
25 which he has been charged, it'll be your duty to find

JURY INSTRUCTIONS

1 him guilty.

2 On the other hand, if you think there is a real
3 possibility that he is not guilty of the crime or
4 crimes for which he has been charged, you must give him
5 the benefit of the doubt and find him not guilty.

6 Now, ladies and gentlemen, in the vernacular of
7 lawyers, you are referred to as the sole judges of the
8 facts. In other words, you and you alone, determine
9 what your verdict will be in this case.

10 If at any time I do or say anything that seems to
11 indicate to you the facts that you're supposed to find
12 in this case -- in other words, the verdict you're
13 supposed to reach -- I'm going to ask you and also
14 instruct you that you are to disregard that. Our state
15 constitution does not allow any trial judge to comment
16 or have an opinion on the facts of any case.

17 Factually, we are like an umpire to make sure that
18 each side receives a fair and impartial trial. And I
19 also instruct you on the law that you must apply at the
20 end of this case. And you will determine what those
21 facts are in this case from the testimony that you hear
22 from the witness stand right here, the sworn testimony,
23 and also by way of any exhibits that I allow into
24 evidence.

25 Once evidence has been admitted, any inferences

JURY INSTRUCTIONS

1 that you want to place to those will be up to you, the
2 jury, to decide what you want them to be.

3 Now, ladies and gentlemen, the law that makes you
4 the sole judges of the facts makes me the sole judge of
5 the law. You may not agree with the law as I give it
6 to you, and you may even think it should be other than
7 what it is. But it is your sworn duty to accept the
8 law and follow it as I give it to you. I cannot
9 disagree with you on your findings of fact, and you
10 cannot disagree with me on what the law is.

11 I'll tell you that there are a group of folks down
12 in Columbia, that if I make an error as to what the law
13 is, they will correct that on appeal.

14 But normally, there's not a way to correct an
15 incorrect finding of fact. So that means that you need
16 to pay close attention throughout the course of this
17 trial so when you begin your deliberations, you're able
18 to recall the testimony and evidence and to engage in
19 meaningful deliberations.

20 Let me remind you, do not begin your deliberations
21 at any point. That means speaking with your fellow
22 jurors or anyone else about this case until you have
23 been discharged from this case. I'm going to ask you
24 each morning whether or not you've read, seen, or heard
25 anything about this case, or spoken with anybody about

JURY INSTRUCTIONS

1 this case. Also, let me remind you that you're not to
2 engage in independent jury research that I told you
3 about yesterday.

4 Ladies and gentlemen, in every case there's
5 generally five phases, whether it be civil or criminal.
6 In just a minute, there will be an opening statement by
7 the State. The Defense may, but it's not required to
8 give you an opening statement.

9 After opening statements, there'll be the
10 presentation of the evidence. The State will present
11 its case. After all the presentation of the evidence
12 has been complete, there'll be closing arguments by the
13 attorneys. I'll then give you the charge on the law
14 that you must apply, and then you'll be given express
15 word to begin your deliberations along with the verdict
16 form and all the exhibits that have been allowed into
17 evidence.

18 And as I told you, in just a minute, the Solicitor
19 will stand up and explain to you what he contends his
20 case is about. This is not to minimize it, but what
21 the State tells you, or if the Defense decides to give
22 you an opening statement, what he tells you is not
23 evidence. These attorneys are not sworn in, they're
24 not subject to cross-examination. That's not to
25 minimize it. Again, it is to tell you that the only

JURY INSTRUCTIONS

1 true evidence that you may consider as evidence is the
2 testimony and evidence you hear from this witness stand
3 and the exhibits into evidence that I allow.

4 Now, in every case that I was ever involved with
5 as an attorney or as a trial judge, there are
6 objections. An attorney has an ethical obligation to
7 object any time he or she sees something they feel like
8 is improper in the courtroom.

9 Ladies and gentlemen, I suspect there may be
10 objections in this case. Mr. Foreman, the fact that
11 there was an objection, and to the extent I let you
12 stay in here in the courtroom and see my ruling on that
13 objection, is not to be the subject of any
14 deliberations. Suffice it to say, that is just the
15 process that goes through -- that each case goes
16 through. You're not to reach any type of conclusion or
17 inference about the fact that somebody raises an
18 objection or my ruling on that.

19 Now, ladies and gentlemen, if at any time -- or,
20 Mr. Foreman, if at any time, you need to communicate
21 with me, I'm going to ask that you get a sheet of
22 paper. You write down the subject of the need for your
23 communication, sign it, give it to your bailiff, and
24 they'll bring it in here to me, and I'll respond to it
25 in open court with attorneys and everyone present.

JURY INSTRUCTIONS

1 Okay, sir?

2 Other than that, you are only to communicate with
3 the Court and no one else throughout the course of this
4 trial.

5 All right. Ladies and gentlemen, in order to make
6 sure that I haven't misstated a point, or I omitted to
7 tell you something I should have, I'm going to send you
8 back very briefly to your jury room then we can bring
9 you back out here for opening statements. But if you'd
10 go to your jury room now, please.

11 (Jury exits the courtroom.)

12 THE COURT: Any additions or exceptions from the
13 State?

14 MR. STONE: No, sir, not from the State.

15 THE COURT: From the Defense?

16 MR. PLEXICO: No, Your Honor.

17 THE COURT: Do y'all need a minute to get your
18 heads together, or are y'all ready to go?

19 MR. STONE: State's ready.

20 MR. PLEXICO: I'm ready to go, Your Honor.

21 THE COURT: Okay. Then bring the jury in if
22 they're ready, please.

23 (Jury enters the courtroom)

24 THE COURT: All right. Opening statements by'
25 the State.

OPENING STATEMENT BY THE STATE

1 OPENING STATEMENT BY THE STATE

2 MR. STONE: May it please the Court, Your Honor?

3 THE COURT: Yes, sir.

4 MR. STONE: This case is about two defenseless
5 people who were robbed and murdered in their own home
6 by this man over here, Joshua Poacher.

7 Kantibihai and Hansaben Patel lived and worked in
8 the Best Western. It's the one on Yemassee and Point
9 South.

10 They lived there and they worked there, and on
11 August the 16th, they were getting ready to go to work,
12 like they did everyday, and for whatever reason, Joshua
13 Poacher went into their room with a semi-automatic
14 handgun and shot them both. Mr. Patel twice, once in
15 the hand and once in the neck. Mrs. Patel, four times,
16 three times in her shoulder and one time in her back.

17 And Poacher then left after taking their debit
18 card and some Indian money, some money he didn't even
19 know how to exchange or what to do with. The ATM card,
20 the debit card, he started using that within the hour.
21 And he used it throughout the rest of the day.

22 Now, this case will take about a day, maybe, for
23 me to present the evidence that I need to present to
24 you. And I want you to be very clear about what my job
25 is, what my responsibility is to you, and the Judge

OPENING STATEMENT BY THE STATE

1 will tell you this at the end of the case. My job is
2 to prove this case beyond a reasonable doubt. It's my
3 responsibility to put witnesses up on the witness stand
4 to tell you exactly what I just told you. My job is to
5 make sure that after I complete that, after I put those
6 people up, that you have no doubt that Joshua Poacher
7 committed this crime.

8 And at the end of this trial, if, for whatever
9 reason, I haven't done that, it's your responsibility
10 to say, no, sir, not guilty.

11 But what I'm going to do is I'm going to ask you
12 to pay very close attention to the testimony. You're
13 going to hear how Poacher started using that ATM card
14 within the hour. You're going to see and hear the
15 times that he used it throughout that day. You're
16 going to hear how the bullets that were found in the
17 victim's home, their hotel room, matched the gun that
18 was found under his bed.

19 The receipts from the ATM cards, some of which
20 were found on him. You're going to see a video of him
21 in the store using that ATM card, and he's going to be
22 identified by his own sister.

23 You're going to hear also a statement that Poacher
24 made to police, admitting to this, and saying, among
25 other things that, that he didn't know the Patels from

OPENING STATEMENT BY THE STATE

1 Adam and Eve. It wasn't personal for him. He went in,
2 he shot them, he killed them both, and he robbed them.
3 It's that simple.

4 After you've heard this testimony, I'm going to
5 come and I'm going to come back here and I'm going to
6 ask you to do one thing, what a jury and what a verdict
7 is supposed to mean. I'm going to ask you to come back
8 here and give us a verdict that speaks the truth. The
9 truth. From the evidence that you hear from the
10 witness stand, I'm going to ask you to hold Joshua
11 Poacher accountable for what he did.

12 Thank you.

13 THE COURT: Mr. Plexico, does the Defense wish to
14 have an opening statement?

15 MR. PLEXICO: Yes, Your Honor. If it pleases the
16 Court.

17 THE COURT: Yes, sir.

18 OPENING STATEMENT BY THE DEFENSE

19 MR. PLEXICO: Thank you. I'm Steve Plexico. I'm
20 one of the public defenders for Jasper County. I've
21 been here -- well, gosh, it's about 1990. It's always
22 a pleasure to talk to a jury.

23 Y'all have a great responsibility today. Y'all
24 are probably in a position where you have more power
25 over a fellow citizen than you'll probably ever again

OPENING STATEMENT BY THE DEFENSE

1 have in your life unless you sit in one of those chairs
2 again in a criminal matter.

3 We have a different system in America. We
4 actually have 12 citizens that decide what the facts
5 are, and this is a very important responsibility,
6 because when the State goes too far, it's not like you
7 have a government agent that's in here deciding what,
8 in fact, should be done. This is y'all's individual
9 responsibility, and nobody can take away the way you
10 make up your mind. And this is a collective group
11 practice also, where y'all try to come to a conclusion
12 while not casting aside your firmly held beliefs about
13 what happened in this matter.

14 You're going to hear a lot of things that did
15 happen. I don't believe that this is going to amount
16 to what they believe is a murder case. It's a sad
17 situation. My client is here, and he's entitled to
18 every reasonable doubt, and this is simply what the law
19 is. And as the Judge said, if you do have a reasonable
20 doubt, he's entitled to that reasonable doubt, and then
21 you must give him that benefit by either finding him
22 not guilty and/or guilty of something else. But only
23 of that which is in front of you, and depending on the
24 evidence that you actually have in front of you. And
25 they have to prove, for instance, for murder, they have

OPENING STATEMENT BY THE DEFENSE

1 to prove the unlawful killing of another person with
2 malice and aforethought.

3 Armed robbery, they have to show that you have an
4 intent to go in and commit an armed robbery wherever
5 you're going. That's what makes it different from
6 theft. And you're armed during that robbery, and
7 there's somebody there that you're actually intending
8 to rob.

9 I believe that they are going to fall short in
10 showing what they're -- in their evidence in showing
11 that my client, indeed, committed a murder of these two
12 individuals. I want you to look for any discrepancies
13 in the evidence, and I would like for y'all to keep
14 your minds open until you sit down at the end. And you
15 can't do it during the trial. When your deliberations
16 begin, it's at the end of the testimony. It's at the
17 end of the evidence, after the closing arguments from
18 both sides.

19 We just want you to keep your -- your minds open
20 and sit down and discuss this, and I'm asking that
21 y'all look at this, take it very seriously. And
22 remember, they have to prove my client beyond a
23 reasonable doubt.

24 Well, I don't think that meets the definition.
25 Anything that makes you hesitant is what the Judge says

OPENING STATEMENT BY THE DEFENSE

1 in your personal matters to act, if you just hesitate.
2 And that doesn't take much to make you hesitate in your
3 important personal matters.

4 So they have a very high, high burden to overcome.
5 The State has the duty to prove my client guilty beyond
6 every reasonable doubt. We don't have to do a thing,
7 we don't have to say a word. We could be just like, on
8 a sunny day, a turtle on a log in a lake, and not do a
9 thing, just float on by.

10 But they have this responsibility. Why do they
11 have this responsibility? This is the power of the
12 State of South Carolina, with all its taxing power and
13 all its resources that's prosecuting one lone citizen,
14 and that lone citizen seldom has the resources to match
15 what the State has.

16 So they put a very high burden on the State, and
17 this is the way we've done it for 200 years, and this
18 is a serious matter. The State has to prove you're
19 guilty beyond a reasonable doubt. We don't have to
20 prove that we're innocent.

21 And remember, if the British had caught George
22 Washington and Thomas Jefferson and Hamilton and all
23 these other guys way back when, they would have hung
24 every one of them, and they wouldn't have had 12 jurors
25 certainly deciding their fate. So this is a sacred

OPENING STATEMENT BY THE DEFENSE

1 institution that we have, this is something the
2 founding fathers have provided for us, it's something
3 that we've held and treasured in this country.

4 I want y'all to respect that. And we're just
5 asking that you keep your minds open and don't make up
6 your minds until you go sit in that jury room, and then
7 you decide what is true and just.

8 Thank you.

9 THE COURT: Call your first witness, please, sir.

10 MR. STONE: Yes, sir. Phillip Cothran.

11 Thereupon,

12 PHILLIP COTHRAN

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. STONE:

17 Q Mr. Cothran, pull that microphone to you, please,
18 sir.

19 Tell me what do you do, sir?

20 A I am a shift supervisor for Jasper County Works &
21 Services.

22 Q And as a shift supervisor, what are your job
23 duties? What's your responsibility?

24 A I perform all of the duties of a TCO, which is
25 answering 911 calls, dispatching for law enforcement. And I

DIRECT EXAMINATION OF COTHRAN BY STONE.

1 also have to supervise the other people in the room doing
2 the same thing.

3 Q So any 911 call that comes into Jasper County, you
4 handle; is that correct? Or somebody working with you
5 handles?

6 A Yes, correct.

7 Q Now, how does that system work? Does that record
8 every 911 call that comes in?

9 A Yes, sir, it does.

10 Q And does it record it contemporaneously? In other
11 words, does it record it as it's being -- as it's being
12 made, and then is it kept in that course of business?

13 A It is actually captured before we even pick up the
14 phone.

15 Q Okay. So there's some time when the phone rings
16 that the other person is on the line, but it picks up
17 earlier than that?

18 A Correct.

19 Q And then it records throughout the entire
20 conversation?

21 A Correct. Until after we hang up.

22 Q These calls, are they all kept in the regular and
23 ordinary course of business?

24 A They are.

25 Q Now, I'm going to show you what's been marked as

DIRECT EXAMINATION OF COTHRAN BY STONE.

1 State's Exhibit 22, and ask if you recognize that, sir.

2 A Yes, sir, I do.

3 Q And what is that?

4 A That is the audio recordings from that 911 call.

5 Q Now, this initial up here on the left, are those
6 your initials?

7 A It is.

8 Q And you have -- you have reviewed this?

9 A I have.

10 Q Is this a accurate depiction of a 911 call that
11 came in on August the 16th, 2015?

12 A Yes, sir, it is.

13 Q I think it has a transcript with it. Is that
14 transcript accurate to the audio?

15 A Yes, sir, it is.

16 MR. STONE: At this time, Your Honor, we
17 introduce State's Exhibit 22.

18 UNIDENTIFIED: We object, Your Honor.

19 MR. PLEXICO: Oh, yes, Your Honor. I believe it
20 contains hearsay from someone else that I can't
21 cross-examine. So I --

22 THE COURT: Just a second.

23 Mr. Foreman, would you take your jury back in the
24 jury room with you, please.

25 (Jury exits the courtroom at 10:56 a.m.)

DIRECT EXAMINATION OF COTHRAN BY STONE.

1 THE COURT: All right. Mr. Stone.

2 MR. STONE: Yes, sir. This falls under Rule 803,
3 Subsection 1, present sense impression is a statement
4 by the person who is actually perceiving the room and
5 immediately thereafter calling 911 and telling them
6 that they have found the two -- the two people dead,
7 what the room looks like, and as they are seeing it.
8 It is immediately after them finding these people.

9 THE COURT: Any response?

10 MR. PLEXICO: Your Honor, I still think it
11 contains hearsay, and it's -- they're all conclusions
12 about what has happened, and I think that's going to
13 prejudice the Defendant, Your Honor, and it's
14 unnecessary. Because they're going to describe this,
15 what the scene was like, all during the trial, Judge.

16 THE COURT: All right. Overrule your objection.

17 MR. STONE: Thank Your Honor.

18 THE COURT: Yes, sir.

19 Would you bring the jury back in, please.

20 (Jury enters the courtroom.)

21 MR. STONE: At this point, Your Honor, we move
22 State's Exhibit 22 into evidence and ask to publish it
23 to the jury.

24 THE COURT: Yes, sir.

25 *(Whereupon, State's Exhibit No(s). 22 marked for*

DIRECT EXAMINATION OF COTHRAN BY STONE.

1 *identification and received in evidence.)*

2 (The CD is being played for the jury.)

3 MR. STONE: No further questions.

4 THE COURT: Cross-examination.

5 MR. PLEXICO: I don't have any questions of this
6 witness, Your Honor.

7 THE COURT: May this witness be excused?

8 MR. STONE: Yes, sir.

9 MR. PLEXICO: No objections, Your Honor.

10 THE COURT: Thank you, sir.

11 MR. STONE: State calls Raj Vyas.

12 Thereupon,

13 RAJ VYAS

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. STONE:

18 Q Mr. Vyas, I'm going to get you to pull that
19 microphone to you just a little bit, sir.

20 And what do you do, sir?

21 A I used to manage the hotel. Now, I moved to
22 California. I have a store there.

23 Q Okay. I'm going to get you to pull a little bit
24 closer, please. I'm sorry.

25 A Okay.

DIRECT EXAMINATION OF VYAS BY STONE.

- 1 Q All right. You are now in California, but back in
2 August of 2015, what did you do?
- 3 A I was a hotel manager at Best Western Point South.
- 4 Q And that is the one in Yemassee, I guess. Right
5 outside of Yemassee; is that correct?
- 6 A It's in -- yeah.
- 7 Q And that's in Jasper County?
- 8 A Yes. Still in Jasper County.
- 9 Q How long had you done that?
- 10 A Since 1998 to 2016, January.
- 11 Q Did you know, during the time that you were there,
12 did you know the Patels?
- 13 A Yes.
- 14 Q And it's Hansaben and Kantibhai, is that -- did I
15 pronounce that correctly?
- 16 A That is correct.
- 17 Q That's Mr. and Mrs. Patel?
- 18 A That is correct.
- 19 Q What did they do for you at the hotel?
- 20 A Housekeeping.
- 21 Q And where did they live?
- 22 A In Room [REDACTED].
- 23 Q They lived -- actually lived in the hotel --
- 24 A On the property.
- 25 Q -- in which they helped you with housekeeping; is

DIRECT EXAMINATION OF VYAS BY STONE.

1 that correct?

2 A That is correct.

3 Q All right. Let me first show you -- I want to
4 show you what's been marked as State's Exhibit, I believe,
5 23. Can you identify that, sir?

6 A Yeah. This is Best Western Point South, the lobby
7 and Denny's, and that's the C building where the Patels were
8 living.

9 Q All right. Is this a fair and accurate depiction
10 of how the hotel looked when you were managing it?

11 A Yes, sir.

12 MR. STONE: At this time, Your Honor, we move
13 State's Exhibit 23 into evidence.

14 THE COURT: Any objection?

15 MR. PLEXICO: No objection, Your Honor.

16 THE COURT: Admitted.

17 *(Whereupon, State's Exhibit No(s). 23 marked for*
18 *identification and received in evidence.)*

19 BY MR. STONE:

20 Q I tell you what, I'm going to let you sit there --
21 well, let me get you to come down, if I could, please. I
22 need you to keep your voice up so this court reporter can
23 hear you, and, of course, the jury primarily.

24 A Yes, sir.

25 MR. PLEXICO: Your Honor, may I come up?

DIRECT EXAMINATION OF VYAS BY STONE.

1 THE COURT: Yes, sir.

2 MR. STONE: Give him some time to come around.

3 All right. Let me get you to stand here.

4 All righty. First of all, if you will, show the
5 jury what that is, please.

6 A This is the lobby of Best Western hotel. This is
7 Denny's restaurant, and these are the rooms that they lived
8 in.

9 Q What is this over here to the, I guess, the far
10 left of this?

11 A That's the Shell gas station.

12 Q Okay. A gas station here. The entrance points
13 here, I'm assuming?

14 A There's another one.

15 Q There's another one at this other end?

16 A Yes, sir.

17 Q All right. And then is the Denny's here. Is that
18 actually attached to the Best Western?

19 A Yes.

20 Q All right. And where were the Patels living?

21 A Right here, [REDACTED].

22 Q Room [REDACTED], which is on the second floor?

23 A On the second floor.

24 Q Okay. And it's almost the corner spot?

25 A The first one.

DIRECT EXAMINATION OF VYAS BY STONE.

1 Q Okay. Now, all of this is joined. I'm assuming
2 that you can get from here to the Denny's by going this way;
3 is that correct?

4 A Right. You can walk all the way across.

5 Q I gotcha.

6 A The back, that way.

7 Q All right, sir. Go ahead and take the stand for
8 me.

9 A (Witness complies.)

10 Q Now, August the 16th -- first of all, what time
11 did the Patels usually come to work?

12 A They come between 8:15 and 8:30.

13 Q All right. And I say, "come to work," but
14 actually --

15 A They come for room assignment.

16 Q -- leave their hotel room to come out. Do they
17 check in first at the --

18 A At the front desk.

19 Q Okay. August the 16th, did they check in at the
20 normal time?

21 A No, sir.

22 Q What time did you start looking for them?

23 A When I came in at 9:15, the front desk informed me
24 that they were not there. I was just asking who is here and
25 who is not, and they say Patels were not there. So I

DIRECT EXAMINATION OF VYAS BY STONE.

1 started wondering about that.

2 Q At some point in time, did you start looking for
3 them? Did you send people to look for them?

4 A Right.

5 Q And was that in their room?

6 A Well, first thing we started was the room, you
7 know. We --

8 Q At what point did you actually go to room -- is it
9 235? I want to make sure -- ■■■■■, excuse me.

10 A Well, my wife went there and she saw the scene.
11 And she came out, she called me. And I went there, I saw
12 the scene.

13 Q Okay. Okay, tell me what you see once you get
14 there.

15 A When I was walking towards the room, right outside
16 the room I saw the laptop charger and a bullet.

17 Q And where was that located?

18 A It's right in front of the room.

19 Q All right. And then let me go ahead and show you
20 what's been marked as State's Exhibit 2. Other than the
21 evidence markers, one and two, is that a fair and accurate
22 depiction of what you saw when you walked up?

23 A Yes, sir.

24 Q And that's the laptop charger cable, and that is
25 the what you refer to as the bullets; is that correct?

DIRECT EXAMINATION OF VYAS BY STONE.

1 A Yes, sir.

2 MR. STONE: At this time, Your Honor, we move
3 State's Exhibit 2 into evidence.

4 THE COURT: Any objection?

5 MR. PLEXICO: None, Your Honor.

6 THE COURT: Admitted.

7 *(Whereupon, State's Exhibit No(s). 2 marked for*
8 *identification and received in evidence.)*

9 BY MR. STONE:

10 Q Now, in the room itself -- or outside, I guess,
11 the room itself -- first of all, this is outside the room;
12 is that correct?

13 A This is outside the room.

14 Q All right. Is it directly in front of the
15 doorway?

16 A In front of the glass, yeah.

17 Q All right. Get that microphone a little bit
18 closer to you. You're sort of soft-spoken, I want the jury
19 to hear.

20 A Yeah.

21 Q So this is the first thing you see as you walk up?

22 A Correct.

23 Q Did you touch this? Did you move it or anything
24 like that?

25 A No, sir.

DIRECT EXAMINATION OF VYAS BY STONE.

1 Q Let me show you what's been marked as State's
2 Exhibit 15, ask if you could identify that.

3 A Yes, sir. That's how the room looked when I --
4 when I opened the door.

5 Q And that's a fair and accurate depiction of how
6 the room looked when you opened the door?

7 A Yes, sir.

8 MR. STONE: At this time, Your Honor, we move
9 State's Exhibit 15 into evidence.

10 THE COURT: Any objection?

11 MR. PLEXICO: May I see it, please.

12 We don't have any objections to that, Your Honor.

13 THE COURT: Admitted.

14 *(Whereupon, State's Exhibit No(s). 15 marked for*
15 *identification and received in evidence.)*

16 BY MR. STONE:

17 Q Now, other than the evidence markers, tell me what
18 you, if you could -- let me show you this monitor. Tell me
19 what you're seeing. What do you see as you look in?

20 A The room was all messed up and the bodies were
21 lying by the refrigerator.

22 Q Now, you're the actual one that called the 911 --
23 called 911; is that correct?

24 A Correct.

25 Q You described the woman and the man -- these are

DIRECT EXAMINATION OF VYAS BY STONE.

1 the Patels?

2 A Right.

3 Q All right. And which one is -- which one is on
4 top? How does that -- how are they?

5 A Mr. Patel is at the bottom, and Mrs. Patel is on
6 the top.

7 Q When you went in to see this, did you touch
8 anything or move anything around?

9 A No, sir.

10 Q This is how it looked when you got there?

11 A Yes, sir.

12 Q What did you do after you walked in and saw that?

13 A I walked out, I called 911, and waited outside the
14 door, you know, until the police arrived.

15 Q Anybody else go in there afterwards?

16 A No, sir.

17 MR. STONE: I don't have any further questions
18 for this witness, Your Honor.

19 Thank you.

20 CROSS-EXAMINATION

21 BY MR. PLEXICO:

22 Q Thank you for being here today.

23 Now, you have no idea about what happened in that room;
24 is that correct?

25 A That is correct.

CROSS EXAMINATION OF VYAS BY PLEXICO

1 MR. PLEXICO: I don't have anything further,
2 Judge.

3 THE COURT: Any redirect?

4 MR. STONE: No, sir.

5 THE COURT: May this witness be excused?

6 MR. STONE: Yes, sir.

7 UNIDENTIFIED: No objections from the Defense,
8 Your Honor.

9 THE COURT: Thank you, sir.

10 MR. STONE: The State calls Andy Williams.

11 Thereupon,

12 ANDY WILLIAMS

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. STONE:

17 Q Mr. Williams, you are with Jasper County EMS; is
18 that correct?

19 A That's correct, sir.

20 Q And what do you do with them?

21 A I'm a firefighter/paramedic with Jasper County.

22 Q From a firefighter, I understand that, but from a
23 paramedic standpoint, tell me exactly what that means.

24 A We respond to all EMS calls in the county, as far
25 as people calling 911. Accidents, medical calls, anything

DIRECT EXAMINATION OF WILLIAMS BY STONE.

1 like that.

2 Q Are there levels of paramedics or people that
3 respond, these first responders?

4 A We have -- everybody with us is a paramedic or
5 ENT. The ENT is the lower level.

6 Q All right. What does a paramedic -- what kind of
7 skills and training do you have to become a paramedic?

8 A We have --well, we have to follow ACLS protocols,
9 interpret rhythm strips, give drugs, medications, start IVs,
10 stuff like that. A little more.

11 Q Now, I understood the IV part. What were the
12 first couple of things you said?

13 A Use a cardiac monitor, interpret rhythm strips as
14 far as from the heart. Using --

15 Q And you -- are you trained and can you determine
16 whether or not somebody has any sign of life?

17 A We are trained, yes, sir, to determine if there's
18 any sign of viable life or if they've already expired.

19 Q Did you get called to Room [REDACTED] of the Best Western
20 on August the 16th, 2015?

21 A Yes, sir.

22 Q And what did you do once you arrived there?

23 A When I arrived, we were escorted upstairs by the
24 sheriff's office to a room. Door was open to the room.
25 Noticed some spent shell casings as we were walking in the

DIRECT EXAMINATION OF WILLIAMS BY STONE.

1 door. Also a live round out front, in front of the door.

2 Walked in, found two patients, appeared to be
3 pulseless and apneic. Upon further checking, no pulse was
4 noted as far as checking carotid pulse. There was also
5 lividity, or blood pooling was noted on the patients from
6 where they were laying on the ground.

7 Copious amounts of blood noted on the floor
8 that had already dried and coagulated.

9 Q Let me start first by showing you what's already
10 been admitted into evidence as State's Exhibit 2.

11 Is that what you found once you walked in? Obviously,
12 the evidence markers were put there later, but other than that, the
13 wire and the bullet. Is that -- did you see that when you walked up?

14 A Yes, sir. That was on the outside of the room.

15 Q And let me back up a little bit and show you
16 what's been marked as State's Exhibit 3. Could you identify
17 that for me, please?

18 A That's the back side of the Best Western.

19 Q Okay. And this is the Room [REDACTED] there?

20 A That's the room -- yes, sir.

21 Q Is that a fair and accurate depiction of how that
22 looked when you got there?

23 A That is correct, sir.

24 MR. STONE: Your Honor, at this time, we move
25 State's Exhibit 3 into evidence.

DIRECT EXAMINATION OF WILLIAMS BY STONE.

1 THE COURT: Any objection?

2 MR. PLEXICO: Let me see three.

3 THE COURT: Any objection?

4 MR. PLEXICO: No. No, Your Honor. I'm sorry.

5 THE COURT: Admitted.

6 MR. STONE: It shall be three.

7 *(Whereupon, State's Exhibit No(s). 3 marked for*
8 *identification and received in evidence.)*

9 BY MR. STONE:

10 Q All right. This is the back side of Best Western,
11 as you saw it when you got there?

12 A Correct, sir.

13 Q And that second -- second floor room, that is Room
14 [REDACTED]; is that correct?

15 A Correct, sir.

16 Q And then as you walked in, go back to State's
17 Exhibit 2, you saw that as you went through?

18 A Yes, sir. That was outside the -- in the hallway.

19 Q I'm going to show you what's been already
20 introduced into evidence as State's Exhibit 15. Put that on
21 the monitor.

22 Is that how you found the room other than, again, the
23 evidence markers? Is that how you found the room when you got there?

24 A Correct, sir.

25 Q And other than dealing with the Patels, did you

DIRECT EXAMINATION OF WILLIAMS BY STONE.

1 touch or move anything getting in there?

2 A No, sir.

3 Q All right. Let me show you what's been marked as
4 State's Exhibit 4. Can you identify that, please?

5 A Yes, sir.

6 Q And is that a fair and accurate depiction of how
7 the Patels looked when you got there?

8 A That is correct, sir.

9 MR. PLEXICO: I do have an objection to the Item
10 No. 4, Your Honor. This is the same objection that I
11 had earlier.

12 THE COURT: All right. Subject to prior
13 objection, admitted.

14 MR. STONE: State's Exhibit 4.

15 *(Whereupon, State's Exhibit No(s). 4 marked for*
16 *identification and received in evidence.)*

17 BY MR. STONE:

18 Q Is this how you found the Patels when you got
19 there?

20 A Correct, sir.

21 Q And you were talking about the blood pooling and
22 things like that. Is that -- is that what you found?

23 A Yes, sir.

24 Q This is the base right here?

25 A Yes, sir.

DIRECT EXAMINATION OF WILLIAMS BY STONE.

1 Q Okay. All right. Go ahead and take that off.

2 After checking the Patels, was there any sign of life
3 for either one of them, either Mr. or Mrs. Patel?

4 A No, sir. There was no pulse noted, no
5 respirations. They were cold to the touch.

6 MR. STONE: Thank you, sir. No further
7 questions.

8 THE COURT: Cross-examination.

9 MR. PLEXICO: We have none, Your Honor.

10 THE COURT: May this witness be excused?

11 MR. STONE: Yes, sir.

12 MR. PLEXICO: Yes, Your Honor.

13 THE COURT: Thank you, sir.

14 MR. STONE: State calls Trey Tallon -- thank you,
15 sir -- Trey Tallon.

16 Thereupon,

17 TREY TALLON

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STONE:

22 Q Mr. Tallon, what do you do, sir?

23 A I'm a special agent assigned to crime scene unit
24 for the South Carolina Law Enforcement Division, more
25 commonly known as SLED.

DIRECT EXAMINATION OF TALLON BY STONE

1 Q How long have you been with SLED?

2 A Since 2014.

3 Q And what is your job as far as the crime scene?

4 Did you say "technician"?

5 A We're investigators.

6 Q All right. So what do you do when you get to a
7 crime scene?

8 A First thing we do is we get with the -- either
9 local agents or with other SLED agents to find out what
10 information we have so far. And then we begin by taking
11 photographs and going through and marking evidence, and
12 collecting and documenting the evidence as we found it.

13 Q Now, were you called to Room [REDACTED] in Jasper County
14 in the Best Western on August the 16th, 2015?

15 A Yes, sir, I was.

16 Q And you were part of that crime scene team. You
17 were the one collecting and photograph -- or taking
18 photographs; is that correct?

19 A That is correct.

20 Q Let me first ask you if -- I will show you as an
21 exhibit, a crime scene sketch. Would this aid in your
22 testimony today?

23 A Yes, sir.

24 Q Okay.

25 MR. STONE: Your Honor, I'd move at this time to

DIRECT EXAMINATION OF TALLON BY STONE

1 use this as an exhibit. This is a crime scene sketch.
2 It is not -- I'm not going to introduce it into
3 evidence, but I would like to use it as an exhibit.

4 MR. PLEXICO: I would have no objections, Your
5 Honor.

6 THE COURT: Okay. Very well. Go ahead, please.

7 MR. STONE: Thank you.

8 Your Honor, for the record, just -- I'm going to
9 go ahead and mark this as State's Exhibit No. 45 so
10 when I refer to it, the record will be clear on it.

11 THE COURT: Okay.

12 MR. STONE: I'll just write on it, "exhibit."

13 *(Whereupon, State's Exhibit No(s). 45 marked for*
14 *identification.)*

15 BY MR. STONE:

16 Q All right. Sir, I am showing the jury at this
17 point State's Exhibit 45. Can you see that from where you
18 are?

19 A Yes, sir.

20 Q All right. I'll tell you what, let me get you to
21 come down from the stand, if you could.

22 MR. PLEXICO: Your Honor, I would request that if
23 he turned more this way, so -- can my client and I
24 come around here and stand so we can see what he's
25 doing?

DIRECT EXAMINATION OF TALLON BY STONE

1 THE COURT: Yes, sir.

2 MR. STONE: Will that work? I want to make sure
3 the jury sees it.

4 THE COURT: Can everybody see that?

5 MR. STONE: Okay. Is that good?

6 MR. PLEXICO: That's good.

7 BY MR. STONE:

8 Q All right. Sir, if you don't mind, tell the jury
9 what this depicts.

10 A This depicts the room.

11 Q Come on, you can come on over here.

12 A This depicts the entrance to the room. Like he
13 said, this is Room [REDACTED] on the second floor of the Best
14 Western. This is the walkway area here where you would walk
15 up to. This is where we seen the cartridge case and the
16 charger. And then once you enter the room, these are
17 marking the items of evidence that we located. Mr. and
18 Mrs. Patel, the bed, and some of the -- not everything in
19 the room is depicted, but just some of the big items are
20 there.

21 Q Okay. You can go ahead and get you --

22 Let me first show you State's Exhibit 3 that's already
23 been put into evidence, and we'll put that on the monitor.

24 That is the outside of the Best Western; is that
25 correct?

DIRECT EXAMINATION OF TALLON BY STONE

1 A That is correct.

2 Q There we go. And then as you get to the top, and
3 what you described under No. 1 and 2, I'll show you State's
4 Exhibit 2. Is that what is depicted in the crime scene
5 sketch as Items No. 1 and 2?

6 A That is correct.

7 Q Okay. And then, I will show you what's been
8 introduced into evidence as State's Exhibit 15. Is that the
9 crime scene as you saw it?

10 And by the way, let me back up a little bit. Showing
11 you on the monitors on State's Exhibit 15, these individual evidence
12 markers, are these markers that you and your crime scene team would
13 have placed?

14 A These specific markers, yes, sir. Markers Nos.
15 1-5 were already placed by Jasper County prior to our
16 arrival.

17 Q Okay. So these one and two are already out there,
18 and then you placed those that are inside the room; is that
19 correct?

20 A That is correct.

21 Q All right. So on State's Exhibit 15, is that how
22 basically you saw the room, including the evidence markers?

23 A Correct.

24 Q All right. I'm going to leave that up there. And
25 then, if you can, let me go specifically now to State's

DIRECT EXAMINATION OF TALLON BY STONE

1 Exhibit 1. Ask if you can identify that, please.

2 A This is showing Marker No. 1 outside of Room [REDACTED],
3 which is the unfired cartridge.

4 Q And that is a fair and accurate depiction of that
5 as you saw it that day?

6 A Yes, sir, that's it.

7 Q All right. When you say "unfired cartridge,"
8 what -- what do you mean by that?

9 A That means it is the case, the metal case around
10 the projectile, or more people call it a bullet. So -- and
11 it hasn't been fired yet. So once a bullet is fired, it
12 comes out and the cartridge case is left, and then you got a
13 projectile. This is all one solid.

14 Q Okay.

15 MR. STONE: Your Honor, at this time, we move
16 State's Exhibit 1 into evidence.

17 THE COURT: Any objection?

18 MR. PLEXICO: We have no objection, Your Honor.

19 THE COURT: Admitted.

20 *(Whereupon, State's Exhibit No(s). 1 marked for*
21 *identification and received in evidence.)*

22 BY MR. STONE:

23 Q All right. From there, you go into the room, and
24 the next one would be, I guess, State's Exhibit 10.

25 I can show you what's been marked as State's

DIRECT EXAMINATION OF TALLON BY STONE

1 Exhibit 10, ask if you could identify that, please, sir.

2 A Yes, sir. That is the cartridge case that --
3 which means it's been fired, and it's just the metal case
4 from the bullet.

5 Q Okay. And what does that correspond to on the
6 crime scene sketch?

7 A That was No. 10.

8 Q Okay.

9 MR. STONE: At this time, Your Honor, we move
10 State's Exhibit 10 into evidence.

11 THE COURT: Any objection?

12 MR. PLEXICO: No objection, Your Honor.

13 THE COURT: Admitted.

14 MR. STONE: Ten.

15 *(Whereupon, State's Exhibit No(s). 10 marked for*
16 *identification and received in evidence.)*

17 BY MR. STONE:

18 Q Now, specifically -- and first of all, make sure
19 we can identify this. What has been marked as State's
20 Exhibit 10 introduced into evidence, could you describe it
21 for the jury, please, sir?

22 A Marker 10?

23 Q Yeah -- no. Yeah, what is depicted in Marker 10?

24 A That is the fired cartridge case.

25 Q And this would be the item, I guess --

DIRECT EXAMINATION OF TALLON BY STONE

- 1 A It's just --
- 2 Q -- on some type of cloth, I guess.
- 3 A Correct. It's just to the -- in the photograph to
- 4 the left, if you look at that photograph, it's going to be
- 5 to right of the suitcase.
- 6 Q Down here; is that correct?
- 7 A That is correct.
- 8 Q Or right here on this crime scene sketch?
- 9 A Correct.
- 10 Q All right, sir.
- 11 The difference between Items No. 1 and 10, what is the
- 12 difference between the two items?
- 13 A No. 1 is an unfired cartridge, and No. 10 is a
- 14 fired cartridge case.
- 15 Q Okay. So you have an unfired outside of the room,
- 16 and then a ten inside of the room; is that correct?
- 17 A Correct.
- 18 Q Moving now to what's been marked on the crime
- 19 scene sketches as No. 11. Show you what's been marked as
- 20 State's Exhibit 11. Can you identify that?
- 21 A That is also a fired cartridge case.
- 22 Q Okay. Is that a fair and accurate depiction of
- 23 the scene as you saw it that day?
- 24 A Yes, sir, it is.
- 25 MR. STONE: We move, Your Honor, at this time,

DIRECT EXAMINATION OF TALLON BY STONE

1 State's Exhibit 11 into evidence.

2 THE COURT: Any objection?

3 MR. PLEXICO: No. No objections, Your Honor.

4 THE COURT: Admitted.

5 MR. STONE: Publish that to the jury.

6 *(Whereupon, State's Exhibit No(s). 11 marked for*
7 *identification and received in evidence.)*

8 BY MR. STONE:

9 Q This is -- tell me, you cannot see it, I guess, in
10 the actual crime scene photo, that photograph, but on the
11 exhibit, where is this located?

12 A It's No. 11 on the exhibit, and it would be behind
13 the suitcase.

14 Q So basically on the other side of the suitcase?

15 A Correct.

16 Q Okay. And that also depicted in this photograph
17 is State's Exhibit No. 11. What can you tell me about that?

18 A It has been fired.

19 Q Let me go now to State's Exhibit 12. Ask if you
20 -- ask if you could identify that please, sir.

21 A That is also another fired cartridge case.

22 Q And is that a fair and accurate depiction of the
23 scene as you saw it that day?

24 A Yes, sir, it is.

25 Q Okay.

DIRECT EXAMINATION OF TALLON BY STONE

1 MR. STONE: At this time, Your Honor, we move
2 State's Exhibit 12 into evidence.

3 THE COURT: Any objections?

4 MR. PLEXICO: None, Your Honor.

5 THE COURT: Admitted

6 MR. STONE: Publish that, please, sir.

7 *(Whereupon, State's Exhibit No(s). 12 marked for*
8 *identification and received in evidence.)*

9 BY MR. STONE:

10 Q Tell the jury what that is, please.

11 A That would be the fired cartridge case to the left
12 of the suitcase in the photograph.

13 Q That's down here at this marker?

14 A Correct. Marker 12, and it is also depicted as
15 Marker 12 on the diagrams.

16 Q Okay. Let me show you what's been marked as
17 State's Exhibit 13. Ask if you could identify that, please.

18 A That is also a fired cartridge case.

19 Q And where is that located?

20 A That is located on the left side of the
21 photograph, in front of the bed, or next to the bed, and
22 also Marker No. 13 on the sketch.

23 Q That's a fair and accurate depiction of the scene
24 as you saw it that day?

25 A Yes, sir, it is.

DIRECT EXAMINATION OF TALLON BY STONE

1 MR. STONE: We move, Your Honor, State's
2 Exhibit 13 into evidence.

3 MR. PLEXICO: No objection, Your Honor.

4 THE COURT: Admitted.

5 *(Whereupon, State's Exhibit No(s). 13 marked for*
6 *identification and received in evidence.)*

7 BY MR. STONE:

8 Q And if you will, explain to the jury where this is
9 located.

10 A It's going to be on the left side of the screen,
11 down towards the bottom, next to the bed, No. 13.

12 Q Here, at 13?

13 A Correct.

14 Q And I believe that is the metal tray right beside
15 that; is that correct?

16 A That is correct.

17 Q And, again, what condition is that shell in?

18 A It has been fired.

19 Q Let me show you what's been marked as State's
20 Exhibit 14, ask you to identify that, please, sir.

21 A That is another fired cartridge.

22 Q And is that a fair and accurate depiction of the
23 scene as you saw it?

24 A Yes, sir, it is.

25 MR. STONE: At this time, Your Honor, we move

DIRECT EXAMINATION OF TALLON BY STONE

1 State's Exhibit 14 into evidence.

2 MR. PLEXICO: No objection, Your Honor.

3 THE COURT: Admitted.

4 *(Whereupon, State's Exhibit No(s). 14 marked for*
5 *identification and received in evidence.)*

6 BY MR. STONE:

7 Q Publishing this on the photograph, tell us where
8 this is located as far as the crime scene sketch is
9 concerned.

10 A It's Marker No. 14.

11 Q So over on this photograph, can you see where 14
12 is?

13 A It's going to be really hard to probably see it
14 from that angle. I believe over on the right-hand side,
15 next to what I would call to the pantry area.

16 Q The pantry area here. Is that the marker right
17 there?

18 A It -- I believe so.

19 Q All right. Show you what's been marked as State's
20 Exhibit No. 9, ask if you could identify that for me,
21 please, sir.

22 A That is a fired projectile, or a fired bullet.

23 Q Okay. So this is not -- well, let me -- let me
24 get to -- is that a fair and accurate depiction of the scene
25 as you saw it?

DIRECT EXAMINATION OF TALLON BY STONE

1 A Yes, sir, it is.

2 MR. STONE: At this time, Your Honor, we move
3 State's Exhibit 9 into evidence.

4 THE COURT: Any objection?

5 MR. PLEXICO: No objections to this, Your Honor.

6 THE COURT: Admitted.

7 *(Whereupon, State's Exhibit No(s). 9 marked for*
8 *identification and received in evidence.)*

9 BY MR. STONE:

10 Q All right, sir. I'm not sure that you can see
11 that on the -- I'm not sure that No. 9 is showing on the --
12 all right. Here we go.

13 I don't think you could see it on State's Exhibit 15,
14 so let me just go to the crime scene sketch itself. Tell me where
15 that is -- Item No. 9 is located.

16 A That is represented by Marker No. 9.

17 Q And that is -- how is that in relation to the
18 Patels and these other shells?

19 A It's going to be towards the back of the room,
20 underneath the sink area, up against the wall that would
21 divide the main room from the bathroom. And it's -- it's
22 kind of small and hard to see. But it's on top of that dust
23 pan. There you go.

24 Q Okay. Now, what is the difference between State's
25 Exhibit 9 and 11, 14, 10, and 12/ and 13?

DIRECT EXAMINATION OF TALLON BY STONE

1 A That is the projectile, or the bullet, that comes
2 and separates from the cartridge once it is fired.

3 Q Okay. First, let me show you what's been marked
4 as State's Exhibit 1A, ask if you could identify that,
5 please.

6 A Yes. This is the -- what we -- would be
7 represented as Marker No. 1, the unfired cartridge that I
8 collected from the scene.

9 Q All right. Now, when you collect these items,
10 what do you do with them? Or what did you do with that, in
11 that case?

12 A Once we collect the items of evidence, we would
13 take it back to SLED headquarters for processing.

14 Q Now, do you put them in that brown -- I see there
15 are a couple of envelopes. Explain the envelopes to me, if
16 you could.

17 A Sure. The brown envelope here, this is the
18 envelope that we use on scene when we are collecting the
19 evidence. And then it is sealed up in the back and then
20 sent to -- or we take it to SLED headquarters in Columbia,
21 and then it is sent to the various departments for
22 processing, whether it be latent prints or DNA or firearms.

23 Q All right. So when you put it in the bag, you
24 seal it. Do you initial it, anything like that?

25 A Yes, sir. This was initialed by my partner,

DIRECT EXAMINATION OF TALLON BY STONE

1 because we collected stuff at the same time. But --

2 Q And then once it is sealed, it then goes to SLED
3 and the --

4 A Correct.

5 Q Whomever tests it, unseals it; is that correct?

6 A That is correct.

7 Q Now, do you change it or alter it in any way prior
8 to putting it in that bag?

9 A No, sir.

10 Q Okay. Let me ask you to identify State's
11 Exhibit 10A.

12 A This would be from Marker 10, and this is the
13 fired cartridge case.

14 Q Did you and your partner collect that as well?

15 A That is correct.

16 Q And you placed it in -- it was placed then into
17 that envelope and sealed; is that correct?

18 A That is correct.

19 Q Did you change or alter it in any way prior to
20 placing it into the sealed envelope?

21 A No, sir.

22 Q Okay. Show you what's been marked as 11A. Could
23 you identify that, please.

24 A This is the cartridge case from Marker 11 that I
25 also collected with my partner. ,

DIRECT EXAMINATION OF TALLON BY STONE

1 Q And is that also -- was that also placed in the
2 envelope and sealed?

3 A Yes, sir.

4 Q And was it changed or altered in any way prior to
5 placing it in that seal?

6 A No, sir.

7 Q State's Exhibit 12A.

8 A Okay. This is from marker -- it's kind of hard to
9 see because it's in the envelope.

10 I think that's a 12 -- yes, that's Marker 12.
11 And it is a fired cartridge.

12 Q And that is also something you and your partner
13 collected?

14 A Correct.

15 Q And you placed it in the envelope and sealed it?

16 A Yes, sir.

17 Q And did you change or alter it, or did your
18 partner change or alter it in any way before you put it in
19 there?

20 A No, sir. None of which.

21 Q State's Exhibit 13A.

22 A This is from Marker 13, and it is another fired
23 cartridge case that I collected.

24 Q And what did you do with it, you and your partner
25 do with that after you collected it?

DIRECT EXAMINATION OF TALLON BY STONE

1 A We took it back to SLED headquarters as the same
2 way we found it.

3 Q Okay. You sealed it in this envelope?

4 A Yes, sir.

5 Q And you change or alter it in any way prior to
6 putting it in the envelope?

7 A No, sir.

8 *(Whereupon, State's Exhibit No(s). 9A-14A marked*
9 *for identification and received in evidence.)*

10 BY MR. STONE:

11 Q Move, now, down to State's Exhibit 14 at the
12 bottom of the crime scene. Show you State's Exhibit 14A.

13 A Yes. This is from Marker 14, and this is a fired
14 cartridge case that me and my partner collected and sealed
15 it the same.

16 Q Also put that into the envelope --

17 A Yes, sir.

18 Q -- sealed?

19 Did you change or alter it in any way?

20 A No, sir.

21 Q And finally, State's Exhibit 9A.

22 A This is from Marker 9. This is the fired
23 projectile that me and my partner collected.

24 Q Okay. And also, this was -- there's a yellow
25 envelope here. Was it also sealed in that envelope?

DIRECT EXAMINATION OF TALLON BY STONE

1 A Yes, sir, it was sealed in that.

2 Q Changed or altered in any way prior to putting it
3 in an envelope?

4 A No, sir.

5 Q And, again, these envelopes, you then transport to
6 SLED and whomever tests it unseals it; is that correct?

7 A That is correct.

8 Q Let me show you what's been marked as State's
9 Exhibit 25. Tell me what that is, please, sir.

10 A This would be the jewelry box that I located
11 underneath a chair inside of the room.

12 Q All right. Can you tell us on the crime scene
13 sketch where that is located?

14 A Yes, sir. It's the chair that's kind of in the
15 middle of the room between Markers No. 13 and 12. There is
16 a chair to the left. Underneath that chair is where this
17 was located.

18 Q And you collected this item?

19 A Yes, sir, I did.

20 Q Now, when you picked this up -- and I'm assuming
21 that on these other bullets or shell casings as well, were
22 you wearing gloves at the time?

23 A Always.

24 Q And did -- you collected this box as well?

25 A Yes, sir, I did.

DIRECT EXAMINATION OF TALLON BY STONE

1 Q What did you do with it once you collected it?

2 A I placed it in this -- this is the envelope that I
3 placed it in and sealed it up and transported it to SLED
4 headquarters for processing.

5 Q Okay. Did you change or alter it in any way?

6 A No, sir.

7 Q All right. And then this is -- this is sealed
8 until whomever tests it takes it out of the bag; is that
9 correct?

10 A That is correct.

11 Q All right. Show you what's been marked as State's
12 Exhibit 24. Can you identify that for me, please, sir.

13 A Yes, sir. This is a bag that I collected,
14 miscellaneous paperwork, different mail and other items that
15 were paper, from the scene, mostly on the bed and near the
16 floor.

17 Q All right. There's a mark on the crime scene
18 exhibit paperwork up here. You collected some paperwork as
19 well up here?

20 A That is correct.

21 Q And that's, I guess, on the bed?

22 A That's correct.

23 Q Now, when you collected that paperwork, what did
24 you do?

25 A Once I collected it, placed it in this bag, I

DIRECT EXAMINATION OF TALLON BY STONE

1 sealed it here with the yellow seal tape and then
2 transported it to SLED headquarters for processing.

3 Q And did you change or alter it in any way prior to
4 placing it in this bag?

5 A No, sir, I did not.

6 Q And you were wearing gloves at the time?

7 A Yes, sir.

8 Q Let me show you what's been marked as State's
9 Exhibit 27. Can you tell me what that is, please, sir.

10 A Yes, sir. This is another fired projectile, or
11 bullet, that was located inside of Mr. Patel's shirt as we
12 were removing him from the scene.

13 Q And it -- also, I see a yellow envelope in there.
14 Did you also place that into the yellow envelope, or your
15 partners, in that envelope?

16 A Yes, sir, and sealed it.

17 Q Okay. And did you change or alter it in any way
18 prior to putting it in the envelope?

19 A No, sir.

20 Q And this was found where?

21 A That was in Mr. Patel's shirt.

22 Q Okay. Let me show you what's been marked as
23 State's Exhibit No. 26, ask if you could identify that,
24 please.

25 A This is another fired projectile, or bullet,

DIRECT EXAMINATION OF TALLON BY STONE

1 located on the floor, underneath Mrs. Patel, as she was
2 being removed from the scene as well.

3 Q And you sealed that, or you and your partner
4 sealed that, into the envelope as well?

5 A That is correct.

6 Q Did you change it or alter it in any way?

7 A No, sir.

8 Q Now, the items that you said that you collected
9 and you sent to SLED, do you send them to basically just an
10 evidence processing -- do you determine where they're
11 processed or where they go?

12 A We talk it over with the agents and the
13 investigators to determine what would be the best course of
14 action to send each piece of evidence.

15 Q Starting with the, I guess, the unfired bullets --
16 the unfired bullet. And I call it a "bullet." What's it --
17 what would an unfired --

18 A It would be a cartridge.

19 Q Unfired cartridge. The fired cartridges, and then
20 any fired bullets, where did you send when you got to SLED?

21 THE WITNESS: Do you mind if I refer to my notes,
22 sir?

23 THE COURT: No, sir.

24 THE WITNESS: Okay. Which ones again? Sorry.

25 BY MR. STONE:

DIRECT EXAMINATION OF TALLON BY STONE

1 Q These items that are the shell casings and the
2 bullets that are -- basically the firearm items.

3 A All right. All of the cartridge cases and the
4 unfired cartridge, so Markers 1, and I believe that's 10,
5 11, 12, 13, and 14 were all sent to DNA Touch, to begin
6 with, then latent prints, and then firearms.

7 Q The item that was the miscellaneous paperwork and
8 the ring box, where was that sent?

9 A That was sent to latent prints.

10 Q All right. And all of that was enclosed in
11 envelopes you didn't change or alter it in any way.

12 A Correct.

13 MR. STONE: Excuse me just a moment, Your Honor.

14 We don't have anything else at this time, Your
15 Honor.

16 THE COURT: All right. Cross-examination.

17 MR. PLEXICO: Sure.

18 CROSS-EXAMINATION

19 BY MR. PLEXICO:

20 Q All right. And did you do this photograph?

21 A Parts of it.

22 Q Okay. All right. This is a fair depiction of how
23 everything was found?

24 A Yes, sir.

25 Q Okay. All right. And this was the limit of your

CROSS EXAMINATION OF WILLIAMS BY PLEXICO

1 involvement at this point in time? You just did the crime
2 scene and then moved on to the next case? Did you come back
3 and do anything else?

4 A No, sir. I did not go back after I left the
5 scene.

6 MR. PLEXICO: Okay. All right. I don't have
7 anything further.

8 THE COURT: Redirect.

9 MR. STONE: No, sir.

10 THE COURT: May this witness be excused?

11 MR. STONE: He may.

12 THE COURT: Mr. Plexico?

13 MR. PLEXICO: He may, Your Honor.

14 THE COURT: Thank you, sir.

15 MR. STONE: State calls Martha Sue Anderson.

16 Thereupon,

17 MARTHA SUE ANDERSON

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STONE:

22 Q Okay. Ms. Anderson, let me get you to speak into
23 that microphone, please, for me.

24 A Okay.

25 Q Where are you currently living, Ms. Anderson?

DIRECT EXAMINATION OF M. ANDERSON BY STONE.

1 A In Triangle, Virginia.

2 Q How long have you lived in Triangle, Virginia?

3 A Thirty years.

4 Q On August the 16th, 2015, were you visiting the
5 area?

6 A Yes, we were, on our way to Savannah.

7 Q And were you staying at the Best Western off of
8 Point South?

9 A Yes, sir.

10 Q Do you recall what room you were staying in?

11 A Room 163.

12 Q We have already put into evidence State -- or,
13 excuse me -- we're using as a -- no, we already put this in
14 evidence, State's Exhibit 23.

15 Let me show that to you. Can you identify that?

16 A Yes, sir.

17 Q All right. Let me ask you, if you could, please,
18 to come off the stand.

19 A (Witness complies.)

20 Q First of all, were you by yourself?

21 MR. PLEXICO: Your Honor, I can't see. Can I
22 come up?

23 THE COURT: Go ahead.

24 BY MR. STONE:

25 Q You -- were you by yourself?

DIRECT EXAMINATION OF M. ANDERSON BY STONE.

1 A No. It was my husband and I.

2 Q Okay. And where were you staying?

3 A This room right here, on the lower level.

4 Q And this is -- what room did you tell me that was?

5 A 163.

6 Q Okay. In the early morning, somewhere around 7:30
7 or 8:00, what were you and your husband doing?

8 A We were walking on this lower level, along the
9 sidewalk, to go to breakfast at the Denny's restaurant that
10 was attached.

11 Q What happened?

12 A We were, as I said, walking along, and we were
13 about to this point, and we heard -- I heard four to five
14 loud bangs. I -- it likened to me like a trash dumpster lid
15 being banged on the top of a truck. And when I looked in
16 the direction of the noise --

17 Q Where were the bangs coming from? Where was the
18 sound coming from?

19 A I was walking this way, so they came from my left.

20 Q Okay. So you were walking towards, I guess,
21 towards the Denny, along here?

22 A That's correct.

23 Q And they came from back in this area?

24 A Yes, sir.

25 Q Okay. Tell me what you did at this point.

DIRECT EXAMINATION OF M. ANDERSON BY STONE.

1 A Well, I turned to look to see where the noises
2 came from. And I looked up, saw a gentleman coming in
3 the -- out of the doorway and --

4 Q Out of what doorway?

5 A This corner room on the second floor. I don't
6 know that room number.

7 Q Okay.

8 A And when I turned, he was in the doorway. I'd say
9 he was between five and 6 feet tall, had on a white shirt,
10 dark pants, and he appeared to be dropping things. He was
11 in the doorway, dropping items, dark in color, and
12 unfortunately, his pants were falling down. He was trying
13 to pull them back up. And he kept dropping things. And by
14 then, my husband had looked at the same time I had, and I
15 told him, "don't look, don't look, something's wrong with
16 this guy, he's either drunk or high or something." Just my
17 assumption, and I turned away.

18 Q Now, he was outside this room; is that correct?

19 A No, sir. He was in the doorway at my first look.

20 Q Was he white? Was he an African-American? Was he
21 Hispanic?

22 A Yes, sir. He was an African-American.

23 Q Somewhere between five and 6 feet tall?

24 A Correct.

25 Q And what was he wearing?

DIRECT EXAMINATION OF M. ANDERSON BY STONE.

1 A Dark pants, white T shirt.

2 Q And you saw him in the doorway. Which way was he
3 coming?

4 A He was coming out of the room itself, and that's
5 the time that I saw him. And then that's when I turned to
6 my husband and told him, "don't look, don't look."

7 Q Go ahead and take the stand.

8 A Yes, sir. (Witness complies.)

9 Q And, again, about what time was this?

10 A Between 7:30 and 8:00.

11 Q A.M. or P.M.?

12 A A.M., sir.

13 MR. STONE: May I have just a moment, Your Honor?

14 THE COURT: Yes, sir.

15 MR. STONE: Nothing else at this time, Your
16 Honor.

17 Thank you, Ms. Anderson. Would you answer any
18 questions Mr. Plexico has.

19 THE WITNESS: Yes, sir.

20 THE COURT: Cross-examination.

21 MR. PLEXICO: The Court's indulgence.

22 CROSS-EXAMINATION

23 BY MR. PLEXICO:

24 Q Well, you were a good distance away, right?

25 A Excuse me?

CROSS EXAMINATION OF M. ANDERSON BY PLEXICO

1 Q You were a good distance away, at least a hundred
2 to two hundred yards, correct?

3 A No, sir. That's feet.

4 Q Okay. But that's still a good distance, right?

5 A Yes, sir.

6 MR. PLEXICO: All right. I don't have anything
7 further.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION

10 BY MR. STONE:

11 Q How much time between the sound that you heard and
12 you being able to see somebody coming out of that room?

13 A Less than a minute. Less than a minute, just 30
14 seconds or so, because the noise was so loud it immediately
15 got my attention.

16 MR. STONE: No further questions. Thank you,
17 Ms. Anderson.

18 THE COURT: Any questions?

19 MR. PLEXICO: Yes.

20 RE-CROSS EXAMINATION

21 BY MR. PLEXICO:

22 Q So you turned around -- you're saying that you
23 turned around and you didn't see anything, and you just
24 didn't look back, and proceed on to Denny's?

25 A I saw that person on the second floor. That was

RE CROSS EXAMINATION OF M. ANDERSON BY PLEXICO

1 the direction the noise came from, and that's why I looked
2 up and saw that.

3 Q So there wasn't a 30-second break. You turned
4 around and saw the person, you're saying?

5 A Correct. In the doorway, yes, sir.

6 Q All right. So there was no 30-second break?

7 A No, not even.

8 Q All right. You just turned around and looked and
9 saw him?

10 A Yes, sir.

11 MR. PLEXICO: Okay. I don't have anything
12 further.

13 MR. STONE: Nothing else, Your Honor.

14 Thank you, Ms. Anderson.

15 The State calls William Anderson.

16 THE COURT: Thank you, ma'am. You may step down.

17 Thereupon,

18 WILLIAM ANDERSON

19 was called as a witness, having been first duly sworn,

20 was examined and testified as follows: *Sworn.

21 DIRECT EXAMINATION

22 BY MR. STONE:

23 Q Mr. Anderson, Martha Anderson is your wife; is
24 that correct?

25 A That's correct, sir.

DIRECT EXAMINATION OF W. ANDERSON BY STONE

1 Q And just go ahead, skip ahead. You were here
2 visiting August the 16th, 2015; is that correct?

3 A Yes, sir.

4 Q I say "here." Where specifically?

5 A Best Western, at Exit 33.

6 Q Let me get you to pull that microphone to you just
7 a little bit.

8 A (Witness complies.)

9 Q Sometime between 7:30 and 8:00 in that morning,
10 what did you -- what were you doing, sir?

11 A We were walking up to the middle of the motel, and
12 I guess you'd call it the center -- center court. And
13 headed up to the Denny's restaurant to get breakfast.

14 Q All right. This has been introduced as evidence,
15 as State's Exhibit 23. Can you identify that, sir? Does
16 that -- do you understand what that is? Do you see that?

17 A That's the Best Western motel, sir.

18 Q All right, sir. Let me get you to -- I don't
19 think you'll have a problem keeping your voice up. Let me
20 get you to come off the stand, if you don't mind, please.

21 A Yes, sir. (Witness complies.)

22 Q And, sir, you can just stand right beside that
23 lady right there. Make sure that the jurors can see you.

24 Where were you coming from? What were you doing?

25 A We were in this room right here, 163, on the

DIRECT EXAMINATION OF W. ANDERSON BY STONE

1 bottom, and we walked up through here. And we got about
2 right here is about where we were at.

3 Q And that's about -- there's a little, like, a
4 concrete pad or something right here.

5 A I think that's the drain.

6 Q The drain. Is that about where you were?

7 A I think so, yes, sir. Right, sir. That's about
8 where I was, yes, sir.

9 Q All right, sir. And what happened at this point?

10 A Well, we heard some popping sounds.

11 Q Okay.

12 A Heard some popping sounds, like four or five, pow,
13 pow, pow, pow, pow. So that's -- that's what happened at
14 that time.

15 Q Okay. What did you do?

16 A Well, my wife says, "that sounds like gunshots."
17 And I'm like, "well, this is a really nice place, clean and
18 everything. Ain't nobody going to be shooting around here."

19 I figured it was a trash truck or something
20 out back, you know, dumping the dumpsters. And so -- and --

21 Q At some point, did you turn around and look
22 towards the sound?

23 A We were -- yes. We were looking around to see
24 what is that, where did that come from.

25 Q Okay. And you, yourself, did you see anything?

DIRECT EXAMINATION OF W. ANDERSON BY STONE

1 A Not immediately. Maybe two or three seconds
2 later, I did see something.

3 Q What did you see?

4 A I saw a person coming out of this room right here.

5 Q All right. You're pointing to the first floor or
6 the second floor?

7 A First room on the second floor.

8 Q Okay. This end room?

9 A Yes, sir.

10 Q Okay. And what did the person look like? Could
11 you see him?

12 A The person was black in color, had a white shirt,
13 black pants on.

14 Q And what was he doing?

15 A He come running out of that room, and he had a
16 bunch of stuff in his arms, and he dropped it, because his
17 pants fell down. So he's squirming around, trying to get
18 his pants back up and gather all this stuff up. And he
19 turned for maybe one or two seconds, and looked. My wife
20 said, "don't look, come on, let's go." That's what we did.

21 Q Okay. Go ahead and take the stand, if you don't
22 mind, sir.

23 A (Witness complies.)

24 MR. STONE: Thank you, sir. I don't have any
25 further questions. If you will answer any questions

DIRECT EXAMINATION OF W. ANDERSON BY STONE

1 Mr. Plexico may have.

2 THE WITNESS: Yes, sir.

3 THE COURT: Cross-examination.

4 MR. PLEXICO: Yes, sir. Court's indulgence just
5 for a second, Your Honor.

6 THE COURT: Yes, sir.

7 (Pause.)

8 CROSS EXAMINATION

9 BY MR. PLEXICO:

10 Q Did you give a statement on August 16th, 2015?

11 A Yes. Yes, sir. '

12 Q In that statement, you didn't say anything about
13 the color of his clothes or anything; is that correct?

14 Would you like to review your statement?

15 A I think I said -- the one I written, I thought I
16 put something about the color of clothes.

17 MR. PLEXICO: May I approach the witness?

18 THE COURT: Yes, sir.

19 BY MR. PLEXICO:

20 Q Could you examine this and tell me if it's the
21 statement that you gave?

22 A Yeah, that's my bad handwriting, yes, sir.

23 Q Okay. And that doesn't say anything about the
24 color of the clothes; is that correct?

25 A No, sir, it does not. But it was in my wife's.

CROSS EXAMINATION OF W. ANDERSON BY PLEXICO

1 She's a better writer than me. I don't got -- I don't got
2 no education.

3 Q All right. And you did tell them that you were
4 just too -- too far away; is that correct?

5 A To identify a positive face, yes, sir.

6 MR. PLEXICO: May I approach?

7 THE COURT: Yes, sir.

8 MR. PLEXICO: Thank you. I don't have anything
9 further.

10 THE COURT: Redirect.

11 MR. STONE: No, sir. Thank you.

12 Thank you, Mr. Anderson.

13 THE WITNESS: Yes, sir.

14 MR. STONE: May he and his wife be excused?

15 THE COURT: Yes, sir.

16 MR. STONE: Thank you.

17 THE WITNESS: Thank you, Judge.

18 THE COURT: Yes, sir.

19 MS. JONES: State calls Jennifer Turno.

20 Thereupon,

21 JENNIFER TURNO

22 was called as a witness, having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MS. JONES:

DIRECT EXAMINATION OF TURNO BY JONES

1 Q Good morning, Ms. Turno.

2 A Good morning.

3 Q Where do you work?

4 A Regions Bank.

5 Q And what do you do at Regions Bank?

6 A I work in the corporate security department. I'm
7 an investigator. We investigate the internal and external
8 bank fraud.

9 Q Could you speak up a little bit. You have a very
10 soft voice.

11 A I work in the corporate security department. We
12 investigate the internal and external bank fraud.

13 Q Okay. And how long have you been doing that?

14 A Thirty-one years.

15 Q And as part of your duties, are you in charge of
16 keeping some records for Regions Bank?

17 A I am in charge of keeping records for Regions
18 Bank. We keep all bank records, bank video, et cetera.

19 Q And at some point, did you have the opportunity to
20 turn over some of these records for this case today?

21 A I did.

22 Q Okay. What was the customer's name on those
23 records?

24 A I'm sorry, I have a hard time pronouncing his
25 name. Kantibhai -- Kantibhai?

DIRECT EXAMINATION OF TURNO BY JONES

1 Q Okay. And how about the last name?

2 A I'm sorry, I can't pronounce it.

3 Q Okay. Do you have records on you that you could
4 spell it?

5 A Uh-huh, I do. They're in that file that I
6 brought.

7 Q Well, actually, I will show you --

8 MS. JONES: Permission to approach, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. JONES:

11 Q Ms. Turno, I'm going to show you what has been
12 marked as State's 28. Do you recognize that?

13 A I do.

14 Q And what is this?

15 A This is a report of Mr. and Mrs. Kantibhai Patel's
16 debit card use.

17 Q Okay. And is this a report that Regions Bank
18 keeps in its ordinary course of business?

19 A Yes, ma'am.

20 Q And this is what you provided to law enforcement?

21 A Yes, ma'am.

22 Q For this case?

23 A It is.

24 MS. JONES: Your Honor, at this time, the State
25 moves State's 28 into evidence.

DIRECT EXAMINATION OF TURNO BY JONES

1 THE COURT: Any objection?

2 MR. PLEXICO: None, Your Honor.

3 THE COURT: Admitted.

4 MS. JONES: Permission to publish to the jury.

5 THE COURT: Yes, ma'am.

6 *(Whereupon, State's Exhibit No(s). 28 marked for*
7 *identification and received in evidence.)*

8 BY MS. JONES:

9 Q Ms. Turno, if I could ask you to step down here.

10 A (Witness complies.)

11 Q What is this that we see here?

12 MR. PLEXICO: I can't -- I can't see what she's
13 showing to the jury.

14 THE COURT: Could you pull it back a little bit
15 for them? There you go.

16 MS. JONES: Can everyone see? Can you see?

17 MR. PLEXICO: Yes.

18 THE WITNESS: This is a report of what we call
19 debit card swipes. This is a bank debit card, and
20 each time a card is swiped, it's recorded here in this
21 column. This is the date column, with the date and
22 the time. This would be the dollar amount that was
23 authorized, and this would be the location of the
24 actual card swipe. Of course, here, this is your
25 state.

DIRECT EXAMINATION OF TURNO BY JONES

1 BY MS. JONES:

2 Q You say, "card swipes." Are these all successful
3 attempts at using the card?

4 A Some of these are swipes for authorization, some
5 of these are swipes to possibly test the balance. Here
6 you'll see a zero, which indicates this was probably a
7 balance check, and then some of these were unsuccessful.

8 Q How can you tell if it's an unsuccessful attempt?

9 A Unsuccessful attempts are coded. In this column
10 here, there's different codes, and each code stands for
11 something different, such as an ATM machine, a retail store,
12 a gas pump, or an unsuccessful swipe.

13 Q And are you familiar with what these codes do
14 mean?

15 A Not by heart. I have it written down.

16 Q Okay. In your notes?

17 A Uh-huh. (Indicating affirmatively.)

18 Q In your notes. Okay. If I could ask you to refer
19 to your notes.

20 Okay. Before we get there, on the day of August 16th
21 of 2015, how many times was this debit card swiped?

22 A On August 16th, 15 times.

23 Q And what is the first time on August 16th?

24 A The first time is going to be 7:55 a.m., Central
25 time.

DIRECT EXAMINATION OF TURNO BY JONES

1 Q Okay. So our time, what time is that?

2 A That's going to be 8:55 a.m.

3 Q Okay. And what is the latest swipe for that

4 August 16th?

5 A That's 5:22 p.m., Central. So that's going to be

6 6:22 our time.

7 Q Okay. So all these times are in Central time.

8 A Yes, ma'am.

9 Q So go up an hour, and that's our time?

10 A That's correct.

11 Q Okay. Thank you.

12 This purchase right here for 5.75 at --

13 A Well, that's going to be 2:06 p.m.

14 Q Okay. And where is that purchase made?

15 A That's at the Shell at 830 on East Main Street in

16 South Carolina.

17 Q Okay. And was that a successful purchase?

18 A It is. That's an inside in a convenience store

19 purchase.

20 Q Okay. How about this purchase here for 33.38?

21 A That's an authorization at a gas pump.

22 Q Okay. At -- is this the location, Handy Dan's

23 three?

24 A Handy Dan's three, in South Carolina.

25 Q So he's successful there. This card was swiped

DIRECT EXAMINATION OF TURNO BY JONES

1 successfully to get \$33.38 worth of gas?

2 A Yes, ma'am.

3 Q All right. What about this 000?

4 A This is an actual ATM swipe. I can't tell you for
5 sure what he requested, but whatever it was, it was not
6 approved. It was either funds that were not enough money to
7 disperse or a balance.

8 Q Okay. And how about this final one for 92, where
9 is that attempted or made?

10 A This says it's at the Solar Eyewear in Georgia,
11 which is a retail store.

12 Q Okay. And you can tell that from the code?

13 A Yes, I can tell it from the code.

14 Q Okay. And whose account is this we're reviewing
15 again?

16 A This is Patel, Kantibhai Patel.

17 Q Okay. And this address, what does this address
18 indicate?

19 A The 3536 Point South Drive, No. [REDACTED], Yemassee,
20 South Carolina.

21 Q Okay. Is that his -- is that the address he gave
22 for his home address?

23 A That's the mailing address that they gave for the
24 statements on their bank account, which is typical.

25 Q Okay. And this number up at the top, what is

DIRECT EXAMINATION OF TURNO BY JONES

1 that?

2 A That's going to be the debit card number, the
3 number you would see on your actual debit card.

4 Q Okay. And if we had any other paperwork to go
5 along with this, would the whole -- say from receipt, the
6 ATM machines, whatnot, would the whole debit card number be
7 displayed?

8 A The whole number should not be displayed. It
9 should just be the last four digits of that card number.

10 Q Okay. And that would be?

11 A That would be 3534.

12 MS. JONES: Ms. Turno, I have no further
13 questions for you at this time. Thank you. And you
14 can have a seat.

15 THE WITNESS: Thank you.

16 THE COURT: Cross-examination.

17 MR. PLEXICO: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. PLEXICO:

20 Q Okay. Is this the only debit card that exists
21 from Regions Bank with the ending number of 3584 -- or 3534?

22 A Yes, sir.

23 Q So you have no other cards that have that one
24 ending number?

25 A No, sir.

CROSS EXAMINATION OF TURNO BY PLEXICO

1 Q But that's what I'm asking, now. I don't think
2 maybe I didn't say it right. It says 3534 just happens to
3 be the last four digits of this long complex code, right?

4 A That's correct.

5 Q Many cards could end in 3534?

6 A Typically, they should not have a duplicate last
7 four digits on those debit cards.

8 Q Okay. How many tens of thousands of customers
9 does Regions Bank have?

10 A I can't answer that.

11 Q Okay. Do they have over 10,000?

12 A Yes.

13 Q Okay. So, therefore, if you started with 001 and
14 went up to 9,999 on your debit cards, that means you would
15 have to start repeating for the next -- for starting with
16 10,000 -- or 10,001. You would start having to repeat those
17 last digits, again, correct? So you would have more than
18 one card ending in those four numbers?

19 A I'm sorry, I can't answer specifically how they
20 generate the card numbers. But they should not have
21 duplicate ending numbers.

22 Q Okay. All right. But -- so you're saying y'all
23 have less than 10,000 or more than 10,000 customers?

24 A We have more than 10,000.

25 Q Do you have more than 100,000 customers?

CROSS EXAMINATION OF TURNO BY PLEXICO

1 A I can't answer that for sure.

2 Q Do you have more 50,000 customers?

3 A I can't answer that.

4 Q All right. So you really don't know how many

5 times those four digits on the end must be repeated.

6 Because if you only have 10,000, and if you have a hundred

7 thousand, you'd repeat those same four numbers at last 10

8 times to have a hundred thousand customers. Logically,

9 that's correct; is it not?

10 A Makes sense.

11 Q Okay.

12 MR. PLEXICO: I don't have anything further.

13 THE COURT: Redirect.

14 MS. JONES: Nothing further, Your Honor.

15 THE COURT: May this witness be excused?

16 MS. JONES: She may.

17 MR. PLEXICO: No objections from Defense, Your

18 Honor.

19 THE COURT: All right. Let's take a morning

20 break, if we could.

21 Mr. Foreman, ladies and gentlemen of the jury,

22 we're going to take the morning break. We'll be about

23 10, 15 minutes. If you need anything, make sure you

24 let your bailiff know.

25 If you'll leave your pads in the courtroom when

CROSS EXAMINATION OF TURNO BY PLEXICO

1 y'all go back for your break, please.

2 (Jury exits the courtroom.)

3 THE COURT: All right. We're in recess.

4 (Whereupon, the Court was in recess.)

5 THE COURT: The State ready with its next
6 witness?

7 MS. JONES: Yes, Your Honor.

8 THE COURT: All right. Would you bring the jury
9 in, please.

10 (The jury enters the courtroom at 11:25 a.m.)

11 THE COURT: Call your next witness, please,
12 ma'am.

13 MS. JONES: Thank Your Honor. State calls Dianne
14 Echols.

15 Thereupon,

16 DIANNE ECHOLS

17 was called as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. JONES:

21 Q Good morning, Ms. Echols. How are you?

22 A I'm fine. Thank you.

23 Q Good. What do you do?

24 A I'm the general manager of Handy Dan's convenience
25 stores.

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 Q How many do you manage?

2 A Four.

3 Q And where are those located?

4 A Two are in Ridgeland, and two are in Tillman.

5 Q Okay. What are some of your duties as the general
6 manager?

7 A Wow. I'm in the stores, making sure cashiers are
8 doing what they're supposed to do, and all others doing what
9 they're supposed to do. I do all the bookkeeping.

10 Q Okay. How long have you been at Handy Dan?

11 A Since 1988.

12 Q And how long as the general manager?

13 A I've been general manager since my brother passed
14 away in 2005.

15 Q As part of your duties as a general manager, does
16 that include keeping up with the records of the business?

17 A Yes, ma'am.

18 Q And what sort of records would this include?

19 A It includes the paperwork of the records and also
20 any videos that are made or maintained.

21 Q Okay. Could paper records include daily receipts
22 or transactions?

23 A Yes, ma'am.

24 Q Does that include transactions for gas pumps,
25 inside store, and ATM machines?

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 A Yes, ma'am.

2 Q Okay. So you have access to all of those?

3 A Yes, ma'am.

4 Q And they are kept in the ordinary course of
5 business?

6 A Yes, ma'am.

7 MS. JONES: Permission to approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 BY MS. JONES:

10 Q Ms. Echols, I'm going to show you what has been
11 marked State's 29 and State's 30. What are those?

12 A The first one is a receipt for gas purchased at
13 Handy Dan's Gulf. The 30 is a receipt out of the ATM
14 machine.

15 Q Okay. Are those records that are kept in the
16 ordinary course of business?

17 A They're kept on the machines and can be retrieved.

18 Q And are those records that you retrieved for law
19 enforcement?

20 A Yes, ma'am.

21 Q Okay.

22 MS. JONES: Your Honor, at this time, the State
23 moves State's 29 and 30 into evidence.

24 THE COURT: Any objection?

25 MR. PLEXICO: None, Your Honor.

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 THE COURT: All right. Admitted.

2 MS. JONES: Permission to publish.

3 THE COURT: Yes, ma'am.

4 *(Whereupon, State's Exhibit No(s). 29-30 marked*
5 *for identification and received in evidence.)*

6 BY MS. JONES:

7 Q State's 29. You mentioned this was a gas receipt?

8 A Yes, ma'am.

9 Q Where is this store located?

10 A It's located next to the Subway in Ridgeland, at
11 8250 East main.

12 Q Okay. And this information right here, with all
13 of these Xs, followed by Visa and the name Patel, what is
14 that information?

15 A It is the last four -- the Xs mark out the actual
16 numbers on the credit card. It just shows the last four.
17 And it was a Visa, and the person's --

18 MR. PLEXICO: May I come up so I can see what's
19 going on?

20 A The person's name is a Patel.

21 BY MS. JONES:

22 Q Okay. And fuel, does that mean that it's for gas
23 outside of the store?

24 A Yes, ma'am, pump one.

25 Q Okay. And what date and time was this purchase

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 made?

2 A 8-16, 2015 at 9:00 a.m.

3 Q Okay. Over to the left here, we see the words,

4 "Na Na and Josh."

5 A That's the back of it.

6 Q Okay. What is that?

7 A The cashier.

8 MR. PLEXICO: Your Honor, I would object to

9 anything. That would be hearsay, anything the cashier

10 said.

11 MS. JONES: I withdraw the question, Your Honor.

12 THE COURT: Very good.

13 BY MS. JONES:

14 Q Let's move on to State's 30.

15 A Okay.

16 Q Okay. What is this?

17 A This is a receipt that I pulled off the ATM

18 machine.

19 Q Okay.

20 A The first receipt was a receipt of the individual

21 using the receipt.

22 Q And that would be the information to the left?

23 A Correct. On top. Correct.

24 Q Okay. Okay.

25 A And the next one was one I pulled off the ATM

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 machine.

2 Q Okay.

3 A I can go in and retrieve transactions.

4 Q Okay. This information to the left, what does
5 this information indicate?

6 A This indicates that an individual came in at 9:04
7 to use the ATM, and it had an invalid pin.

8 Q Okay. What does that mean?

9 A It means that the pin number that was used was
10 invalid, so they were not able to withdraw funds.

11 Q Okay. And do you know what card, debit card
12 number, this invalid pin is associated with?

13 A The same receipt that you see here is reprinted
14 here, and the whole credit card number is printed.

15 Q Okay. And is that where it says, "C" and then it
16 has a bunch of numbers?

17 A Correct.

18 Q Okay. And what are the last four numbers of that?

19 A 3534.

20 Q Thank you. And there's no name though?

21 A No, ma'am.

22 Q Just the number?

23 A Just the number.

24 Q And, again, what time and date was this attempted
25 at the ATM?

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 A August the 16th, 2015, at 9:04.

2 Q Okay. Thank you. Ms. Echols, you also mentioned
3 that you also keep videos.

4 A Yes, ma'am.

5 Q What are these videos of?

6 A The videos are all cameras in the stores. And it
7 also shows transactions on the cash register.

8 Q And how does this recording system work?

9 A It records in a back room.

10 Q Okay. While the event is happening?

11 A While the events are happening.

12 Q Okay. Were you asked to retrieve some video
13 footage for this case today?

14 A Yes, ma'am.

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

16 A Yes, ma'am.

17 Q Okay. And these records, again, are kept in the
18 ordinary course of business?

19 A Yes, ma'am. They're recorded 24/seven.

20 Q Ms. Echols, I'm going to show you what has been
21 marked as State's 31, Can you identify that?

22 A Yes, ma'am. It's a recording that I did of that
23 day.

24 Q Okay. And what is it a recording of?

25 A There's a recording of Handy Dan's No. 3 ATM.

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 Q And where is Handy Dan's No. 3?

2 A At 8250 East Main street in Ridgeland.

3 Q And is that the same -- does that depict the same
4 ATM machine we just saw the receipt for?

5 A Yes, ma'am.

6 Q Okay. And this is a fair and accurate depiction
7 of the recording?

8 A Yes, ma'am.

9 Q And is that indicated by your initials?

10 A Yes, ma'am.

11 Q Those are your initials at the top?

12 A Yes, ma'am.

13 MS. JONES: Your Honor, at this time, State moves
14 State's 31 into evidence.

15 THE COURT: Any objection?

16 MR. PLEXICO: No, Your Honor.

17 THE COURT: Admitted.

18 *(Whereupon, State's Exhibit No(s). 31 marked for*
19 *identification and received in evidence.)*

20 MS. JONES: Permission to publish.

21 THE COURT: Yes, ma'am.

22 (Video is being published to the jury.)

23 BY MS. JONES:

24 Q Ms. Echols, I'm going to show you a couple
25 photographs.

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 Let's go back to the video for a second. You're
2 familiar with the inside of all these stores?

3 A Yes, ma'am.

4 Q Okay.

5 MS. JONES: If you could pause it.

6 Q Ms. Echols, what is this video showing?

7 A This is showing behind the cashier at Handy Dan's
8 Gulf.

9 Q Okay. And do you know who this is in the corner?

10 A Laurie Blackwood.

11 Q Laurie Blackwood. Okay. And it's --

12 A ATM is in front of her.

13 Q That is the ATM, that gray machine over there?

14 A Yes, ma'am.

15 Q Okay.

16 MS. JONES: Pause it.

17 Q And this shows -- what does this show, somebody --

18 A Somebody at the ATM trying to retrieve money.

19 Q Okay.

20 MS. JONES: Can you pause it.

21 Q Do you know what's happening right now?

22 A Laurie stated that she went over to --

23 MR. PLEXICO: I'll object, Your Honor.

24 THE COURT: I'll sustain that.

25 BY MS. JONES:

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 Q What is the video showing?

2 A My cashier assisting the individual at the ATM.

3 Q Okay. And, Ms. Echols, I'm going to show you what
4 has been marked State's 32 and 33. Can you identify those?

5 A This is an individual standing at the ATM at Gulf.

6 Q Okay. And that's --

7 A And this is Laurie assisting an individual at the
8 ATM.

9 Q Okay. And those are from the video we had just
10 seen?

11 A Yes, ma'am.

12 Q And those fairly and accurately depict the inside
13 of your store?

14 A Yes, ma'am. This --

15 Q In front of the ATM?

16 A This is where the -- this is the cash register
17 screen.

18 Q Okay.

19 A In this picture.

20 MS. JONES: Your Honor, at this time, State moves
21 State's 32 and 33 into evidence.

22 THE COURT: Objections?

23 MR. PLEXICO: No objections, Your Honor.

24 THE COURT: Admitted.

25 MS. JONES: Permission to publish.

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 THE COURT: Yes, ma'am.

2 *(Whereupon, State's Exhibit No(s). 32-33 marked*
3 *for identification and received in evidence.)*

4 BY MS. JONES:

5 Q And, again, this is State's 32. And what is that
6 showing?

7 A An individual at the ATM machine.

8 Q Inside Handy Dan's here in Ridgeland?

9 A Inside Handy Dan's Gulf.

10 Q And you keep saying, "Handy Dan's Gulf." Why --
11 are there multiple Handy Dan's?

12 A I have four locations.

13 Q And they're all called Handy Dan's?

14 A And -- yes. But this one is the only one that is
15 a Gulf. I have two Exxons and an unbranded. So we call it
16 Gulf.

17 Q Okay. Thank you.

18 And 33. Okay. What does this picture show?

19 A This shows my cashier assisting him at Handy
20 Dan's.

21 Q At the ATM machine?

22 A At the ATM machine.

23 Q Do you know what time this transaction occurred?

24 A This transaction, correlating with the one used at
25 the pump, was at 9:04.

DIRECT EXAMINATION OF ECHOLS BY JONES.

1 Q And do you know what date that was?

2 A August the 16th, 2015.

3 Q Okay.

4 MS. JONES: Ms. Echols, I have no further
5 questions for you.

6 THE COURT: Cross-examination.

7 MS. JONES: Ms. Echols, if you could answer any
8 questions Mr. Plexico may have for you.

9 MR. PLEXICO: I don't have any questions of this
10 witness, Your Honor.

11 THE COURT: All right. May she be excused?

12 MS. JONES: Yes, Your Honor.

13 MR. PLEXICO: Yes, Your Honor.

14 THE COURT: Thank you, ma'am.

15 MS. JONES: State calls Laurie Blackwood.

16 Thereupon,

17 LAURIE BLACKWOOD

18 was called as a witness, having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. JONES:

22 Q Good morning, Ms. Blackwood.

23 A Good morning.

24 Q Where do you work?

25 A Handy Dan's Gulf.

DIRECT EXAMINATION OF BLACKWOOD BY JONES.

1 Q And where is that located?

2 A 8250 East Main Street.

3 Q Okay. You're very soft-spoken, so if you could
4 speak up a little bit -- if you bring the microphone down,
5 it might help.

6 A (Witness complies.)

7 Q Could you say that again.

8 A 8250 East Main Street in Ridgeland.

9 Q Okay. How long have you worked there?

10 A Thirteen years.

11 Q Thirteen years?

12 A Yes.

13 Q And what do you do there?

14 A I'm a cashier.

15 Q Do you remember if you were working on August 16th
16 of 2015?

17 A I was.

18 Q And what were you -- in what capacity were you
19 working?

20 A I was at the register, just ringing up customers.

21 Q Okay. Ms. Blackwood, I'm going to show you a
22 video that's already been admitted as State's 31 and have
23 you take a look at it.

24 (Video played.)

25 MS. JONES: Okay. Let's pause it for a second.

DIRECT EXAMINATION OF BLACKWOOD BY JONES.

1 BY MS. JONES:

2 Q Ms. Blackwood, are you in this video?

3 A That's me.

4 Q This is you right here in the corner?

5 A Correct.

6 Q Okay. And what do you see happening in this video
7 right now?

8 A Joshua was at the ATM.

9 Q Okay. You know his name?

10 A Yes.

11 Q How do you know his name?

12 A He is my brother.

13 Q He's your brother. So you knew, no doubt about
14 it, that was Joshua at the ATM.

15 A I -- I knew it was him.

16 Q What's his last name?

17 A Poacher.

18 Q You just pointed over at him. What's happening?

19 A Any time you insert a credit card, and you insert
20 it improperly, it makes a noise. So I heard the noise a
21 couple times. So I was telling him to turn the card the
22 other way.

23 When I realized that he wasn't -- still
24 wasn't inserting it correctly, that's when I walked around
25 the counter.

DIRECT EXAMINATION OF BLACKWOOD BY JONES.

- 1 Q What are you doing at this point?
- 2 A Inserting the card for him.
- 3 Q Did you have a chance to look at the card?
- 4 A I did not.
- 5 Q What's he doing right now?
- 6 A Assuming he's trying to put in the pin number.
- 7 Q Did you see him get cash out of that ATM?
- 8 A I did not.
- 9 Q Ms. Blackwood, I'm going to show you a couple
- 10 photos.
- 11 First, I'm going to show you State's 33 that has
- 12 already been admitted into evidence.
- 13 Okay. You can have a closer look there.
- 14 Ms. Blackwood, what does that photo show?
- 15 A Me at the ATM inserting a ATM card, and Josh
- 16 standing to the side of me.
- 17 Q What is Josh wearing in that picture?
- 18 A A white T shirt and some jeans.
- 19 Q Okay. Dark jeans?
- 20 A Dark.
- 21 Q Okay. I'm going to show you State's Exhibit 34.
- 22 Do you recognize that picture?
- 23 A I do.
- 24 Q And what does that photo depict?
- 25 A It's Joshua.

DIRECT EXAMINATION OF BLACKWOOD BY JONES.

1 Q Okay. Is that a fair and accurate depiction of
2 him at the ATM on August 16th of 2015?

3 A Yes, it is.

4 MS. JONES: Your Honor, at this time, State moves
5 State's 34 into evidence.

6 THE COURT: Any objection?

7 MR. PLEXICO: Could I see 34, please?

8 No objection, Your Honor.

9 THE COURT: Admitted.

10 MS. JONES: Permission to publish.

11 THE COURT: Yes, ma'am.

12 *(Whereupon, State's Exhibit No(s). 34 marked for*
13 *identification and received in evidence.)*

14 BY MS. JONES:

15 Q And, again, who is that at the ATM machine?

16 A Joshua.

17 Q And who is that in the corner?

18 A It's me.

19 Q After he attempted to use this ATM, did you do
20 anything?

21 A I proceeded to check out whomever I was checking
22 out. I believe it was my boss's granddaughter, two
23 granddaughters.

24 Q Okay. Did you have a chance to pull a receipt?

25 A I did.

DIRECT EXAMINATION OF BLACKWOOD BY JONES.

1 Q Okay. I'm going to show you what's been marked as
2 State's 29. What is that?

3 A A receipt for pump one, which unleaded fuel was
4 pumped for \$33.38.

5 Q Okay. What's the date on that?

6 A August the 16th, 2015.

7 Q Is there a time?

8 A 9:00, a.m.

9 Q Okay. So it was right around the time he was in
10 getting -- or attempting to use the ATM?

11 A Correct.

12 Q Okay. If you flip it over, what's on the back of
13 that?

14 A It says, "Na Na and Josh."

15 Q And whose handwriting is that?

16 A It's mine.

17 Q Why did you write that on there?

18 A Well, actually, I was on the phone, and I was told
19 that a murder had happened and that someone was coming to
20 speak with me. And I pulled the receipt -- it was just a
21 sickening gut feeling, you know. I saw him out there and I
22 just pulled it.

23 Q Okay. And who is Na Na?

24 A I'm assuming his girlfriend.

25 Q Okay. And Josh is Joshua Poacher?

DIRECT EXAMINATION OF BLACKWOOD BY JONES.

1 A Yes, my brother.

2 Q Okay. Do you -- one more question for you,
3 Ms. Blackwood.

4 The man that tried to use the ATM machine that day,
5 what was his name?

6 A Joshua Poacher.

7 Q And do you see him in the courtroom today?

8 A Yes, I do.

9 Q Can you please point him out?

10 A He's right here.

11 Q Okay. And what is he wearing?

12 A A blue and white shirt.

13 MS. JONES: May the record reflect the witness
14 did identify the Defendant.

15 THE COURT: So reflects.

16 MS. JONES: Ms. Blackwood, I have no further
17 questions for you.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. PLEXICO:

21 Q He is -- my client's actually your stepbrother,
22 correct?

23 A Well, I call him my brother. We don't have the
24 same mother, but we have the same father.

25 Q Okay. But he's your stepbrother, correct?

CROSS EXAMINATION OF BLACKWOOD BY PLEXICO

1 A Yes.

2 MR. PLEXICO: I don't have anything further.

3 THE COURT: Redirect.

4 MS. JONES: No, Your Honor.

5 THE COURT: May this witness be excused?

6 MS. JONES: Yes, Your Honor.

7 THE COURT: All right. Thank you, ma'am.

8 MS. JONES: State calls Hardik Patel.

9 Thereupon,

10 HARDIK PATEL

11 was called as a witness, having been first duly sworn,

12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. JONES:

15 Q Good morning, Mr. Patel.

16 A Good morning.

17 Q Where do you work, Mr. Patel?

18 A Right now, at the Quality Inn.

19 Q Okay. How about in August of 2015, where did you
20 work?

21 A I was at the Travel Lodge, Ridgeland.

22 Q Ridgeland. How long had been there?

23 A Over a year.

24 Q Where is that located; do you know the address?

25 A 8216 East Main Street.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 Q Okay. What was your job at the Travel Lodge?

2 A I was managing it.

3 Q And as a manager, what were some of your duties?

4 A Basically, cover the shifts, make the schedules,
5 make the drops.

6 Q Were you working on August 16th of 2015?

7 A Yes, ma'am.

8 Q And what hours were you working?

9 A I was working the night shift.

10 Q Okay. And how long did that -- when did the night
11 shift end on the 16th?

12 A I believe around 11.

13 Q Okay. So it went from the night of the 15th to
14 late morning on the 16th?

15 A Correct, uh-huh. (Indicating affirmatively.)

16 Q Okay. And you were at the front desk?

17 A Yes, ma'am.

18 Q Okay. On that afternoon, did someone come in and
19 present something to you that seemed odd?

20 A Yeah. A person came in and he had Indian
21 currency.

22 Q Okay. Was he a customer of the hotel?

23 A I believe so, yes.

24 Q Okay. Had you seen him before?

25 A Previously, yes.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 Q Where?

2 A I mean he -- he did stay at the hotel before.

3 Q So earlier to August 16th, you had seen him in the
4 hotel before?

5 A Yes, ma'am.

6 Q On August 16th, did he come by himself, or was he
7 with somebody else?

8 A He didn't come into the office while they were
9 checking in, the girlfriend came in, and the person came in
10 afterwards.

11 Q Do you know about what time the girlfriend checked
12 in?

13 A Around 9:00..

14 Q Do you know what room they booked into?

15 A 120-something.

16 Q Okay. You said he presented you with some Indian
17 money.

18 A Yes.

19 Q Mr. Patel --

20 MS. JONES: Permission to approach, Your Honor.

21 THE COURT: Yes, ma'am.

22 BY MS. JONES:

23 Q I'm going to show you what has been marked as
24 State's A -- State's 7A. My apologies.

25 A Okay.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 Q What is this?

2 A Indian money.

3 Q Okay. How do you know?

4 A I'm from India, so I've looked at it a lot of
5 times.

6 Q Okay. How often does someone come into Travel
7 Lodge and try to change Indian money?

8 A Not at all.

9 Q Okay. And is this the money that was presented to
10 you that day?

11 A Yes, ma'am.

12 MS. JONES: Your Honor, at this time, State moves
13 State's 7A into evidence.

14 THE COURT: Any objection?

15 MR. PLEXICO: I don't see how we can identify
16 that money, Your Honor. Foundation.

17 THE COURT: Overruled. Admitted.

18 MS. JONES: Thank you, Your Honor.

19 *(Whereupon, State's Exhibit No(s). 7A marked for*
20 *identification and received in evidence.)*

21 BY MS. JONES:

22 Q When you were presented this money, what do you
23 do?

24 A Well, it -- it seemed odd, so I made a few calls
25 if anything had happened around the area. Because we do

DIRECT EXAMINATION OF H. PATEL BY JONES

1 keep Indian currency. When we go back to India, it's -- at
2 the airport, to buy something, we keep just a little bit of
3 money.

4 Q Okay.

5 A So, I mean, it doesn't stay out in the house. It
6 seems odd that someone would have Indian currency that's not
7 worth a lot.

8 Q Okay. "Not worth a lot," what I just showed you
9 is not worth a lot?

10 A No.

11 Q Do you know about how much American money that
12 would be worth?

13 A Probably \$40 at most.

14 Q Forty dollars at most?

15 A Uh-huh. (Indicating affirmatively.)

16 Q Okay. So you call around, do you learn anything?

17 A Well, because I had worked the night shift, I went
18 to sleep, but I just let a few people know that someone did
19 come in, brought some Indian money, so if there's anything.

20 Q Okay. When you wake up, do you have an
21 opportunity to speak with the police?

22 A Yeah. I believe they were around there, and when
23 I came down there, I talked to the SLED officer.

24 Q Okay. Do you remember that SLED officer's name?

25 A It was a woman SLED officer.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 Q A woman SLED officer.

2 A Yeah.

3 Q Okay. What did she do?

4 A She gave me a line-up and asked me who that person
5 was that brought in the Indian money.

6 Q Had you ever been shown a line-up before?

7 A No.

8 Q When you say "line-up," what did it look like?

9 A It was a paper with, I believe, six pictures, and
10 she asked me to circle the person that brought in the money.

11 Q How did she give you the line-up?

12 A It was in a folder.

13 Q Okay. When she gives you the folder, is there --
14 are any of the pictures marked or do they stand out?

15 A No, ma'am.

16 Q Okay. Does she in any way suggest a photo for you
17 to pick out?

18 A No.

19 Q Does she in any way influence your decision?

20 A No.

21 Q All right.

22 Prior to -- prior to being shown this photo line-up,
23 did she say something to you?

24 A I don't think so.

25 Q Could she have possibly given you a piece of paper

DIRECT EXAMINATION OF H. PATEL BY JONES

1 to read over?

2 A I'm not sure. I don't remember.

3 MS. JONES: Your Honor, permission to approach
4 the witness?

5 THE COURT: Yes, ma'am.

6 BY MS. JONES:

7 Q Mr. Patel, I'm going to show you what's been
8 marked as State's 36.

9 A Uh-huh. (Indicating affirmatively.)

10 Q Does that refresh your memory?

11 A Yeah. This is the paper actually. I see.

12 Q Okay. And how do you recognize that?

13 A I see my initials, and I wrote a statement as
14 well.

15 Q Okay. And what does that form say at the top?

16 A "South Carolina affidavit of photograph
17 identification."

18 Q Okay. And you said you have your initials on it.

19 A Uh-huh. (Indicating affirmatively.)

20 Q And those are, in fact, your initials?

21 A Yes, ma'am.

22 Q And then you said you wrote a statement?

23 A Uh-huh. (Indicating affirmatively.)

24 Q And that's your handwriting?

25 A Yes, ma'am.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 Q And is that the actual copy you filled out back on
2 August 16th, 2015?

3 A Yes, ma'am.

4 Q Does that appear to be altered in any way?

5 A No.

6 Q Okay.

7 MS. JONES: Your Honor, at this time, the State
8 moves State's 36 into evidence.

9 THE COURT: Any objection?

10 MR. PLEXICO: Based on the -- I do object on the
11 basis that he hasn't said that he's -- he's -- I just
12 read the --

13 THE COURT: One second.

14 Mr. Foreman, will you take your jury back to the
15 jury room, please.

16 (Jury exits the courtroom.)

17 THE COURT: All right. What's your objection?

18 MR. PLEXICO: Well, I basically -- he's from
19 India, we don't have a basis to whether he can read
20 and write English or not. And in regards to that
21 money, and I don't think that's on the record, and I
22 think that's a reasonable objection.

23 THE COURT: Other than that?

24 MR. PLEXICO: Other than that, I don't have any
25 objection.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 THE COURT: Overruled.

2 Let's bring the jury back out, please.

3 (Jury enters the courtroom at 11:56 a.m.)

4 THE BAILIFF: We're missing one, Your Honor.

5 THE COURT: Okay. We'll be at ease for one
6 moment.

7 (Pause.)

8 MS. JONES: Your Honor, at this time, State moves
9 State's 36 into evidence.

10 THE COURT: Admitted.

11 *(Whereupon, State's Exhibit No(s). 36 marked for*
12 *identification and received in evidence.)*

13 MS. JONES: Permission to publish.

14 THE COURT: Yes, ma'am.

15 BY MS. JONES:

16 Q Okay. Mr. Patel, is this what you have in your
17 hands?

18 A Yes, ma'am.

19 Q Okay. And this is the form that you were read
20 prior to being shown the photographs?

21 A Yes, ma'am.

22 Q What are these to the left, next to these
23 sentences?

24 A Initials.

25 Q And whose initials are those?

DIRECT EXAMINATION OF H. PATEL BY JONES

1 A Those are mine.

2 Q Okay. And when you initialed those, why did you
3 initial next to each of those?

4 A I read the statement, I understood it, and that's
5 why I initialed.

6 Q Okay. Can we go through these statements?

7 A Okay.

8 "I have been asked to view a set of
9 photographs. I understand it is just as important to clear
10 innocent persons from suspicion as to identify guilty
11 parties. I understand that individuals depicted in line-up
12 photos may not appear exactly as they did on the date of
13 incidence because features such as head and facial hair are
14 subject to change. I understand that the person who
15 committed the crime may or may not be in the set of
16 photographs being presented. I understand that
17 regardless -- regardless of whether identification is made,
18 the police will continue to investigate the incident. I
19 understand that I shall state in my own words how certain I
20 am of the identification."

21 Q Okay. Let's stop right there.

22 So after you read that, are you shown the pictures?

23 A Yes, ma'am.

24 MS. JONES: Permission to approach?

25 THE COURT: Yes, ma'am.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 BY MS. JONES:.

2 Q Mr. Patel, I'm going to show you what has been
3 marked as State's 35. Can you identify that?

4 A Yes, ma'am.

5 Q What is that?

6 A That's the line-up that I was shown.

7 Q Okay. How do you know that that's the line-up you
8 were shown?

9 A Because I could see, I circled the three first.
10 And just to be clear, they had me circle the entire picture.

11 Q Okay. Did you put any other markings on that
12 piece of paper?

13 A I wrote that this is the man I saw trying to
14 exchange money.

15 Q And how certain are you, when you circled that,
16 that that is a picture of the man who tried to exchange the
17 money?

18 A I was hundred percent certain.

19 MS. JONES: Your Honor, at this time, State moves
20 State's 35 into evidence.

21 THE COURT: Subject to prior rulings.

22 MR. PLEXICO: I'm sorry, Your Honor?

23 THE COURT: Thirty-five, the line-up, subject to
24 prior rulings?

25 MR. PLEXICO: Yes, Your Honor.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 THE COURT: All right. Admitted.

2 *(Whereupon, State's Exhibit No(s). 35 marked for*
3 *identification and received in evidence.)*

4 MS. JONES: And permission to publish.

5 THE COURT: Yes, ma'am.

6 BY MS. JONES:

7 Q Okay. Is this what you have in your hand?

8 A Yes, ma'am.

9 Q State's 35?

10 And over on the far left, whose handwriting is that?

11 A Far right?

12 Q Yes.

13 A Yeah, that's mine.

14 Q Okay. And what does that say?

15 A "This is the man I saw trying to change money."

16 Then I signed it and dated.

17 Q And did you place that circle around that top
18 picture?

19 A Yes, ma'am.

20 Q Okay.

21 MS. JONES: If we can go back to 36.

22 BY MS. JONES:

23 Q Back to State's 36, after you were shown that
24 photo line-up, did you fill out this paragraph?

25 A Yes, ma'am.

DIRECT EXAMINATION OF H. PATEL BY JONES

1 Q And what does that say?

2 A "I, Hardik Patel, have viewed a group of six
3 photographs, the 16th day of August 2015, from which I have
4 positively identified Photograph No. 3 displayed to me by
5 S.A. McCallister, of Joseph Poacher as being person who
6 tried to exchange money, Indian rupee, with Hardik Patel. I
7 am 100 percent certain that No. 3 is the man who had the
8 money."

9 Q Okay. It says, "Joseph Poacher." Why did you put
10 that on there?

11 A I kind of looked it up in the system. Sometimes,
12 when you look it up by which room number that they stayed
13 in, if they stayed there previously, their name does come
14 up.

15 Q Okay. No one told you that name?

16 A No, ma'am.

17 Q Okay. You looked it up?

18 A Yes, ma'am.

19 Q Okay. How certain were you on August 16, 2015
20 that the man you circled in No. 3 was the man who gave you
21 the money?

22 A Hundred percent.

23 Q Do you see that man in the courtroom today?

24 A Yes, ma'am.

25 Q And can you please point him out?

DIRECT EXAMINATION OF H. PATEL BY JONES

1 A He's right there in the blue shirt.

2 Q In the blue shirt.

3 MS. JONES: May the record reflect the witness
4 did identify the Defendant.

5 THE COURT: Reflects.

6 MS. JONES: Mr. Patel, I have no further
7 questions for you. Thank you.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. PLEXICO:

11 Q Okay. Was -- what kind of -- was he wearing a
12 Gamecock T-shirt that morning?

13 A Don't remember.

14 Q You don't remember what he was wearing?

15 A No.

16 MR. PLEXICO: Okay. All right. I don't have
17 anything further.

18 THE COURT: Redirect.

19 MS. JONES: No, Your Honor.

20 THE COURT: May he be excused?

21 MS. JONES: Yes, Your Honor.

22 THE COURT: Any objection?

23 MR. PLEXICO: No. No objection, Your Honor.

24 THE COURT: All right. Thank you, sir.

25 MS. JONES: State calls Agent McCallister.

CROSS EXAMINATION OF H. PATEL BY PLEXICO

1 administer.

2 Thereupon,

3 KATIE MCCALLISTER

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. JONES:

8 Q Agent McCallister, where do you work?

9 A The South Carolina State Law Enforcement Division,
10 commonly known as SLED.

11 Q And how long have you worked at SLED?

12 A Almost five years.

13 Q What is your -- what are your duties at SLED?

14 A I'm an investigator in the Lowcountry region.

15 Q And were you involved in the investigation of the
16 case we're here for today?

17 A I was.

18 Q And what were some of your duties for that
19 investigation?

20 A I was assisting the lead agent, Richard Johnson,
21 with the case. Whatever he needed, I helped him with.

22 Q Okay. And did you have an opportunity to show a
23 photo line-up to somebody?

24 A I did.

25 Q And who did you show that to?

DIRECT EXAMINATION OF MCCALLISTER BY JONES

1 A Hardik Patel.

2 Q Where did this happen?

3 A At the Travel Lodge here in Ridgeland.

4 Q And do you know what date and time?

5 A It was August the 16th. I believe it was
6 around -- August the 16th, 2015, I believe it was around
7 5:30.

8 Q Okay. Was there anybody with you?

9 A I was alone.

10 Q Okay. Agent McCallister, I want to show you what
11 has been already admitted as State's 35 and 36.

12 Starting with State's 36, do you recognize that?

13 A I do.

14 Q And what is that?

15 A It's the SLED affidavit of photograph
16 identification.

17 Q And is that the one that you showed to Mr. Patel?

18 A It is.

19 Q How do you know?

20 A It has my signature and it's time stamped in blue.

21 Q Is this your signature next to the word "witness"?

22 A It is.

23 Q Okay. These sentences up here, what is that?

24 A Those are what we read to the person who's doing
25 the line-up, just to kind of let them know what we're going

DIRECT EXAMINATION OF MCCALLISTER BY JONES

- 1 to be doing and why we're showing them this.
- 2 Q Okay. Do you read those to Mr. Patel?
- 3 A I did.
- 4 Q And does he indicate he understands those?
- 5 A He does, by putting his initials beside them.
- 6 Q And that's what the "HP" is to the side?
- 7 A It is.
- 8 Q All right. After you read him those, what do you
- 9 do?
- 10 A Hand him the line-up in a manila folder. I hand
- 11 it to him and tell him to open it and see if he can identify
- 12 anyone.
- 13 Q At any time during y'all's conversation, do you
- 14 tell him the name Joshua Poacher?
- 15 A I do not.
- 16 Q Do you tell him which picture to pick out?
- 17 A I do not.
- 18 Q Do you point to any of the photographs?
- 19 A I do not.
- 20 Q Do you influence him in any way?
- 21 A I do not.
- 22 Q Do you suggest any of the photos?
- 23 A I do not.
- 24 Q Do you tell him he has to pick a picture?
- 25 A I do not.

DIRECT EXAMINATION OF MCCALLISTER BY JONES

1 Q Okay. In fact, these rights, these -- these right
2 here state that he may or may not be in there.

3 A They do.

4 Q Okay. So afterwards, does he look at the photo
5 line-up?

6 A He does.

7 Q Okay. And that would be State's 35.

8 And is this the actual line-up?

9 A It is.

10 Q And whose writing is this next to that circled
11 picture?

12 A It's Mr. Patel's.

13 Q Who circled that photograph?

14 A He did.

15 Q How quickly did he circle that photograph when
16 being shown the line-up?

17 A He opened the folder and looked at it and went
18 straight to the picture.

19 Q Okay. How certain was he?

20 A Absolutely certain.

21 Q And that, in fact, he actually made the markings
22 around the photograph.

23 A He did. I did not write on that paper at all.

24 Q Okay. And, again, when you're showing this to
25 him, in no way you influence him to pick No. 3?

DIRECT EXAMINATION OF MCCALLISTER BY JONES

1 A I do not.

2 Q Okay. Whose photograph -- who's in position No.

3 3?

4 A Joshua Poacher.

5 Q Okay. And do you see Joshua Poacher in the
6 courtroom today?

7 A I do.

8 Q Can you please point him out?

9 A He's over there.

10 Q And what color shirt is he wearing?

11 A Blue and white striped shirt.

12 MS. JONES: May the record reflect the witness
13 did identify the Defendant.

14 THE COURT: So reflects.

15 MS. JONES: Agent McCallister, I have no further
16 questions for you. Thank you.

17 THE COURT: Cross-examination.

18 MR. PLEXICO: I don't have any cross, Your Honor.

19 THE COURT: May she be excused?

20 MS. JONES: Yes, Your Honor.

21 THE WITNESS: Thank you, Your Honor.

22 MR. STONE: State calls Agent Richard Johnson to
23 the stand.

24 Thereupon,

25 RICHARDSON JOHNSON

DIRECT EXAMINATION OF MCCALLISTER BY JONES

1 was called as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. STONE:

5 Q Hey, Mr. Johnson. If I could get you to say your
6 full name and spell your last name, please sir.

7 A Richard Johnson, J-O-H-N-S-O-N.

8 Q What do you do, Mr. Johnson?

9 A I'm special agent with the South Carolina State
10 Law Enforcement Division.

11 Q And that's commonly known as the SLED?

12 A SLED.

13 Q How long have you been with SLED?

14 A Since 2005.

15 Q What are your job -- I understand you're a special
16 agent; what does that entail?

17 A It entail conducting investigation of a lot of the
18 crime, particularly violent crimes, white collar crime.
19 Essentially everything except narcotics.

20 Q Are you regionally located or you work throughout
21 the state, or how does that work?

22 A We are regionally located. I'm assigned to the
23 Lowcountry region, which our regional office is located out
24 of Walterboro.

25 Q And you work this region, so the Lowcountry

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 consists of what counties?

2 A Start from Calhoun County, Bamberg, Barnwell,
3 Allendale, Jasper, Berkeley, Dorchester, Charleston, Jasper
4 County, Beaufort County, Orangeburg County. It's a combine
5 of 12 counties.

6 Q Now, on August the 16th of 2015, did you work the
7 murder case involving the deceased, the Patels?

8 A Yes, I did.

9 Q And what was your job in that?

10 A My job was to serve as the lead agent, or the lead
11 investigator, in this incident.

12 Q And I'll be calling you again to the stand in a
13 few minutes, but right now, let me just cover the actual
14 arrest. At some point in point, did you make an arrest on
15 Joshua Poacher?

16 A Yes, I did.

17 Q And where did that take place?

18 A Took place at the Travel Lodge hotel in Ridgeland.

19 Q Do you know what specific room?

20 A Not without looking at my notes.

21 Q Go ahead and check your notes, if you don't mind.

22 A Let me get to my search warrant here.

23 Okay. It would have been Room 127.

24 Q What gets you to Room 127?

25 A I'm sorry, say again?

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 Q How do you get to Room 127? What do you -- how do
2 you know to go to that room?

3 A After we -- S.A. McCallister had developed
4 information that the individual -- that the Defendant had
5 checked in at the hotel. Once we obtained that room number,
6 knowing that they were there, then we obtained a search
7 warrant to enter that room and arrest and search the room
8 for any other evidence.

9 Q When you get to the room, what do you find?

10 A Mr. Poacher, his girlfriend, Ms. Shatera Walker, I
11 believe her name. The children clothing items, a weapon
12 that was recovered out the room, and I think it was some
13 moneys also recovered.

14 Q Now, Trey Tallon, who's also testified previously,
15 he's with your -- he's also with SLED. He's your crime
16 scene technician; is that correct?

17 A That's correct.

18 Q And did he at some point come to that room as
19 well?

20 A Yes, sir.

21 Q So he process the evidence out of that room?

22 A That is correct.

23 Q What was your responsibility when you got there?

24 A At that point, we secured Mr. Poacher and had him
25 transported to the Jasper County center, investigation

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 division. Myself were -- myself and Detective Evan Wright
2 proceeded to interview Mr. Poacher.

3 Q All right. Before we get to that, let me just
4 cover as far as the arrest itself.

5 When you get to Room 127, Mr. Poacher is there, his
6 girlfriend. You said, "children." How --

7 A I believe it was two children there, if I'm not
8 mistaken.

9 Q And how old, or approximately how old?

10 A They were extremely young. I think one of the
11 children was probably about one years, or one or two years,
12 if I'm not mistaken.

13 Q And you made the arrest of Mr. Poacher there?

14 A Yes, sir.

15 Q And do you see Mr. Poacher in the courtroom today?

16 A Yes, sir, I do.

17 Q Could you pick him out for me, please.

18 A A young man with the blue and white striped shirt.

19 MR. STONE: Your Honor, I will be calling the
20 agent again, but right now that's all we have for him.

21 THE COURT: Do you have any cross-examination on
22 what you've heard?

23 MR. PLEXICO: Not in regards to this matter, Your
24 Honor.

25 THE COURT: Okay. Thank you, sir. You may step

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 down.

2 MR. STONE: State calls Agent Trey Tallon.

3 Thereupon,

4 TREY TALLON

5 was called as a witness, having been first duly sworn,

6 was examined and testified as follows:

7 THE COURT: Mr. Tallon, Agent Tallon, you're

8 still under oath.

9 DIRECT EXAMINATION

10 BY MR. STONE:

11 Q Agent Tallon, you were the crime scene -- I know

12 you've already testified once, you're still under oath.

13 You were the crime scene technician that had previously

14 worked the murder scene; is that correct?

15 A That is correct.

16 Q Now, after leaving the murder scene, at some point

17 later on, did you also go to the Travel Lodge?

18 A Yes, sir, I did.

19 Q All right. How long afterwards is this?

20 THE WITNESS: Do you mind if I refer to my notes,

21 Your Honor?

22 THE COURT: No, sir.

23 THE WITNESS: We responded to the Travel Lodge

24 and arrived at approximately 9:48 p.m.

25 BY MR. STONE:

DIRECT EXAMINATION OF TALLON BY STONE

1 Q Okay. So this is into the evening at this point?

2 A Correct.

3 Q Are you present when Mr. Poacher is arrested out
4 of that room?

5 A Yes, sir, I was.

6 Q Let me show you what we will mark as State's
7 Exhibit 46, and we will use this as an exhibit. I'll not
8 introduce this into evidence, but we'll use it as an
9 exhibit.

10 This is a crime scene sketch of Room 127, the Travel
11 Lodge. Would that aid in your testimony today?

12 A Yes, sir, it would.

13 MR. STONE: Your Honor, I'd ask to be able to use
14 this. This, again, has been marked for the record as
15 State's Exhibit 46.

16 THE COURT: And that's for demonstrative
17 purposes?

18 MR. STONE: That's correct, sir.

19 *(Whereupon, State's Exhibit No(s). 46 marked for*
20 *identification.)*

21 THE COURT: All right. Ladies and gentlemen,
22 just for example, we had another demonstrative piece
23 of evidence earlier and this one. That's simply what
24 the State contends or vies occurred in this case.
25 Demonstrative evidence will not go back with you to

DIRECT EXAMINATION OF TALLON BY STONE

1 your jury room. And if you disagree with it, you can
2 do so, you're free to do so based on your view of the
3 evidence.

4 MR. STONE: Thank you, sir.

5 All right. Counselor, if you want to get where
6 you can see this.

7 BY MR. STONE:

8 Q Now, what I put up here is State's No. 46. If you
9 could, please tell the jury, sir, what this is.

10 A That depicts the room, Room 127, at the Travel
11 Lodge. And the -- where the beds were placed and a couple
12 of items of furniture in the room, along with some items of
13 evidence that were located.

14 Q And, again, you are going in basically at the same
15 time that Mr. Johnson goes in and arrests the Defendant; is
16 that correct?

17 A Correct. The Defendant actually came out to us
18 when we arrested him outside, and then we made our way in
19 after that, after taking photographs.

20 Q First, I'm going to show you what's been marked as
21 State's Exhibit No. 5. Can you tell me if you recognize
22 that, please, sir.

23 A Yes, sir. This is a photograph entering the room
24 from the doorway.

25 Q Is that a fair and accurate depiction --

DIRECT EXAMINATION OF TALLON BY STONE

1 MR. PLEXICO: Your Honor --

2 Q Is that a fair and accurate picture of how that
3 room looked?

4 A Yes, sir, it is.

5 Q And I will show you also what's been marked as
6 State's Exhibit 6, ask if you can identify that, please.

7 A That is after you've taken at least one step
8 inside, and the door would be behind you, facing inward.

9 Q Are those fair and accurate depictions of how the
10 scene looked when you got there?

11 A Yes, sir, it is.

12 Q All right.

13 MR. STONE: I introduce, Your Honor, at this
14 time, State's Exhibit No. 5 and State's Exhibit No. 6.

15 THE COURT: Okay. Any objection?

16 MR. PLEXICO: None, Your Honor.

17 THE COURT: Admitted.

18 *(Whereupon, State's Exhibit No(s). 5-6 marked for*
19 *identification and received in evidence.)*

20 BY MR. STONE:

21 Q State's Exhibit 5 on the monitor. Tell the jury
22 what that is, please, sir.

23 A That would be standing on the outside of the room,
24 looking inward, photographing from the door inside.

25 Q Okay. We move now to State's Exhibit No. 6. Tell

DIRECT EXAMINATION OF TALLON BY STONE

1 us what that is, please, sir.

2 A And that would be once you've taken at least a
3 step inside, with the door behind you slightly,
4 photographing inside of the room.

5 Q Now, at this point, the Defendant, the girlfriend,
6 and the children are already outside of the room; is that
7 correct?

8 A That is correct.

9 Q This is how you find the room; is that correct?

10 A That is correct.

11 Q I'll show you what's been marked as State's
12 Exhibit No. 7. Can you identify that, please?

13 A Yes. This is a photograph looking into one of the
14 drawers in between the two beds.

15 Q All right. And is that a fair and accurate
16 depiction of what you found in that drawer?

17 A Yes, sir.

18 Q What you saw.

19 A Yes, sir.

20 MR. STONE: At this time, Your Honor, we move
21 State's Exhibit No. 7 into evidence.

22 *(Whereupon, State's Exhibit No(s). 7 marked for*
23 *identification and received in evidence.)*

24 THE COURT: Any objection?

25 MR. PLEXICO: No objections, Your Honor.

DIRECT EXAMINATION OF TALLON BY STONE

1 THE COURT: Admitted.

2 MR. STONE: On the monitor.

3 BY MR. STONE:

4 Q All right. Now, in this split screen over on the
5 left is State's Exhibit No. 6, and then over to the right is
6 State's Exhibit No. 7. Could you tell the jury what that
7 photograph depicts?

8 A That is, on the left side, if you were to look in
9 between the two beds, you can see part of a lamp there on a
10 table, and the photograph on the right is one of the -- it
11 is the top drawer of the table that the lamp is on.

12 Q All right. So on this crime scene sketch, this
13 would be located here; is that correct?

14 A That is -- that is correct.

15 Q Okay. And the item inside -- the series of
16 things -- items inside that drawer, what is that?

17 A The items that were located was a Gideon Bible,
18 some foreign currency, and suspected marijuana, and a cigar
19 packet.

20 Q Let me show you what's been already moved into
21 evidence as State's Exhibit 7A, ask if you could identify
22 that, please, sir.

23 A Yeah. This is the foreign currency that was
24 located in between the beds and the nightstand.

25 Q Okay.

DIRECT EXAMINATION OF TALLON BY STONE

1 MR. STONE: Permission, Your Honor, to publish
2 this to the jury.

3 THE COURT: Okay.

4 BY MR. STONE:

5 Q So this currency was found on this crime scene
6 sketch here, which would have been --

7 If I could go back up to that photograph, please, sir.
8 All right. Up here, State's Exhibit No. 7, yes.

9 The items in this photograph at the very top, this is
10 the -- this is the currency here that you retrieved, correct?

11 A That is correct?

12 Q Show you what's been marked as State's Exhibit 8.
13 If you could identify that, please.

14 A These are some sunglasses, and I believe it was a
15 watchband that was located in front of that dresser, on the
16 floor in a bag.

17 Q Okay. Is this a fair and accurate depiction of
18 the items as you pull them out of the bag?

19 A Yes, sir.

20 Q And where are these -- where were these located?

21 A In between the two beds, in front of that dresser.

22 Q In this area here?

23 A Correct.

24 MR. STONE: At this time, Your Honor, we move
25 State's Exhibit 8 into evidence.

DIRECT EXAMINATION OF TALLON BY STONE

1 THE COURT: Any objections?

2 MR. PLEXICO: No objections, Your Honor.

3 THE COURT: Admitted.

4 MR. STONE: State's Exhibit 8.

5 *(Whereupon, State's Exhibit No(s). 8 marked for*
6 *identification and received in evidence.)*

7 BY MR. STONE:

8 Q Let me show you what's been marked as State's
9 Exhibit 8A, ask if you could identify those items, please,
10 sir.

11 A These are the sunglasses, along with what I
12 believe to be a watchband, possibly.

13 Q Are those -- that which is depicted in State's
14 Exhibit 8; is that correct?

15 A That is correct.

16 MR. STONE: At this time, Your Honor, we move
17 State's Exhibit 8A into evidence.

18 THE COURT: Any objection?

19 MR. PLEXICO: No objection, Your Honor.

20 THE COURT: Admitted.

21 *(Whereupon, State's Exhibit No(s). 8A marked for*
22 *identification and received in evidence.)*

23 BY MR. STONE:

24 Q If I could, I'm going to hand you out of State's
25 8A one of the pair of sunglasses, ask if you could tell me

DIRECT EXAMINATION OF TALLON BY STONE

1 what name brand that is, please, sir.

2 A Oh, I'm looking at it upside down. I apologize.

3 Solar X.

4 Q Solar X?

5 A Correct, yeah.

6 Q Let me show you what's been marked and already
7 introduced into evidence as State Exhibit 20A, which is a --
8 which has been testified to be a review of purchases or
9 attempted purchases by the Patels' ATM card. The very top
10 item, if I could ask you to publish that to the jury. What
11 is that item for?

12 A Solar X eyewear.

13 Q Thank you, sir.

14 Let me show you now what's been marked as State's
15 Exhibit 16. Could you tell me what that is, please, sir.

16 A This is a photograph depicting the bed on the
17 right side of the room. Looking at it from where the jury
18 sits.

19 Q Okay. And let me show you what's been marked as
20 State's Exhibit 21. Could you identify that, please, sir.

21 A Yes. This is a photograph of a receipt.

22 Q Do you know where that receipt came from?

23 A This specific -- I believe this is the one from
24 the trash can.

25 Q Okay. And then State's Exhibit 20, can you

DIRECT EXAMINATION OF TALLON BY STONE

1 identify that, please?

2 A Okay. I want to redact that. Twenty-one is
3 actually from, I believe, the pants on the bed. And this
4 one is from the --

5 Q All right. State's Exhibit 16, is that a fair and
6 accurate depiction of how the scene looked and where those
7 pants were?

8 A Yes, sir.

9 Q State's Exhibit 21, is that a fair and accurate
10 photograph of the receipt retrieved from the pants?

11 A That is correct.

12 MR. STONE: At this time, Your Honor, we move
13 State's Exhibit 16 and 21 into evidence.

14 THE COURT: Any objection?

15 MR. PLEXICO: No, Your Honor.

16 THE COURT: Admitted.

17 *(Whereupon, State's Exhibit No(s). 16 marked for*
18 *identification and received in evidence.)*

19 *(Whereupon, State's Exhibit No(s). 21 marked for*
20 *identification and received in evidence.)*

21 BY MR. STONE:

22 Q State's Exhibit 16 on the monitor, these are where
23 the pants were located; is that correct?

24 A That is correct.

25 Q And then State's Exhibit 21. That is the receipt

DIRECT EXAMINATION OF TALLON BY STONE

1 retrieved. Again, I see, those are gloves. So you and your
2 agent were wearing gloves through this process?

3 A Yes, sir.

4 Q All right. And that is the receipt retrieved from
5 the pants?

6 A Correct.

7 Q Let me show you what's been marked as State's
8 Exhibit 21A. Can you identify that, please, sir.

9 A Yes, sir. This is that -- the receipt depicted in
10 the photo and taken from the pants.

11 MR. STONE: Your Honor, at this time we move
12 State's Exhibit 21A into evidence.

13 THE COURT: Any objection?

14 MR. PLEXICO: No objections, Your Honor.

15 THE COURT: Admitted.

16 *(Whereupon, State's Exhibit No(s). 21A marked for*
17 *identification and received in evidence.)*

18 BY MR. STONE:

19 Q Agent, if you could take State's Exhibit 21A and
20 publish that to the jury, please, sir.

21 A At the top it states, "Handy Dan's No. 4, 520 East
22 Main Street, Ridgeland, South Carolina."

23 Q And does it have a time and date on it?

24 A It does. August 16, 2015, at 3:40 p.m. It
25 states, "pin error."

DIRECT EXAMINATION OF TALLON BY STONE

1 Q Okay. And let me show you what has already been
2 put into evidence as State's Exhibit 20A.

3 Okay. Let me hold up just a moment.

4 While she's looking at that, let me also hand you
5 what's been marked as State's Exhibit 20, ask you could identify that,
6 please, sir.

7 A This would be the receipt that was located in the
8 trash can underneath the sink in the bathroom area.

9 Q Okay. And on the crime scene sketch, where would
10 that be located?

11 A To the far right of the sketch, to the left of the
12 sink, right above --

13 Q There is a trash can under that sink; is that
14 where it was retrieved?

15 A That is correct.

16 Q Okay. And I show you what's been marked as
17 State's Exhibit as 20A, ask if you could identify that,
18 please.

19 A This would be the receipt from the trash can.

20 MR. STONE: At this time, Your Honor, we State's
21 Exhibit 20 and 20A into evidence.

22 THE COURT: Any objection?

23 MR. PLEXICO: No objection, Your Honor.

24 THE COURT: Admitted.

25 *(Whereupon, State's Exhibit No(s). 20-20A marked*

DIRECT EXAMINATION OF TALLON BY STONE

1 *for identification and received in evidence.)*

2 BY MR. STONE:

3 Q State's Exhibit 20, I believe, is now on the
4 monitor. Tell us what that is, please, sir.

5 A That's a photograph of the receipt after being
6 removed from the trash can.

7 Q I show you also what's been marked as State's
8 Exhibit 28 already into evidence. And then I'm going to
9 hand you the receipt that you just talked about with 5.75.
10 Do you see a purchase on State's Exhibit 28 that
11 corresponds with that receipt?

12 A And this would be the receipt from the trash can?

13 Q Yes.

14 A Okay. The date is August 16th, and at 2:06.

15 Q And is there an amount for that?

16 A It is \$5.75 cents at a -- it states, Shell, 8309
17 East Main Street, Ridgeland, South Carolina.

18 Q Okay. I direct you on this as State's Exhibit No.
19 28. Do you see that -- do you see that purchase here?

20 A Yes, sir. That would be this one there, the
21 fourth one down.

22 Q Okay. Thank you. Let me show you what's been
23 marked as State's Exhibit 17 and ask you to identify that
24 please?

25 A A photograph taken looking underneath the bed.

DIRECT EXAMINATION OF TALLON BY STONE

1 Farthest from the right from where the jewelry sits.

2 Q We have produced six, that shows how the bed
3 looked when you got there?

4 A That's correct.

5 Q This is underneath that?

6 A Once the mattress had been picked up.

7 Q You guys had to pick the mattress up to look; is
8 that correct?

9 A Yes, we had to physically pick it up.

10 Q Is that a fair and accurate depiction of what you
11 found under the bed as you lifted the mattress?

12 A Yes, it is.

13 Q I show you State's 18. Is that also a fair and
14 accurate depiction of what you saw under the mattress once
15 you lifted it?

16 A Yes, it is.

17 MR. STONE: Your Honor, at this time we move
18 State's 17 and 18.

19 THE COURT: Any objection?

20 MR. PLEXICO: No objections, Your Honor.

21 THE COURT: Admitted.

22 *(Whereupon, State's Exhibit No(s). 17-18 marked*
23 *for identification and received in evidence.)*

24 BY MR. STONE:

25 Q State's Exhibit 17 on the monitor, tell us what

DIRECT EXAMINATION OF TALLON BY STONE

1 that is, please stand?

2 A That is depicting underneath the mattress.

3 Someone is holding the mattress up while we are
4 photographing underneath where we located the firearm.

5 Q Okay. And then State's Exhibit 18?

6 A That is a closer photograph of the firearm that is
7 located underneath the bed.

8 Q Let me show you what's been marked as State's
9 Exhibit 18A and ask if you can identify that, please
10 sir.

11 A This is the firearm that is depicted in that
12 photograph, along with the magazine and ammunition that was
13 placed in a box that myself and my partner made and sealed
14 up and signed it.

15 Q All right. Thank you. At this time, Your Honor,
16 we move State's Exhibit 18A into evidence.

17 THE COURT: Any objections.

18 MR. PLEXICO: None Your Honor.

19 THE COURT: Ladies and gentlemen of the jury, if
20 the firearm is brought out. It'll not be pointed in
21 your direction at this any time. And it will be
22 disabled. Also, make sure that you remind your
23 witness not to point it at anyone throughout the
24 course of these proceedings. But it is admitted.

25 *(Whereupon, State's Exhibit No(s). 18A marked for*

DIRECT EXAMINATION OF TALLON BY STONE

1 *identification and received in evidence.)*

2 BY MR. STONE:

3 Q Can I get you to secure this?

4 A Certainly.

5 Q Thank you.

6 THE COURT: The gun is secured?

7 MR. STONE: It has, Your Honor, now been secured.

8 THE COURT: All right. Thank you, sir.

9 BY MR. STONE:

10 Q All right. If I could, go ahead and just -- you
11 can put your thing away and I'm going to hand you this and
12 if I could get you to -- first of all, let's go through the
13 box. We have items in the box, and could you show the jury
14 what is in the box, please sir?

15 A Certainly, can I stand sir?

16 Q If you want to come down, you may have more room.

17 A This is the firearm that is located in that
18 photograph right there that was located underneath the bed.

19 Q State's Exhibit 17 and 18; is that correct?

20 A Yes, sir, it is.

21 Q Okay.

22 A This is the magazine that was located within the
23 firearm as you can also see in the photograph.

24 Q That is the extended end of that?

25 A That is correct.

DIRECT EXAMINATION OF TALLON BY STONE

1 Q What does that do? What is this purpose of that?

2 A This holds the rounds, all of the cartridges.

3 Q What I would call bullets, I guess?

4 A Sure, it holds the bullets.

5 Q All right. These are the bullets or cartridges
6 that were located within the firearm.

7 Q And when were they located?

8 A In the magazine and -- oh, that is the test fire,
9 sorry. Yes, in the magazine in the firearm.

10 Q Okay. Let me ask you this too. Using this. And
11 I know that it has been secured. But in order to secure it,
12 you pulled back the back of this; what is the purpose of
13 that normally?

14 A Once the magazine has rounds in it and the
15 magazine is placed into the butt of the weapon, the slide is
16 then racked backwards to load the firearm.

17 Q So the racking serves the purpose of, what,
18 drawing the bullet out of the magazine into the chamber?

19 A Pushing it into the chamber here to sit in the
20 firing range.

21 Q Before you fire it, you have to do that to get the
22 bullet in the chamber?

23 A That's correct.

24 Q What happens if there's already a bullet in the
25 chamber when you do that?

DIRECT EXAMINATION OF TALLON BY STONE

1 A If there's a bullet in the chamber when you rack
2 it out, it'll spit that one out and load another one.

3 Q That means, basically, if it's cocked, or whatever
4 you want to call it, it spits the bullet out, it doesn't
5 fire the bullet; is that correct?

6 A That's correct.

7 Q All right. Now, after you retrieve these items,
8 in particular this firearm, did you also get this to your
9 firearms department? And I think that that is called tool
10 marks and firearms; is that correct?

11 A Tool marks and firearms.

12 Q That was for testing against the other items that
13 you saw at the scene; is that correct?

14 A That's correct, it did make its way to firearms.

15 Q I want to go back one more time to the State's
16 Exhibit 2. If you will pull up State's Exhibit 2.

17 Q All right. State's Exhibit 2 actually shows --
18 both State's Exhibit 1 and 2. And you testified to this
19 previously; is that correct?

20 A That's correct.

21 Q And particularly, I want to talk about what's been
22 marked as State's Exhibit 1 and I want to hand you again
23 what has been marked as State's Exhibit 1A. Will you go
24 back and tell us what was marked at State's 1?

25 A This is an unfired round.

DIRECT EXAMINATION OF TALLON BY STONE

1 Q Unfired round. That was a round that somehow came
2 out without being shot though; is that correct?

3 A I can't say that it came out of a gun, but it
4 definitely has not been fired.

5 MR. STONE: Great. Thank you. I don't have any
6 further questions at this time, Your Honor.

7 THE COURT: Cross examination.

8 CROSS EXAMINATION

9 BY MR. PLEXICO:

10 Q You work for SLED, you know about guns; you gather
11 them. Now, that is a very long magazine for that particular
12 weapon, correct?

13 A That would -- I would not say that is standard;
14 however, that is beyond my scope. That would be someone in
15 firearms, as to what type of magazine that is.

16 Q If that gun was dropped, the clip could have
17 popped out of it; is that correct?

18 A I assume that is possible.

19 Q If a clip pops out and hits the ground, a bullet
20 could fall out?

21 A That is possible.

22 Q You don't know if it was dropped out of somebody's
23 pocket or whatever?

24 A No, sir.

25 Q You don't have any idea how it got there?

DIRECT EXAMINATION OF TALLON BY STONE

1 A No, sir.

2 Q Is that correct?

3 A Yes, sir, that is correct.

4 MR. PLEXICO: No further questions.

5 THE COURT: Redirect.

6 MR. STONE: Nothing, Your Honor.

7 THE COURT: May this witness be excused?

8 MR. STONE: Yes, sir.

9 THE COURT: Thank you. A lunch break?

10 MR. STONE: Yes, sir, that will be fine.

11 THE COURT: How long is your next witness?

12 MR. STONE: She is -- she is relatively short.

13 But we have a number. I tell you what, one more

14 witness and then we can break, Your Honor?

15 THE COURT: Absolutely.

16 THE COURT: All right. Mr. Foreman, ladies and

17 gentlemen of the jury, we are going to go ahead and

18 take a lunch break now. This is a good breaking

19 place. If you will be back at 5 till 2:00 and we will

20 resume at 2:00. Let me remind you to leave your pads

21 in the jury room. Don't speak amongst yourselves or

22 anyone else during the break. You may go back with

23 the bailiff, please.

24 Jury exits the courtroom at 12:40 p.m.

25 THE COURT: The State ready?

DIRECT EXAMINATION OF TALLON BY STONE

1 MR. STONE: Yes, Your Honor.

2 THE COURT: Is the Defense ready?

3 MR. PLEXICO: Yes, Your Honor.

4 THE COURT: Bring in the jury.

5 (The jury enters the courtroom.)

6 THE COURT: Call your next witness, please sir.

7 MR. STONE: Yes, sir. The State calls Sean
8 Burwell to the stand.

9 Thereupon,

10 SEAN BURWELL

11 was called as a witness, having been first duly sworn,

12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. STONE:

15 Q What do you do, sir?

16 A I am a corporal at Jasper County Detention Center.

17 Q You are a Correctional Officer in the Detention
18 Center?

19 A Yes, sir.

20 Q What is your position there?

21 A I am supervisor of the booking area.

22 Q Were you in the booking officer, or in that
23 capacity, on August the 16th, 2015?

24 A Yes, sir.

25 Q And did you book Joshua Poacher?

DIRECT EXAMINATION OF BURWELL BY STONE

1 A Yes, sir.

2 Q As part of the booking process, do you also take
3 fingerprints of the people that you book?

4 A Book.

5 A Yes, sir.

6 Q I'll show you Exhibit 38 and see if you can
7 identify that.

8 A Yes, this is a booking printout.

9 Q And there is a signature on the top there; whose
10 signature is that?

11 A Mr. Poacher.

12 Q Is there any indication that you did that?

13 A It is a computer printout. Last name.

14 Q Okay. Right here?

15 A Yes.

16 MR. STONE: Your Honor, at this time we move to
17 introduce State's 38 into evidence.

18 MR. PLEXICO: No objections, Your Honor.

19 THE COURT: All right. Admitted.

20 *(Whereupon, State's Exhibit No(s). 38 marked for*
21 *identification and received in evidence.)*

22 BY MR. STONE:

23 Q If you will, please, sir, on the top of that, if
24 you could tell us the identifying information, as far as
25 Mr. Poacher is concerned.

DIRECT EXAMINATION OF BURWELL BY STONE

1 A His last name and his first name. His Social
2 Security. His date of birth, which is [REDACTED], 1994.
3 His height and his weight. Color eyes is brown, black hair.
4 And that's it.

5 Q And that's all information that you got from
6 Mr. Poacher?

7 A Yes, sir.

8 Q Now, when you took his prints, how do you do that
9 exactly?

10 A We do the rolling system, just by live scan.

11 Q All right. What is a live scan?

12 A It's a machine used to get the information for the,
13 inmate or prisoner.

14 Q Is it a -- do you ink the hand and put it down, or
15 do you put it on a screen?

16 A No. It's a live scan. It's got no ink, it's a
17 computer -- computer print. It's just a scan.

18 Q Like to use this glass plate?

19 A Yes.

20 Q And then that's scanned into the computer system.

21 A Yes, sir.

22 Q And that, then, is sent to the State Law
23 Enforcement Division, otherwise known as SLED.

24 A Yes, sir.

25 Q And this is a print-off of that live scan; is that

DIRECT EXAMINATION OF BURWELL BY STONE

1 correct?

2 A Yes, sir.

3 MR. STONE: No further questions at this time,

4 Your Honor.

5 THE COURT: Cross-examination.

6 MR. PLEXICO: Yes.

7 CROSS-EXAMINATION

8 BY MR. PLEXICO:

9 Q What's his height on that card?

10 A 6 feet.

11 Q Okay.

12 MR. PLEXICO: May I approach the witness, Your

13 Honor?

14 THE COURT: Yes, sir.

15 BY MR. PLEXICO:

16 Q What's his height on that card?

17 A 6'1".

18 Q And what's his weight?

19 A 165 pounds.

20 Q Thank you.

21 MR. PLEXICO: I don't have anything further.

22 THE COURT: Redirect.

23 MR. STONE: No, sir.

24 THE COURT: May this officer be excused?

25 MR. STONE: He may.

CROSS EXAMINATION OF BURWELL BY PLEXICO

1 MR. PLEXICO: Without objection.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Thank you.

4 MR. STONE: State calls Kimberly Mears.

5 Thereupon,

6 KIMBERLY MEARS

7 was called as a witness, having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STONE:

11 Q Ms. Mears, what do you do, ma'am?

12 A I'm a forensic scientist in the latent print
13 department at the South Carolina Law Enforcement Division,
14 which is commonly known as SLED.

15 Q And how long have you been in the latent
16 fingerprint department?

17 A A little over six years.

18 Q And have you always been in the latent print
19 department?

20 A When I was first hired at SLED, I was in the
21 toxicology department for about three years, and then I
22 transferred to latent prints.

23 Q What type of -- in order to do latent -- you say,
24 "latent prints." What does "latent" mean? What do we mean
25 by that?

DIRECT EXAMINATION OF MEARS BY STONE

1 A The word "latent" means hidden or invisible, and
2 print is dealing with the fingerprints or footprints.

3 Q What type of training do you have to allow you to
4 be a forensic scientist in this particular field?

5 A When I transferred to the latent print department,
6 I completed their in-house training program, then I was
7 accepted into the latent print examiner training program
8 sponsored by the National Institute of Justice, which was a
9 ten-week program with courses covering all aspects of
10 fingerprint work.

11 Since that time, I have attended various
12 conferences, workshops, and classes as budgeting and
13 scheduling allows.

14 Q Have you ever testified in court as an expert in
15 this particular field?

16 A Yes, I have.

17 Q Do you know how many times?

18 A Approximately 16.

19 Q Okay. Now, as a -- and I'm going to back up a
20 little bit before I qualify you. The previous officer, I
21 believe you heard, spoke of a live scan.

22 A Yes.

23 Q What exactly is that?

24 A It is essentially a scanner platform that reads
25 the moisture on the hands.

DIRECT EXAMINATION OF MEARS BY STONE

1 Q Now, once somebody puts their hands on this type
2 of a scan and it scans it, where does that information go?

3 A It is sent electronically to SLED's records
4 department.

5 Q And then you can, I'm assuming, retrieve that at
6 some point?

7 A Yes, I can.

8 Q Okay.

9 MR. STONE: Your Honor, at this time, I would
10 like to have her determined by the Court as a forensic
11 expert in the field of latent fingerprints.

12 THE COURT: Any voir dire, or do you stipulate?

13 MR. PLEXICO: I do have some voir dire, Your
14 Honor.

15 THE COURT: Okay.

16 VOIR DIRE EXAMINATION

17 BY MR. PLEXICO:

18 Q All right. Explain to me what -- all right.

19 Is this something that's mechanically done and
20 determined, or is this something you do through examination and
21 expertise as far as fingerprint analysis goes?

22 A It is not mechanically done. I compare an unknown
23 print with a known print, myself.

24 Q Okay. All right. But you don't run it through a
25 computer system and get an answer, or a comparison?

VOIR DIRE EXAMINATION OF MEARS BY PLEXICO

1 A No, we don't.

2 Q Okay. All right. Now, how many fingerprints have
3 you actually examined?

4 A It would be in the thousands.

5 Q In the thousands?

6 A Yes.

7 Q So, how many would you do a day?

8 A I don't have a number for that. It could be
9 anywhere from the tens to hundreds a day.

10 Q Okay. And how much time does it take to do a
11 fingerprint analysis?

12 A It -- that would depend on the print itself, how
13 complex that particular print is. It just varies.

14 Q Do you know what Level 2 detail is?

15 A Yes, I do.

16 Q Okay. All right. And what -- how many -- how
17 much in Level 2 detail is required by y'all's training to
18 have a match?

19 A Well, let me first explain what that Level 2
20 detail are. There are three levels of detail. The first
21 level of detail is the actual ridges of the skin, forming a
22 pattern type. Level 2 is what those ridges are doing within
23 the pattern type, whether they just end or fork or just look
24 like dots. The third level is your actual core structure
25 and the ridge structure.

VOIR DIRE EXAMINATION OF MEARS BY PLEXICO

1 As far as second level detail required for a
2 print identification, there is no set number of points
3 required for an identification.

4 Q Was there a set number prior to the 1990s in
5 England, for instance, that might have been 16 points of
6 comparison on a Level 2 detail?

7 A Certain European countries do have required
8 numbers. In the United States, there is no scientific basis
9 for a required number.

10 Q All right. A Level 2 used -- used to be referred
11 to as Galton characteristics?

12 A That is correct.

13 Q Okay. In the FBI, at one point in time, is it not
14 true, required at least eight -- at least eight if not 12 --

15 A I don't recall.

16 Q -- Galton characteristics.

17 A Yes.

18 Q Twelve. They required 12. Okay. All right.

19 Now, did they come out with -- in '73 -- you know, what
20 is the -- you remember the IAI?

21 A IAI, that is the International Association for
22 Identification, which is our professional organization.

23 Q All right. Did they come out in 1973 with the
24 declaration, "There was no valid basis exists at this time
25 for requiring that a predetermined minimum number of

VOIR DIRE EXAMINATION OF MEARS BY PLEXICO

1 friction ridge characteristics must be present in two
2 impressions in order to establish positive identification"?

3 A Yes, that's correct.

4 Q Did that, in your professional opinion, mean that
5 everybody had been doing it wrong for the last 50 years with
6 the FBI and fingerprint matches?

7 A I do not believe that they were doing it wrong,
8 no.

9 Q All right. Do you know what the newer definition
10 is?

11 A No, I do not.

12 Q Were you aware of an international symposium in
13 Israel on the Mediterranean coast in 1995?

14 A I have heard of that, yes, but I'm not familiar
15 with it.

16 Q Okay.

17 MR. PLEXICO: I don't have any objections to her
18 qualifications.

19 THE COURT: All right. Just one second, if you
20 don't mind, Solicitor.

21 MR. STONE: Yes, sir.

22 THE COURT: Mr. Foreman, ladies and gentlemen of
23 the jury, normally a witness is not allowed to give
24 their opinion in the courtroom. They have to testify
25 to what they saw, they heard, they smelled, they felt.

VOIR DIRE EXAMINATION OF MEARS BY PLEXICO

1 Generally, consistent with your senses.

2 However, if because of a person's education or
3 experience or a combination thereof, a person develops
4 an expertise in an area, and that area of expertise
5 would be helpful to you as finders of fact, the person
6 will be allowed to give their opinion in the area of
7 their expertise and tell you the reasons for their
8 opinion.

9 In this case, it is stipulated that this witness
10 is an expert in the field of forensic latent
11 fingerprint analysis, and she will be allowed to give
12 her opinions and the basis of her opinions in that
13 area. Expert testimony, ladies and gentlemen, just
14 like any other testimony you'll hear, you may accept
15 it, you may reject it, or give it as much weight as you
16 think it deserves.

17 All right, sir.

18 MR. STONE: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. STONE:

22 Q Ms. Mears, I'm going to hand you what's been
23 marked as State's Exhibit -- and I actually placed into
24 evidence, I believe.

25 Let me show you what's been marked as State's Exhibit

DIRECT EXAMINATION OF MEARS BY STONE

1 No. 24, ask if you could identify that, please ma'am.

2 A Yes. This is Item 2 for SLED, Lab No. L15-11223,
3 and it has my initials under the bar code.

4 Q All right. And where do you get this item here?

5 A That came from our latent incoming, which is where
6 the evidence assigned to the latent print department is
7 housed until an examiner goes to work.

8 Q All right. When you get it, is it in this -- is
9 it in this bag?

10 A That bag was in a sealed box. The box is what I
11 received.

12 Q All right. And was that sealed by -- I think Trey
13 Tallon had earlier testified that he seized it, and his
14 partner packaged it and took it to SLED. Was it in that
15 condition when you received it?

16 A Yes, it was.

17 Q Now, do you -- when you get this bag itself, this
18 is outside the box -- this is inside the box; is that
19 correct?

20 A It is inside the box. I get the box, and then
21 further items packaged within that box.

22 Q All right. Now, this has a seal on the back.
23 What is that seal?

24 A I'm not sure what this red seal is, but this
25 yellow SLED seal tape is my seal after I had processed this

DIRECT EXAMINATION OF MEARS BY STONE

1 evidence.

2 Q Okay. So when you get this bag, the yellow seal
3 is on it. Do you have your -- you undo that and then put
4 your initials on it; is that correct?

5 A That's correct.

6 Q So it is sealed in this bag when you receive it.

7 A Yes, sir.

8 Q All right. And at that point, you test it; is
9 that correct?

10 A Yes.

11 Q All right.

12 MR. STONE: At this time, Your Honor, we move
13 this -- this is State's Exhibit 24, listed as
14 miscellaneous paperwork, previously testified, into
15 evidence.

16 THE COURT: Any objections?

17 MR. PLEXICO: Yes, Your Honor, relevance.
18 There's no relevance to this case in regards to that.

19 THE COURT: I'm sorry. I didn't hear you.

20 MR. PLEXICO: Relevance, Your Honor. He hasn't
21 shown how it's relevant to this particular case.

22 THE COURT: Overruled. It will be admitted.

23 *(Whereupon, State's Exhibit No(s). 24 marked for*
24 *identification and received in evidence.)*

25 BY MR. STONE:

DIRECT EXAMINATION OF MEARS BY STONE

1 Q Now, let me hand you what's marked as State's
2 Exhibit 24. If you could tell us what's in that.

3 A Do you want me to actually open it and tell you --

4 Q Yeah.

5 A -- or just based on my paperwork?

6 Q You can open it if you want to, either way. Do
7 you need scissors?

8 A Yes. Thank you.

9 We have a partial copy of a Social Security
10 card. Another copy of a Social Security card.

11 Q What is the name on those Social Security cards?

12 A This one is Hansaben Kantibhai Patel.

13 Q Okay.

14 A This one is the same. We have a Social Security
15 Administration envelope with contents that have been -- the
16 envelope's been ripped open. Another Social Security
17 Administration envelope with contents, and this one shows
18 it's addressed to Kantibhai Patel. Another Social Security
19 envelope with contents addressed to Kantibhai Amibal
20 (phonetic) Patel. And then we have five pay stubs. They
21 appear to be pay stubs from the Best Western motel to
22 Hansaben Patel.

23 A piece of paper with writing. Five copies
24 of a Social Security card for Kantibhai Amibal Patel. And
25 an unopened envelope to the Social Security Administration

DIRECT EXAMINATION OF MEARS BY STONE

1 from Hansa Patel. Another envelope with writing. Another
2 envelope with writing.

3 Two Regions Bank envelopes that have been
4 opened, with contents. An envelope with writing. Another
5 Medicare envelope that has been opened, with contents. And
6 then we have a grocery rewards card, an emergency
7 information card, and some form of pamphlet in another
8 language.

9 Q Okay. Now, going back to this last envelope that
10 you showed, they have these SLED indications, or some type
11 of SLED stickers on them. What are those?

12 A This is from after I processed this item.
13 Wherever I see potential ridge detail or fingerprints that
14 could be compared with known prints, I would mark it with
15 these scale stickers, as we call them, and send them to our
16 photography studio, for the photographer to further document
17 the print for me to then work with and do a comparison.

18 Q And I believe that other envelope that you have
19 there also has a sticker; is that the same?

20 A Yes. These are more of the same impressions that
21 I want photo documented for further comparison.

22 Q That miscellaneous paperwork that you just
23 described, you tested for those to -- for, I guess, latent
24 prints; is that correct?

25 A Yes, I did.

DIRECT EXAMINATION OF MEARS BY STONE

1 Q And were you able to get any prints off of that
2 paperwork?

3 A From all of this paperwork, I was able to get six
4 impressions.

5 Q Okay. Let me show you what's already been put
6 into evidence as State's Exhibit 38. Joshua Poacher's
7 fingerprint card, that was scanned in and went through a
8 live scan.

9 Did you compare the latent prints with Mr. Poacher's
10 fingerprint card?

11 A Yes, I did.

12 Q Do you know -- I think with previous testimony,
13 this is Item No. 24, the miscellaneous paperwork?

14 A Yes, it is.

15 Q And that it was recovered from Room [REDACTED] in the
16 Best Western?

17 A I -- I do not have documented where it was
18 recovered from.

19 Q Okay. Let me see the bag. All right.

20 That's, Ms. Mears, Trey Tallon's signature there; is it
21 not?

22 A Yes, it is.

23 Q Okay. All right. Those are items that he seized?

24 A Yes.

25 Q Okay. All right. If you could, tell me the

DIRECT EXAMINATION OF MEARS BY STONE

1 paperwork that you found with the Patels' name on it. What
2 were your results -- what were the results of your tests
3 between what was on the latent fingerprint on the paperwork
4 and the Defendant?

5 A Of the six impressions from the miscellaneous
6 paperwork, one of those was identified to the fingerprint
7 card of Joshua Poacher.

8 Q Let me show you what's been marked as State's
9 Exhibit 25, which was testified as recovered from Room [REDACTED]
10 of the Best Western, what appears to be a ring box.

11 Can you identify that, please, ma'am?

12 A Yes. This also has our SLED lab number. This is
13 Item 3, with my initials on the item as well..

14 Q Did you receive that in a sealed container?

15 A Yes. I received it in this sealed paper bag.

16 Q And then you opened it and tested it from there?

17 A Correct.

18 MR. STONE: At this point, Your Honor, we move
19 State's Exhibit No. 25 into evidence.

20 THE COURT: Any objection?

21 MR. PLEXICO: That's only the box?

22 THE COURT: It's the box.

23 MR. PLEXICO: I would have no objections to the
24 box.

25 THE COURT: Admitted.

DIRECT EXAMINATION OF MEARS BY STONE

1 *(Whereupon, State's Exhibit No(s). 25 marked for*
2 *identification and received in evidence.)*

3 BY MR. STONE:

4 Q Did you compare the box located here at the Room
5 [REDACTED] of the Best Western with the fingerprint card from
6 Joshua Poacher?

7 A Yes. Once I chemically processed the box, there
8 was a fingerprint impression for -- of comparison quality
9 that I did compare to the fingerprint card of Joshua
10 Poacher.

11 Q And what were the results of that comparison?

12 A It was identified to the card of Joshua Poacher.

13 Q Let me show you what's been marked as State's
14 Exhibit No. 39. Tell us what that is, please, ma'am.

15 Just tell me first, and then I'll show it to the jury.
16 I will make sure we put it into evidence first.

17 A This is what we call a fingerprint chart, which is
18 a visual representation of the comparison process.

19 Q Okay. And these are charts that -- basically,
20 this is the comparison that you used in order to make those
21 match?

22 A This is correct.

23 MR. STONE: Your Honor, at this time, we move
24 State's Exhibit 39 into evidence.

25 THE COURT: Any objection?

DIRECT EXAMINATION OF MEARS BY STONE

1 MR. PLEXICO: No, Your Honor.

2 THE COURT: Admitted.

3 *(Whereupon, State's Exhibit No(s). 39 marked for*
4 *identification and received in evidence.)*

5 BY MR. STONE:

6 Q Could I get you to come off the stand, please.

7 A (Witness complies.)

8 MR. PLEXICO: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. STONE:

11 Q If you could, if you could explain this to the
12 jury.

13 A This unknown print is the print that was developed
14 on the fingerprint -- or on the jewelry box. This known
15 print is the print off of the fingerprint card of Joshua
16 Poacher.

17 Q Okay. Let me stop you just there. Just got to
18 have these exhibits.

19 So the print that is here, this came from this jewelry
20 box?

21 A Yes.

22 Q Okay. All right. And then this is what produces
23 the known; is that correct?

24 A This is a zoomed in image of one of these
25 fingerprint boxes.

DIRECT EXAMINATION OF MEARS BY STONE

1 Q Okay.

2 A These letters and lines are pointing to the
3 Level 2 detail that we discussed earlier. You can see how
4 these black lines, these are the ridges I was testing.
5 Black lines will run and then just end at the ending ridge.
6 A black line will run and fork into two. That's a
7 bifurcation. And it's not represented very well on here,
8 but we also have dots.

9 These lines are pointing to the
10 characteristics that aided in the identification of this
11 unknown print to the known print.

12 Q Okay. Thank you.

13 Now, let me also show you what's been entered into
14 evidence as State's Exhibit 18.

15 Did you also test this gun for fingerprints as well?

16 A Yes, I did.

17 Q Were you able to get any prints off of that?

18 A The result for the gun is no value, which means
19 there were -- there was ridge detail on the gun. However,
20 it was not comparison quality to compare with a known
21 standard.

22 Q State's Exhibit 1A, 10A, 11A -- and I'll let you
23 see this -- I know your SLED numbers are different -- 12A,
24 13A, and 14A were items that were testified that were
25 recovered from the murder scene. Were you -- did you, at

DIRECT EXAMINATION OF MEARS BY STONE

1 some point, get those shells and do anything to them?

2 A Yes. I received these items, processed them for
3 latent prints, and the result for all of these items was no
4 fingerprint evidence was observed.

5 Q Okay. Now, when you get these, these are in this
6 envelope, I'm assuming; is that correct?

7 A Yes.

8 Q And it's sealed when you receive them?

9 A Correct.

10 Q And you then do your comparison, and then you put
11 them back in the sealed envelope; is that correct?

12 A I then put it back in -- I don't know how we can
13 tell -- there's another clear bag within the Ziplock, that's
14 what I packaged it in when I was finished with it.

15 Q Okay. And then at that point, is that when it
16 goes to toolmarks and identification folks?

17 A Yes, the firearms unit.

18 Q All right. All right. And all of these that I
19 just showed you, did you treat them all the same?

20 A Yes, I did.

21 Q And other than you analyzing them, did you change
22 them or alter them in any way?

23 A No, I did not.

24 Q In your expert opinion, item which has been marked
25 State's Exhibit No. 25, in comparison to item -- State's

DIRECT EXAMINATION OF MEARS BY STONE

1 Item No. 38, which is Joshua Poacher's fingerprint, what is
2 your expert opinion?

3 A The impression on the jewelry box is from Joshua
4 Poacher.

5 Q The item, State's Exhibit 24, the miscellaneous
6 paperwork, what is your expert opinion as to that in
7 comparison with Item No. 38?

8 A No. 38 is the fingerprint card?

9 Q Yes.

10 A One of the impressions located on one of the
11 envelopes is identified to the print card of Joshua Poacher.

12 MR. STONE: Thank you, ma'am. Answer any
13 questions Mr. Plexico has.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. PLEXICO:

17 Q Do you have a chart like this for the envelope?

18 A No, I do not.

19 Q Okay. All right. Let's just start with the card.
20 Do you have any notes in regards to the card?

21 A I have an item description.

22 Q Okay. All right. Do you have any notes in
23 regards to the card and the miscellaneous paperwork, which
24 is I think No. 24, he just spoke about?

25 A I'm not sure what you mean by "notes."

CROSS EXAMINATION OF MEARS BY PLEXICO

1 Q Well, I mean, do you have any details of your
2 investigation, of your analysis, of the two prints? What
3 makes you think they're the same?

4 A Yes. I do have my worksheets that detail my
5 comparisons of all the prints that I looked at.

6 Q Okay. What do you have in reference to the
7 miscellaneous paperwork that you compared and said was
8 similar to 38?

9 A That particular impression is our Item 2.1. The
10 way our worksheets is laid out, we have a bunch of drop down
11 boxes and check boxes that reference different
12 characteristics of the print, so I have different details as
13 far as definition pressure, the contrasts of print, lateral
14 pressure. I explained what all of those look like in our
15 Item 2.1, which is that unknown print -- or not that unknown
16 print, but the unknown print from the paperwork. And then I
17 go through and document my comparison with any of the known
18 standards I look at, where I have documented what type of
19 impression I'm looking at, whether it be an end joint, a
20 palm print. And then, whether there's agreement or
21 disagreement at each of the levels of detail we discussed
22 earlier.

23 Q And do you have any of the Level 2 notes in
24 regards to this?

25 A Yes. I have Level 2 agreement documented.

CROSS EXAMINATION OF MEARS BY PLEXICO

1 Q Okay. Well, what's the degree of that?

2 A I'm not sure what you mean by "degree."

3 Q Well, you have nine points of agreement on this
4 one, A through I. That would be nine, correct?

5 A Okay. Yes, sir.

6 Q All right. How many points of agreement do you
7 have on Item 24?

8 A We do not document a number of points. Those nine
9 on that chart are just for reference as a visual for you to
10 understand what I mean when I say the comparison.

11 There are actually more points in that print
12 that I did not mark.

13 Q Okay. All right. But you don't have any record
14 of that, correct?

15 A Correct. I do not document a number of points.

16 Q Okay. All right. But the FBI used to require you
17 to have at least 12 points you could document to have a
18 valid match on fingerprints; is that not true?

19 A Yes. There used to be a requirement. There is no
20 longer, however.

21 Q And that worked well for 50 years, correct? Or 60
22 years?

23 A I'm not sure how long it went on. In 1973 is when
24 they decided -- or when they said, after studies, that there
25 was no scientific basis for a required number.

CROSS EXAMINATION OF MEARS BY PLEXICO

1 Q Doesn't that undermine the theory of fingerprints,
2 if it is only just the opinion of the analyst? The whole
3 theory, isn't it? Wasn't it supposed to be scientific
4 based?

5 A It is scientifically based that latent prints are
6 permanent and unique to an individual and to a specific
7 finger. So having a specific number required for an
8 identification does not really affect the permanence or
9 uniqueness of the print.

10 Q Okay. Well, you said some European countries,
11 earlier you testified, required 16; is that correct?

12 A Yes.

13 Q On level -- just Level 2 alone?

14 A Yes.

15 Q Before they thought it was a valid fingerprint
16 match?

17 A Correct.

18 Q Okay. So you could have one point or two points,
19 and you could call it a valid match, based on your
20 experience; is that what you're saying?

21 A Based on my experience, no. I do not know of any
22 examiners that call a print identified on just one or two.
23 There is more that goes into an identification, or a
24 comparison in general, than just counting points.

25 Q But a lot of that is opinion; that's subjective.

CROSS EXAMINATION OF MEARS BY PLEXICO

1 It's the analysis -- it's the opinion of the person doing
2 the analysis.

3 A Correct.

4 Q On a Level 1 and Level 3; is that correct?

5 A Correct.

6 Q All right. Level 2 is pretty inarguable, in that
7 other examiners can also find the same prints, saying there
8 were 12 or 16 points. Another examiner could duplicate the
9 work without question; is that not correct?

10 A Correct.

11 Q Okay. However, one and three is subjective, so
12 another examiner may not be able to verify that; is that
13 correct?

14 A I'm sorry, Level 1 is not necessarily subjective.
15 For example, that print on that chart, anyone -- any
16 examiner can look at that and determine it is a loop pattern
17 from an end joint.

18 Q Okay. All right. Now, how much time did you
19 spend doing this analysis?

20 A I -- I do not know. We do not document the amount
21 of time spent on each individual comparison.

22 Q Okay. What would be, in your professional
23 opinion, a fair estimate of the amount of time, since you
24 are testifying as an expert, that a fingerprint analyst
25 should spend on each comparison?

CROSS EXAMINATION OF MEARS BY PLEXICO

1 A I do not have an opinion as to a fair amount of
2 time. As I said, it is going to depend on the particular
3 print being compared. So there's no way for me to say a
4 certain amount of time.

5 Q Okay. You've done, you were guessing, 6,000,
6 8,000 prints, comparisons?

7 A That I have done? It's in the thousands, I do not
8 have a number, no.

9 Q Okay. All right. And you can't tell me how many
10 you do a day?

11 A Correct.

12 Q All right. And how many years have you been in
13 the fingerprint department doing this job?

14 A A little over six years.

15 Q So for six years, you have been doing the same
16 work, day in and day out?

17 A Yes.

18 Q And that is comparing fingerprints?

19 A Comparing fingerprints, as well as processing
20 evidence for the fingerprints.

21 Q Okay. All right. So how long does it take to
22 process the evidence for the fingerprints?

23 A That also depends on the item being processed.
24 Some techniques we do have a timed cycle, whereas other
25 techniques require certain amounts of heat and humidity to

CROSS EXAMINATION OF MEARS BY PLEXICO

1 develop the print. And that just depends on the print
2 itself and how much time it needs to develop.

3 Q How much -- what's the maximum amount of time it
4 may take?

5 A We don't -- I don't have a maximum amount of time.
6 There are certain cases where I may process an item one
7 morning, and the next afternoon it is still developing
8 prints. Whereas, other items, I may develop it in a timed
9 cycle that I was explaining, 30 minutes later that technique
10 is finished. So it really just depends on the evidence
11 itself.

12 Q Isn't it true that if you don't require a large
13 number of Level 2 characteristics to match, that it makes
14 the job go much faster and easier?

15 A I would not say that, no.

16 Q Okay. Let me ask you this. In your professional
17 opinion, would it be easier to find two comparison points on
18 Level 2 that match than to find 12 or 16 that match, as if
19 you're a European scientist or old FBI guy -- or gal.

20 A I would guess, if you're just strictly counting
21 points, to count one, two, that would take less time than to
22 count one to 16.

23 Q Okay. Do you think they used to require 12 to
24 eliminate a margin of error so that innocent people weren't
25 accused?

CROSS EXAMINATION OF MEARS BY PLEXICO

1 A I'm honestly not sure why there was a set number.

2 Q Do you know why the Europeans would require 16?
3 Would it be that some innocent person does not have a false
4 fingerprint match?

5 A I am not sure of the foundation behind requiring a
6 number in European countries.

7 Q So you can't tell me the number of Level 2 matches
8 on the paperwork; is that correct?

9 A That's correct.

10 Q And you cannot tell me -- you say there's nine
11 level -- is that nine Level 2s that you have on the box? Or
12 is that something -- a mixture of Level 1, 2, and 3 that's
13 nine, A through I?

14 A No. On that chart, those letters are specifically
15 pointing to Level 2 details, and I do have nine marked.
16 However, there are more in the print that are not marked.

17 Q Okay. But you can't tell me how many more you
18 found because you didn't bother documenting it; is that
19 correct?

20 A It's not required for us to document that.

21 Q Okay. And this is all hand work done by you; is
22 that correct?

23 A Yes, that's correct.

24 Q What is the Integrated Automated Fingerprint
25 Identification System?

CROSS EXAMINATION OF MEARS BY PLEXICO

1 A That is what we call IAFIS, and that is the FBI's
2 database of fingerprints.

3 Q And how long does it take to run a fingerprint
4 through that and get a match sometimes? Is it as little as
5 27 minutes?

6 A Yes, it can be. It just depends on the system
7 that day and how many people are running prints.

8 Q But you didn't run it through the national law
9 enforcement's Integrated Automated Fingerprint
10 Identification System, as you testified to. You didn't do
11 that, correct?

12 A No. In this case, the known prints were provided
13 to me. So when I did my comparison, the print was already
14 identified, so there was no reason for me to then search it
15 through IAFIS.

16 Q So you cut out the national -- didn't they spend
17 hundreds of millions of dollars setting this system up for
18 all 50 states?

19 A I'm not sure how much the system cost. The way we
20 operate is when we receive a latent or unknown print, as
21 well as suspect or victim, or even officer names, we will go
22 ahead and compare the latent print with any known prints we
23 have. And then any prints that are left unidentified, we
24 will then search through either AFIS, which is the State's
25 database, or IAFIS, the FBI's database.

CROSS EXAMINATION OF MEARS BY PLEXICO

1 Q And as a back-up on your work, wouldn't you want
2 to run it through an expensive nationally recognized
3 respected fingerprint comparison system to see if your work
4 was correct, as a check on your own work, as a quality
5 protocol?

6 A When I do a print comparison and I -- my
7 conclusion is that a print is identified, I'm saying a print
8 is identified. So there's no need for me to then go back
9 and check, search a print through a system, to see what it
10 finds behind me.

11 As far as our quality control in our
12 laboratory, all of our cases are peer reviewed by a second
13 examiner.

14 Q Okay. Won't use the -- all right.

15 Human beings sometimes have pressures put upon them and
16 have biases; is that not correct?

17 A Yes, that's correct.

18 Q Okay. Does a computer have biases? And can you
19 put pressure on a computer without re-programming it to give
20 a certain result when you're under pressure?

21 A No, computers do not have bias. However, the way
22 AFIS works, it is not a 100 percent catch-all computer
23 system. It is based on algorithms developed by humans.
24 That is not a perfect system.

25 Just because I enter a print on AFIS to run

CROSS EXAMINATION OF MEARS BY PLEXICO

1 through the database, the known person's print may be in
2 that system. However, based on the way the computer
3 algorithm speaks to it between the unknown and known prints,
4 it may not determine that print to be a match. That is why
5 we have latent print examiners that physically compare
6 prints.

7 Q Well, none of y'all would have -- not to be crass
8 -- but is it not true that computers are in some departments
9 displacing fingerprint analysts; is that not true?

10 A I am not sure about other departments, no. We use
11 latent print examiners at SLED to do fingerprint
12 comparisons.

13 Q Okay. You go to national symposiums on
14 fingerprints as a member of the IAA -- IAI, correct?

15 A Yes, I do.

16 Q Okay. All right. And how many fingerprint
17 analysts do you have at SLED now?

18 A We have, I believe, six examiners.

19 Q Qualified or in training?

20 A No. Full time, court qualified examiners.

21 Q Okay. All right. Now -- so you made a decision
22 not to run it through that system?

23 A Yes, I did.

24 Q Okay. You don't think it would be wise to have a
25 computer verify your work?

CROSS EXAMINATION OF MEARS BY PLEXICO

1 A No, I do not. As I said, the way our department
2 operates is if we have known individuals associated with a
3 case, we will go ahead and compare them, and a computer
4 system would not be a catch-all anyways, even if we did
5 search it after I was done with my comparison.

6 Q If the computer system -- doesn't the Integrated
7 Automated Fingerprint Identification System come back with a
8 rating on that, such as a percentage that it's sure of
9 itself?

10 A It does. When you search a print, it comes back
11 with a candidate list of who the computer thinks the print
12 belongs to, and there is a score associated with each
13 individual, yes.

14 Q Okay. So, you would -- why would you not
15 professionally want to one run it through, get a list of the
16 other candidates, and then make an individual comparison of
17 the other candidates to see if something else matched?

18 A Because by me saying this print is identified to a
19 particular known print, it can't be anybody else. So
20 there's no need for me to then go through and compare all
21 the results of that candidate list.

22 Q But you wouldn't -- would you not -- wouldn't
23 it -- wouldn't it not guarantee your work if it came back on
24 the system as that person?

25 A I suppose that would be further validation, yes.

CROSS EXAMINATION OF MEARS BY PLEXICO

1 Q But y'all make a professional choice, an expert,
2 choice in the fingerprint department, not to validate your
3 work through the national fingerprint system. That's
4 y'all's choice, isn't it?

5 A Correct. We do not further search our prints on
6 AFIS. We use a peer review system, where a second examiner
7 reviews all of my work.

8 Q And it's also y'all's choice not to document all
9 the Level 2 detail that you find, correct?

10 A Yes, that's correct.

11 Q All right. And in some cases, you don't document
12 any, because you don't even come up with a photograph when
13 you testify, such as the envelope part, correct?

14 A I'm sorry. Could you repeat that?

15 Q Well, in some cases, you have no documentation
16 that you can actually put up, and you don't sit down and
17 show where things are together. You don't know, for
18 instance, on the envelope, how many Level 2 points of
19 comparison there were that matched?

20 A That is correct, because we're not required to
21 document that.

22 As far as the court chart, it is just a
23 visual demonstration of the comparison process. So that
24 explanation would be the same for the other print that was
25 identified, it would just look different because it's a

CROSS EXAMINATION OF MEARS BY PLEXICO

1 different fingerprint.

2 Q So this is all y'all's choice and y'all's decision
3 on how to go about making these comparisons, correct?

4 A As far as how many court charts we produce?

5 Q Well, it's all y'all's choice in the court. All
6 y'all's -- it's your choice on how to go about making these
7 comparisons and when to stop; is that correct?

8 A As far as what we document?

9 Q Yes.

10 A Yes. Yes, we -- our department has decided. We
11 created our worksheets, we wrote our department protocol,
12 so, yes.

13 MR. PLEXICO: I don't have anything further, Your
14 Honor.

15 THE COURT: Redirect.

16 MR. STONE: Yeah, just briefly.

17

18 REDIRECT EXAMINATION

19 BY MR. STONE:

20 Q What's the purpose of IAFIS? What is the purpose
21 behind that computer system?

22 A The purpose for AFIS or IAFIS is when a crime
23 occurs and there are no suspects or no known people
24 associated, we would search a print through that system to
25 see what the computer says, as is that candidate list. And

REDIRECT EXAMINATION OF MEARS BY STONE

1 then we would then compare any of the known prints to the
2 individuals on that candidate list to do a comparison to see
3 if any of those individuals are identified to that print.

4 Q So even if AFIS produces a list of people, you
5 then have to go in and do the comparison; is that correct?

6 A That's correct.

7 Q And in this case, you didn't need to go do that,
8 you already had a known print; is that correct?

9 A Correct.

10 Q Now, I know -- I asked you to produce this State's
11 Exhibit 39, as far as a photograph of this. And it lists,
12 it looks like, nine points or something like that. Those
13 are just that you used to show us today. Are there other
14 prints matching as well -- or numbers as well?

15 A Yes, those -- A through I is what I marked for
16 that particular court chart. If I were to go in and mark
17 each Level 2 detail that is in agreement, the lines can get
18 very busy and take away from the print itself. So that's
19 why we don't necessarily mark every point within the print.

20 Q Okay. This is just something that you do for
21 court for me?

22 A Correct.

23 Q Okay. And this print, once you actually do it,
24 then it is peer reviewed. In other words, you have other
25 experts in your department to check after your work; is that

REDIRECT EXAMINATION OF MEARS BY STONE

1 correct?

2 A Yes. Another examiner reviews that -- this entire
3 case file.

4 Q And they did that in this case as well?

5 A Yes, they did.

6 MR. STONE: I don't have anything else, Your
7 Honor.

8 MR. PLEXICO: Briefly.

9 RE-CROSS EXAMINATION

10 BY MR. PLEXICO:

11 Q You did this on October 13, 2015?

12 A That is when my report was issued.

13 Q So you could have done it earlier than that?

14 A The actual processing of the evidence was done on
15 September 28th, 2015. The actual comparisons of the prints
16 began on October 2nd, 2015. And then I completed my work in
17 this case on October 13th, 2015.

18 Q So that's 18 months ago, correct?

19 A I believe so.

20 Q So -- and you have done thousands -- you've done a
21 thousand since then in the last 18 months?

22 A Possibly, yes.

23 Q Okay. So you wouldn't remember the details of
24 that report if you had done a thousand other reports since
25 then. You wouldn't remember the details of the thousand and

RE-CROSS EXAMINATION OF MEARS BY PLEXICO

1 one report you did back in 2015?

2 A Correct. That's why I'm referencing my worksheets
3 and my report.

4 Q Okay. And you don't have how many Level 2 matches
5 in your worksheet, is what you've already testified to. I
6 just want to be clear.

7 You said there were others, but you didn't document it;
8 is that clear?

9 A Correct.

10 MR. PLEXICO: Okay. I don't have anything else.

11 THE COURT: May she be excused?

12 MR. STONE: Yes, sir.

13 MR. PLEXICO: Without objection.

14 THE COURT: Thank you, ma'am. You may step down.

15 MR. STONE: Tyffanie Edwards.

16 Thereupon,

17 TYFFANIE EDWARDS

18 was called as a witness, having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STONE:

22 Q Ms. Edwards, what do you do, ma'am?

23 A I am currently employed with the South Carolina
24 Law Enforcement Division, commonly referred to as SLED. I'm
25 currently assigned to latent print department. However,

DIRECT EXAMINATION OF T. EDWARDS BY STONE

1 prior to January of this year, I was assigned to the crime
2 scene and latent print departments since 2011.

3 Q And then in August of 2015, you were working
4 actual crime scenes; is that correct?

5 A I was employed in both the crime scene and the
6 latent print departments.

7 Q And the crime scene area, were you -- were you
8 involved in the investigation concerning the Joshua Poacher
9 case?

10 A Yes, I was. I had the honor of attending the
11 autopsies that were performed down at the Medical University
12 of South Carolina, referred to as MUSC, in Charleston.

13 Q Okay. And these are the autopsies -- these are
14 the autopsies performed on the Patels; is that correct?

15 A That is correct.

16 Q Let me show you what's been identified as State's
17 Exhibit 37, ask if you could identify that, please, ma'am.

18 A This is the fired projectile that was recovered at
19 autopsy from Hansaben Patel. It is marked as a bullet, and
20 it bears the MUSC label that was applied at the time of
21 autopsy.

22 When I obtained this item, it was already
23 sealed within this small envelope, and it was provided to me
24 by the autopsy technician, from whom I signed the chain of
25 custody from.

DIRECT EXAMINATION OF T. EDWARDS BY STONE

1 Q Now, I'm assuming -- obviously, you do not perform
2 the autopsy. You're present during the autopsy; is that
3 correct?

4 A Correct. I'm just present to observe and relay
5 any information that the physician may give me back to the
6 case agent, who was Trey Tallon from crime scene, and bring
7 back the evidence that was collected from autopsy back to
8 the forensic laboratory so that he can log it into evidence,
9 and then packaged and distributed throughout the laboratory
10 for further analysis.

11 Q When the bullet is removed from the body, you're
12 present, the person, the doctor, takes it and then puts it
13 in the sealed package and hands it to you; is that correct?

14 A That's correct. And it's sealed at the time I
15 receive it.

16 Q All right. Now, do you change it or alter it in
17 any way in taking it from autopsy into -- to SLED?

18 A No, sir. I simply courier the sealed evidence
19 from the location of autopsy back to the SLED forensics
20 laboratory.

21 Q Okay.

22 MR. STONE: No further questions for this
23 witness, Your Honor.

24 THE COURT: Cross-examination.

25 MR. PLEXICO: None, Your Honor.

DIRECT EXAMINATION OF T. EDWARDS BY STONE

1 THE COURT: May this witness be excused?

2 MR. STONE: She may.

3 THE COURT: Thank you, ma'am.

4 MR. STONE: State calls Suzanne Cromer.

5 Thereupon,

6 SUZANNE CROMER

7 was called as a witness, having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STONE:

11 Q Ms. Cromer, what do you do, ma'am?

12 A I am a firearm and toolmark examiner at the South
13 Carolina Law Enforcement Division.

14 Q And at the -- at SLED, as a firearms and toolmark
15 examiner, what exactly is that? What does that -- what do
16 you do in that particular category?

17 A What we do is called firearms identification. We
18 look at ammunition components, bullets and cartridge cases,
19 shotgun shells, unfired cartridges, to determine whether
20 they were fired by or loaded into and extracted from a
21 specific firearm. If we do not have a specific firearm, we
22 can look at ammunition components left at a crime scene and
23 give investigators an idea of how many guns were fired
24 there.

25 We also do torque exams, bolt cutters on

DIRECT EXAMINATION OF CROMER BY STONE

1 padlocks, pry marks on safes and doors.

2 Q And how long have you been doing this?

3 A I've been with SLED for 17 years and four months.
4 I've been signed off of training since 2004. So over 13
5 years.

6 Q What type of training and education do you have
7 that would allow you to test components of ammunition, and
8 compare them to various guns, compare them to other pieces
9 of ammunition, that type of thing?

10 A I have a bachelor's degree from Clemson
11 University. I did some graduate work at the University of
12 South Carolina, Criminal Justice. While there, I did an
13 internship in the SLED firearms department.

14 I was hired on at SLED and completed their
15 in-house training program for firearms and toolmark
16 examiners, which is a three to five-year intense study
17 program. We take written tests, oral tests, practical
18 exercises, prepare casings for other examiners.

19 Upon completion of all sections, in our
20 training manual, we're given a comprehensive final exam that
21 includes essay questions, terms, and actual mock casework.
22 That is graded on by our training officer and our
23 lieutenant.

24 I have also taken classes with the
25 Association of Firearm and Toolmark Examiners, which is an

DIRECT EXAMINATION OF CROMER BY STONE

1 international organization for our profession. They meet
2 once a year for a week long conference, and they also offer
3 additional classes. I have been fortunate enough to attend
4 several of those conferences and take extra seminars, such
5 as machine gun conversion, barrel making, ethics, gunshot
6 residue, high point firearm familiarization.

7 I've taken classes with the South Carolina
8 chapter of the International Association of Identification,
9 most pertinent being a three-day shooting scene
10 reconstruction workshop. I've taken classes with the Bureau
11 of Alcohol, Tobacco, and Firearms and Explosives, commonly
12 referred to as the ATF.

13 On serial number restoration, and in
14 conjunction with the ATF and forensic technology, I have
15 taken classes on the Integrated Ballistics Identification
16 System, which is a searchable digital database for images of
17 cartridge cases.

18 I have also taken classes with -- on Glock
19 firearms. I have also toured numerous firearm
20 manufacturers, such as Ruger, Smith & Wesson, FN, Daniel
21 Defense, Perry USA. I've also toured numerous tool
22 manufacturers, such as Crescent Tools, Mayhew, Cabler,
23 Cutco, and Ontario Knife Factory. I have also attended the
24 IBIS Jeepers (phoentic) Group, or the integrated -- the
25 National Integrated Ballistics Identification Network Users

DIRECT EXAMINATION OF CROMER BY STONE

1 Congress several times as a representative for North and
2 South Carolina.

3 Q And you have testified in court as to toolmarks
4 and firearm identifications in the past as well, correct?

5 A That is correct.

6 Q Do you know how many times?

7 A Approximately 95 times.

8 Q Have you -- and you've been -- each time you
9 testified, you've been previously qualified as an expert in
10 this particular field?

11 A Yes, sir, I have.

12 MR. STONE: Your Honor, at this time, we offer
13 her as an expert in the area of firemarks -- excuse
14 me, firearm -- toolmarks and firearm identifications.

15 MR. PLEXICO: I have no objection to that, Your
16 Honor.

17 THE COURT: All right. Ladies and gentlemen, if
18 you recall what I told you earlier about getting
19 opinions, normally you're not allowed to. This lady's
20 been stipulated to be an expert in the field of
21 firearm and tool markings and firearm identification;
22 is that right? Did I misstate it?

23 MR. STONE: I may have misstated it. I want to
24 make sure I get it right. It's toolmark and firearm
25 identification; is that correct?

DIRECT EXAMINATION OF CROMER BY STONE

1 THE WITNESS: That's correct.

2 THE COURT: Toolmarkings and firearm
3 identification. She'll be allowed to give her opinion
4 in that area. And I'll remind you that expert
5 testimony is like any other testimony you may hear.
6 You may accept it or reject it or give it as much
7 weight as you think it deserves.

8 All right, sir.

9 MR. STONE: Thank Your Honor.

10 BY MR. STONE:

11 Q First, I want to start with what's been marked as
12 State's Exhibit 10A. Can you tell me what that is, please,
13 ma'am?

14 A)State's Exhibit 10A was my Item 12. It is a fired
15 cartridge case.

16 Q And there is an envelope in there, and then a
17 sealed envelope, and I believe that's been testified, and
18 you were here during that testimony.

19 At what condition do you receive this in?

20 A I received this in this -- in a clear envelope,
21 heat sealed by Kimberly Mears, inside of another envelope
22 with all of this evidence together.

23 Q So when you get it, you actually take it out of
24 the seal and then you examine it as well?

25 A That's correct.

DIRECT EXAMINATION OF CROMER BY STONE

1 Q Anything that's happened to that in the meantime
2 that would affect your findings?

3 A No, sir.

4 Q Okay.

5 MR. STONE: At this time, Your Honor, we move
6 State's Exhibit 10A. This corresponds with what has
7 previously been identified as Item 10, a photograph,
8 and 10A is the item seized at the crime scene.

9 THE COURT: Any objection?

10 MR. PLEXICO: No objection, Your Honor.

11 THE COURT: Admitted.

12 *(Whereupon, State's Exhibit No(s). 10A marked for*
13 *identification and received in evidence.)*

14 BY MR. STONE:

15 Q Show you what's been marked as 11A, ask if you
16 could identify that, please.

17 A Again, State's Exhibit 11A was my Item 13. It's
18 another fired .40 S&W caliber cartridge case.

19 Q And you received that in a similar condition as to
20 the previous State's Exhibit 10A?

21 A Yes. It was inside of this sealed clear envelope.

22 Q And any testing that would have taken place prior
23 to you getting that, would that have affected your findings
24 any way, one way or the other?

25 A No, sir.

DIRECT EXAMINATION OF CROMER BY STONE

1 Q All right.

2 MR. STONE: At this time, Your Honor, we move
3 State's Exhibit 11A, which corresponds to Marker 11 in
4 State's Exhibit 11 photograph that's previously been
5 testified to and admitted.

6 MR. PLEXICO: No objections.

7 THE COURT: Admitted.

8 *(Whereupon, State's Exhibit No(s). 11A marked for*
9 *identification and received in evidence.)*

10 BY MR. STONE:

11 Q Show you what's been marked as State's
12 Exhibit 12A, ask if you can identify that, please, ma'am.

13 A State's Exhibit 12A was my Item 14. It's another
14 fired .40 S&W caliber cartridge case.

15 Q And you received it in this clear bag, the same as
16 you did Items 10, 10A, and 11A?

17 A Yes, sir.

18 Q And you took it out of there and tested it; is
19 that correct?

20 A Correct.

21 Q There was no testing prior to that that would have
22 affected your findings?

23 A No, sir.

24 MR. STONE: Your Honor, at this time, we move
25 State's 12A, which corresponds to State's 12

DIRECT EXAMINATION OF CROMER BY STONE

1 photograph into evidence.

2 MR. PLEXICO: No objections, Your Honor.

3 THE COURT: Admitted.

4 *(Whereupon, State's Exhibit No(s). 12A marked for*
5 *identification and received in evidence.)*

6 BY MR. STONE:

7 Q Show you what's been marked as 13 -- State's
8 Exhibit No. 13A, ask if you could identify that, please,
9 ma'am.

10 A State's Exhibit 13A was my Item 15. It's another
11 fired .40 S&W caliber cartridge case, and I did receive it
12 in this inner envelope, heat sealed from Ms. Mears.

13 Q Okay. And when you received it, you took it out,
14 that was the condition that you found it in; is that
15 correct?

16 A That's correct.

17 Q And was there any testing that was done to it that
18 would affect your findings?

19 A No, sir.

20 MR. STONE: At this time, Your Honor, we move
21 State's Exhibit 13A, which corresponds to State's 13
22 photograph.

23 MR. PLEXICO: No objection, again, Your Honor.

24 THE COURT: Admitted.

25 *(Whereupon, State's Exhibit No(s). 13A marked for*

DIRECT EXAMINATION OF CROMER BY STONE

1 *identification and received in evidence.)*

2 BY MR. STONE:

3 Q Show you what's been marked as State's
4 Exhibit 14A.

5 A State's Exhibit 14A was my Item 16. It's another
6 fired .40 S&W caliber cartilage case.

7 Q You received it, I'm assuming, in this clear bag;
8 is that correct?

9 A That's correct.

10 Q And did you change or alter it in any way other
11 than your testing?

12 A No, I did not.

13 Q And is there any testing that took place on this
14 prior to you getting it that would have affected your
15 testing one way or the other?

16 A No, sir.

17 MR. STONE: At this time, Your Honor, we move
18 State's Exhibit 14A into evidence. That corresponds
19 with State's 14, a photograph of the shell casing.

20 MR. PLEXICO: No objections, Your Honor.

21 THE COURT: Admitted.

22 *(Whereupon, State's Exhibit No(s). 14A marked for*
23 *identification and received in evidence.)*

24 BY MR. STONE:

25 Q Now, I'd like to show you what's been marked as

DIRECT EXAMINATION OF CROMER BY STONE

1 State's Exhibit 1A, ask if you could the identify that,
2 please.

3 A State's Exhibit 1A was my Item 11. It's an
4 unfired .40 S&W caliber cartridge.

5 Q You received that in that clear bag, I'm assuming?

6 A Yes, sir.

7 Q And was there any tests that were done to that at
8 all that would affect your findings?

9 A No, sir.

10 Q All right.

11 MR. STONE: Your Honor, at this time, we move
12 State's Exhibit 1A into evidence. That corresponds
13 with State's Exhibit 1, which is a photograph.

14 THE COURT: Any objection?

15 MR. PLEXICO: No objection, Your Honor.

16 THE COURT: Admitted.

17 *(Whereupon, State's Exhibit No(s). 1A marked for*
18 *identification and received in evidence.)*

19 BY MR. STONE:

20 Q Now, let me ask you, and if you need to come down
21 and take a look at this, you're welcome to it. But the
22 difference between what I've just shown you in State's
23 Exhibit 1A and 11A, 13A, 12A, 10A, and 14A, what are the --
24 what's the difference between those -- that one item and
25 those other four?

DIRECT EXAMINATION OF CROMER BY STONE

1 A My Item 11, State's Exhibit 1A, is an unfired
2 cartridge. The rest of them have been fired.

3 Q All right. And these are actually -- I guess,
4 would they be just the case that the bullet came out of; is
5 that correct?

6 A That's correct. The unfired piece of ammunition,
7 you can see it has a projectile in the top and the cartridge
8 case body. When it's fired, you have a projectile and then
9 you have the cartridge case. So when it's fired, it becomes
10 two pieces.

11 Q Okay. Let me show you what's been marked as
12 State's Exhibit 9A, ask if you could identify that, please.

13 A State's Exhibit 9A was my Item 10. It is a fired
14 .40 S&W 10-millimeter auto caliber bullet.

15 Q And that comparison with what we've just got, too,
16 that is the other end basically of the casing -- of the
17 case?

18 A That's the fired bullet from a piece of
19 ammunition.

20 Q Okay. And when you received it, it was in that --

21 A It was in this sealed envelope.

22 Q The envelope. All right.

23 And you tested it, you unsealed it and took it out and
24 tested it; is that correct?

25 A Yes.

DIRECT EXAMINATION OF CROMER BY STONE

1 MR. STONE: Your Honor, at this time, we move
2 State's Exhibit 9A into evidence. That corresponds
3 with State's Exhibit 9, found also at the crime scene.

4 MR. PLEXICO: No objections, Your Honor.

5 THE COURT: Admitted.

6 *(Whereupon, State's Exhibit No(s). 9A marked for*
7 *identification and received in evidence.)*

8 BY MR. STONE:

9 Q Show you what's been marked as State's Exhibit 27.
10 This is -- previously testified as collected from
11 Mr. Patel's shirt. Ask if you could identify that, please,
12 ma'am.

13 A State's Exhibit 27 was my Item 8. It is another
14 fired .40 S&W or 10-millimeter auto caliber bullet.

15 Q And you received that, I believe, in this
16 envelope; is that correct?

17 A That is correct.

18 Q And it was sealed when you received it?

19 A That's correct.

20 Q You unsealed it and tested it?

21 A Yes.

22 MR. STONE: At this time, Your Honor, we move
23 State's Exhibit 27 into evidence corresponding -- it
24 is not marked on our crime scene, but it was testified
25 as found under -- in Mr. Patel's shirt.

DIRECT EXAMINATION OF CROMER BY STONE

1 MR. PLEXICO: Without objection, Your Honor.

2 THE COURT: Admitted.

3 *(Whereupon, State's Exhibit No(s). 27 marked for*
4 *identification and received in evidence.)*

5 BY MR. STONE:

6 Q Finally, let me show you what's been marked as
7 State's Exhibit 26. This was testified to under the floor,
8 under Mrs. Patel.

9 A State's Exhibit 26 was my Item 9. Again, it's
10 another fired .40 S&W or 10-millimeter auto caliber
11 projectile, or bullet.

12 Q And you received it in this envelope, I believe?

13 A That's correct.

14 Q You unsealed it and tested it?

15 A That's correct.

16 MR. STONE: Your Honor, at this time, we move
17 State's Exhibit 26 into evidence, also testified to as
18 under Mrs. Patel at the crime scene.

19 MR. PLEXICO: No objection, Your Honor.

20 THE COURT: Admitted.

21 *(Whereupon, State's Exhibit No(s). 26 marked for*
22 *identification and received in evidence.)*

23 BY MR. STONE:

24 Q Show you what's been marked as State's Exhibit No.
25 27 -- excuse me, 37. I apologize. Ask if you could

DIRECT EXAMINATION OF CROMER BY STONE

1 identify that for us.

2 A State's Exhibit 37 was my Item 51. Again, it's
3 another fired .40 S&W or 10-millimeter auto bullet or
4 projectile.

5 Q This, I believe, was previously testified, and you
6 were here, I believe, for that testimony, that this was the
7 bullet removed at autopsy; is that correct?

8 A That's correct.

9 Q You received it in this sealed bag?

10 A That's correct.

11 Q And you took it out and tested it?

12 A Yeah, I received it in this sealed envelope, in
13 this bag.

14 Q Yeah. All right. And you unsealed it and tested
15 it; is that correct?

16 A That's correct.

17 MR. STONE: At this time, Your Honor, we move
18 State's Exhibit No. 37 into evidence.

19 MR. PLEXICO: No objection, Your Honor.

20 THE COURT: Admitted.

21 *(Whereupon, State's Exhibit No(s). 37 marked for*
22 *identification and received in evidence.)*

23 BY MR. STONE:

24 Q This is not from the crime, this was from autopsy,
25 so I'll put it in the bottom.

DIRECT EXAMINATION OF CROMER BY STONE

1 Now, I'm going to show you what's been entered into
2 evidence as State's Exhibit 18A. I'll just hand you that, ask you if
3 you could tell us what that is, please -- if I give you enough room to
4 work.

5 A Yes. I'll put this up here.

6 Q Sure.

7 A State's Exhibit 18A was my Item 37, and I'm
8 looking at the markings that were placed there, with my lab
9 number, my item number, and my initials. We mark a firearm
10 in several different locations, one on the barrel, on the
11 back of the slide, and in the magazine well. So this was my
12 Item 37 that I examined.

13 Q Okay.

14 THE COURT: Please make sure you don't point that
15 at anybody.

16 THE WITNESS: Yes, sir.

17 MR. STONE: I believe I still have the key, Your
18 Honor. So I think it's still locked, and I have the
19 key.

20 THE COURT: Okay. Makes me feel better.

21 MR. STONE: Does it?

22 BY MR. STONE:

23 Q Let me refer to what's been -- what we're using as
24 an exhibit, State's Exhibit 46, the crime scene. Previously
25 testified that that item, which is State's Exhibit -- what

DIRECT EXAMINATION OF CROMER BY STONE

1 is it again?

2 A 18A.

3 Q Was recovered in Room 127 of the Travel Lodge.

4 Did you test that handgun against any of these other --
5 and I'm going to call them bullets and shells. I'm sure you have a
6 more scientific answer for that, but that's what I'm going to refer
7 to. Did you test that gun against these shells?

8 A Yes, I did.

9 Q Could you tell the jury, please, what your results
10 were.

11 A My results were that I found sufficient agreement
12 in the individual identifying characteristics on the
13 cartridge cases and bullets to determine that they were
14 fired, in my opinion, from this firearm.

15 Q All of the fired shells, Items 13A, 12A, 11A, 10A,
16 and 14A, all those are fired items. You compared those?

17 A Yes, sir.

18 Q And how do you compare that against the -- against
19 the gun that you have?

20 A What I do is I first look at what I have fired,
21 evidence wise. Then I pull this gun out. What we do is we
22 take notes on this gun, we look at the rifling. Then we
23 will test fire this particular firearm.

24 And how that works is our lab, our department
25 is on the second floor of the laboratory, and we have a

DIRECT EXAMINATION OF CROMER BY STONE

1 bullet recovery tank that is full of water that goes all the
2 way down to the first floor. So we shoot into that bullet
3 recovery tank. That will collect the bullets, the water
4 slows them down without adding to or taking from any of the
5 markings put there by the gun barrel.

6 So we take them back to the laboratory, and
7 then I will microscopically compare those test bullets that
8 I know that had been fired from this gun to each other to
9 see how they're marked. And then I compare them to the
10 evidence bullet, and then I render my conclusion.

11 Q Now, the casing itself is going to be -- the item,
12 I'm assuming, just kicks out of the gun after it's fired; is
13 that correct?

14 A Right. Correct. The cartridge casing, we also
15 take those test specimens, and we'll also look at those
16 cartridge cases to each other.

17 Cartridge cases from a semi-automatic firearm
18 are marked in five different locations. They are marked
19 from the breach space of the gun, which is this area back in
20 here. That supports the head of the cartridge case that I'm
21 firing. It's also marked by the firing pin itself. The
22 extractor, which is like a middle -- I call it the claw,
23 that clips over that rim of the edge of the cartridge and
24 holds it into the slide. Then it can be marked by the
25 ejector, which is a little -- looks like a pin inside the

DIRECT EXAMINATION OF CROMER BY STONE

1 slide, that when this slide is coming backwards during the
2 firing process, and that claw is holding it in place, that
3 ejector will hit it and force that cartridge case to come
4 out the ejection port. And then the last of the five parts
5 can be marked on the chamber itself. If there's any
6 imperfections in the chamber, which is the end of the barrel
7 that is supporting the cartridge during firing, it can be
8 imprinted on that cartridge case during the expansion of
9 firing.

10 Q Basically, what the explosion of the bullet, or
11 the shell, then that tool, which is the gun, actually makes
12 physical marks on it; is that right?

13 A That's correct.

14 Q And then you can compare that to what you know,
15 which is what you shot; is that correct?

16 A That is correct.

17 Q Now, is that the same that is producing the
18 identification for the bullet itself?

19 A No. The bullets are a little different. And I
20 call it climbing my ladder to a microscope. You have
21 several different class characteristics. First off, is it
22 the same caliber? And then were -- assume it's a .40
23 caliber, those bullets were, like I said, either .40 S&W or
24 10-millimeter auto, which the bullets are the same. It's
25 just the cartridge case itself can be different. So they

DIRECT EXAMINATION OF CROMER BY STONE

1 were correct.

2 So then, next step, is it the same type of
3 rifling? Rifling is what's put into the gun barrel by the
4 manufacturer to make that bullet spin, similar to a
5 quarterback that throws a football. He wants it to go into
6 a tight spiral so it will fly more accurately towards its
7 target. That's the premise behind rifling, it makes that
8 bullet spin so it goes more accurately towards its target.
9 And it's made up of what we call lands and grooves, raised
10 and depressed areas.

11 And you can have any number of lands and
12 grooves. But, like I said, there's two different types of
13 rifling. There's conditional, which it's clinging to the
14 gun barrel with right edges in it. Or there's polygonal,
15 which is more of a rounded look.

16 So, first, is it the same caliber? Then is
17 it the same type of rifling? If it is, then we can go to
18 the next. Is it the same number of lands and grooves? Like
19 I said, any manufacturer can use any different number. You
20 can have four, five, six, nine, ten, 24, 37. And in this
21 case, they were both six lands and grooves.

22 I have six lands and grooves on my evidence
23 bullet. I have six lands and grooves on this firearm. Then
24 I look at which way is it going to make that bullet spin.
25 Is it going to make it spin to the left or to the right? In

DIRECT EXAMINATION OF CROMER BY STONE

1 this case, it was to the right, which is what's displayed on
2 my evidence bullets.

3 So then I can go to my scope. Anywhere that
4 in that ladder, if I have differences, it couldn't have been
5 fired by this gun. So I can kind of jump off my ladder, I
6 don't have to go to microscope. So I have to meet all those
7 criteria before I get to the microscope.

8 Q So you tested not only the shells then, you tested
9 the individual bullets and the bullets themselves with
10 what's creating the lands and grooves and things like that?

11 A That's correct.

12 Q You tested items, State's 9A, which was a bullet
13 found at the scene, as well as State's Exhibit 26 and 27,
14 two bullets also found at the scene, under Mrs. Patel and in
15 Mr. Patel's shirt. Did you compare those to the fired
16 bullet that you fired from that handgun?

17 A Yes, I did.

18 Q And what were the results of that test?

19 A In my opinion, they were fired by this firearm.

20 Q Finally, the State's Exhibit 37, which was the
21 bullet removed from Ms. Patel at the autopsy, did you test
22 that against the known bullet that you fired from that
23 handgun?

24 A Yes, I did.

25 Q And what is the result of that test?

DIRECT EXAMINATION OF CROMER BY STONE

1 A In my opinion, it was fired from this firearm.

2 Q And the unfired bullet, which is State's Exhibit
3 1A, were you able to do any testing on that?

4 A I just determined that it was an unfired .40 S&W
5 caliber round. It was consistent in brand with the fired
6 cartridge cases.

7 Q And that was the one that was found outside of the
8 motel.

9 All right. And also in Item 18A are what I refer to as
10 one, two, three, four, five, six, seven, eight -- nine bullets; is
11 that correct?

12 A These are nine cartridges, or unfired ammunition.

13 Q Okay. Were those consistent with the type of
14 ammunition that was found at the scene?

15 A Two of them were.

16 Q Okay. All right.

17 MR. STONE: Your Honor, I don't have any further
18 questions from this witness.

19 THE COURT: All right. Let's take a break.

20 We're going to have about a 10, 15-minute break.

21 Ladies and gentlemen of the jury, if you need
22 anything, let the bailiff know, please.

23 (Whereupon, a brief recess was taken.)

24 THE COURT: Please be seated.

25 Are you ready to proceed?

DIRECT EXAMINATION OF CROMER BY STONE

1 MR. STONE: State's ready.

2 MR. PLEXICO: We need the Defendant. We need the
3 Defendant before the jury comes in.

4 THE COURT: Yep. That would be helpful.

5 (Defendant enters the courtroom.)

6 THE COURT: Bring the jury in, please.

7 (Jury enters the courtroom.)

8 THE COURT: All right. Cross-examination.

9 MR. PLEXICO: We have none, Your Honor.

10 THE COURT: May this witness be excused?

11 MR. STONE: Yes, sir.

12 THE COURT: Thank you, ma'am.

13 Call your next witness, please, sir.

14 MR. STONE: Agent Richard Johnson.

15 THE COURT: Agent Johnson, you're still under
16 oath, please, sir.

17 THE WITNESS: Yes, sir.

18 Thereupon,

19 RICHARD JOHNSON

20 was called as a witness, having been previously duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. STONE:

24 Q Agent Johnson, you were -- you've been previously
25 placed under oath.

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 You were the agent in this case; is that correct?

2 A That's correct.

3 Q And you had testified earlier that you were the
4 one that actually arrested Joshua Poacher; is that correct?

5 A That's correct.

6 Q At some point in time, did you seek to try to
7 question Mr. Poacher about his involvement in this case?

8 A Yes, I did.

9 Q When was that? And let me start from the very
10 first time, when was that?

11 A That would have been on August 16th, 2015.

12 Q That same day?

13 A Same day.

14 Q Let me get you to pull up a little bit closer to
15 the microphone, or swing that to you -- I don't know if it
16 can move.

17 After his arrest and you questioned him -- first of
18 all, where did you -- where did you go to question him? Where was he?

19 A At the Jasper County Central Investigation
20 Division unit.

21 Q Basically the sheriff's office right down here,
22 right at the annex?

23 A The annex.

24 Q All right, sir. And when you get there, he is
25 already at this point arrested; is that correct?

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 A I'm sorry. Say that again.

2 Q He is already arrested at that point; is that
3 correct?

4 A When we get to the CID?

5 Q Yes.

6 A That's correct, he's in custody.

7 Q Okay. What is the first thing you do once you get
8 there?

9 A We took him into an interview room and just
10 attempted to interview him. We advised him of his Miranda
11 rights prior to any of it.

12 Q Show you what's been marked as State's Exhibit 40,
13 ask if you could identify that, please, sir.

14 A Yes.. This is the Miranda rights form that was
15 read to him, and he initialed and signed it.

16 Q Now, that is on stationery from SLED; is that
17 correct?

18 A That's correct.

19 Q That's the Miranda form you use on a regular
20 basis?

21 A Yes.

22 Q Now, tell me what happens when you bring the form
23 out.

24 A Well, typically, I like to bring out two copies,
25 so as I'm reading it to them, to make certain that I have

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 covered each aspect of Miranda right correctly. I would
2 give that individual a copy for him or her to review as I
3 read it. Or if I only have one copy, because I may be short
4 on documents, I make certain we sit next to each other so we
5 both are viewing the same thing.

6 Q And do you recall in this case what the situation
7 was?

8 A Yes. I slid this copy to him so he can review it,
9 and I took a separate copy and sort of just kind of went
10 over it.

11 Q Okay. Now, does he read that or do you read it?

12 A On this one, I read it out to him.

13 Q Okay. Tell me, if you will, and read to the jury
14 what you read to Mr. Poacher that afternoon.

15 A Before we ask you any -- "Before we ask you
16 questions, you must understand your rights. You have a
17 right to remain silent. Anything you say can be used in
18 court as evidence against you. You're entitled to talk to a
19 lawyer now and have him present now or at anytime during
20 questioning. If you cannot afford an attorney, one will be
21 appointed for you without cost. If you decide to answer
22 questions now without a lawyer present, you will still have
23 a right to stop answering at any time. You also have the
24 right to stop answering at any time until you talk to a
25 lawyer. Do you understand these rights? Do you wish to

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 talk to us at this time?"

2 The bottom area, which is to waive your
3 rights, reads: "I have read this statement of my rights and
4 I understand what my rights are. I am willing to talk now
5 without a lawyer present. I understand and know what I am
6 doing. No promises or threats have been made to me, and no
7 pressure or coercion of any kind has been used against me."

8 Q Now, do you ask him to initial that form?

9 A Yes, I do.

10 Q In what areas?

11 A Along -- along each -- along each line of Miranda
12 line, we ask an individual to put his initial on each line
13 just simply acknowledging that he understood what each line
14 is saying.

15 Q And then does he sign that?

16 A Yes, right below the waiver of rights, he signed
17 his initials, his signature there.

18 Q Any other signatures under that?

19 A Myself and Detective Evan Wright with Jasper
20 County Sheriff's Office.

21 MR. STONE: At this time, Your Honor, we'd move
22 State's Exhibit 40 into evidence.

23 THE COURT: Any objection?

24 MR. PLEXICO: Without objection, Your Honor.

25 THE COURT: Admitted.

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 *(Whereupon, State's Exhibit No(s). 40 marked for*
2 *identification and received in evidence.)*

3 BY MR. STONE:

4 Q After you read him these rights forms and you fill
5 this out, he initials it. At this point, does he give you a
6 statement?

7 A Yes, he does.

8 Q What does he tell you at this point?

9 A He essentially just lets us know that around seven
10 or 8:00 in the morning hours he'd gotten up and had gone to
11 a bootlegger house and got some cigarettes. And afterward
12 he came across a friend of his named Roy Bryant. The two of
13 them smoked a blunt. On his way back home he came across a
14 crackhead that he simply knew as Darryl, and that Darryl at
15 that time had provided him the debit card and informed him
16 that only \$200 was on the debit card. And he didn't
17 subsequently use the debit card at the -- I think it was a
18 Gulf store, which is the Handy Dan store and the Marathon
19 store.

20 Q Did he acknowledge any culpability as to the
21 deaths of the Patels?

22 A No, he did not.

23 Q Okay. Did he tell you at any time that --
24 anything about a weapon or any money, anything like that?

25 A No.

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 Q And did you at some point stop this interview and
2 move on?

3 A Yes, I did. I stopped the interview.

4 Q Okay. Now, did you again go back, and at some
5 point interview him again?

6 A Yes, I did.

7 Q All right. And that was later that same day?

8 A Yes, sir.

9 Q Tell me about that.

10 A Well, on the same day, we interviewed him. We
11 advised him of his rights verbally. He didn't sign a form
12 this time, but because he never left the premises, he was
13 just in another room, we then just simply verbally read him
14 the same rights that I just read out to the court, and he
15 agreed that he's willing to continue to talk with us.

16 And at that time, that's when he provided
17 slightly different information, such as that Darryl provided
18 him the credit card, the Indian money, the pistol, all for
19 \$50 and a -- I think it was three -- yeah, three beers. He
20 also provided information that Darryl gave him the
21 four-digit pin number to the credit card.

22 Q So the pin number, the gun, and the money, that's
23 now part of this second story that he gives you, but not the
24 first; is that correct?

25 A That's correct.

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 Q And at some point, did you terminate this
2 conversation?

3 A Yes, I did.

4 Q And then did you talk to him again?

5 A Yes, I did.

6 MR. PLEXICO: Your Honor, I would renew our prior
7 objection, Your Honor, in regards to the --

8 THE COURT: It's noted for the record.

9 BY MR. STONE:

10 Q Did you interview him three days later, August the
11 19th, 2015?

12 A Yes, I did.

13 Q And I'm going to show you what's been marked as
14 State's Exhibit 41, ask if you could identify that for us.

15 A This is another Miranda rights form that was read
16 to him, which bears his signature along each line as I read
17 through it. His initials are -- and his signature at the
18 bottom of it.

19 Q Now, is this the same form as State's Exhibit 40?

20 A Yes, it is.

21 Q And is it filled out in the same way?

22 A Yes, sir.

23 Q And this is -- but he's still without -- at this
24 point, at a different day, three days later?

25 A Yes, sir.

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 Q Now, where are you located at this point?

2 A At the Jasper County Detention Center.

3 Q Okay. So now you're at a different location?

4 A That's correct.

5 Q Now, does he initial this form?

6 A Yes, sir.

7 Q Does he indicate he understands those rights?

8 A Yes, sir.

9 Q Do you promise him anything, coerce him, force
10 him, threaten him in any way to get him to give you a
11 statement?

12 A No, sir.

13 MR. STONE: At this time, Your Honor, we move
14 State's Exhibit 41 into evidence.

15 THE COURT: Subject to prior objection and
16 ruling, it is admitted, yes, sir.

17 *(Whereupon, State's Exhibit No(s). 41 marked for*
18 *identification and received in evidence.)*

19 BY MR. STONE:

20 Q So now on August the 19th, 2015, does he then give
21 you another statement?

22 A Yes, he does.

23 Q What is the statement this time?

24 A It's essentially the same thing, just some numbers
25 changed. For instant (sic), he still comes across Darryl,

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 but this time he give Darryl a hundred dollars worth of
2 crack, \$25 in cash, all for the .40 caliber pistol that was
3 recovered from the hotel room, and the credit card and some
4 Indian money.

5 Q So now, instead of \$50 and three beers it's a
6 hundred dollars?

7 A Yes. Hundred dollars in crack -- worth of crack.

8 Q Okay. And then \$25, I guess, in cash; is that
9 correct?

10 A Yes, sir.

11 Q All right, sir. You, at some point, ended that
12 interview as well?

13 A That's correct.

14 Q Two days later, August the 21st, did you also go
15 back and talk to him?

16 A Yes, I did.

17 Q I will hand you State's Exhibit 42, ask if you
18 could identify that, please.

19 A It's another Miranda rights form, filled out the
20 same way, through the same procedure with Mr. Joshua
21 Poacher.

22 Q All right. And this is the form that you gave him
23 and he filled out; is that correct?

24 A That is correct.

25 Q Let me show you what's been marked as State's

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 Exhibit 43, ask if you could identify that, please.

2 A Yes, sir. This is the recorded disc of my
3 interview with Mr. Joshua Poacher.

4 Q And this is on the 21st of August; is that
5 correct?

6 A That is correct.

7 Q And is this a -- I believe there's also a
8 transcript along with it. Is that an accurate transcript as
9 to what you see and hear on the video?

10 A That is correct.

11 Q What room is this taken in?

12 A At the interview interrogation room at the annex
13 building of the Jasper County Sheriff's Office.

14 Q Okay. And you reviewed this. I believe there's
15 some initials on here as well?

16 A Yes, I did.

17 MR. STONE: At this time, Your Honor, we move
18 State's Exhibit 43 and 42 into evidence.

19 THE COURT: Any objection?

20 MR. PLEXICO: Yes, Your Honor. Our prior
21 objection, Your Honor.

22 THE COURT: Subject to prior objection, they're
23 admitted.

24 *(Whereupon, State's Exhibit No(s). 42 marked for*
25 *identification and received in evidence.)*

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 *(Whereupon, State's Exhibit No(s). 43 marked for*
2 *identification and received in evidence.)*

3 MR. STONE: First of all, Your Honor -- let me
4 hand you some copies -- this is copied. Ask to be
5 able to publish it first, just the Miranda warnings
6 for the jury.

7 THE COURT: Yes.

8 MR. STONE: If you'll do that for me.

9 (Exhibits published to jury.)

10 BY MR. STONE:

11 Q All right. First of all, before we go, this is
12 Mr. Poacher here in the orange suit; is that correct?

13 A That's correct.

14 Q All right. And who was with him?

15 A That's the deputy. I don't recall his name.

16 Q Okay. And this is August the 21st, 2015, Friday.
17 1442, what time is that?

18 A That's two -- but that time is incorrect. Let me
19 make certain.

20 Q Let me hand you this form back. I think you got
21 the time on this form as well.

22 A Yeah. I think that time -- that is not correct.
23 It's 3:02 on here -- 1442 would be 2:42 p.m.

24 MR. STONE: All right. Go ahead and play it.

25 (Playing video.)

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 BY MR. STONE:

2 Q This form, State's Exhibit 42, basically, this is
3 the form that he just read to you and filled out; is that
4 correct?

5 A That's correct.

6 Q Now, you started this interview at 3:02.
7 Initially through this interview, did he admit any --
8 acknowledge in any way he had anything to do with the death
9 of the Patels?

10 A Initially, no.

11 Q Did he indicate during this initial part of the
12 interview that he had anything to do with the robbery of the
13 Patels?

14 A No, sir, he did not.

15 Q And at some point in time, did he change his
16 story?

17 A Yes, he did.

18 Q Okay.

19 MR. STONE: Your Honor, I'm going to introduce
20 the entire disc, but I'd like to go straight to the
21 part in which he starts actually talking about his
22 involvement.

23 THE COURT: All right. Subject to prior motions
24 and rulings.

25 MR. PLEXICO: He's introducing the entire disc?

DIRECT EXAMINATION OF R. JOHNSON BY STONE

1 THE COURT: He said he's going to go to -- jump
2 forward in the tape.

3 MR. PLEXICO: Yes, but did he also say he's
4 introducing the entire disc?

5 MR. STONE: Yes, sir.

6 THE COURT: Yes, sir.

7 MR. PLEXICO: Okay. I understand.

8 MR. STONE: No further questions, Your Honor.

9 THE COURT: Cross-examination.

10 MR. PLEXICO: Yes, Your Honor. One moment,
11 please.

12 CROSS-EXAMINATION

13 BY MR. PLEXICO:

14 Q At the end of your second interview with
15 Mr. Poacher, did he ask for an attorney?

16 A Yes, he did.

17 Q Okay.

18 A Yes, he did.

19 Q And that was on August 16th at 12:34?

20 A Yes, August 16.

21 Q 12:34, p.m.?

22 A Let me look at that form to make certain of the
23 time, but I know it was on the same day that he was
24 arrested.

25 Yes, 12:50, according to my memorandum

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 interview.

2 Q Okay. Now, last time you talked with him, did you
3 tell him there's a difference between -- "Look here, there's
4 a difference between being a cold-blooded killer and someone
5 at the spur of the moment that takes someone's life."

6 A I probably did.

7 Q Okay. Did you have the transcript? Do you have a
8 copy of the transcript?

9 A Not -- not handy.

10 Q Okay. All right. Do you -- you don't dispute
11 that you said that?

12 A Something along that line. I've often made that
13 statement during interviews.

14 Q All right. Now, I'm saying that you went there
15 with the mindset to murder those people. No, no. You or
16 whoever. That was not the intention. We could tell that
17 from the crime scene. That's a good thing, that you
18 didn't went there with intention just to bluntly murder
19 somebody. But stuff happens. Paraphrasing.

20 When you go do the robin hood, you know that anything
21 is possible can go wrong.

22 Did you tell him that?

23 A That's very possible. Speak up.

24 Q Did you continue --

25 THE COURT: Speak up a little louder. He said he

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 couldn't hear you.

2 BY MR. PLEXICO:

3 Q I'm sorry. You couldn't hear that?

4 A I have sinus. My sinus is bothering me and it's
5 affecting my hearing.

6 Q Okay. All right. Well, did you -- when did my
7 voice drop off? I'm so sorry.

8 A No, I heard it, but it -- I had to strain to hear
9 you.

10 Q Okay. I'm sorry. I'll try and speak up, sir.
11 Let me know if you can't hear me.

12 Is that what you told him?

13 A Yes. That's a high probability I did.

14 Q Okay. But you're not disputing you told that?

15 A No, sir.

16 Q Okay. All right. And this was earlier in the
17 interview that wasn't played?

18 A That's correct.

19 Q Okay. Now, you only went there with intention to
20 kill -- kill them people, that's why you were able to look
21 me in the eye and say you were no murderer. And there's a
22 difference between being a murderer and a killer.

23 A That's correct.

24 Q So you continued along that line of questioning,
25 correct?

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 A Correct.

2 Q And that murderer is that one who has entered
3 their mind to just take someone's life. A killer is someone
4 who, when they went there for one reason, "S" went south and
5 something else happened.

6 Is that -- you continued with that line?

7 A That is correct.

8 Q Okay. Now -- so you have a persuasive way of
9 talking to people, correct?

10 A I don't know if it's persuasive, but I -- I just
11 try to talk to people as I would have them talk to me.

12 Q Okay. But you have interviewed people for law
13 enforcement for how many years, sir?

14 A Since -- definitely since 2000 as an investigator,
15 but my law enforcement career spans longer than that.

16 Q Well, almost 20 years? I mean your experience --

17 A Roughly 27 years all together.

18 Q You're an experienced man in law enforcement?

19 A Yes, sir.

20 Q Okay. All right. You got a search warrant,
21 correct?

22 A Yes, sir.

23 Q And that search warrant, the arrest warrant, that
24 is -- that's for murder; is that not correct?

25 A The search warrant is to search his room.

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 Q Excuse me. I'm sorry. The arrest warrant. You
2 got the arrest warrant for murder?

3 A Yes, sir.

4 Q Okay. All right. So you weren't being truthful
5 with him; is that correct?

6 A I'm sorry. Say again?

7 Q So you talked to him, you were not being truthful
8 with him; is that correct?

9 A Well, I wouldn't say that I wasn't being truthful
10 because in the initial part of the investigation, you don't
11 really know exactly what's what. So often time we just
12 operating off of what's available to us at the very moment.
13 Now, throughout that investigation a lot of things shift and
14 change back and forth.

15 Q Okay. Later in the interview -- I'm trying to
16 find the page -- you told him, "I don't think you
17 intentionally not -- matter of fact, I'm not going to say
18 that. I don't think -- I'm saying I'm certain that was not
19 your intention to take those people. I'm not saying for
20 certain, all right. So -- so -- so, no, you're not a
21 murderer." And he says, "I'm not a killer either." Okay?

22 A Uh-huh. (Indicating affirmatively.)

23 Q Now, so, you continued on in the conversation
24 telling him that, from your review of the facts, that you
25 didn't think he was a murderer; is that correct?

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 A That's correct.

2 Q Okay. All right. And he did tell you the Indian
3 man winked out or whatever and started speaking a foreign
4 language to him and ran at him and grabbed at the gun. Is
5 that what he says at the interview, and grabbed at him?

6 A You say he "winked out"?

7 Q Winked out or he just got excited and started
8 speaking in another language he, my client, said he didn't
9 understand, and he said -- he used the word "attack" one
10 time. The old man attacked him; is that correct?

11 A Yeah, that's -- that's -- along those lines.

12 Q Okay. And he tried to push him away?

13 A Yes, sir.

14 Q All right. Now -- and he said he was scared?

15 A Yes, sir.

16 Q Okay. So he shot?

17 A Yes, sir.

18 Q All right. But he said he didn't know what his
19 intentions were in that interview that we just heard. He
20 didn't know the intentions of the Indian man in the
21 interview; is that correct?

22 A That's correct.

23 Q All right. And he kept saying, "I just asked for
24 a light," and he couldn't understand what happened.

25 Is that the way that he described it to you?

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 A Yes, sir.

2 Q So -- and then he says the woman, Indian woman,
3 came running out at him after screaming something, and this
4 was after he had fired the first shot. And he said he was
5 scared and he just -- he didn't know what to do, and that's
6 why he fired more; is that correct?

7 A I don't think that he fired more at the gentleman.

8 Q Not at the gentleman, the Indian woman.

9 A The Indian woman, yes.

10 Q Okay. That is what he said. Okay.

11 And he kept saying, "I didn't mean for this to happen."

12 A Yes.

13 Q And he also said before it happened, he was headed
14 toward the door?

15 A Yes, sir.

16 Q Okay. All right. Now -- so he thought he was in
17 danger; is that correct? Or he could be?

18 A I'm sorry, say again.

19 Q He expressed to you he thought he was in danger?

20 A Yes.

21 Q Okay. All right.

22 Now, the end of the second interview, that was when?
23 On August 16th, correct?

24 A Yes, sir.

25 Q All right. He asked for an attorney?

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 A Correct.

2 Q Okay. Now, August 17th, did you see to it an
3 attorney talked with him?

4 A I'm sorry.

5 Q Did you see to it that an attorney talked to him
6 on August 17th, the next day?

7 A Did I see to it that he --

8 Q Yes. Since he asked for a lawyer, did you do
9 anything to help him? He as -- to help him get the advice
10 of an attorney?

11 A It's not our job to do that.

12 Q And the next day, August 18th, did you do
13 anything, did you call the clerk of court, did you do
14 anything, call the Public Defender's office, we want to
15 interview this guy, would you go talk to him and see if we
16 could continue interviewing him?

17 A No. We're still following up other leads.

18 Q Okay. So the 16th, you didn't call a lawyer, the
19 17th, and the 18th; is that correct?

20 A That's correct.

21 Q But he's asked for an attorney. You're
22 interrogating him about a double homicide, correct?

23 A Correct.

24 Q Okay. All right. Now, was he crying in your last
25 interview?

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 A The very last one?

2 Q Yes.

3 A Yes, there was some tears.

4 Q All right. And it took four times to talk to him,
5 right?

6 A Correct.

7 Q All four without a lawyer, right?

8 A Correct.

9 Q Okay. Even though after the second time, he
10 expressed he wanted a lawyer?

11 A Correct.

12 Q All right. So, he's sitting in the Jasper County
13 jail, right?

14 A Yes.

15 Q Okay. He doesn't have any friends or family or
16 getting any advice from anybody in the Jasper County jail?

17 A I don't know what he got from the county jail.

18 Q Okay. Do you know of any counselors that work for
19 the Jasper County Detention Center, sir, in your years of
20 service in Jasper County?

21 A No, sir.

22 Q Okay. All right. He wasn't out on bond, correct?

23 A No, sir. No, sir.

24 Q All right. Now, so don't you think he's under a
25 lot of pressure to be sitting there at that jail?

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 A That, I can't think. I've never been in that
2 predicament.

3 Q Okay. All right. So he's sitting in the jail
4 minute after minute, hour after hour, day after day, after
5 asking for legal advice and legal counsel or a lawyer to
6 consult with, and he hasn't gotten it. And don't you think
7 that's going to diminish his capacity, his will to look
8 after his best interest?

9 A I cannot speak on the psychological aspect of it.

10 Q Okay. Wouldn't you like for a suspect to sit in
11 jail long enough until he's finally going to throw in the
12 towel and tell you what you want? Especially if there's no
13 lawyer around to give him legal advice about his rights?

14 A I've never took any thought to that.

15 Q Okay. But you did nothing.

16 A Sir?

17 Q You did nothing to help him in that line, correct?

18 A Not secure an attorney.

19 Q Okay. All right. Did the sheriff's department do
20 anything?

21 A I can't answer that.

22 Q Okay. All right. Public Defender's Office makes
23 regular visits to the jail, correct?

24 A I'm assuming.

25 Q Okay. So did anybody tell one of the public

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 defenders when they were at the Jasper County Detention
2 Center already, would you stay an extra ten minutes and talk
3 to this guy?

4 A I have no idea.

5 Q Okay. But after four times, you finally got what
6 you wanted. You didn't bother talking to him a fifth time,
7 I noticed.

8 A No, sir, I did not.

9 Q Okay. All right. So that's what you were after
10 the entire time?

11 A The truth.

12 Q And what you were after the entire time was a
13 statement you could use in court against him, correct?

14 A No, sir.

15 Q All right. And you had no concern whatsoever
16 whether or not he could get a lawyer, even when he asked for
17 one?

18 A That's not correct.

19 Q That's not your job, is it?

20 A Absolutely not.

21 Q Did you testify that's not your job?

22 A That's not my job to provide him with an attorney.

23 Q All right. And so that was fine by you?

24 A I just don't take any thought to it. If he wants
25 a lawyer, I stop interviewing him, don't come back to him

CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 until he requests it to hear from -- requests me to come
2 back, or his attorney. In this case, he requested it. Made
3 a return --

4 Q Okay. But he called you, did he have a cell phone
5 in his jail cell?

6 A Not that I'm aware of.

7 Q Okay. So you have no personal knowledge of him
8 asking anybody, because you're not present, that he wanted
9 to talk to you again after that?

10 A No, sir. No personal knowledge.

11 Q All right. But you sure talked to him again,
12 right?

13 A That is correct.

14 Q Then you talked to him yet again, correct?

15 A That is correct.

16 Q And by this time, this is days later, right?

17 A Yes, sir.

18 Q Okay.

19 MR. PLEXICO: Court's indulgence.

20 (Pause.)

21 MR. PLEXICO: I don't have anything further,
22 Judge.

23 THE COURT: Redirect.

24 MR. STONE: Just briefly.

25 REDIRECT EXAMINATION

REDIRECT EXAMINATION OF R. JOHNSON BY STONE

1 BY MR. STONE:

2 Q And on August the 19th, when you spoke to him, did
3 you ask him if he wanted to talk to you after he had already
4 said he wanted a lawyer on the 16th?

5 A That is correct.

6 Q And that's a conversation you had directly with
7 him?

8 A Yes, sir.

9 Q And what did he tell you?

10 A He told me that he did request to speak with
11 myself and/or Major Donald Hipp, which was at the department
12 at the time, and that he was willing to talk now without a
13 lawyer.

14 Q Of course, on the 19th, after he asked for that,
15 after you read him his rights again, he still doesn't tell
16 you though?

17 A Still doesn't tell us anything.

18 Q Now, at some point in time you said, and I think
19 you were cross-examined on this, that you were telling him
20 there's a difference between cold-blooded murder and things
21 that just happen?

22 A Correct.

23 Q Sounds like you were minimizing it?

24 A Absolutely.

25 Q Why?

REDIRECT EXAMINATION OF R. JOHNSON BY STONE

1 A Well, I don't know what's inside of his mind or
2 whomever I'm -- I'm, you know, just investigating. So I
3 take whatever information I have. So the best thing to do
4 is to look at it from a minimized standpoint. Sort of open
5 it up so the individual can see the bigger picture of it
6 all.

7 Q Is that a technique that you use in order to get
8 people to talk to you and tell you what happened?

9 A Yes, sir. Yes, sir.

10 Q All right. And one other question that
11 Mr. Plexico asked you, I think, was that the Defendant had
12 said at least once or twice that Mr. Patel came at him, he
13 didn't know what he was doing, and he -- and he basically
14 got scared and turned and shot him; is that correct?

15 A That's correct.

16 Q The Defendant also told you that he was either
17 high or coming off of a high at the time?

18 A That's correct.

19 MR. STONE: Nothing further, Your Honor.

20 RE-CROSS EXAMINATION

21 BY MR. PLEXICO:

22 Q After days without a lawyer, he finally went back
23 and talked to y'all and gave up on getting one, correct?

24 A Yes, sir.

25 Q All right. Now -- and you use minimalization to

RE-CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 deceive and trick people to get to hear what you want during
2 an interview; isn't that pretty much it?

3 A No, sir.

4 Q But isn't that a form of trickery?

5 A I don't view it as a form of trickery, I view it
6 as interview interrogation technique.

7 Q Good police work.

8 A Good police work.

9 MR. PLEXICO: I don't have anything further.

10 MR. STONE: That's it, Your Honor.

11 THE COURT: Thank you. You may step down.

12 MR. STONE: Dr. Nicholas Batalis or --

13 MR. PLEXICO: Let me see.

14 MR. STONE: Can I approach?

15 (Discussion at the Bench.)

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the jury, we have a witness who's from out of the town
18 here and not to be very long, I don't believe. Would
19 you check with your jury in the jury room -- we're
20 going to take a quick break and bring you back out
21 here. We want to make sure everybody's okay to finish
22 up with him for the day, then we'll go home for the
23 evening. But if you'd go back to the jury room,
24 please, sir.

25 (Jury exits the courtroom at 5:02 p.m.)

RE-CROSS EXAMINATION OF R. JOHNSON BY PLEXICO

1 THE COURT: Let's take about ten minutes.

2 (Whereupon, there was a recess.)

3 THE COURT: Please be seated. All right. Are
4 you ready?

5 MR. STONE: Yes, sir.

6 THE COURT: Would you bring the jury in, please.
7 Defense ready?

8 MR. PLEXICO: Yes, Your Honor.

9 (Jury enters the courtroom.)

10 THE COURT: All right. Mr. Foreman, were you
11 able to clear with your jury whether or not they're
12 able to hear this last witness of the day?

13 JURY FOREMAN: Yes, Your Honor. Have you given
14 us a timeframe on it?

15 THE COURT: Timeframe? I would anticipate
16 probably 30 minutes or so.

17 Does that sound about right?

18 MR. STONE: Yes, sir.

19 THE COURT: Roughly 30 minutes.

20 JURY FOREMAN: I think everybody's in agreement.

21 THE COURT: Okay. Thank you very much. Thank
22 you.

23 All right. Thank you.

24 Mr. Solicitor, call your next witness.

25 MR. STONE: Dr. Nicholas Batalis.

DIRECT EXAMINATION OF BATALIS BY STONE

1 Thereupon,

2 NICHOLAS BATALIS

3 was called as a witness, having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STONE:

7 Q Dr. Batalis, let me get you to pull that

8 microphone close to you, sir.

9 How do you spell your last name, just for the purpose

10 --

11 A It's Batalis, B-A-T-A-L-I-S.

12 Q All right. And I'm calling you Dr. Batalis. What

13 exactly are you a doctor of?

14 A I'm a forensic pathologist.

15 Q All right. What is a forensic pathologist? What

16 is that?

17 A So pathology, kind of stepping back, pathology is

18 a sub specialty in medicine that deals with the study and

19 diagnosis of disease. So a general pathologist would be the

20 one, if you have a biopsy taken, if you have surgery and

21 they take a tumor out, the pathologist would be the one

22 telling the clinician whether it's cancer, whether it's

23 benign.

24 Forensic pathology is in a sub specialty, so

25 if you're completing the general training, you do further

DIRECT EXAMINATION OF BATALIS BY STONE

1 training, and it really revolves around the legal aspects of
2 medicine, specifically performing autopsies to determine the
3 cause and manner of death.

4 Q Now, have you been doing this for a while?

5 A Yes. I've been in my position for almost nine
6 years now.

7 Q Now, as to forensic pathology, what specific
8 training do you have to allow you to be an expert in the
9 field of forensic pathology?

10 A Sure. It's again, just stepping back just one
11 second, after finishing college, then went on to medical
12 school at Indiana University. Came down to Charleston to
13 MUSC for my general pathology residency. So it was four
14 years of, again, the general pathology training. After
15 that, took a board examination to become board certified in
16 general pathology. I then spent one year in Dallas, Texas
17 at the Dallas County Medical Examiner's Office, where that
18 year was spent exclusively in the field of forensic
19 pathology, learning autopsy and some other crime scene type
20 things.

21 Again, after that year concluded, then took
22 another exam to become board certified in forensic pathology
23 and, again, been practicing for about nine years after that.

24 Q And you are now practicing at the Medical
25 University of South Carolina; is that correct?

DIRECT EXAMINATION OF BATALIS BY STONE

1 A Yes. When I came back from Dallas, I -- I went
2 back to the place I trained and took a position there, and
3 that's where I've been for the duration of my employment.

4 Q Sorry to interrupt. And you teach as well; is
5 that correct?

6 A Yes.

7 Q Okay. And you've got some classes tomorrow
8 morning, in fact?

9 A Yes, I do. I appreciate the time save.

10 MR. STONE: Your Honor, at this time, we offer
11 Dr. Batalis as an expert in the field of forensic
12 pathology.

13 MR. PLEXICO: I have no objections.

14 THE COURT: All right. Ladies and gentlemen, I
15 just remind you what I've told you previously twice
16 about expert witness testimony.

17 All right. Go ahead, please, sir.

18 BY MR. STONE:

19 Q Dr. Batalis, first I'd like to ask you, you did --
20 you performed the pathology -- the autopsy on both of the
21 Patels in this case; is that correct?

22 A Yes, I did. On August 18th, 2015.

23 Q All right. First, let me go to Mr. Patel and ask
24 specifically about that. First of all, how old was
25 Mr. Patel?

DIRECT EXAMINATION OF BATALIS BY STONE

1 A He was 72 years old at the time of death.

2 Q And your testing on that, what did you do?

3 A I'm sorry. Could you clarify?

4 Q I'm sorry. What -- you do the autopsy on

5 Mr. Patel first or, this order. What do you find?

6 A So the major finding in Mr. Patel's autopsy were
7 two gunshot wounds. He had one gunshot wound that entered
8 the back of the left wrist, kind of similar to where my
9 watch is, that exited just on the side of the wrist, kind of
10 near the base of your left thumb. The other gunshot wound
11 he had was on the left side of the neck, kind of almost in
12 the midline on the left side of the neck.

13 That gunshot, after the bullet entered the
14 skin there, it grazed a couple of the vertebrae, or a couple
15 of your spinal bones, went through the esophagus. And the
16 esophagus is the tube that takes food from your mouth down
17 to your stomach. And then right next to that is the carotid
18 artery. So the carotid artery is one of the major arteries,
19 blood vessels that takes blood from the heart up to the
20 brain. So one of the major blood vessels went through that
21 carotid artery and kind of continued through the tissues of
22 the upper chest and shoulder before exiting through the
23 right shoulder.

24 Q Let me show you what's been marked as State's
25 Exhibit No. 44, ask if you could identify that, please, sir.

DIRECT EXAMINATION OF BATALIS BY STONE

1 A Yes. That's a diagram I prepared showing the
2 location of the wounds.

3 Q And this is as to Mr. Patel; is that correct?

4 A Yes.

5 MR. STONE: At this time, Your Honor, we'd move
6 State's Exhibit 44 into evidence.

7 MR. PLEXICO: May I see that first, please, Your
8 Honor.

9 THE COURT: Yes.

10 MR. PLEXICO: I have no objections, Your Honor.

11 THE COURT: Admitted.

12 *(Whereupon, State's Exhibit No(s). 44 marked for*
13 *identification and received in evidence.)*

14 BY MR. STONE:

15 Q Dr. Batalis, if I could get you to come down,
16 please, and explain this chart to the jury, please, sir.

17 A Sure. So in the process of performing autopsy,
18 the first thing we'll do is we'll take pictures of the body
19 as we receive it, before we do any --

20 Q Excuse me. Just one moment. Let me scoot by
21 where he can see.

22 A Before we make any changes to the body. After
23 that, we'll then again take pictures, we'll then remove any
24 clothing and the evidence, bag that up, wash the body and
25 perform our external examinations. As we're doing this, you

DIRECT EXAMINATION OF BATALIS BY STONE

1 can see there's some indicators, height, weight, all sorts
2 of -- look for tattoos, that sort of thing.

3 So my main diagram was much busier with a lot
4 of other wording on here. So this is a cleaned up diagram
5 that just shows the two gunshot wounds.

6 So the first one I mentioned earlier is
7 labeled No. 2 here, just randomly. This shows an entrance
8 on the back of the left wrist, and it exits again. This is
9 still -- the body's flipped over, it's still the left hand
10 here. Again, kind of the front outside part of the base of
11 the thumb.

12 The more significant wound in this case was
13 again, it entered on the left side of the neck, which is No.
14 1 in the circle here. And, again, that bullet then traveled
15 across, going through part of the spine to the esophagus,
16 again, the right, carotid artery, that major artery, which
17 travels just right of that midline here. The bullet
18 continued traveling through to a point somewhere here on the
19 front part of the right shoulder, where it exited.

20 Q Let me ask you this. Can you tell from either one
21 of those wounds at autopsy, the distance, or whether or not
22 it was a contact wound or a distant wound?

23 A Sure. So when a gun is fired, not just the bullet
24 comes out. So there's a couple of other things that come
25 out that can help us to determine the range of the -- of the

DIRECT EXAMINATION OF BATALIS BY STONE

1 weapon.

2 So first, we would start with a contact
3 wound. So if a gun is pressed up against the skin,
4 sometimes you'll see actually an impression or a muzzle
5 imprint where that gun is really butted up against the skin.

6 When that gun is fired, one material that
7 comes out of is called soot, which is basically just kind of
8 the burned up gun powder from the explosion that propels
9 that bullet outward.

10 So the other thing we'll see in a contact
11 wound is that soot will get built up inside the wound
12 because the gun is pressed up against there.

13 As you pull that gun away, that soot will
14 still kind of form a puff of smoke or a cloud, and then you
15 can get deposits on the skin. That all depends on the
16 weapon and the ammunition, but that will go -- soot will go
17 up to about 6 inches to a foot from the barrel of the gun
18 until it gets deposited.

19 The other thing that we can see is what we
20 call is stippling. So stippling is when -- it's now --
21 again, it's not just the burned up soot. Now, we have
22 pieces of gun powder that are burning, or some that didn't
23 get burned up in the explosion when the gun was fired. They
24 come flying out the barrel of the gun and they'll travel a
25 little bit further, from 2 to 4 feet, depending on the

DIRECT EXAMINATION OF BATALIS BY STONE

1 weapon and the ammunition. That will strike the skin and
2 cause little scrapes, what we call stippling.

3 So if we don't have either of those things,
4 we know we're beyond that 2 to 4 feet radius.

5 So getting back to your question, in this
6 case, neither wound had any soot or stippling, which to me
7 would suggest that the weapon was at least 2 to 4 feet when
8 it was fired, or there was something in between. So -- a
9 window, a heavy piece of clothing, door, something that
10 would absorb that gun powder.

11 But, otherwise, if there's no interfering
12 object, we know that it's at least 2 to 4 feet away when the
13 gun was fired.

14 Q So not right up on the skin?

15 A Correct.

16 Q All right. Can you tell me if it caused the
17 manner of death for Mr. Patel?

18 A Yes. His cause of death was gunshot wound to the
19 neck. And the mechanism, so the real reason he died, would
20 have been from bleeding out and, again, lacerating that
21 major blood vessel. And his manner of death would be
22 homicide.

23 Q Okay. Did you also do the autopsy and -- I tell
24 you what, you can stay right there if you'd like to. Just
25 make sure she can hear you.

DIRECT EXAMINATION OF BATALIS BY STONE

1 A Sure.

2 Q Did you also do the autopsy on Mrs. Patel?

3 A I did.

4 Q And could you tell me, first of all, how old was
5 Mrs. Patel?

6 A She was 67 years old at the time of the autopsy.

7 Q And what were your findings as to Mrs. Patel?

8 A So her major findings that she had, four gunshot
9 wounds. She had a cluster of three gunshot wounds that all
10 entered right on outside of the left arm or left shoulder
11 area that traveled across her body. All three of them
12 traveled, again, from left to right across the body. And
13 these really went through pretty superficial. And once they
14 entered, they were close enough that I can't really tell
15 which one went where, but they kind of took the same
16 direction.

17 So one entered the shoulder and ended up
18 coming out of the skin in kind of the upper left side of the
19 chest. One went into the shoulder, came out of the chest,
20 went back into the skin, left over kind of near the -- near
21 the right side of the chest near the armpit. Exited there,
22 went into the right arm and then exited the right arm. So
23 one --

24 Q Let me stop you there. I don't mean to interrupt
25 you, but I've shown you an exhibit with basically a

DIRECT EXAMINATION OF BATALIS BY STONE

1 mannequin showing this. Would that aid in your testimony,
2 that you could explain that better?

3 A I think it would.

4 Q All right. If you could, please -- and I want to
5 make sure the jury and everyone sees. If you need to
6 consult your report, that's perfectly fine.

7 Do you number these -- I know you number them as
8 Gunshot Wounds 1, 2, and 3. Is there any way to tell what order any
9 of these were in?

10 A No. And when I number them, it's just really for
11 description purposes. So when I'm just describing them, I
12 can't tell what order or the severity. It's just the way
13 that I identify them, for me to put these things back
14 together.

15 Q And you actually placed these wires here; is that
16 correct?

17 A I did.

18 Q All right. Let me just hand you exit wound --
19 Entrance Wound 1. Could you tell -- and if you need to
20 refer to your notes, that's perfectly fine.

21 A Sure. So basically, we'll put one through three
22 on these wounds, but again, it's somewhat arbitrary because
23 once these enter here, I'm not sure which one exited where.
24 We know they all three went the same direction.

25 But so again, one of the wounds, as I

DIRECT EXAMINATION OF BATALIS BY STONE

1 mentioned -- oh, this is No. 1, the first one I described --
2 entered this cluster on the left shoulder, went through,
3 just again some of the muscle and fat, and then exited the
4 upper left side of the chest. So, that would be the first
5 one in this cluster.

6 Q Okay. Entrance Wound No. 2?

7 A Sure. So, again, Wound No. 2, again, entered in a
8 fairly tight cluster here in the left shoulder. This one
9 then, once again, through that same pathway again, just
10 through kind of the soft tissues of the chest, exited the
11 body. But since it was coming literally straight across the
12 body, it then re-entered just a short distance away.
13 Then -- our rods aren't long enough -- but then exited the
14 skin over here, re-entered the right arm, basically right
15 across from one another. Continued through and then exited
16 on the back surface of the right arm.

17 Q Entrance Wound No. 3.

18 A Sure. So two and three, again, nearly identical,
19 entering the same location, going through just the kind of
20 soft tissues, superficial part of the chest here, towards
21 the top. Again, exits the skin of the chest, coming
22 straight across the body between the breasts, enters the
23 body again. This one then again, very similar to the one
24 before it, exited in the area of the right armpit, and then
25 entered the right arm. And then that was one of the bullets

DIRECT EXAMINATION OF BATALIS BY STONE

1 that we recovered. That was the bullet that we recovered.

2 Q All right. And these three shots here, all coming
3 in at this angle with that tight of a pattern, what can that
4 tell us? Or what does that tell you?

5 A We know the trajectory, and so we say the
6 trajectory, we know the relationship of the barrel of the
7 gun to the body when the gun was fired.

8 And so the trajectory here, as you can tell,
9 essentially is purely from the decedent's left to her
10 right-hand side. It did travel a little bit downward as it
11 grooved, but predominantly traveling across the body.

12 Q And the fact that they are close as far as a
13 pattern, does that tell us anything?

14 A I mean, they're again so close, and again with the
15 trajectory, the pathway is going the same direction, most
16 likely scenario would be they were fired in rapid
17 succession. They all line up very close to each other and
18 have the exact same pathway across the body. These were
19 likely fired one after another.

20 Q Of these three shots, did any of these three shots
21 actually kill Mrs. Patel?

22 A No. Again, all these, they would have caused, you
23 can imagine you poke some -- use a fairly big weapon, poke a
24 few holes in your skin, you're going to get some bleeding
25 from that, but none of the deep organs, none of the major

DIRECT EXAMINATION OF BATALIS BY STONE

1 blood vessels were injured during any of these gunshots. So
2 these would not be considered fatal wounds unless maybe she
3 didn't get treatment for days or something like that.

4 Q Let me then go finally to the fourth shot. You
5 could tell the jury, and I'll give you the card for Gunshot
6 No. 4, if you could explain that to the jury.

7 You got some behind you, I want to make sure the jurors
8 can see it.

9 A So Gunshot Wound No. 4, again, you can see this
10 one, totally different location. So, again, these three
11 tightly clustered all in the same direction. Gunshot Wound
12 No. 4 comes in the left side of the back, and then this is
13 exiting the base of the neck, kind of I'm holding the tip of
14 it up here.

15 So this one would have been the fatal gunshot
16 wound, if you will. Because after entering the left side of
17 the back here, it went through one of the ribs, the left
18 lung sits right beneath that, went through that left lung,
19 came out the front side of the left lung and so we're
20 nearing the front now, is the aorta.

21 So the aorta is basically the biggest blood
22 vessel in the body, it comes right off the heart. It
23 delivers blood everywhere. So this got the lung and then
24 the aorta again that -- you know, two major organs and
25 things that would bleed very, very quickly, and have a lot

DIRECT EXAMINATION OF BATALIS BY STONE

1 of bleeding.

2 And then this one, again, exited the base of
3 the neck, where the pointer is coming out here.

4 Q All right. Now, what can you tell us as far as
5 the location of the gun compared to the entrance wound?

6 A So, again, this is an approximate here, but again,
7 this is relating the -- how the gun, the barrel of the gun
8 to the body when it was fired. So, again, if she happened
9 to be standing up like this, we would know that the gun
10 would have had to have been fired from a lower position.

11 There's other ways, though. If she happened
12 to be laying down on the ground, it could be one that's
13 fired from above. Basically, if you kind of take this and
14 put it like that, so now the gun doesn't have to be below
15 the body. Because if she was already laying down, then it
16 could just be relatively pointing down towards the body.

17 Q All right. Let me -- and let me move this over
18 here. I think we had some jurors over there who could not
19 see that. If you could do that again.

20 A Sure. Just illustrating again that if she's up,
21 we're looking at a gun would have had to have been below.
22 But if she was on the ground or leaning over, then it could
23 be a matter of just kind of walking over her, and you could
24 get that same trajectory.

25 Again, so without moving it, we could move

DIRECT EXAMINATION OF BATALIS BY STONE

1 her in any sort of direction. We're just going to know that
2 the gun would have been at some point coming away from this
3 point here.

4 Q Now, as to these entrance wounds you're showing
5 there, clearly the gun is to this side, into the back. No
6 gunshot from here; is that correct? And I'm looking face
7 straight on; is that correct?

8 A Correct.

9 Q All right. And the other thing you noted is that
10 this bleeds very quickly when you hit that -- what, is that
11 the carotid artery?

12 A The carotid artery was injured in the gentleman.
13 She injured the aorta, which again would be the major blood
14 vessel. And, again, it was injured near the front. So,
15 again, it would bleed very, very rapidly, and a great deal
16 of blood.

17 Q Okay. All right, sir. Go ahead and take the
18 stand again.

19 A (Witness complies.)

20 Q Let me first show you what's been put into
21 evidence as State's Exhibit 15. If you can get that up on
22 the monitor.

23 And, Doctor, from that photograph, do you see any blood
24 on this side of the -- basically on this side of the room, on this
25 side of the Patels?

DIRECT EXAMINATION OF BATALIS BY STONE

1 A No. I don't see any visible blood on this -- from
2 this angle.

3 Q And the blood you're describing, as far as the
4 blood you just described, and it would come out quickly,
5 where Ms. Patel was shot over on this side, would you expect
6 to see blood over here?

7 A Definitely. There would be a trail of blood to
8 where she ultimately collapsed.

9 Q Let me show you what's been marked now and put
10 into evidence as State's Exhibit 4. Let me put that up on
11 the monitor.

12 What can you tell us about that photograph?

13 A So, again, this shows the bodies, I mean, as they
14 were found. And you can see there's large pools of blood
15 underneath both bodies. Again, the previous photo didn't
16 show, again, any blood around the bed or other floor, those
17 type of areas. But now, you can see major pooling coming
18 from their injuries.

19 Q What does that tell you?

20 A They died in these positions, and the fact that
21 there's no blood otherwise would likely also say they were
22 shot there and then died there, in close proximity.

23 Q Thank you, Doctor. The manner and cause of death
24 for Ms. Patel?

25 A The cause of death for her was gunshot wounds of

DIRECT EXAMINATION OF BATALIS BY STONE

1 the trunk. Again, the more specific mechanism would have,
2 again, been from bleeding out from entering her lung and the
3 aorta, and her manner of death was homicide.

4 MR. STONE: Thank Your Honor. Thank you for
5 letting me put him on.

6 THE COURT: Cross-examination.

7 MR. PLEXICO: Yes, please, Your Honor.

8 CROSS EXAMINATION

9 BY MR. PLEXICO:

10 Q Could that, if she had bent over, would that have
11 contributed to that angle on the wound? If she had bent
12 sideways to bending over, could that have attributed to
13 that?

14 A Yeah. Certainly -- I'm not sure exactly, but any
15 -- any movement of her body would change the relationship of
16 the weapon to her.

17 Q So if she had bent down, that could have caused
18 that angle?

19 A Correct.

20 Q Okay. All right. So it's not -- you're not
21 testifying the only way it could have been caused is
22 somebody walked up to her and shot her -- shot her in that
23 particular way?

24 A I'm not saying that's the only way it could be
25 done.

CROSS EXAMINATION OF BATALIS BY PLEXICO

1 Q Okay. Thank you, sir.

2 MR. PLEXICO: I don't have anything further.

3 THE COURT: Redirect.

4 MR. STONE: Just briefly. Just very briefly.

5

6 REDIRECT EXAMINATION

7 BY MR. STONE:

8 Q If she had, in fact, been bent down like this, the
9 shooter would still have to be standing over her; is that
10 correct?

11 A Or approaching from behind. I mean, as you -- if
12 she happened to be leaning just like you are now, somebody
13 in the jury could basically get that angle. So, I mean --

14 MR. STONE: Thank you. No further questions.

15 THE COURT: May this witness be excused?

16 MR. STONE: He may.

17 MR. PLEXICO: There's nothing further from me.
18 Nothing further from me, Your Honor.

19 MR. STONE: Thank you, Your Honor. And with
20 that, Your Honor, the State rests.

21 THE COURT: All right. Very good.

22 All right. Mr. Foreman, ladies and gentlemen of
23 the jury, thank you for your willingness to go a little
24 bit extra.

25 All right. The State rests, and we're finished

REDIRECT EXAMINATION OF BATALIS BY STONE

1 for the day.

2 Is there any reason why we can't be back here at
3 9:30 in the morning to begin to resume the trial?

4 (Attorneys and jurors respond.)

5 THE COURT: Okay. Let me remind you not to speak
6 amongst yourselves or anyone else about the case.
7 Don't read, hear, or listen to anything about it, and
8 we'll see you in the morning.

9 If you'll leave your notes in the jury room,
10 please.

11 (Jury exits the courtroom at 5:35 p.m.)

12 THE COURT: Mr. Poacher, would you mind standing
13 up, please, sir. Would you raise your right hand.

14 Do you swear or affirm to tell the truth, the
15 whole truth, and nothing but the truth?

16 I'm going to get you to speak louder.

17 THE WITNESS: Yes, sir.

18 Thereupon,

19 JOSHUA LENARD POACHER

20 was called as a witness, having been first duly sworn,
21 was examined and testified as follows.

22 THE COURT: Put your hand down. You can have a
23 seat.

24 First, has your attorney explained to you your
25 rights under the Fifth Amendment to the United States

REDIRECT EXAMINATION OF BATALIS BY STONE

1 Constitution?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand them?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Just to make sure that we do,
6 we've reached that juncture or that point in the trial
7 where the State says we've rested.

8 THE DEFENDANT: Okay.

9 THE COURT: So you have a right at this juncture
10 to present a defense. You have a right to testify and
11 all things that go along with that. You also have a
12 right to claim the protections that are afforded to
13 you by the Fifth Amendment of the United States
14 Constitution. And let me read to you about some of
15 that just relevant part.

16 It says: "No person shall be compelled in any
17 criminal case to be a witness against himself."

18 In other words, what that simply means, that you
19 have a Constitutional right that you cannot be
20 compelled to testify by anyone. The State cannot
21 compel you, I cannot compel you, your attorney cannot
22 compel you to testify whatsoever. No one can.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, it's a personal right that you

REDIRECT EXAMINATION OF BATALIS BY STONE

1 must decide for yourself and in advice and
2 consultation with your client (sic) or any other body
3 -- any other family members or other people who are
4 reasonably close by.

5 But if you do decide to testify, you're going to
6 be subject to the same direct examination as any other
7 witness. The State will be allowed to cross-examine
8 you. I don't know what your criminal record is.

9 Is there any criminal record in this case?

10 MR. STONE: There is not, Your Honor. Not that
11 we would bring up.

12 THE COURT: But if you were to have a criminal
13 record that would be subject to showing you would have
14 a dishonesty or otherwise qualified under our rules of
15 evidence as being subject to imprisonment for more
16 than a year, and I found that the prejudice outweighs
17 -- is not outweighed by the probative value, they can
18 cross-examine you on it. The State says they don't
19 have any.

20 But, even so, they will still be allowed to
21 cross-examine you to try to discredit anything you may
22 say in your testimony, like any other witness in this
23 case.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

REDIRECT EXAMINATION OF BATALIS BY STONE

1 THE COURT: Okay, sir. Now, if you decide to
2 testify, or if you decide not to testify, that
3 decision ultimately has to be made by you. You have
4 to make it freely, voluntarily, and intelligently,
5 knowing your rights under the Fifth Amendment, and the
6 consequences of your decision to testify.

7 Do you understand everything I've gone over with
8 you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, if you decide that you do not
11 wish to testify, when I charge the jury on the law, I
12 will charge them that they cannot consider or discuss
13 whatsoever your failure to testify because that's your
14 right under the Fifth Amendment to the United States
15 Constitution, and the State bears the burden of
16 proving your guilt by proof beyond a reasonable doubt,
17 and you don't have to do a thing. Okay, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you understood everything I've
20 gone over with you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions of me?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you have any questions of your
25 attorney?

REDIRECT EXAMINATION OF BATALIS BY STONE

1 THE DEFENDANT: No, sir.

2 THE COURT: Okay. I will ask you to make that
3 decision now. But in the morning, you're going to
4 need to make a determination as to whether or not
5 you're going to testify. Also, whether or not you
6 wish to present a defense in this case. Okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Thank you very much.

9 THE DEFENDANT: All right.

10 THE COURT: Now, anything from the State before
11 we break for the evening?

12 MR. STONE: No, sir. And thank you again for
13 allowing us to get the last witness up.

14 THE COURT: Not a problem.

15 Anything from the Defense?

16 MR. PLEXICO: No, Your Honor.

17 THE COURT: All right, guys, we'll see you in the
18 morning at 9:30.

19 MR. STONE: Yes, sir. Thank you.

20 THE COURT: This is entered in.

21 MR. PLEXICO: Your Honor, this is the DVD of No.
22 2 that I didn't know whether you entered in at the
23 hearing. I wanted to make a copy of it, so I had a
24 copy for records because that'll get additional
25 collateral.

REDIRECT EXAMINATION OF BATALIS BY STONE

1 THE COURT: Okay. So that is at the Jackson
2 Denno hearing you put it in, not during the
3 case-in-chief.

4 MR. PLEXICO: Right. During the Jackson V Denno
5 hearing, Judge. Only. Yes.

6 THE COURT: Okay. Very good.

7 (Whereupon the Court recessed for the day.)

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APRIL 12, 2017 PROCEEDINGS

1 In the Court of General Sessions for the
2 State of South Carolina, County of Jasper

3

4 Case No.: 2015-GS-27-00378+

5 State of South Carolina,

6 Plaintiff(s),

7 vs.

Transcript of Record

8 Joshua Lenard Poacher,

9 Defendant(s).

10

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15 April 12, 2017

16 Ridgeland, South Carolina

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21 BEFORE:

22 The Honorable R. Lawton McIntosh

23

24

25

APRIL 12, 2017 PROCEEDINGS

1 PROCEEDINGS

2 THE COURT: Please be seated.

3 All right. Mr. Plexico, have you had an
4 opportunity to consult with your client as to whether
5 or not he wishes to testify?

6 MR. PLEXICO: I have, Your Honor.

7 THE COURT: And does he wish to testify?

8 MR. PLEXICO: He does not, Your Honor.

9 THE COURT: Okay, sir.

10 Mr. Poacher.

11 THE WITNESS: Yes, sir.

12 THE COURT: Raise your right hand.

13 THE WITNESS: Yes, sir.

14 THE COURT: Do you swear to tell the truth, the
15 whole truth, and nothing but the truth?

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. Sir, you can put it down. You
18 may be seated.

19 Thereupon,

20 JOSHUA LENARD POACHER

21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:

23 EXAMINATION BY THE COURT

24 THE COURT: Have you had sufficient opportunity
25 to consult with your attorney or anyone else about the

APRIL 12, 2017 PROCEEDINGS

1 decision as to whether or not you wish to testify?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And have you made this decision
4 knowing your rights and the Fifth Amendment and the
5 consequences of your decision to testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: This is your own free will? Have you
8 made this decision by yourself?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You made it voluntarily?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anybody forced, threatened,
13 promised you anything to get you not to testify?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay, sir. All right, sir. Do you
16 have questions of your attorney?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. Very well.

19 Do you have any defense you're going to put up?

20 MR. PLEXICO: No, Your Honor. We would rest in
21 front of the jury, and then I have motions to make.

22 And do my directed verdict motions, and then -- I have
23 my directed verdict motions to make now -- excuse
24 me -- and then I need to rest in front of the jury.

25 THE COURT: We'll send a note back and let them

APRIL 12, 2017 PROCEEDINGS

1 know what's going on, if you don't mind.

2 MR. PLEXICO: Sorry?

3 THE COURT: I'm going to bring the jury in, let
4 you call your -- I'm going to call your case and you
5 say "I rest," and then we'll send them back and tell
6 them that we'll have a charge conference and other
7 administrative things, it will be a while. Okay?

8 MR. PLEXICO: Okay. So you don't want me --
9 you're telling me not to do my directed verdict motion
10 now?

11 THE COURT: Not now. You wait until we send them
12 back.

13 All right. Bring the jury in, please, ma'am.

14 (Jury enters the courtroom.)

15 THE COURT: Good morning, ladies and gentlemen.
16 I hope you had a nice evening.

17 Before we get started, let me ask you, has anybody
18 read, heard, or seen anything about this case during
19 the break? If so, raise your hand.

20 (No response.)

21 THE COURT: Very good. Has anybody spoken with
22 anybody about this case, including one another on the
23 jury panel? If so, would you raise your hand?

24 (No response.)

25 THE COURT: Very good. Let the record reflect

APRIL 12, 2017 PROCEEDINGS

1 they all responded negative to both questions.

2 All right. Mr. Plexico.

3 MR. PLEXICO: Yes. The Defense would rest, Your
4 Honor.

5 THE COURT: You rest.

6 MR. PLEXICO: Yes, Your Honor.

7 THE COURT: Okay. Ladies and gentlemen, if you
8 recall, at the beginning of this case I told you
9 there's three -- five phases in every case. We have
10 opening statements, we have the presentation of the
11 evidence. The State announced yesterday afternoon, if
12 you recall, that they rested. The Defense is
13 announcing that he rests, which means that we have
14 concluded the presentation of the evidence phase of
15 this case. There will be no more evidence that will
16 be presented at any time in this case.

17 At this juncture, I have some administrative
18 matters to take up with counsel. I will then consult
19 with them on the law that I'm going to charge to you.
20 When we bring you back in here, there'll be closing
21 statements by the attorneys. I will then charge you on
22 the law.

23 And, Mr. Foreman, at some point after that, you'll
24 be given word expressly with the verdict form and the
25 exhibits to begin your deliberations. Just to let you

APRIL 12, 2017 PROCEEDINGS

1 know where you are.

2 This part, this administrative aspect, may take a
3 little while. So just relax and we'll get you in here
4 as soon as we can. Okay?

5 You can go back to your jury room, please.

6 (Jury exits the Courtroom.)

7 THE COURT: All right. Be glad to hear from you,
8 Mr. Plexico.

9 MR. PLEXICO: Thank you, Your Honor.

10 In reference to 2015-GS-27-00378 and 379, we'd
11 move for a directed verdict on the basis that they have
12 not been able to show any malice on the part of my
13 client. The only evidence they've put in, I believe --

14 THE COURT: I need you to speak louder.

15 MR. PLEXICO: I'm sorry.

16 In reference to not consenting in 378 and 379,
17 we'd move for a directed verdict in that they failed to
18 put in any evidence of malice. The only evidence they
19 actually put in was a statement that said was that they
20 came at him and he reacted to that, Judge. And I don't
21 think that's sufficient to go forward on the murder
22 indictments, and I'd move to -- for a directed verdict
23 of not guilty in regards to that.

24 In reference to 2015-GS-27-00490, the armed
25 robbery, Your Honor, I don't believe that they have

APRIL 12, 2017 PROCEEDINGS

1 laid out the foundation for all of the elements of
2 armed robbery, and we would move for a directed verdict
3 on that.

4 In regards to the indictment ending in 491 is --
5 that's the possession of a weapon with -- during the
6 commission of a violent crime. If you direct a verdict
7 on the other three, Your Honor, then there is no
8 violent crime upon which the jury could reasonably base
9 a verdict. And I would move for the directed verdict
10 in regards to that one.

11 THE COURT: All right. Those are denied. I
12 think there's sufficient facts in the record to
13 support the charges in law on the indictments before
14 the jury.

15 MR. PLEXICO: Okay. Your Honor, I think I have
16 to form a record to renew that motion based on the
17 sufficiency of the evidence at the close of the
18 Defendant's case. And I will make those same motions
19 because I believe the evidence lacks sufficiency in
20 regards to what I've already said.

21 THE COURT: All right, sir. It is, again,
22 denied. And I prevented you from making your motion
23 at the close of the State's case, for the record.

24 All right. I'm going to do this a little bit
25 backwards. I know that I somewhat anticipated some of

APRIL 12, 2017 PROCEEDINGS

1 the requests to charge that I got from the Defendant,
2 that being self-defense and voluntary manslaughter.
3 I'm going to go first to the wife and not to the
4 husband, and I think, if I'm looking at this indictment
5 right, that would be Kantibhai Patel or the proper
6 pronunciation of her name.

7 MS. JONES: That's Mr. Patel, Your Honor.

8 THE COURT: Ma'am?

9 MS. JONES: That would be Mr. Patel.

10 THE COURT: Okay. Indictment says "her." Okay.
11 Her's is the other one?

12 MS. JONES: Hansaben.

13 THE COURT: Hansaben. Okay.

14 MS. JONES: Yes, Your Honor.

15 THE COURT: Okay. All right.

16 Now, Mr. Plexico, with regard to the wife, what
17 evidence is there in the record that will sustain a
18 self-defense charge with regard to her?

19 MR. PLEXICO: I believe that the jury, based on
20 his statement, Your Honor, from looking at his
21 statement which, Your Honor, was a lengthy statement
22 that he gave, he said he was originally attacked by
23 the husband, and then supported in his point of view,
24 and it easily could be argued to the jury, and the
25 jury could easily find that the wife supported his

APRIL 12, 2017 PROCEEDINGS

1 attack upon my client.

2 THE COURT: The testimony was that when the man,
3 the victim husband, allegedly attacked him, she was in
4 the restroom. And that she came out and screamed and
5 he shot her. And that is no basis of any self-defense
6 charge that I can think of.

7 And there's multiple reasons that I have problems
8 with it. But I don't think as to wife, you get
9 anywhere close to it.

10 MR. PLEXICO: If you look at the -- that that was
11 indefinitely described and was described two ways, in
12 the transcript and then during his testimony, about
13 whether or not she was in the bathroom at the time of
14 the shots.

15 THE COURT: He clarified. It was not described
16 two ways, he clarified himself and then they said,
17 "she was in the bathroom." And he said, "yes, she was
18 in the bathroom."

19 Is there mistake in that testimony?

20 MS. JONES: No, Your Honor. We deduced that when
21 he shot, she came out.

22 MR. PLEXICO: I don't think you can separate the
23 attack --

24 THE COURT: Oh, yeah, you can. I think you can.
25 If I'm wrong, I'll be found wrong, but I think you

APRIL 12, 2017 PROCEEDINGS

1 can. I mean, assuming that there is facts sufficient
2 to warrant a self-defense charge as to husband -- and
3 I'm not saying there are, I'm just saying assume that
4 there is. And because allegedly, by the version that
5 this gentleman had proffered in his statement, that
6 the husband went for his gun. How does that transmute
7 over to the wife, who's across the room in the
8 bathroom, out of site at the time, and comes back out
9 and then yells and then is shot? Tell me.

10 MR. PLEXICO: Because this is very close quarters
11 and it's almost simultaneous, Judge. And I think the
12 jury can easily find that. You can look at that
13 picture and see the close quarters. She just come
14 around that corner. And it's not like she was taking
15 a shower and getting dressed. So she just comes
16 around that corner, as the Defendant stated, so I
17 think it's fair --

18 THE COURT: Yeah. Let me ask you in light most
19 favorable to him, in the record.

20 MR. PLEXICO: Well --

21 THE COURT: Hang on. Now, let me finish and then
22 you can correct me. But I paid close attention to
23 that twice, and the only evidence that I recall there
24 being, even in the light most favorable to
25 Mr. Poacher, would be that she hollered something in

APRIL 12, 2017 PROCEEDINGS

1 another language from the other side of the room, and
2 I don't see anything that makes her aggressor or
3 anything that put him in reasonable apprehension or
4 imminent peril of serious bodily injury or death.

5 MR. PLEXICO: He was -- she was coming at him,
6 and that's what it was, Your Honor, and that's why he
7 fired. Because she was not just screaming, she was
8 coming at him.

9 THE COURT: I disagree with you. Let me hear
10 from the State on this, please. And I'm going to
11 break it down. Quick.

12 MS. JONES: Okay. Thank you, Your Honor.

13 The State disagrees with Mr. Plexico, obviously.
14 Mrs. Patel was 67 years old. The only evidence that
15 she came at him is based on the statements of Mr. -- it
16 would be one statement -- the first three, he continued
17 to lie through, throughout -- of Mr. Poacher. None of
18 the physical evidence corroborates that.

19 She was shot in the back. The pathologist even
20 got on the ground and showed how she was either face
21 down --

22 THE COURT: Well, the question is, for me, at
23 this juncture, is there any evidence in the record
24 that reasonably supports it? Am I mistaken in my
25 understanding of what I've witnessed in this case,

APRIL 12, 2017 PROCEEDINGS

1 that Mr. Poacher clarified on questioning from the
2 officers that she was in the restroom. The shots
3 occurred, she came out, and that she yelled something,
4 and then he shot her.

5 MS. JONES: Correct. She was defenseless at that
6 point.

7 THE COURT: I mean, I know they're close
8 quarters, but there's no reasonable --

9 MS. JONES: She was as far away from him as she
10 could possibly be if he was right by the door, Your
11 Honor.

12 THE COURT: I agree. I'm not going to charge
13 self-defense as to her, nor your request to
14 manslaughter charge as to the wife. It'll go to the
15 jury on murder and the other indictments.

16 As to the husband, let me ask you this. I was
17 looking at the case this morning of State versus
18 Slater, and it's not necessarily on all fours with
19 this, but you have to not be at fault for bringing on
20 the provocation. Okay.

21 And I know that just because you have an unlawful
22 pistol in your possession doesn't make you not have the
23 self-defense available to you. But with him carrying
24 it in his pants and exposing it to them, supposedly,
25 does that make him without fault still in bringing on

APRIL 12, 2017 PROCEEDINGS

1 this problem?

2 MR. PLEXICO: Absolutely, Your Honor. He had no
3 right to go attack my client, when my client was on
4 his way out of the apartment. And wrapped -- wrapped
5 --

6 THE COURT: I don't think that's what the
7 testimony was.

8 MR. PLEXICO: I do.

9 THE COURT: No, sir. I was here, right here,
10 too, and what I heard was that somehow the guy saw the
11 gun, then he lunged at him, and then he tried to get
12 out, and he knocked the gun out of the way and then
13 turned around and shot him.

14 MR. PLEXICO: Well, what I heard, Your Honor, was
15 that the man went for his gun, my client pushed him
16 back --

17 THE COURT: But it didn't say he was leaving the
18 premises when he tried to go for his gun.

19 MR. PLEXICO: I think that was the connotation
20 since he came up behind him.

21 THE COURT: I don't think so.

22 MR. PLEXICO: And the only way he'd be able to
23 come up behind him is if my client was walking towards
24 the doorway.

25 THE COURT: All right. Let me hear from the

APRIL 12, 2017 PROCEEDINGS

1 State on that point, please.

2 MS. JONES: Thank you, Your Honor.

3 I do not recall in any of the evidence it being
4 said that Mr. Patel came up behind Mr. Poacher. I
5 believe all the evidence, including what Mr. Poacher
6 himself says, was that they were having a one-on-one
7 conversation, they were face-to-face. Then Mr. Poacher
8 changes his mind a little bit. He can't decide if Mr.
9 Patel grabbed at the gun, if Mr. Patel first saw the
10 gun and then screamed something in a foreign language
11 and got all scared, and then Mr. Poacher grabs the gun,
12 or if Mr. Patel just grabbed the back of Mr. Poacher's
13 shirt, which are all three renditions that we heard
14 from Mr. Poacher himself.

15 None of those negate that Mr. Poacher came to a
16 stranger's apartment with a loaded gun with the intent
17 to rob them. And I think that is also evidence by the
18 ejected -- the projectile, unfired projectile, outside
19 of the front door. He had one intention, to go in
20 there with that gun.

21 THE COURT: He had what?

22 MS. JONES: He had one intention when he went --

23 THE COURT: Yeah, but that's -- anyway, that's
24 your job to argue that. My job is to charge the jury
25 on what the real -- what the facts would support. And

APRIL 12, 2017 PROCEEDINGS

1 if I don't, then it would be error on my part. Right?

2 MS. JONES: Right, Your Honor.

3 THE COURT: So is there any cases that you are
4 aware of --

5 MS. JONES: Yes.

6 THE COURT: -- where -- let me ask you the
7 question first -- where the Defendant brings a weapon
8 to a scene and that is determined -- it's determined
9 that he is not without fault in bringing on the
10 controversy. That's the first element.

11 MS. JONES: Yes, sir. Okay. State versus
12 Santiago is a case where a scorned ex-boyfriend of the
13 victim's daughter goes to his house to retrieve some
14 of his belongings after the break-up. He has a 12
15 gauge shotgun in the trunk of his car when he goes.
16 He has a disagreement with the father of the victim at
17 the trunk of his car. And at this point, Mr. Santiago
18 says that the victim looked at the gun, looked at him,
19 looked at the gun, looked at him, and then Mr.
20 Santiago pulls the gun and shoots him.

21 At that point, he flees the scene. The court --
22 the Supreme Court agreed that the trial judge was
23 correct in not charging voluntary manslaughter because
24 Mr. Santiago brought that loaded shotgun to that
25 altercation. He went --

APRIL 12, 2017 PROCEEDINGS

1 THE COURT: Well, that's voluntary manslaughter.
2 We're talking about self-defense.

3 MS. JONES: My apologies. That is self-defense,
4 Your Honor. It is saying that self-defense was not
5 needed to be charged because he -- he brought on the
6 difficulty when he brought that loaded gun to that
7 scene.

8 THE COURT: All right.

9 MR. PLEXICO: May I address that?

10 THE COURT: Yeah. Yeah, I want to hear. I want
11 to charge the correct law, so, sure.

12 MR. PLEXICO: Well, the case she just handed me,
13 State versus Santiago --

14 THE COURT: Sir?

15 MR. PLEXICO: The case she just handed me, State
16 versus Santiago, from the second page on the overview,
17 it says, "the father, who was not armed, took no
18 hostile act toward Defendant."

19 THE COURT: That was going to be my question.
20 What about the act allegedly, obviously, in this case
21 that this victim, husband, allegedly made towards
22 about going for this gentleman's gun?

23 MS. JONES: In the Santiago case?

24 THE COURT: No.

25 MS. JONES: In our case.

APRIL 12, 2017 PROCEEDINGS

1 THE COURT: You guys have changed the facts.
2 Looking at the gun is one thing, lunging for the gun
3 is quite another, in my view. I think that that
4 may -- if he had a right -- if the fact that he had a
5 gun there, ab initio doesn't make him without the
6 defense. Then the victim's alleged lunging for the
7 gun, although I know you dispute that, but if that's
8 the facts into evidence, then does that not take it
9 out of the Santiago case, which was just somebody
10 looking at the existence of a gun in a trunk, and then
11 taking no steps to grab the gun. I think it does.

12 MS. JONES: I agree that it possibly could, but
13 we still don't know because Mr. Poacher is still
14 saying three different things happened.

15 THE COURT: Ma'am?

16 MS. JONES: Mr. Poacher is still saying three
17 different events happened.

18 THE COURT: Well, I understand that. But you
19 understand that's your duty to argue the case. My
20 duty is if there are any facts into evidence that
21 would support a charge of self-defense, I've got to
22 give it. Right?

23 MS. JONES: I understand that.

24 THE COURT: And so the question that I have,
25 twofold, when I was looking at this, is one, whether

APRIL 12, 2017 PROCEEDINGS

1 him, the act of bringing the gun in his waistband to
2 that apartment. Now, I know you said he had one thing
3 and one thing only in mind. He says I was going up
4 there to borrow a light. And that's clearly in the
5 record, too.

6 But does the fact that he has a gun in his
7 waistband, in and of itself, make him not without fault
8 in bringing on the events such that self-defense would
9 not be available?

10 I mean, there's cases I know that says mere,
11 unlawful, possession of a gun does not make you not
12 have self-defense available.

13 MS. JONES: Right. I'm familiar with those
14 cases, Your Honor. You can still be unlawful carrying
15 and be unlawful defending yourself.

16 THE COURT: Right. If it is clearly in his
17 statement that he said that this man went for his gun,
18 is that -- and if he did, does that give him a right
19 at that juncture to use the gun in his self-defense?

20 MS. JONES: I think if that was the only thing he
21 said, then, yes. But because he's not even clear on
22 that fact, that we can't even -- we don't even reach
23 that far.

24 THE COURT: I hear you. I know, you're asking me
25 to weigh the facts, and I can't do that.

APRIL 12, 2017 PROCEEDINGS

1 Another question I had, based on the testimony,
2 was that the gentleman went for his gun, he knocked his
3 arm around, away, and he spun around and he said, "I
4 just was so scared, I shot him."

5 If the threat has stopped, which it sounded -- may
6 or may not -- do you have that self-defense available
7 to you at that juncture? I know you say yes, but tell
8 me why.

9 MR. PLEXICO: That's because I think that's a
10 jury question about whether or not, you know, he had
11 the appropriate correct in the law, an apprehension
12 about his safety, Judge. And serious bodily harm that
13 somebody is trying to take the gun off you, that it
14 could not mean well.

15 So, you know -- and especially somebody that just
16 invited you in would be a complete surprise in any
17 sense. And you would want to take protective action,
18 you know. And, see, I could see it as, you know, that
19 happening, the woman screaming, him talking in another
20 language, him shooting him, her coming around
21 immediately. I think it's all one convoluted, quickly
22 staged scenario that put my client in substantial fear.

23 And, you know, that's the way I see the facts. I
24 think the jury can easily find that those, indeed, are
25 the facts.

APRIL 12, 2017 PROCEEDINGS

1 MS. JONES: Your Honor, I think that with the arm
2 being hit, the gun is still on Mr. Poacher's hip at
3 that point. He is at the door, the final prong of
4 self-defense is leave, you could leave. He could have
5 left. He was at the door there at the corner. At
6 that point, he is the only one with a weapon. There's
7 no evidence that Mr. or Mrs. Patel had a weapon on
8 them. He has the only weapon that he brings to the
9 scene. And if Mr. Patel is there, arms up, at this
10 point, we still believe Mrs. Patel is in the bathroom,
11 because she doesn't come out until the gun is fired.

12 He is there, Mr. Patel, by himself, a 72-year-old,
13 unarmed man. He's at the door, he's the only one with
14 a gun on his hip. A reasonable person, first of all,
15 would not be fearing for their safety or great bodily
16 injury in that situation. You're the only one with a
17 weapon against this defenseless man.

18 And second, if you're the only one with a weapon
19 against this defenseless man, you leave. And he had
20 the opportunity to leave.

21 MR. PLEXICO: May I address that?

22 THE COURT: Sure.

23 MR. PLEXICO: There's not a shred of evidence
24 where my client was standing when he fired. There's
25 not a shred of evidence of where these gunshots were

APRIL 12, 2017 PROCEEDINGS

1 fired from in that room with such small --

2 THE COURT: There's a shred, but not a lot.

3 MR. PLEXICO: Correct, Your Honor. And he could
4 have been within 2 feet.

5 THE COURT: Sir?

6 MR. PLEXICO: The man could have been within
7 2 feet of him. Within 2 feet. That's not somebody
8 that could draw -- after the man -- after Mr. Patel
9 created the danger, Your Honor, in fear of my client,
10 and which I say is reasonable, he could have been
11 right there still and not trying to take that gun. We
12 don't know that. We don't know where they were in the
13 room. It's conjecture.

14 We know they're at least 2 feet apart, because of
15 the soot and stippling. That's all we know.

16 THE COURT: Quite frankly, I just need to give it
17 some thought. I have some real heartburn, if you want
18 to know the truth, of self-defense being interjected
19 in this case at all. I will think that he was not --
20 I don't think he was without fault in bringing on this
21 problem in the first place.

22 But in candidness to you, Mr. Plexico, I have not
23 found any cases that says -- other than unlawful
24 possession of a gun, it does not make you not -- the
25 self-defense charge unavailable to you.

APRIL 12, 2017 PROCEEDINGS

1 MR. PLEXICO: I agree.

2 THE COURT: I was looking at the Slater case, and
3 quite frankly, I haven't finished looking at it.

4 Manslaughter, let's go to it right quick. Pop up
5 that charge on the screen. There's some language in
6 the manslaughter charge I really -- number one, I'm not
7 going to charge as to wife. I think she's a separate
8 actor totally. I know you disagree. It's going to her
9 on murder only. I note your objection on that. If I'm
10 wrong, I'm wrong. But I think that's the facts
11 forward.

12 Would you bring me that charge?

13 There's -- in the charge, it says, "I'll be back."
14 Using of the words alone, however vulgar or insulting
15 or not enough to be legal provocation, where death is
16 caused by the use of a deadly weapon, the words must be
17 accompanied by some overt act, threatening act, which
18 could have produced the impact, and that's where you
19 are.

20 But the next line says this: "The exercise of the
21 legal right, no matter how offensive it is to another,
22 is never sufficient legal provocation for voluntary
23 manslaughter."

24 Unequivocally, all facts in this case point to the
25 fact that the Defendant, for whatever reason he was

APRIL 12, 2017 PROCEEDINGS

1 there, was in these folks' home. Right?

2 MR. PLEXICO: Correct, Your Honor.

3 THE COURT: Now, would a homeowner in all regards
4 have a right to disarm you in your -- if I'm in my
5 house and you bring a gun there, or vice versa, do you
6 or do I have a right to disarm you no matter what?

7 MR. PLEXICO: You only have a right to eject a
8 trespasser. He was not ejecting a trespasser, he was
9 attacking my client.

10 THE COURT: You don't think I have a right to
11 disarm you in my own home?

12 MR. PLEXICO: That you would have a right to
13 eject a trespasser at first, and the reasonableness
14 would you be telling them to leave. I don't allow
15 guns in my home.

16 You don't attack the person, that's an assault and
17 battery. That's what he did to my client, which is the
18 sufficient legal provocation.

19 MS. JONES: Your Honor, I don't even believe that
20 Mr. Poacher's statement --

21 THE COURT: I can't hear you.

22 MS. JONES: I don't even believe that Mr.
23 Poacher's statement is evidence that he was attacked,
24 which is what Mr. Plexico is saying, that he was
25 attacked.

APRIL 12, 2017 PROCEEDINGS

1 THE COURT: Well, no, I think that he said that
2 the husband allegedly went for the gun in his belt.
3 He was trying to get -- and they were struggling over
4 it. That's what I understood him to say.

5 Is that not what the evidence said in his
6 statement?

7 MS. JONES: I don't -- I don't believe that he
8 said there was a struggle. I think he said he reached
9 for my gun, and then he grabbed it and shot them.

10 THE COURT: It's a little more than that. And
11 it's more than that. In the record, there is. I
12 mean, I -- we can look at it in the transcript, but
13 I'm just telling you, I'm pretty sure that there was a
14 struggle, because he kind of showed kind of them
15 moving around, getting arms and stuff, and them
16 knocking it out of the way, he turns around and shoots
17 him.

18 Solicitor, what is your position on that, or are
19 you just getting ready for closing?

20 MR. STONE: I was just getting ready for closing,
21 but I'll be honest with you. This is a difficult
22 thing. Here's what I have found with these cases.

23 Generally, it doesn't seem to make any difference
24 if the Defense and the State agree on any of this.
25 It's always going to be whether or not there's any

APRIL 12, 2017 PROCEEDINGS

1 evidence in the record that would indicate that you
2 have to charge a voluntary manslaughter. And I was
3 looking through it here, and I think the record is
4 clear that, at least from the standpoint of the
5 Defendant and what the Defendant says. He says that
6 Mr. Patel saw his gun and panicked. And said, I think
7 he also said, "Where are you going," when he turned to
8 leave and grabbed him. That's at best the evidence
9 that's out there from the Defendant.

10 THE COURT: Where is that in the transcript, do
11 you know? I know you know.

12 MR. STONE: I just know it's in the statement
13 that we put in, I'm not sure exactly what section of
14 that.

15 But here's what's interesting. At no point in
16 time did Poacher say, number one, the Patels were armed
17 in any way, that Mr. Patel had a gun, anything like
18 that. It says no weapon on Mr. Patel.

19 At no time does he say, to my memory, that the --
20 the victim even touches the gun. I don't have him
21 reaching for the gun. I have him looking at the gun
22 and getting upset, at which time the Defendant then
23 says, "I got scared, pulled the gun out and shot him."

24 And that's -- now, that's my memory. And so if
25 that's all different from what the video shows,

APRIL 12, 2017 PROCEEDINGS

1 obviously the video is correct.

2 But what I'm trying to wrap my head around is --

3 THE COURT: There was the sight of the gun, there
4 was something that was stated in a foreign language.

5 MR. STONE: Yes, sir.

6 THE COURT: And then there was movement on the
7 part of the husband victim in some form or fashion.
8 That's what I'm looking for. Because that has to do
9 with whether or not he went for the gun, which would
10 lead to self-defense and probably involuntary
11 manslaughter.

12 MR. STONE: And even to Mr. Poacher's benefit on
13 that, Poacher says that he turned -- or he, at some
14 point in time, Mr. Patel grabbed, I think, his sleeve
15 and said, "Where are you going?"

16 And I think that's -- but I think that's the
17 extent of it. The gun basically, he just said he got
18 scared, grabbed the gun and turned and shot him, I
19 think, from what my memory says here.

20 MR. PLEXICO: Page 60, Your Honor. I'll direct
21 your attention to Page 60.

22 THE COURT: Sixty?

23 MR. PLEXICO: Yes.

24 MR. STONE: "He grabbed me and I pushed him off,
25 and I was going for the door. He grabbed my shirt

APRIL 12, 2017 PROCEEDINGS

1 behind me. He grabbed me like this."

2 THE COURT: You know what, you're on 60. Okay.
3 Just one second.

4 MR. STONE: Okay. I'm sorry, I'm on 84 of this
5 transcript.

6 Judge, do you have the transcript with the
7 numbers?

8 THE COURT: Yes, I do. I have the transcript
9 with the page numbers at the bottom; is that what
10 you're asking?

11 MR. STONE: Yes, sir. And then they have some
12 other numbers as well. I'll just hand you this -- of
13 course, I can't read through the -- at the very bottom
14 of that page, it looks like, is where it starts.

15 THE COURT: Yep. That's what I remember. Okay.

16 So I think he's entitled to a self-defense charge
17 and then an involuntary manslaughter charge as to the
18 husband. I still think he's not entitled to it as to
19 the wife at all, and I'm not going to charge it. If
20 I'm wrong, I'm wrong.

21 MR. PLEXICO: Well, Your Honor, on Page 61, he
22 says, "I fired because I got scared."

23 "How many times did you shoot him?"

24 "Like twice, once or twice."

25 "Where was the girl?"

APRIL 12, 2017 PROCEEDINGS

1 "She was coming out of the bathroom, I believe."

2 I mean, so --

3 THE COURT: Let me tell you something. She was
4 running out of the bathroom and hollering. That
5 didn't give him a right to shoot her in any form or
6 fashion in any law I'm aware of.

7 MR. PLEXICO: "She was coming toward me, too,
8 hollering and screaming." And this was a very intense
9 situation.

10 THE COURT: Okay. And listen. There's an
11 appellate court down there, if I'm wrong, they'll
12 correct me. But I don't think that warrants
13 self-defense. I don't think that warrants involuntary
14 manslaughter. She, first, was in her own home, she
15 has a right to scream and holler in her own house
16 regardless. She didn't take any actions towards
17 getting his gun or anything, he just shot her. And
18 all the evidence on top of that shows he shot her
19 across the room. So I'm not charging that.

20 MR. STONE: And if I may, I don't want to
21 interrupt, but --

22 THE COURT: Sure.

23 MR. STONE: But here's what -- let me just first
24 tell you that I've had a very difficult time sorting
25 through voluntary manslaughter versus murder through

APRIL 12, 2017 PROCEEDINGS

1 the years. It seems to be changing one way or the
2 other, going back and forth.

3 And it's sort of tied in with the same concept
4 from the self-defense. Let me just talk about the
5 self-defense.

6 The Defendant was without fault bringing on the --
7 I think we could get past that. The Defendant actually
8 believed he was in imminent danger of losing his life
9 or sustaining serious bodily injury.

10 Unrefuted testimony is the 72-year-old man never
11 touches his gun. He doesn't have a gun of his own.
12 Doesn't have a knife. Doesn't have any weapon, and
13 never gets control of the Defendant's gun, or for that
14 matter, even grabs the gun. He grabs his shirt.

15 THE COURT: Well, he says that -- in the
16 transcript at Page 84, and it has 513 above it. "He
17 grabbed my shirt behind me. He grabbed me like this,
18 thought, I guess, trying to take the gun off my side,
19 and I pushed his hand out of the way. And I grabbed
20 the gun and I turned around and just fired."

21 MR. STONE: Yes, sir. By that testimony, not
22 once does Mr. Patel ever touch the gun. There's no
23 testimony that Patel ever gets the gun. So what's the
24 imminent danger of losing his life that Mr. Poacher
25 would have to be experiencing? And that's my whole

APRIL 12, 2017 PROCEEDINGS

1 problem.

2 THE COURT: Well, that's the question I asked.
3 Number one was, I think everybody agrees that he was
4 not at fault, quote, "under the law," in bringing on
5 the controversy because he had an unlawful gun of his
6 own.

7 MR. STONE: I think that's right, yes, sir.

8 THE COURT: Number two, that there's evidence in
9 the record that the victim allegedly lunged for the
10 gun, which in and of itself may give rise to a
11 self-defense charge and potentially a voluntary
12 manslaughter charge, I think.

13 The question I was asking earlier though was once
14 he blocked him and he didn't get it and the threat or
15 the provocation is gone, so to speak, because the gun
16 is in his hand, then does he get to continue to use
17 self-defense in that situation?

18 MR. STONE: If they were struggling over the gun,
19 I think that's it. If he had actually gotten the gun
20 and then he had to go back and get it back from him,
21 if Mr. Patel had a gun -- if there was anything like
22 that. But the problem is, the Defendant says, "I
23 knocked his hand away." There's still no testimony
24 that he -- and that was my memory, but I again --

25 THE COURT: That's what it was.

APRIL 12, 2017 PROCEEDINGS

1 MR. STONE: He knocks his hand away, and then he
2 says, "And I pulled the gun out," which means the gun
3 wasn't out before. He pulls it out -- at least
4 according to Mr. Poacher -- and he shoots and kills
5 him.

6 I'm trying to figure out under a -- at least,
7 under a self-defense concept, the Defendant had no
8 other probable means of avoiding the danger of losing
9 his life. What was the danger?

10 Now, I can argue that to the jury, obviously, but
11 I'm trying to just figure out from a legal standpoint
12 what the -- and clearly, number three, in a reasonable
13 doubt, a reasonable prudent person of ordinary fitness
14 and courage would have entertained the same belief. I
15 --

16 THE COURT: When you start getting the issues of
17 reasonableness, that's raises the question.

18 MR. STONE: Yes, sir, I agree. I agree.
19 Although that's -- I agree.

20 I just -- I think my hold-up on this all along has
21 been that he never actually touched the gun, he never
22 got the gun, he never had a gun. And Poacher says, "I
23 was scared and I pulled the gun and shot him twice" --
24 or once or twice. That's been my difficulty all along
25 with that.

APRIL 12, 2017 PROCEEDINGS

1 THE COURT: Yeah. I'm with you.

2 MR. PLEXICO: He's just -- he's being off -- I
3 mean, I came up with him toward -- the man came up and
4 pushed on me and was grabbing for their wallet or
5 their knife, and he swung around and --

6 THE COURT: We're talking about the facts of the
7 case. I'm not doing hypotheticals right now.

8 MR. PLEXICO: Well, I mean, this is what the fact
9 here is. He attacked my client and tried to steal the
10 gun.

11 THE COURT: Say that again.

12 MR. PLEXICO: He attacked my client, and he tried
13 to steal the gun. I think that's a question for the
14 jury. And how far apart he was is a question for the
15 jury. Whether the attack was still going on is a
16 question for the jury. And the instantaneous --

17 THE COURT: Let me tell you, Mr. Plexico. I tend
18 to agree with you based on the statement that he --
19 the gentleman was going for his gun and he knocked his
20 hand away. I think that you can't break it down in
21 such component parts as to, one, he knocked his hand
22 away, he turned around and shot him.

23 There's no evidence that he wasn't continuing, no
24 evidence that he was continuing, it's just -- that's
25 going to be a question for the jury.

APRIL 12, 2017 PROCEEDINGS

1 So I'm leaning towards charging as to this
2 gentleman victim self-defense and involuntary. I'm not
3 saying I am.

4 I'm not going to charge it to the wife. I think
5 that she's out. So at the end of the day, it may not
6 make much difference one way or the other. But let me
7 go look at something. If anybody can come with any
8 cases, send them back and I'll be glad to give them any
9 consideration.

10 MR. STONE: Yes, sir. Yes, sir. Thank you.

11 MR. PLEXICO: Do you want to talk about the other
12 ones while we're at it?

13 THE COURT: Sir?

14 MR. PLEXICO: Do you want to talk about my other
15 requests before you go back?

16 (Off-the-record discussion held.)

17 THE COURT: Okay. On your request to charge, I'm
18 going to let you make them all copies of a part of the
19 record, because I think if I charge my charge, they
20 will be included with the exception of diminution, and
21 I wasn't quite sure what in the world that's doing in
22 there.

23 MR. PLEXICO: Sure, Your Honor. Case law, and
24 this is very important, a voluntariness of statement.
25 Matter of fact, the Solicitor gave you his version of

APRIL 12, 2017 PROCEEDINGS

1 it, the statement of Defendant.

2 This comes up, this charge comes up short on the
3 law, Your Honor, in that what it -- what it refers to
4 is -- it leaves out -- see, I have ten factors here,
5 which the courts say a jury can consider in regards to
6 whether or not there was a -- one of the things,
7 diminution of his rights. And this is the case law.
8 And those ten have all ten of those factors as
9 streaming forth in this case. I mean, we're talking
10 about here, the place and length of detention, the
11 nature of the questioning, police misrepresentations,
12 promises, opinions --

13 THE COURT: That's included in my charge.

14 MR. PLEXICO: Is this your charge, Your Honor?
15 Is this the one that was on my desk earlier?

16 THE COURT: Yes, sir.

17 MR. PLEXICO: Okay. But, no, it stops on eight.
18 I don't see it in front of me right now.

19 THE COURT: No, I think you're mistaken on that.
20 Look at it again.

21 MR. PLEXICO: Oh, since you have -- you brought
22 them all together?.

23 THE COURT: It's whatever my law clerk gave you,
24 Mr. Plexico. It was on front. I normally would have
25 charged that the first part of my charge, but it was

APRIL 12, 2017 PROCEEDINGS

1 attached to the murder.

2 MR. PLEXICO: All right. The factors here stop
3 at eight, Your Honor. They do not have place and
4 length of --

5 THE COURT: I'll look at that. If you're right,
6 if that's the law, I'm glad to charge what the law is.
7 I'm pretty sure it's in there.

8 MR. PLEXICO: All right. It does not mention --
9 it does have the place and length of detention, which
10 is my No. 6. It does have my No. 7, the nature of the
11 questioning. That's your No. 7. And it does not have
12 police misrepresentations and promises of leniency,
13 Your Honor.

14 THE COURT: I think you're wrong again,
15 Mr. Plexico, but I'll be glad to look at it.

16 Now, the question I had of you earlier was this.
17 Your Question No. 3 just says, "diminution, the act,
18 fact, or process of diminishing, lessening, reduction."

19 MR. PLEXICO: Yes. The whole point is I don't
20 think the average person in America knows what the
21 word, "diminution" means. Therefore, the word itself
22 needs to be defined to enable the jurors to understand
23 what they're doing. And that's an important concept.

24 THE COURT: What's the State's position on that?

25 MR. STONE: If the definition is what he's

APRIL 12, 2017 PROCEEDINGS

1 recommending it to be, act, fact or process of
2 diminishing, it sounds like the same thing as
3 diminution. I don't know why that acts one way or the
4 other.

5 THE COURT: Well, let me look at it.

6 All right. The rest of your charges, you can make
7 on the record. I'm not going to charge them. I'm
8 going to check and see if you're right about me leaving
9 out the factors. If I did, I'll add them. Okay?

10 MR. PLEXICO: Thank you. His right not to
11 testify, you're not going to charge that?

12 THE COURT: I've got that in my standard charge.
13 I'm going to come back in just a minute and we can go
14 over everything in my charge. But I've looked at your
15 charges this morning and I think they're all included.
16 Okay, sir? So we'll give you an opportunity to go
17 ahead and make them a part of the record.

18 The next Court Exhibit, Madam Court Reporter. And
19 then we'll come back and finish it.

20 *(Whereupon, Court's Exhibit No(s). 9 marked for*
21 *identification and received in evidence.)*

22 THE COURT: We'll be in recess.

23 Do y'all have any cases right quick?

24 MR. STONE: Yes, sir.

25 THE COURT: Do you have any request charge you

APRIL 12, 2017 PROCEEDINGS

1 want me to look at?

2 MR. STONE: No, sir. I think you're fine.

3 THE COURT: All right.

4 (Whereupon, the Court was in recess.)

5 MR. PLEXICO: Your Honor, can I point out one
6 thing on your --

7 THE COURT: No, sir. You can stop for one second
8 until I ask you to stand up. Okay?

9 Now, looking back first -- excuse me for cutting
10 you off, but let me just get this out.

11 As to the Slater case, I don't think it's
12 applicable to the facts of this case. So I'm going
13 to -- as to the husband charge the voluntary
14 manslaughter and self-defense.

15 I have to say, I agree with Mr. Plexico that
16 police misrepresentation is not included in one of the
17 elements in my charge as to statement of the Defendant.
18 So that will be included. The rest of them have been
19 included.

20 MR. PLEXICO: What was that? Which one, Your
21 Honor?

22 THE COURT: Police misrepresentation.

23 And so if you'll look at your charge that I have
24 out there for you. So this means that the statement
25 was not caused by, and I have police misrepresentation,

APRIL 12, 2017 PROCEEDINGS

1 pressure, force, fear, threats, et cetera, et cetera,
2 as you go through there. Okay.

3 Now, to the verdict form, it's going to be amended
4 to reflect that the first murder as to Ms. Patel, then
5 it goes to murder as to Mr. Patel, with the
6 lesser-included of voluntary manslaughter, then armed
7 robbery, and then use of a weapon during the commission
8 of a violent crime. Okay.

9 Other than -- other than the amendment to the
10 verdict form, any problem with the verdict form as
11 amended? First, Mr. Plexico?

12 MR. PLEXICO: No, Your Honor.

13 THE COURT: All right. Now, Mr. Plexico, I cut
14 you off, and tell me what you were going to say.

15 MR. PLEXICO: Okay. Your Honor, in regards to
16 two things. Let me start first with the voluntariness
17 of the statement of the Defendant. It does not have
18 in here the phrase it should -- I believe it should
19 say, "and the law supports that he was uninfluenced by
20 the promise of a reward, threat, or injury, or the
21 diminution of his rights."

22 THE COURT: All right.

23 MR. PLEXICO: That phrase is very important, the
24 diminution of his rights, because that's clearly
25 evident from the testimony that there was a diminution

APRIL 12, 2017 PROCEEDINGS

1 of his rights. And I believe he's legally entitled to
2 that charge, Your Honor. So we could argue that to
3 the jury.

4 That phrase is simply not in the charge.

5 THE COURT: So how are you asking to charge that
6 to the jury? Say that again..

7 MR. PLEXICO: I'm asking that it be charged as --
8 you include the phrase, "Before you give any weight to
9 the alleged statement, you must be satisfied beyond a
10 reasonable doubt that it was made by the accused when
11 he was uninfluenced by the promise of a reward, threat
12 of injury or diminution of his rights."

13 That phrase, diminution of his rights, is omitted
14 from here, and that's an important legal concept for
15 this case because the diminution of his rights is
16 arguably why he made the statement, and that was an act
17 of coercion.

18 THE COURT: In which matter?

19 MR. PLEXICO: Well, he was held for days.
20 Remember, he was arrested, I believe, the 16th, and it
21 was the 21st -- 16, 17, 18, 19, 20 -- the 21st. The
22 sixth day. Held without counsel, and he finally made
23 a statement. They finally broke him. That was a
24 diminution of his rights.

25 THE COURT: What's your position on that,

APRIL 12, 2017 PROCEEDINGS

1 Counselor?

2 MR. STONE: If you covered everything you could
3 possibly -- I'm going through your rights here. You
4 have a full -- almost a full page. The voluntariness
5 of the statement and your -- and, in fact that's one
6 of the very first things I have.

7 THE COURT: I did not say the misrepresentation
8 of the police, and I will add that. But I'm going to
9 let you make your charge as part of the court's
10 record. I note your objection to me not charging the
11 diminution of rights, but I'm not going -- I think
12 that mine accurately covers that, those grounds.

13 So let's go back. If you would, please,
14 Mr. Plexico, go ahead and just make all of your charges
15 part of the court's record. You also ask that I charge
16 larceny, I will not do that.

17 MR. PLEXICO: Yes, Your Honor.

18 THE COURT: There's no evidence in the record to
19 support that.

20 MR. PLEXICO: I've already clocked in all eight
21 of my charges, and they should be in the Clerk of
22 Court's record.

23 THE COURT: In the record. Okay. I'm going to
24 give them to the court reporter just out of an
25 abundance of caution.

APRIL 12, 2017 PROCEEDINGS

1 MR. PLEXICO: Okay.

2 THE COURT: If I'm not correct, I'll be
3 corrected. Okay?

4 MR. PLEXICO: Yes, Your Honor.

5 THE COURT: I'll give those to you.

6 Let's go back then. I know I tried a case with
7 you before, Mr. Plexico -- I think I have, haven't I?

8 MR. PLEXICO: Yes, Your Honor, in Allendale.

9 THE COURT: All right. Now -- now, I know I've
10 tried a case with you. I haven't -- otherwise, let me
11 just -- I have -- my charges consist of three parts.

12 The first part would be the general rules that
13 define and control the juror's duties as jurors. In
14 it, I tell them that it's their duty to find the facts
15 from the evidence presented. I point out to them that
16 there will be no more testimony.

17 Lots of times we ask for additional information to
18 be presented to them by way of new evidence, and that's
19 not going to happen. If they want to go back and hear
20 other evidence that's already in the record, they may.

21 And do they have -- they must apply the law as I
22 give it to them, and not -- apply it for what it is and
23 not what they'd like it to be. They're not to be
24 influenced by any, first of all, likes or dislikes,
25 opinions, prejudice, or undue sympathy they have for

APRIL 12, 2017 PROCEEDINGS

1 one side or the other.

2 I tell them if I've done anything to create the
3 impression of how they're to find the facts, they are
4 to disregard that. And they, and they alone, are the
5 judges of what the facts are, and they'll determine
6 what they are by evaluating and weighing the evidence
7 they heard during the trial. And that is an entirely
8 mental process. They can't get a set scales and weigh
9 the evidence.

10 I describe what is evidence and what is not
11 evidence. Basically, the testimony and the exhibits,
12 there's no stipulations in this case at all. Then I go
13 through them and tell them what's not.

14 I describe circumstantial evidence and direct
15 evidence under the State versus Clarence Logan opinion
16 that basically says that to the extent State uses the
17 circumstantial evidence, and all the circumstances must
18 be consistent with each other, and when taken together,
19 point conclusively to the guilt of the accused beyond a
20 reasonable doubt. And if there are circumstances that
21 portray this behavior as suspicious, then that proof
22 has failed.

23 I go through the credibility of the witnesses.
24 Expert testimony. I tell them that each -- the fact
25 that he has been arrested, charged, indicted is not

APRIL 12, 2017 PROCEEDINGS

1 evidence. Doesn't raise an inference or a presumption
2 of his guilt. And that's simply the way the State gets
3 people such as Mr. Poacher before them for trial in
4 determination of guilt. And that each of the
5 indictments are separate, freestanding instruments.
6 They have to be decided on their own, uninfluenced by
7 their decision about the others, except for weapons
8 charge. And I'll explain that to them when I go over
9 the verdict form.

10 The presumption of innocence is described. So is
11 reasonable doubt. Intent, failure of the Defendant to
12 testify.

13 And also, Mr. Plexico, just so you know, I
14 instruct the foreperson that if anybody raises that
15 issue, it's his duty to stop it in its tracks. The
16 burden remains on the State at all times to prove his
17 guilt. He doesn't have to do anything. And if
18 somebody persists in trying to raise that issue, you
19 bring it to my attention.

20 If you want me to do something more than that,
21 I'll consider it after I charge what I think you'll be
22 satisfied with.

23 If there's an issue of identification in this
24 case, that will be charged. And then we go to the
25 statement by the Defendant. Okay?

APRIL 12, 2017 PROCEEDINGS

1 Next, I would charge on the law of murder. And I
2 would -- and I'd say there's two counts of murder.
3 Then I'd go to the law of voluntary manslaughter as to
4 the male victim in this case. And then the defense of
5 self-defense as to the male victim in this case.

6 And I tell them, it's not available as to the
7 female victim in this case. They can only consider
8 whether or not he's guilty of murder as to her.

9 Then I'll charge them on armed robbery and charge
10 them on possession of a weapon during the commission of
11 a violent crime. Okay.

12 You'll have the verdict forms coming your way, to
13 pass them out. After I do that, I go over their duty
14 to deliberate, the jurors' duties to deliberate, and I
15 go over that with them. Then I'll go over the verdict
16 form with the Defendant in this matter -- excuse me,
17 the foreperson in this matter.

18 If any of you want to see my standard charge, I
19 have it here. You're more than welcome to look at it.
20 I think -- I know you've heard it before, both of the
21 sides have it, if you want to look at it for any
22 reason, you're more than welcome to.

23 Other than that, I note your objections to my
24 rulings on your request to charge, Mr. Plexico.

25 Any other matters from the Defense before we start

APRIL 12, 2017 PROCEEDINGS

1 closing?

2 MR. PLEXICO: No, Your Honor.

3 THE COURT: Any other matters from the State?

4 MR. STONE: No, sir.

5 THE COURT: Okay.

6 MR. PLEXICO: Hold up. Your Honor, I'd like to
7 point out before we start that police
8 misrepresentation you said was going to be put in
9 here, I don't see it on the new one.

10 THE COURT: It's in there on mine that I'm using.
11 Okay?

12 MR. PLEXICO: On the one you're using.

13 THE COURT: Yes, sir.

14 MR. PLEXICO: Okay then.

15 THE COURT: And listen, if I don't do it, you
16 make sure I do, but I can assure you I can show you
17 where it is right here in my charge.

18 Let me get mine aligned since we'll be using that.

19 Oh, as to murder, I'm not going to charge anything
20 as to the inference by the use of the deadly weapon. I
21 think this has caused headaches, and we have
22 self-defense in this case anyway, so it wouldn't be
23 applicable. I would just stop then under the murder
24 charge with malice may be inferred from conduct showing
25 a total disregard for human life, period. And not

APRIL 12, 2017 PROCEEDINGS

1 anything further with regard to any inferences that
2 arise from the use of weapon.

3 Any objections from the State?

4 MR. STONE: No, sir.

5 THE COURT: Any objection from the Defense?

6 MR. PLEXICO: No, Your Honor.

7 THE COURT: I didn't think so. Okay.

8 Then I go to voluntary manslaughter,
9 self-defense -- have you had a chance to read those
10 charges yet, Mr. Plexico and Mr. Stone?

11 MR. STONE: I'm looking at them now, sir.

12 THE COURT: Y'all take a minute and look at it
13 and then we'll come back.

14 (Brief recess.)

15 THE COURT: Please be seated.

16 Have you had time to review those charges, the
17 objections to charges, and the verdict form?

18 MR. PLEXICO: I've reviewed the verdict form,
19 Your Honor. It's in compliance with the rulings, and
20 I don't have anything to add from what you have
21 submitted at this time.

22 THE COURT: All right. Mr. Stone.

23 MR. STONE: Yes, sir, we've reviewed them, and
24 they're acceptable to the State.

25 THE COURT: Ready to go? I know I've been in and

APRIL 12, 2017 PROCEEDINGS

1 out of here. You need a minute, y'all ready to go?

2 MR. STONE: Yes, sir, ready to go.

3 THE COURT: You ready to go, Mr. Plexico?

4 MR. PLEXICO: Yes, Your Honor.

5 THE COURT: All right. Bring the jury in,
6 please.

7 (Jury enters the courtroom.)

8 THE COURT: All right. Ladies and gentlemen of
9 the jury, please bear with us and thank you for
10 bearing with us. Let me just tell you that the delay
11 caused was my fault. I've been going over certain
12 things to be very mindful of what I charge you to make
13 sure that I'm correct. So thank you for your
14 patience.

15 That being said, we're moving to the third phase
16 of the trial. That is closing statements by the
17 attorneys in this matter. The State will argue first,
18 the Defense will argue last; is that correct?

19 MR. STONE: Yes, sir.

20 THE COURT: Okay. Mr. Stone, ready to proceed?

21 MR. STONE: May it please the Court, Your Honor.

22 THE COURT: Yes, sir.

23 CLOSING ARGUMENT BY THE STATE

24 MR. STONE: Joshua Poacher killed the Patels.

25 Two -- a 72-year-old man and 67-year-old woman who

CLOSING ARGUMENT BY THE STATE

1 were defenseless. He shot them. He shot them both,
2 and he killed them and he robbed them.

3 For what? For what amounts to about \$30 or \$40 in
4 American currency, but it's money. And, a new pair of
5 sunglasses. That's what their lives amounted to.
6 That's what it all came down to.

7 Mr. Poacher got some money and he got some
8 sunglasses. That's what their lives came down to, to
9 Joshua Poacher. He shot them and he killed them.
10 That's what he did it for.

11 Why did he do it? Two reasons, both the reasons
12 he told you. At least, according to him, one is he was
13 high. He was either high or he was coming down off of
14 a high. His words, not mine. And he was scared.

15 What's he scared of? The Patels are getting ready
16 for work, hadn't even put their shoes on yet. How far
17 away could the Patels be from that front door before
18 they were shot? Cowering in the very back of their own
19 home, shot and killed in the back of their home. They
20 don't have a gun. No knives. No weapons of any way.
21 Weren't even fully dressed.

22 Do they look like they're posing a threat? He was
23 afraid. He was afraid, but he robbed them anyway. So
24 he was afraid, so he robbed them. That's what he did
25 this for, because he was high, he wanted the money, he

CLOSING ARGUMENT BY THE STATE

1 got him a new pair of sunglasses.

2 The evidence that we presented in this case, let's
3 go through it just briefly and talk about it. The ATM
4 card that he stole from the Patels, that he says he was
5 afraid, he started using it almost within an hour of
6 their death. And he tried to use it 15 times
7 throughout the entire day, starting right about 9:00 in
8 the morning, and all the way up till about 12 minutes
9 after six that night. The last attempted purchase was
10 those sunglasses.

11 Why do we know that? Well, we know it because he
12 still had the receipts on him when they arrested him.
13 Of course, one of the receipts that he didn't have on
14 him was one that his own sister notated his name on the
15 back of. Of course, she identifies him, his own
16 sister. That was my brother at right about 9:00,
17 trying to get money out of the Patels' ATM machine.

18 He was identified by another man trying to
19 exchange this money, money that he had stolen but
20 didn't know what to do with. That's what the ledger
21 tells us.

22 What does the science tell us in this case? His
23 fingerprints, inside the murder room, inside where the
24 Patels were cowering in the back of their house, in
25 their own home, shot and killed, his fingerprints on a

CLOSING ARGUMENT BY THE STATE

1 ring box. His fingerprints on an AARP envelope with
2 Hansaben Patel's name on it. Found in the murder
3 scene.

4 The shells from the shot bullets all matched the
5 gun that he had hidden in the other hotel in his room,
6 where he was. This gun. It matches all of the shells
7 fired from here -- and take a look at that for a
8 second. The shells come out of the side of this gun
9 when they get fired. That tells you pretty much where
10 Joshua Poacher was standing compared to the victims.
11 The bullets, the projectiles coming out here, all
12 landed over here, one in Mr. Patel's shirt, after it
13 went through probably her body, and the other one
14 underneath her. Again, after it went through her body.

15 These are the bullets here, and they also match
16 the gun that he had hidden under his bed. The autopsy
17 bullet removed from Mrs. Patel also matches the gun
18 Mr. Poacher had hidden under his bed.

19 That's what the science of just the crime scene
20 alone tells us. But what does he tell us? What does
21 he tell us? He says, I went there, I was going to go
22 to Denny's, I was going to go get something to eat. I
23 didn't intend to rob them. In fact, if I had intended
24 to rob them, I would have found the other money that
25 was in the house. He talked over and over about the

CLOSING ARGUMENT BY THE STATE

1 \$700 that he hadn't found, as if he was somehow sad
2 that he hadn't located the other money.

3 But he didn't mean for this to happen. He just
4 took this handgun with him, loaded, into their home,
5 and according to him, he was high, but he was scared,
6 and so he shot them and then robbed them.

7 He admits to using the card after four or five
8 times being asked about it. Agent -- Agent Simmons
9 came up here and spoke and talked to you over and over
10 again about how many times he had to ask him, and I'm
11 going to get back to that because that's pretty
12 important as far as what I think the Defense will argue
13 to you and what Mr. Poacher said about being afraid.

14 But when it comes to the truth and what we're
15 looking for, the evidence and the testimony that you
16 hear, that's what doesn't change. Even what he tells
17 you, he killed them, but he didn't intend to go there
18 and kill him. He was afraid. He robbed them, but he
19 hadn't really intended to do that, he just ended up
20 doing it. And he was afraid. He was so afraid that he
21 used that ATM card over and over and over again at
22 various locations throughout the county that day, so he
23 could get some money and a new pair of sunglasses.
24 That's what he tells us.

25 But the ultimate knowledge, I think, that you get

CLOSING ARGUMENT BY THE STATE

1 from this case is what the crime scene tells us. First
2 of all, let's look at the big crime scene. Poacher
3 tells us, I was going to the Denny's and I was going to
4 get something to eat and I needed a lighter, and Mr.
5 Patel said come on up.

6 There's Denny's. There's the entrance. So he
7 drove right by Denny's, or he walked right by Denny's,
8 all the way to the very back in order to find the
9 Patels. There's the Shell station that has the
10 lighter, if he wanted one. There's the Denny's, where
11 he had the food that he was looking for. But that
12 didn't slow him down any. He didn't stop at any of
13 those places, he kept going, all the way back here, to
14 the farthest part of the hotel. Nowhere close to
15 Denny's, where he supposedly was going.

16 What else does the crime scene tell us? Exhibit
17 No. 1, State's Exhibit 1A, this bullet was found
18 outside, right as you walk into the room. Right there
19 where that marker is.

20 How does the bullet get ejected out of this gun?
21 How does it come out? You heard the testimony about
22 that, too. It comes out when you rack it. When you
23 rack it, because the bullet was already in there. The
24 purpose behind racking a gun is to bring the bullet
25 from the magazine up into the chambers so you can shoot

CLOSING ARGUMENT BY THE STATE

1 it. That tells you Poacher's intent when he gets to
2 the room. That bullet, unfired, out here at Marker
3 No. 1 shows you that that man walked up to that hotel
4 room, and as he walked up, he cocked the gun.

5 Why do you do that? You do it because you intend
6 to use it, and not just show it to somebody and scare
7 them. But to shoot it. To fire the bullet. Not just
8 because it was loaded, but because he cocked it on the
9 way in the door, which is probably what caused the
10 Patels to go all the way back to the back part of their
11 room, where they were cowering away from him as he
12 fired, one, two, three, four. He says, I shot
13 Mr. Patel once. We know that's not true. The
14 pathologist testified he was shot twice.

15 I don't remember how many times I shot her, but
16 she was coming at me. That's not true either. This is
17 Mrs. Patel. How's she coming at him when all the shots
18 are coming in from the side, as the pathologist said,
19 in rapid succession -- except for this one. And I'll
20 get back to that in just a second.

21 How's she coming after him? How does a bullet get
22 shot that way? Doesn't. It's not possible.

23 What else does the pathologist tell you with this
24 photograph right here? They died where they were shot.
25 They were shot where they died. There is no blood in

CLOSING ARGUMENT BY THE STATE

1 any of this crime scene. There's no blood anywhere
2 else. If they'd been shot out here and then moved
3 across or ran away or bled anywhere like that, there'd
4 be blood somewhere else. There's not. All the blood
5 is right there, which is why the pathologist told you,
6 a doctor, they were shot right there, they died right
7 there. Mrs. Patel, when she was hit, it severed an
8 artery that caused her to bleed out very quickly, and
9 all that blood came quickly.

10 What kind of threat were these people to him, to
11 Poacher? I don't know the effect of drugs on a
12 bloodstream, I don't know. He said he was high, maybe
13 that made him paranoid. I don't know. But the Patels,
14 under no circumstances, were ever a threat to him. No
15 way. Not the 72-year-old Mr. Patel, and not the
16 67-year-old Mrs. Patel. They were executed in the far
17 back of their own home by a man who wanted some money
18 and a new pair of sunglasses.

19 And the one other thing the pathologist said,
20 aside from the three shots in the shoulder, the one on
21 the back is an upward angle. Now, we know that
22 nobody's going to do this and shoot somebody. How's
23 that going to happen?

24 Especially considering the fact that he had
25 already -- the pathologist had already told you that

CLOSING ARGUMENT BY THE STATE

1 they died where they were shot. How's that fourth shot
2 administered? Just like that (indicating.) Just like
3 that. And by the way, the first three didn't kill her.
4 They would have been painful and they would have hurt,
5 but they didn't kill her. It was the fourth shot that
6 killed her. It was the fourth shot that caused the
7 blood to leave her body quickly. It was the fourth
8 shot, where she was shot and where she died.

9 And what was she doing when he shot her? What
10 kind of threat was she to this man over here, the one
11 man in that room who actually had a gun. The only one
12 that had any weapon whatsoever. What kind of threat
13 was she? What was she doing? She was hovering over
14 her dead husband. That's why she's in that position.
15 That's how they found her. That's the threat.

16 What Mr. Poacher said on his statement, and the
17 SLED agents, I will tell you, they knew he wasn't being
18 truthful from the very beginning. And they stayed
19 after him. And they did it legally and they gave him
20 an opportunity to minimize, and they told him all kind
21 of stuff because they wanted him to tell them what
22 happened. They wanted to know, and they wanted to know
23 if anybody else was involved.

24 You heard over and over again, was there anybody
25 else involved? And he gave them a little bit. He

CLOSING ARGUMENT BY THE STATE

1 never did tell them the full truth. He was trying to
2 say something in the line of this must have been
3 self-defense. He grabbed at me and I was afraid, so I
4 shot and killed him. She was coming at me and I shot
5 and killed her.

6 See, here's the problem that Mr. Poacher has. And
7 in this case, therefore, the defense attorney. The
8 issues that will be before you, is whether or not he's
9 guilty of murder. Murdering Mrs. Patel and Mr. Patel.
10 And the argument from the Defense will be he did it in
11 self-defense, or he did it out of some type of heated
12 passion. He was afraid.

13 Well, see, here's the problem. When I initially
14 talked to you the very first day, I said I'm going to
15 come back here after this is all over and after you
16 hear all the testimony, and I'm going to ask you to do
17 one thing, give us a verdict that speaks the truth.
18 The truth.

19 And, see, the funny thing about the truth, it's
20 not a multiple choice kind of thing. It's not, if you
21 don't believe this, how about this? It's not a, I was
22 smoking a blunt with Roy, and Darryl gave me a credit
23 card, and if you don't believe that, how about Darryl
24 just gave me the credit card? How about I bought it
25 for \$100? How about I gave him some crack? If you

CLOSING ARGUMENT BY THE STATE

1 don't believe that, okay, I shot him, but I did it in
2 self-defense.

3 The truth's not like that. Your verdict speaks
4 the truth, and it's not multiple choice. Everything
5 that you see, from the evidence and the testimony that
6 you heard, the scientific evidence, the witness
7 testimony, all points to one thing. Joshua Poacher
8 came there with a loaded handgun. He cocked it as he
9 walked into the door. These people went back to the
10 far back because they were afraid, and he executed both
11 of them.

12 Now, whether or not he held them at gunpoint and
13 stole the items before he shot and killed them, nobody
14 will ever know that except for Mr. Poacher. But he
15 shot and killed them. They were cowering away from
16 him. They were causing him no threat whatsoever. And
17 then he stole their ATM card and their money. And
18 would have stolen anything else he could find.
19 Because, as you could tell from the scene, everything
20 was thrown all over the place, even the AARP paperwork.

21 My job is to prove this case beyond a reasonable
22 doubt, and if I haven't done that, your job is to come
23 back and say, no, you haven't done your job, and he's
24 not guilty.

25 But now it's your turn. I'm going to ask you to

CLOSING ARGUMENT BY THE STATE

1 do what it is that you were sworn to do, pay attention
2 to the evidence, facts, what you know is common sense,
3 and give us a verdict that speaks the truth.

4 Thank you.

5 THE COURT: Mr. Plexico.

6 MR. PLEXICO: If it pleases the Court.

7 THE COURT: Yes, sir.

8 CLOSING ARGUMENT BY DEFENSE

9 MR. PLEXICO: Good to see everyone. Mr. -- well,
10 first, ladies and gentlemen of the jury, yes, the
11 evidence is all finally in.

12 I have certainly a different take on this case. I
13 want to start off with going over some legal principles
14 with you, that I think were actually very, very
15 important.

16 First off, it is indeed the State's burden to
17 actually go out and carry that burden of proving my
18 client guilty beyond a reasonable doubt with competent
19 evidence that you feel is trusted and was gotten in a
20 lawful manner.

21 To start with, my client's presumed innocent. And
22 this presumption of innocence is actually legal proof
23 of innocence. That alone, by itself, when you cut
24 through the evidence and decide what you should
25 consider -- because some of this evidence is not

CLOSING ARGUMENT BY DEFENSE

1 lawfully gotten, and I think that you will find that
2 and you won't be able to consider that. Then you'll
3 have to look at the quality of the rest of the evidence
4 that the State has put forward and decide if that would
5 create a belief in you that the Defendant is guilty of
6 anything beyond a reasonable doubt.

7 Presumption of innocence is like a cloak of
8 innocence, and that can't be taken away from you. That
9 by itself can be enough reason just to find the
10 Defendant not guilty.

11 He has a right not to testify. We don't have
12 anything that -- that we'll put in. That is his right.
13 Y'all cannot even consider that. You can't talk about,
14 oh, he didn't say, he didn't this, that, or the other.
15 Or he didn't say anything. That's not evidence against
16 him.

17 In America, that can't be held against him. In
18 some countries -- remember, we're special. America is
19 special. We have rights that other people don't have,
20 and we have to, as jurors, you need to make sure the
21 government's not stepping on the rights that these
22 people have. As hard as it is, and you know that
23 you've done a good job when you have a difficult case
24 and you say I'm not going to consider the evidence that
25 the government got in an illegal manner, because that's

CLOSING ARGUMENT BY DEFENSE

1 your job.

2 And if you can't do it in a hard case, I just do
3 it in an easy case, pretty soon it won't be, I won't do
4 it for a poor man or I won't do it of a person for
5 color, I'll only do it for a rich man. Then you won't
6 do it for any man, and then that right will have
7 slipped away from you.

8 A lady asked Ben Franklin at the end of the
9 Constitutional conventional, she said, "Mr. Franklin,
10 what kind of government do we have?"

11 And his response was, "A republic, ma'am, if you
12 can keep it."

13 If you can keep it. And you have rights today.
14 And the bottom line of whether or not you're going to
15 keep those rights goes to the integrity of each
16 individual juror, and jurors as a group, when following
17 the judge's instructions and defending the rights of
18 the accused. Because if the accused don't have them,
19 then they don't exist and nobody has them, and when
20 they're needed. And remember what the Catholic priest
21 said of Hitler. He said that when they came to get the
22 Jews, no one said anything. When they came to get the
23 people of color, nobody said anything. When they came
24 to get me, there was nobody left to say anything. They
25 had missed their opportunity.

CLOSING ARGUMENT BY DEFENSE

1 Each time you have a right to stand up and do the
2 right thing is the most important thing that a juror
3 can do, especially in a difficult case. It's nothing
4 to be ashamed of. It's something -- the more difficult
5 the case and the harder the decision, the brighter the
6 light that shines that America is going to keep this
7 fine criminal justice system that we have.

8 Now, my client has to be proven by the State
9 guilty beyond a reasonable doubt of any of these
10 charges. If you have a reasonable doubt about any
11 element in this, then he has to get the benefit of that
12 reasonable doubt. He has to be given that. Okay.
13 They have to prove each element beyond a reasonable
14 doubt. Any doubt you have has to be resolved in my
15 client's favor, and that's going to be that he's not
16 guilty. Okay? Now, that's simply a legal concept
17 that's extremely important.

18 We'll talk about something else before I go over
19 the evidence. This is called voluntariness of a
20 Defendant's statement. You're going to be told by the
21 Judge that you have to find that this statement was
22 given free and voluntary. Okay? And whether or not
23 it's considered to be made voluntary, it's -- you have
24 to look at his age. You know his age, he's 20 years
25 old. You saw his -- his addiction and, you know, his

CLOSING ARGUMENT BY DEFENSE

1 understanding of the English language. He's not a
2 bright guy. How much does he really understand his
3 rights to start with? How educated did he appear to
4 you? His education was a second factor.

5 His mental ability and capacity. Well, you know,
6 he's 20 years old and you saw how he carries himself.
7 So we know that's not really great. No, my client's
8 not an Einstein.

9 And you have to look at the place and length of
10 detention. You got to look at the nature of the
11 questioning, police misrepresentations. Okay? So they
12 got him -- what, on the 16th, put him in custody,
13 locked him in an iron box, a concrete box. The 17th,
14 the 18th, he's asking for a lawyer, they don't care.
15 The 19th, the 20th passes, and on the sixth day, okay,
16 he finally cracks due to the disregard for his rights,
17 which is another factor, and the length of detention.

18 His obvious lack of intelligence, his obvious lack
19 of an education. They abused his constitutional rights
20 is what they did. Yet they want to come to you and
21 have you ignore that. Why? Because this is a hard
22 case. This is a sad case. Play on your emotions.

23 Let's forget this man's rights today. He asked
24 for a lawyer. Not my job. Well, I guess it's nobody's
25 job over at the jail. Okay?

CLOSING ARGUMENT BY DEFENSE

1 Did they give him an extra phone call? Did y'all
2 call the Public Defender's Office? Goodness. I mean,
3 use common sense. You have PDs 24 in New York. What's
4 a PD 24? Public defender 24 hours. You know, you get
5 a guy that you're investigating at 11:00 at night, you
6 pick up the phone and say, hey, public defender, you
7 know, you got a call list, come on out. We need to
8 talk to him now. Because, you know, New York City's a
9 24-hour city. You know. They're sophisticated and
10 they're set up and they honor a person's right to have
11 a lawyer.

12 We're a poor state. I've heard our Chief Justice
13 say it. There are a lot of things I'd love to do, I'd
14 like to have more judges and all this stuff, but we're
15 just simply an impoverished state. There are a few
16 rich areas around, but, you know, generally, that just
17 doesn't happen. That's unheard of down south.

18 But if your rights under the Federal Constitution,
19 is your rights any different if you're a South
20 Carolinian than if you're a New Yorker? Are you a
21 better American as a New Yorker? Are you entitled to
22 different rights, constitutional rights than if -- you
23 know, yours are exercised differently. Yours are
24 looked at differently by the government here.

25 Does that make you less? It shouldn't. This is

CLOSING ARGUMENT BY DEFENSE

1 what jurors need to say. I don't think we're allowing
2 this. This does not work.

3 Now, the other thing is, you have to look at the
4 advice of his Constitutional rights. And we're talking
5 about the Miranda warnings, his right to have a lawyer,
6 his right to remain silent, his right to stop making a
7 statement or answering questions at any time. And if
8 indigent -- that's poor -- too poor to hire a lawyer,
9 then the right to have a lawyer appointed to represent
10 him for free.

11 And his ability to understand those warnings. And
12 to understand the effect of waiving his constitutional
13 rights. Uneducated, not very bright, locked in a
14 concrete box, away from his family, away from his
15 friends. Denied a lawyer. And he finally cracks.

16 Now, how could you -- how could this person, from
17 what you've seen from his demeanor, how could he
18 understand the effect of waiving his constitutional
19 rights if, in fact, unless he talked, excuse me, to a
20 lawyer. Unless he talked to a lawyer, which they
21 denied him, he couldn't understand it.

22 Now, there's also a consideration, the diminution
23 of his rights, diminution of his rights. That means a
24 lessening, a reducing. In other words, it's that
25 second class citizen. Okay? That's the concept. If

CLOSING ARGUMENT BY DEFENSE

1 the State has shown, for instance, that, you know,
2 before you can give any weight, what is weight to a
3 state? In other words, you're considering it as
4 evidence. Before you could consider it as any type of
5 evidence at all, okay, you have to be satisfied beyond
6 a reasonable doubt. That's a heavy burden.

7 If what I say makes you hesitate as a good
8 American, that I can't consider this and I'm not going
9 to be part of the State's -- because now you're part of
10 it. If you approve it, you use it, you're a part of
11 it. You think that's the way it needs to be done.
12 Lock them in a box, deny them a lawyer, make them stare
13 at concrete day after day after day, then you're part
14 of it.

15 I think we're better than that. It says, "you
16 must be satisfied beyond a reasonable doubt, it was
17 made by the accused, uninfluenced by the promise of
18 reward, threat of injury, or diminution of his rights."

19 Diminution of his rights. Diminution. Okay?
20 Reducing. Lessening of his rights.

21 How could you have -- what good are rights if you
22 can't exercise them? Oh, he wants a lawyer? Well,
23 we'll just keep him over there a couple of weeks, we'll
24 starve him out. That's about the size of it, isn't it?

25 So, in other words, the secret -- the dirty secret

CLOSING ARGUMENT BY DEFENSE

1 here is that you don't have a right to a lawyer. Okay?
2 You're being denied that.

3 Did he get a lawyer? No. Unquestionably. I want
4 a lawyer. It stops there. That means what? Since
5 there's other statements, and he doesn't get a lawyer,
6 anything they're saying that happened after that, which
7 is the statement in question that they put in, you
8 cannot in good conscience, as a good American who
9 respects the constitutional right of others and
10 yourself, your own self -- because you don't have it if
11 you can't respect somebody else's. You cannot consider
12 that statement.

13 You have to find that it is beyond a reasonable
14 doubt in view of all of these factors, that it was
15 given freely and voluntarily without threat or promise
16 of reward. Well, we heard promises, we're going to
17 help you out. Misrepresentations by the police. Do I
18 have to go over them? You know they were just lying to
19 him, and they don't care.

20 And part of this culture of the police, okay, of
21 the SLED culture, is, hey, we're just going to
22 steamroll the guy. They keep going on and on and on
23 until we get what we want. And this goes to the power
24 of the evidence if -- they wouldn't be in this jail if
25 they got on the phone and picked up that -- and said,

CLOSING ARGUMENT BY DEFENSE

1 Mr. Lawyer, we need somebody down here. If they had
2 done that.

3 Let me ask you this question. Why don't they do
4 that? If they had done that, no competent lawyer would
5 have talked to Mr. Poacher and say, you tell them what
6 you said on that tape. No competent lawyer. They
7 would have said -- what, you're going to exercise your
8 right to remain silent, and that's my bottom line. My
9 bottom line advice.

10 They know that's coming, the police. Come on.
11 That's why they're not -- that's why they denied his
12 right to a lawyer, because they hadn't gotten that
13 confession. And they were in desperate, dire need of
14 that confession, okay, to keep moving forward, or they
15 were going to have to cut him loose.

16 So they purposely abused his rights and want you
17 to put a stamp of approval on that abuse of his rights
18 by shaming yourselves and telling the police that it's
19 okay to behave in this unconstitutional manner. To
20 ignore your duties as a juror and as a jury as a whole.

21 I'll tell you again, in determining whether any
22 statement made by the Defendant was voluntarily made,
23 you should consider the characteristics of the accused
24 and the details of the interrogation. And the Judge is
25 going to give you a big list of things to follow.

CLOSING ARGUMENT BY DEFENSE

1 Okay? And it's not just reciting somebody's Miranda
2 rights. If you look at how this person was treated,
3 and all those factors, and then you go, that's wrong.
4 In America -- this isn't Russia -- it might be okay in
5 Chili or somewhere else, okay, or Belize, I don't know.
6 You know, it sounds Gestapo to me.

7 You know, my father fought in World War II, and we
8 had a lot of conversations about really people not
9 standing up for what they believe in. Okay?

10 And I promised him I would always do that. And
11 I'm sure that everybody in their life has a
12 conversation with a responsible adult about the depth
13 of doing things when they're right, even if it could
14 cost them their life.

15 I think I've gone over this enough. But what I'm
16 asking you to do, the legal concept, is not to consider
17 that statement. Look at any other evidence they have
18 lawfully that's meaningful. Don't consider that
19 statement at all. And the Judge will tell you, if it's
20 an abuse of his rights, meaning it's not freely and
21 voluntarily gotten, in view of these factors, a
22 diminution of his rights, okay, a diminishing of his
23 rights, a reducing of his rights, making him a second
24 class citizen, okay, with effectively meaningless
25 rights. He's not really an American because he doesn't

CLOSING ARGUMENT BY DEFENSE

1 have his constitutional rights.

2 Then, what are we? I mean, would you do that to a
3 rich person? Get the public defender, you can't afford
4 a lawyer. Common sense. All right. Rich lawyer, rich
5 person that has ten lawyers beating his door down. Two
6 classes of justice, one for a rich man, one for a poor
7 man. Is that going to be on your conscience?

8 I would hope not. Would a rich man waited six
9 days? No. A rich man would have had that lawyer in
10 there the next day, and you know it. Two classes.
11 Don't be part of that. You can't be. We need to be
12 one America, where we're all the same, with the same
13 rights and the same opportunities, and that's all there
14 is to it.

15 Now -- the Court's indulgence.

16 I want to go over a few things with you now. One
17 of the big things that they're doing is hanging this --
18 they have fingerprints. Okay? What we did learn from
19 the fingerprints -- from my questioning, certainly not
20 the prosecutor's -- is that apparently the FBI's been
21 locking people up based on fingerprint, okay, analysis
22 for prior to '73 for about 50 years, and didn't know
23 what they were doing. Well, let's count up all the
24 Americans that have been wrongly imprisoned.

25 They used to have, what they called, she testified

CLOSING ARGUMENT BY DEFENSE

1 to, Level 2 detail in American is 12. The British were
2 more conservative. They wanted 16 points of
3 comparison, 16 points. That's the European standard, a
4 higher standard. Okay?

5 In America, we require two -- 12, excuse me, Level
6 2 details. All right. She has A through I. And I'm
7 not clear they were all Level 2. Something about pores
8 and things. She didn't look at those fingerprints
9 herself and say -- see if all these things didn't match
10 up. That's going to be common sense.

11 Now, they have the subjective analysis versus an
12 objective analysis. Can you imagine that you've got a
13 national computer system, and I can only imagine the
14 millions that that costs, use your common sense, that
15 all 50 states are hooked into, and they've got this
16 little rotating device, even in our Jasper County jail,
17 that takes a hologram or whatever of your finger, and
18 then in 27 minutes, once you insert it in the database,
19 the national database, you get a hit back. Okay?

20 That's saved untold amounts of work. Okay? It
21 would also -- and it gives you a reliability factor.
22 These are computers running algorithms. Okay. They
23 don't have emotions, the don't have bosses, they don't
24 all hang out at SLED headquarters where they get the
25 training and they're all Sonny and Buddy. Okay? And

CLOSING ARGUMENT BY DEFENSE

1 you call up the fingerprint guy, you're a SLED agent or
2 you're a fingerprint lady. Okay? And you say, hey,
3 you know what, I need to get something on Billy Bob
4 here, because I know he's a really bad guy. I got to
5 go to court, and these fingerprints matter -- oh, in
6 her opinion, what did they do? Oh, you can look at
7 them and see if they're different. Okay? You can find
8 two of something alike in anything. All right?

9 She didn't even make good notes. No. How do you
10 check something if somebody else -- oh, we have a
11 supervisor that checks us. There's only six of them.
12 Five million South Carolinians. You know there's a lot
13 of crime in South Carolina, come to being an
14 impoverished state. Five million.

15 Get this. They do all their work by hand. Okay?
16 Thousands -- she has 6,000 or so, whatever number she
17 said. Thousands and thousands. Okay? Now, okay, I
18 mean, they're not going to use something that takes 27
19 minutes? That would be a big time saver. It would
20 make sense. So this is -- and there's no standard.

21 Well, British had 16, then they went to 12. Then
22 come to find out, well, we don't have any reason to
23 believe that, that you need so many -- any definite
24 number of points of comparison.

25 So, well, we compared enough. Only got one

CLOSING ARGUMENT BY DEFENSE

1 finger, what it looks like. Well, where is your data?
2 I don't have it. I just, you know, don't. And you can
3 look at them and see they don't match. Look at one.
4 If that say, I don't think the FBI is full of a bunch
5 of dumb idiotic men and women. Okay? If they require
6 12, there might have been more than the 16 points of a
7 similarity in agreement. Remember, similar is not
8 always the same.

9 Now, here's an attorney. Similar. Okay? It
10 should be the same. Because if it's the same
11 fingerprint, it shouldn't be a similar one. That could
12 be his problem. It was a neighbor or some guy in, I
13 mean, Savannah. Who else -- who else is going to know?

14 It goes to the quality of the evidence, and
15 they're refusing to -- in a modern world, how can South
16 Carolina do this, supposedly out of sophisticated SLED?
17 They don't use computers? I mean, what are they
18 thinking? I mean, what kind of competency is that?

19 And they denied there's any specific criteria for
20 you to gauge and say they're reliable fingerprints.
21 Oh, trust me. I've heard that one. Don't worry about
22 it, trust me. Don't worry about it, trust me. Right.
23 This is supposed to be scientific evidence without any
24 science. There's no science. That's what it comes
25 down to.

CLOSING ARGUMENT BY DEFENSE

1 So if she came in here and all around and she was
2 -- didn't seem very inspiring to me about her level of
3 expertise. Now, you have a right, you can believe some
4 of what a witness says, none of it. Okay? All of it.
5 It's up to you to gauge what that person says from that
6 witness chair.

7 So there's no credible reason to believe that
8 these fingerprints matched based upon the analysis she
9 said that she had. Which is, we know, below the FBI ~
10 standard. Okay?

11 Why? Let's guess. Sixteen's hard to get. Twelve
12 is easier to match up. Let's get it down to eight or
13 four, nine, six. Okay?

14 What happens when you don't require high
15 efficiency, and it goes down to low efficiency?
16 Remember, that's going to be more wrongfully, okay,
17 convicted, and imprisoned people.

18 So if you get the confession out of your mind, the
19 Judge can tell you it's your duty not to -- if you
20 don't believe that beyond a reasonable doubt it was
21 fairly good, then you move on to the other evidence.
22 The big other evidence is the SLED's fingerprint. One,
23 they didn't do a proper analysis, where they deny
24 there's even a good analysis to be made. So you
25 couldn't convict a person on that. That has no weight.

CLOSING ARGUMENT BY DEFENSE

1 Of course, you know, I mean, they're denying the
2 government knows what it's doing. It's a trust me
3 standard. It's incredulous.

4 So if you get past the statement and you take away
5 the fingerprint, which is unreliable evidence that you
6 can't trust, what do you have at that point? Well, do
7 you have any witnesses that are going to testify my
8 client was there at that hotel? No, you don't. You
9 can't put him there. The only thing that you have to
10 put him there is the statement, which is
11 unconstitutionally gotten and issued by a criminal.
12 And fingerprint, alleged fingerprints, which are
13 exempt. There's no standard. Okay? It's a joke, and
14 you know it.

15 Then there's no eyewitness to put him in there.
16 So what do you have? All you have is him in possession
17 of stolen items. Okay? Now, this is the proper way to
18 go about it, and you're not going to be given a reason
19 -- you can't find him -- you don't have a choice that
20 you're going to be able to find him guilty of receiving
21 stolen goods or larceny. Because the Judge isn't going
22 to give you that in his jury charge.

23 Now -- but that's all he would be guilty of based
24 on the evidence they have. They don't have any other
25 evidence. They can't prove when he became in

CLOSING ARGUMENT BY DEFENSE

1 possession of the gun, for instance. They can't show
2 anything. They can't put him in at the hotel. Okay?

3 That's the proper analysis here. And what is
4 this? This is a hard thing to do, correct? All right.
5 You make your first error when you go out and use some
6 of the statement. Why? Because you've made him a
7 lesser citizen. You, yourselves, individually and as a
8 group, stripped him of his constitutional rights. You
9 know those amendments they wrote, we wouldn't be a
10 nation today unless they got off and did it and got it
11 all together at that convention way back when, a couple
12 hundred years ago, and they came up with those
13 constitutional amendments. We wouldn't have been a
14 country. Okay? We would have been 13 little
15 individual states like in the Articles of Confederation
16 before we became a real nation. Okay? Thirteen
17 affiliated little countries. We would be Europe.
18 Might have a 16 standard, don't know what to tell you,
19 but we would be more like the European government.

20 If they talk you into ignoring that, or you just
21 -- you just don't give him his rights, and I hope for
22 goodness sakes that you do, then we have other issues
23 to talk about. But it stops there. Because at this
24 point, what you should say is, I'm not going to find
25 him guilty of anything, if you take that statement out.

CLOSING ARGUMENT BY DEFENSE

1 And so no fingerprints that you can rely on those.

2 That's a -- be honest with yourself.

3 Would you convict somebody on fingerprint evidence
4 that wasn't -- after hearing what you're hearing and
5 just the lousy job that they're doing on fingerprints,
6 and apparently have always done? No. See, the truth
7 is coming out about this now. It might have taken them
8 decades, but, okay, it's just a tool of law
9 enforcement. Like abusing their rights, we have jurors
10 stand aside and do nothing, be lazy, okay, and not make
11 the hard decision, because they want to go home to
12 dinner or go home to the children or go home to their
13 happy little lives. Okay? Remember, if they do that,
14 one day they might not have those rights. And their
15 neighbors and the rest of us. It's a hard job here.
16 It should end here.

17 But if you don't go that way, then you have a
18 right to consider self-defense. All right.
19 Self-defense, without fault in bringing on the
20 difficulty. And he made a big deal about where to
21 park. Did he come out with anything about, you know,
22 that this was in August, you know, this was trauma time
23 and all that stuff? You know, this is a big place
24 where a lot of people come and stay. All right. So he
25 don't know anything about parking, he might have parked

CLOSING ARGUMENT BY DEFENSE

1 around toward the back because he had to. That
2 wouldn't be the first time that happened if you wanted
3 to go eat at Denny's. Okay? I mean, how many Denny's
4 are there around here? Not -- you know, pickings are
5 kind of slim. Okay? All right. Denny's is sort of
6 special, a lot of people go there. They serve a great
7 breakfast. Okay? There are people who like breakfast
8 24 hours a day and, you know, service from time to
9 time. But you don't know anything about the parking
10 situation. So where he parked is of no relevance at
11 all. Okay?

12 All right. And they had an opportunity to go look
13 at the registry, to see how many people ate there, see
14 how many people stayed there, to see how busy the place
15 was. They could have retained video. They could have
16 established that. No, they didn't do that, you know.
17 No. Why? They're relying on the unconstitutional
18 statement. They're relying on it and they're just
19 resting easy.

20 But he says, I asked for a light, the guy freaked
21 out on me, grabbed me, went for my gun. Okay? I
22 pushed him off. Turned around, and here's the lady.
23 Okay. The man's coming at him. He shoots him, they're
24 trying to say it's two. Depending on how he's coming
25 and moving his hands. Okay? The bullet could have

CLOSING ARGUMENT BY DEFENSE

1 been here, could have been there, it could have been
2 one. They don't have enough shells for what they're
3 trying to say they're two. Okay? If you choose to use
4 that, and then she's a screaming banshee coming toward
5 him. And this piled up, if you remember the picture,
6 you know, in the pathologist statement, we're talking
7 within 2 feet. We're talking at least 2 feet apart,
8 where there would have been stippling from the -- from
9 the bullets, which was the powder burns or soot from
10 the powder. So we know it's 2 feet. Okay? We don't
11 know if it's 10 feet or 12 feet, we know it's more than
12 2 feet. And we know that he felt threatened.

13 If somebody comes up on you and reaching in front
14 of you to grab your gun, they up to no good. You know,
15 what else is up here? And it's not like he's over here
16 doing anything wrong, and he just freaks out. Okay?
17 Well, if somebody goes around your gun, that places you
18 in imminent danger. Okay? That's a threat of real
19 bodily injury. You might not get out. And there's two
20 of them.

21 And I'm, you know, it's confusing about when she
22 appears. So she's coming to his aid to rob him? I
23 don't know. Look at the facts. So he fires. Okay?

24 Well, you know, somebody's coming to do injury.
25 Inexperienced, young, not very bright, you know this.

CLOSING ARGUMENT BY DEFENSE

1 Okay? Would it be reasonable for a person to act out
2 like that? It's reasonable. Didn't bring on the
3 problem. He's in fear of, you know, serious bodily
4 injury. Okay?

5 I mean, did he act reasonably? I mean, they --
6 goodness knows. You're talking about who's going to
7 get the gun. They're moving toward him. These are
8 facts you don't like, but it's an interpretation that
9 can be found in the record. And once you make that
10 interpretation, then you can't find him guilty of
11 either murder.

12 Remember, people are grabbing at him. And that
13 very well may be a hundred percent the way that it is.
14 Okay? The fact that he grabbed stuff and left makes
15 him guilty of the larceny, but that's all. But they
16 don't have anything else. That's all they have.

17 The Court's indulgence.

18 You know, you're going to have some choices here.
19 And they're a little confusing. So I'm going to go
20 over them with you, because I've heard jurors tell me
21 before they didn't quite understand everything. And
22 feel free to ask the judge if there's something that
23 you don't understand, that's what the judge is here
24 for. And the court reporter is here, if you want to
25 hear all the evidence. Or you forgot something or you

CLOSING ARGUMENT BY DEFENSE

1 can't agree, you can always listen to it again. I
2 mean, you know, that's part of our jobs, because we
3 want you to make intelligent, smart decisions that are
4 reasonable.

5 I'd say that, you know, it's simply not guilty in
6 regards to the woman. He just doesn't have anything to
7 have to prove. If you take the statement and can even
8 place him there. Then you got to show malice.

9 That means you got to show that he went there to
10 kill her. Okay. You know, malice is meanness, and
11 it's just that you intend to do that act for a bad
12 reason right then. And you don't have a bad reason
13 that he's doing that act. You simply don't. And I
14 think that any 12 people can agree that he's there to
15 commit an armed robbery. That's just not the way it
16 is. That just doesn't seem to make any sense.

17 And they made a big statement in view -- in spite
18 of the fact that Agent Tallon came in here -- you know,
19 the short guy with brown hair, glasses, who was the
20 crime scene investigator -- he came in, he said, well,
21 it could have dropped out of somebody's clothes, it
22 could have gone on the -- the bullet on the floor could
23 have came when somebody racked it back, the gun could
24 have been dropped. Could have been -- it wasn't that
25 the lady saw him dropping things. Okay? And the gun

CLOSING ARGUMENT BY DEFENSE

1 could have been one of them. All right.

2 And then you had the clip, clips pop out. If you
3 had the semi-automatic, use your common sense,
4 sometimes, you know, you overload it, try to pop it in,
5 it drops back on the floor. Or you don't pop it in
6 good enough, then it drops down on the floor and the
7 bullet can pop out. It could actually fire sometimes
8 that way. Okay?

9 But there's been no testimony, it's just plain and
10 simple. All right? So there are multiple ways where
11 and how the bullet could have gotten on the sidewalk.
12 Multiple ways. And they want you to assume, oh, this
13 is the bad way because it makes the State's case look
14 better. All right. Forget his constitutional rights,
15 you know, we need that statement.

16 When you start taking these pieces apart, they
17 don't make any sense. That's all there is to it.

18 The -- and, you know, you can -- I think it's with
19 Patel, Mr. Patel, this is just -- he's just not guilty.
20 He just can't come up and, you know, attack somebody
21 and start trying to get their gun. These people are
22 going to defend themselves. It's a way to get killed.
23 That's what happened, unfortunately. And then she
24 freaked out and, you know, goodness knows.

25 I mean, you know, sad situation, but, you know,

CLOSING ARGUMENT BY DEFENSE

1 sad situations sometimes make for bad verdicts,
2 because, you know, you're not here to make everybody
3 happy. You're here to do the right thing. And that's
4 what I'm begging you to do.

5 And they might argue, well, you know, that's only
6 voluntary manslaughter. And that's where there's a
7 killing and there's sufficient legal provocation such
8 as being attacked. Okay? They're going to go, oh,
9 well, maybe somebody might say well, you know, they
10 weren't armed. Okay.

11 But when you're in close quarters, and that's some
12 close closeness there, that nobody testified -- or
13 nobody testified from the stand, you know, people might
14 want to use imagination about how close this struggle
15 was. Okay?

16 So, I mean, if you use your -- you know, your
17 memory of the testimony and, you know, these things
18 somebody -- you know, you're talking about who's going
19 to control a gun, you know, somebody's going to get
20 shot. But that's not murder, and that's not
21 manslaughter. I mean, that's taking care of number
22 one, which is -- I mean, if you don't have that right,
23 I don't think you pretty much have any rights at all.

24 So there's no armed robbery because there's no
25 intent. That's just out the window. There simply is

CLOSING ARGUMENT BY DEFENSE

1 no armed robbery. And if there's no manslaughter,
2 there's no murder, and there's no armed robbery,
3 there's no possession of a weapon during the commission
4 of a violent crime. Because the only crime he
5 committed was larceny, if you're going to believe the
6 State. Obviously, he's got a gun. Neither of which
7 you're going to have in front of you to find him guilty
8 of, unfortunately. That would be for another day.

9 Now, believe what the Judge is going to tell you
10 is that statements alleged to have been made by the
11 Defendant, has been admitted into evidence. Okay?

12 Now, the Court only determines that whether or not
13 it's admissible. Okay? But you make the ultimate
14 decision of whether or not the Defendant made the
15 statement, and if he did make the statement, you must
16 determine whether it was made by the Defendant
17 voluntarily and of his own free will. That means that
18 the statement was not caused by pressure --

19 THE COURT: Just one second. I will charge the
20 jury on the law. Do not read my charge to the jury.
21 Thank you.

22 MR. PLEXICO: Yes, Your Honor.

23 And I want to go back to the theory on the
24 diminution of rights. Let me leave you with this.
25 Because if you take away the rights of one person, and

CLOSING ARGUMENT BY DEFENSE

1 if 12 people as a jury are going to ignore the rights
2 of that one person, that's the only way you can
3 consider his statement, it's just about saying he's a
4 second class citizen, now being upset about the facts,
5 and that's what I'm begging you not to do. Throw out
6 that statement and say the length of detention, then
7 the denial of his right to a lawyer is wrong. And
8 we're not going to have two or three classes of people
9 in America. We're going to do it right, and we're
10 going to expect that from our government. And once the
11 jurors start telling them that, they'll get it
12 straight. There will be a PD 24 in South Carolina.
13 But if you don't demand it, they're going to ignore it.
14 They're going to ignore rights over and over and over
15 again. They're going to use lousy evidence, like
16 fingerprints which, of course, apparently you have
17 thousands of people in jail that the FBI said they were
18 good matches, which they deny now. I wonder how they
19 fix that?

20 One thing for sure, this man won't get another
21 trial or another jury. Any errors of law the appellate
22 court can fix. This is a wise old judge. He's not
23 going to make any -- experienced judge. He's not going
24 to make any errors. There's no such thing as fixing a
25 determination of the facts.

CLOSING ARGUMENT BY DEFENSE

1 You can't fix whether or not, later on, on appeal,
2 whether or not the jury should even have considered for
3 a second the Defendant's statement taken in violation
4 of his rights. Once you say that's okay, you can't
5 appeal a jury's verdict. There's no appealing.

6 I'm begging you, do your jobs, stop this travesty
7 of injustice, and stop it in its tracks, and do it now.
8 Don't wait for the next time. Remember the Catholic
9 priest. When Hitler came for me, the Nazis came for
10 me, there wasn't anybody left to defend me. Because he
11 had let everybody else go. He hadn't complained about
12 it. And a not guilty verdict is a loud complaint.

13 I'm asking you to find him not guilty on all
14 charges. And that's just the only just and fair thing
15 to do unless you're going to take away his rights and
16 make him less than each American.

17 Him alone, starting with me, just like all the
18 others, don't do this. Return a true and just verdict,
19 and that's going to be a verdict of not guilty in all
20 counts.

21 Thank you very much.

22 THE COURT: All right, sir.

23 Mr. Foreman, ladies and gentlemen of the jury,
24 we've been going about an hour. Let's about a
25 five-minute break. My charge will probably be in the

COLLOQUY

1 neighborhood of 35 to 40 minutes, so let's sit down for
2 a minute. We'll go ahead and make arrangements for
3 your lunch. After we get through, we'll begin your
4 deliberations. But if you go back in the jury room
5 now, we'll bring you back out in just a few minutes.

6 (Jury exits the courtroom.)

7 THE COURT: What's the State's positions whether
8 or not the gun should go back to the jury?

9 MR. STONE: It is locked. I have the key here.
10 It's not -- it's not operable right now.

11 THE COURT: Okay.

12 MR. STONE: So I'll tell you, it's secure.
13 Here's the key. I really honestly don't know what to
14 do with the key. But I guess I'll give it to the
15 clerk.

16 But other than that, it is locked, it's secure.
17 So --

18 THE COURT: You agree with that?

19 MR. PLEXICO: Those are lousy locks, Judge, and
20 you know, out of an abundance of caution, I wouldn't
21 send it back.

22 THE COURT: That sounds good.

23 All right. Madamn Clerk, let's go ahead and order
24 their lunch. And by the time they get back, they can
25 just kind of stop their deliberations.

COLLOQUY

1 THE CLERK: Okay.

2 THE COURT: Anybody need a break before we start
3 charging?

4 MR. STONE: No, sir. Not from the State.

5 THE COURT: Bring the jury back in.

6 (Jury enters the courtroom.)

7 THE COURT: All right. Mr. Foreman, ladies and
8 gentlemen of the jury, now that all the evidence in
9 the case has been admitted and you've heard the
10 arguments from the attorneys, it's my duty to instruct
11 you on the law which you must apply in this case. You
12 must apply the law as I give it to you, and you may
13 not be concerned with what you think it should be,
14 only what it is.

15 Now, these instructions that I give to you now
16 will be in three parts. The first part will be the
17 general rules that define and control your duties as
18 jurors. Quite frankly, it's going to be one of the
19 longer aspects of my charge, after which, I can let you
20 have a break. Not to go necessarily to your jury
21 room -- unless you need to -- then I'm going to give
22 you the substantive law that applies in this case.

23 In other words, what the State must prove in order
24 to make out its charges against this Defendant. I'll
25 give you some considerations about your deliberations.

COLLOQUY

1 And then, Mr. Foreman, I'm going to go over the verdict
2 form with you. Okay, sir.

3 After that, I'll have a break with the attorneys
4 to see if I've neglected to tell you something that I
5 should have, and if so, we'll bring you back. If not,
6 then you'll be given the case to begin your
7 deliberations along with the exhibits and verdict form.

8 We have ordered your lunch, or it's in the process
9 of being ordered, and that will be available to you
10 once you begin your deliberations.

11 Now, if at any time, you need to take a break from
12 my charge, let me know. If you can't hear me during my
13 charge, let me know. It is important, however, that
14 you get everything that I tell you. Unfortunately, I'm
15 not as articulate or bright enough as some of the
16 attorneys are in this case, and these are very precise
17 points of law. So some of it will be read to you in
18 advance, and I apologize to you for that.

19 JURY CHARGE

20 But I told you at the beginning of this case,
21 you're the sole judges of the facts of this case. Sole
22 judges of the facts in this case. It will be your duty
23 to apply the law to the facts as you find them to be in
24 order to reach, hopefully, a unanimous verdict. You
25 may not and shall not be concerned with what you think

JURY CHARGE

1 the law should be, but only what it is. Also, you may
2 not be influenced by any personal likes or dislikes,
3 opinions, prejudice, or undue sympathy that you may
4 harbor anywhere in this case. That simply means that
5 you will decide this case solely upon the evidence
6 that's been placed before you, and according to the law
7 as I give it to you. And I'll remind you that's what
8 you took an oath at the beginning of this case to do
9 just that.

10 Now, there will be no more evidence placed.
11 Sometimes jurors ask me to supply them additional
12 evidence. There'll be -- all the evidence that is
13 going to be placed before you has been placed before
14 you.

15 Now, if you want to read or hear or see some of
16 the evidence that may need to be played here in the
17 courtroom, we'll do that as many times as you need as
18 long as it's already there. But there'll be no
19 additional evidence to be supplied to you.

20 Also, in following these instructions, if I've
21 done anything throughout this case that seems to
22 indicate to you how you are to decide the facts -- in
23 other words, what verdicts you are to reach in this
24 matter, you are to disregard that. I have a
25 constitutional prohibition about making any comments or

JURY CHARGE

1 any facts in any case, and I will tell you, I have no
2 opinion one way or the another about what the facts
3 are, or about what your verdict should be. You and you
4 alone will decide that. You're the sole judges of the
5 facts, and you will determine what the facts are by
6 evaluating and weighing the evidence that you heard
7 here in this courtroom and applying the law as I give
8 it to you.

9 Now, weighing evidence is not a little term. You
10 can't weigh evidence by -- with a scale, it's entirely
11 a mental process. And when you engage in your
12 deliberations when you're told to, you should use your
13 good common sense and your sense of logic and fairness
14 when you go through and discuss what your verdict is
15 going to be.

16 Now, in this case, the evidence that you may
17 consider as evidence is simply this. It's the sworn
18 testimony right here from this witness stand, whether
19 it be on direct examination, cross-examination, or some
20 other part of that. The exhibits that I allowed into
21 evidence will also be considered evidence. And that's
22 it.

23 So, that leads me to what's not evidence? As I
24 told you at the beginning of this case, lawyers have an
25 ethical duty to argue their case. But what they tell

JURY CHARGE

1 you is helpful, but it's not evidence. They have not
2 been cross-examined, they've not been put on the
3 witness stand. So if your memory of a fact differs
4 from what either or both of these attorneys have told
5 you in their opening or closing statements, or at some
6 other time, your memory of that fact will control.

7 Mr. Foreman, again, just because something may
8 appear in one of your juror's notes doesn't mean it
9 trumps somebody's memory of that particular issue or
10 fact. That's why they're deliberations, you'll have to
11 hash that out.

12 Also, questions and objections by the attorneys is
13 not evidence. As I told you, attorneys are required to
14 object any time they think something is improper in the
15 courtroom. Then to the extent that I allowed you to
16 see my ruling on that, you may not draw any conclusions
17 or inferences from the objection itself or from my
18 ruling.

19 Suffice it to say, that is simply the process that
20 goes on in every case.

21 Also, ladies and gentlemen, anything that you may
22 have seen or heard while you were not here in this
23 courtroom is not evidence. That leads me to the type
24 of evidence that we recognize in South Carolina as
25 evidence.

JURY CHARGE

1 In South Carolina we recognize direct evidence and
2 circumstantial evidence.

3 This is direct evidence: Direct evidence directly,
4 proves the existence of a fact and does not require
5 deduction or inference. For example, if an issue in
6 the case was whether or not I had run a stop sign, and
7 my law clerk testified that she saw me run that stop
8 sign, that would immediately establish that issue or
9 that fact. That is direct evidence. You wouldn't have
10 to infer anything further, or to deduce anything
11 further.

12 Circumstantial evidence is a little more tricky,
13 but it's this: It's proof of a chain of facts and
14 circumstances indicating the existence of a fact. In
15 other words, you have to draw a fact from the inference
16 or deduction. For example, if each of you were to go
17 to sleep at night and there was a fresh sleet -- a
18 sheet of snow, excuse me, in your front yard -- I'm
19 from the upstate. And if you were to wake up in the
20 morning and see tracks in that snow, you can reasonably
21 infer or deduce that someone walked through your yard
22 at night while you were sleeping, even though you
23 didn't see it.

24 The only prohibition for you would be that the
25 fact that you deduced, or the conclusion that you

JURY CHARGE

1 reached, can't be speculation or surmised.

2 Now, ladies and gentlemen in South Carolina,
3 crimes may be proven by circumstantial evidence and the
4 law makes no distinction between the weight or the
5 value to be given either to direct or circumstantial
6 evidence.

7 However, to the extent that the State relies on
8 circumstantial evidence, all of the circumstances must
9 be consistent with each other, and when taken together
10 point conclusively to the guilt of the accused beyond a
11 reasonable doubt.

12 If these circumstances merely portray the
13 Defendant's behavior as suspicious, then that proof
14 would have failed. The State has the burden to prove
15 the Defendant guilty beyond a reasonable doubt, and
16 that burden rests with the State regardless of whether
17 it uses direct evidence, circumstantial evidence, or a
18 combination of both of those.

19 Now, ladies and gentlemen, in deciding what the
20 facts are or what your verdict is going to be, you must
21 consider all the testimony and all the evidence that
22 has been submitted. In doing this, you must decide
23 which testimony you want to believe, and if you think
24 it's appropriate, which testimony you wish not to
25 believe. You have a right to disbelieve any part of

JURY CHARGE

1 any witness' testimony. You can believe all --
2 disbelieve all of any witness' testimony or believe all
3 of any witness' testimony.

4 But in making this determination, what we call the
5 credibility of the witnesses, you may take into account
6 the following factors.

7 Number one, was the witness able to hear or see or
8 know the things about which that witness testified?
9 How well was the witness able to recall and describe
10 the subject of their testimony? What was the witness'
11 manner or what was their demeanor while they're sitting
12 up here on the witness stand and testifying? You can
13 ask yourself was there some reason the witness would
14 want to give testimony that would help or hurt one side
15 or the other. Did the witness have an interest in the
16 outcome of the case or any bias or prejudice concerning
17 any party or issue involved in the case?

18 You may ask yourself how reasonable the testimony
19 was in consider -- in light of all the other evidence
20 in the case, and whether that witness' testimony had
21 been contradicted by what that witness had said or done
22 at another time, by any other testimony, or evidence in
23 the case.

24 Now, ladies and gentlemen, when you're sworn in as
25 jurors, you do not check your common sense at the door

JURY CHARGE

1 when you're sworn in, and you shouldn't in this case.
2 You should use those things in your lives that you find
3 indicative of truthfulness and indicative of lack of
4 truthfulness in making this determination of which
5 testimony to believe and which testimony you may not
6 want to believe.

7 One thing you may not do, however, is add the
8 number of witnesses that appear in this case for one
9 side or the other in making this determination.

10 Ladies and gentlemen, you've heard testimony from
11 expert witnesses in this case. And I told you multiple
12 times that an expert is allowed to give their testimony
13 when some people, and most of, were not. Expert
14 testimony, if it is helpful to you, the jury, may be
15 considered by you. But expert testimony, ladies and
16 gentlemen, is just like any other testimony that you
17 heard in this case. You may accept it, you may reject
18 it, or give it as much weight as you think it deserves,
19 considering that witness' education, their experience,
20 the reason for their opinion, and all the other
21 evidence in this case.

22 I'll remind you, ladies and gentlemen, that the
23 fact that this Defendant has been arrested, charged,
24 and indicted, is not evidence of his guilt. It doesn't
25 raise an inference of his guilt, nor a presumption of

JURY CHARGE

1 his guilt. Those documents are simply the mechanisms
2 by which the State of South Carolina will bring a
3 Defendant such as this one before the Court in a trial
4 and a determination of his guilt or innocence.

5 Also, Mr. Foreman, each of the charges in this
6 case are independent. Each of the indictments are
7 independent. They are freestanding except for the
8 weapons charge, and I will tell you more about that
9 when I go over the verdict form with you.

10 That means that you will consider the indictment,
11 for example, murder. You'll consider that. And then
12 I'll tell you further, there'll be some lesser-included
13 as to one charge of murder. You can consider those.

14 But then once you do that, you have to go to the
15 other charge. And you do it unaffected by your
16 decision as to that charge. Each one is freestanding,
17 except the weapons charges.

18 Now, ladies and gentlemen, in this case, the
19 Defendant has pled not guilty to each and every one of
20 the charges against him. And I will tell you that puts
21 the burden on the State of South Carolina to prove each
22 and every element of the charges against him by proof
23 beyond a reasonable doubt.

24 It is an important rule of law in South Carolina
25 that a person is never ever required to prove him or

JURY CHARGE

1 herself innocent. It is an important rule of law that
2 no matter what the seriousness of the charges are, that
3 a person will always be presumed innocent of the crime
4 or crimes for which the indictments have been issued
5 unless that guilt has been proven by evidence
6 satisfying you of guilt beyond a reasonable doubt.

7 And that presumption does not end when you go back
8 in your jury room and begin your deliberations, but it
9 accompanies the Defendant throughout the trial and into
10 your deliberations until those deliberations satisfies
11 you of his guilt beyond a reasonable doubt.

12 It is said in the law that the presumption of
13 innocence is like a robe of righteousness that's been
14 placed around the Defendant's shoulders, where it
15 remains until it has been stripped by evidence
16 satisfying you of guilt beyond a reasonable doubt.
17 This presumption, ladies and gentlemen, is not just a
18 mere legal theory, it's not just a legal phrase, but it
19 is a substantial right in which every defendant is
20 entitled unless, you the jury, are satisfied from the
21 evidence of the Defendant's guilt beyond a reasonable
22 doubt.

23 So that leads me to the charge on what is a
24 reasonable doubt.

25 A reasonable doubt is the kind of doubt that would

JURY CHARGE

1 cause a reasonable, sincere, honest, and conscientious
2 person to hesitate to act in an important matter in
3 their own affairs. Proof beyond a reasonable doubt is
4 proof that leaves you firmly convinced of the
5 Defendant's guilt.

6 Now, with that being said, there are very few
7 things in this world that we know with absolute
8 certainty, and our criminal law does not require that
9 proof overcome every possible doubt.

10 If, based on your consideration of the evidence,
11 you are firmly convinced that the Defendant is guilty
12 of the crime or crimes for which he has been charged,
13 you must find him guilty.

14 On the other hand, if you think there's a real
15 possibility that the Defendant is not guilty of the
16 crime or crimes for which he has been charged, then it
17 will be your duty to find him not guilty.

18 And I'll charge you further, the Defendant is
19 entitled to every reasonable doubt that may arise in
20 the case. And a reasonable doubt may arise in evidence
21 or the lack of the evidence.

22 What that simply means, ladies and gentlemen, is
23 this: If upon any issue of fact essential to a
24 conviction and a verdict of guilty of the crime for
25 which he has been charged and that you are considering,

JURY CHARGE

1 if you have a reasonable doubt as to how that issue
2 shall be resolved, it is your duty to resolve it in
3 favor of the Defendant.

4 Now, ladies and gentlemen, in order to establish
5 criminal liability, criminal intent is required. For
6 example, the mental state of mind required to be proven
7 by the State for a particular crime might be purpose,
8 intent, knowledge, recklessness, or criminal
9 negligence.

10 Criminal intent must be proven by the State beyond
11 a reasonable doubt. Criminal intent is always a matter
12 that must be determined by the jury from the
13 circumstances surrounding the situation.

14 Now, there's no way to prove intent to a
15 mathematical certainty, and there's no way that medical
16 science can dissect a person's brain to determine what
17 they had in mind. So the law says that criminal intent
18 may be inferred from the circumstances shown to have
19 existed. And that is how you make a determination of
20 whether or not the element requiring intent was
21 present. It is not necessary to establish intent by
22 direct and positive evidence, but intent may be
23 established by inference in the same way as any other
24 fact, by taking into consideration the acts of the
25 parties and all the facts and circumstances of the

JURY CHARGE

1 case. Criminal intent is a mental state, it is a
2 conscious wrongdoing.

3 Ladies and gentlemen, it'll be up to you to
4 determine what the intent the Defendant intended to do
5 based on the circumstances showing to have existed.
6 Criminal intent can arise from action or a failure to
7 act. It may arise from negligence, recklessness, or
8 indifference to duty, or to the consequences that is
9 considered by law to be equivalent to criminal intent.

10 Now, Mr. Foreman, ladies and gentlemen of the
11 jury, I instruct -- and I emphasize to you -- the fact
12 that the Defendant did not testify is not and shall not
13 be a factor considered by the jury in any way in your
14 deliberations.

15 Mr. Foreman, if any juror attempts to raise that
16 fact or issue up in your deliberations, it'll be up to
17 you to make it stop. If they continue, you bring it to
18 the Court's attention. I will tell you that at all
19 times, the State has the burden of proving the
20 Defendant's guilt by proof beyond a reasonable doubt,
21 and the Defendant has no obligation whatsoever to
22 present any evidence of his innocence.

23 Now, ladies and gentlemen, at issue in this case
24 is the identification of the Defendant as the person
25 who committed the crime for which he has been charged.

JURY CHARGE

1 The State has the burden of proving identity beyond a
2 reasonable doubt. You must be satisfied beyond a
3 reasonable doubt of the accuracy of the identification
4 of the Defendant before you may convict the Defendant.

5 Identification testimony is an expression, a
6 belief, or impression by a witness. You must determine
7 the accuracy of the identification of the Defendant.
8 You must consider the believability of each
9 identification witness in the same way as any other
10 witness. You may consider whether the witness had an
11 adequate opportunity to observe the offender at the
12 time of the offense. This will be affected by things
13 like how long or short of a time was available, how far
14 or close the witness was, the lighting conditions, and
15 whether the witness had the chance to see or know the
16 person in the past. It is not essential that the
17 witness himself be free from doubt as to the
18 correctness of his statement.

19 Once again, I instruct you "the burden of proof is
20 on the State" extends to every element of the crime
21 charged, and this specifically includes the burden of
22 proof beyond a reasonable doubt, the identity of the
23 Defendant as the person who committed the crime.

24 If after examining the testimony, you have a
25 reasonable doubt as to the accuracy of the

JURY CHARGE

1 identification, you must find the Defendant not guilty.

2 Now, ladies and gentlemen, I'm coming close to an
3 end of the first aspect of my charge. But before I do,
4 let me go over this.

5 There's been a statement alleged to have been made
6 by the Defendant that has been admitted into evidence
7 in this case. And while the Court has determined that
8 the statement is admissible, I instruct you that you --
9 you, the jury -- make the ultimate decision of whether
10 or not the Defendant made the statement. If the
11 Defendant did make the statement, you must determine
12 whether the statement was made by the Defendant
13 voluntarily and of his own free will. This means that
14 the statement was not caused by police
15 misrepresentation, pressure, force, fear, threats,
16 coercion, or intimidation, or by hope or a promise of
17 leniency, or a reward of any kind.

18 In determining whether the statement was
19 voluntary, you should consider both the characteristics
20 of the Defendant and the details of the question. Some
21 of the factors you must consider are: The age of the
22 Defendant; the Defendant's education or lack of
23 education; the Defendant's mental ability or capacity;
24 the Defendant's IQ or intelligence; the Defendant's
25 background and environment; the place and length of

JURY CHARGE

1 detention; the nature of the questioning, and the
2 advice or lack thereof to the Defendant of his
3 Constitutional rights, including but not limited to the
4 right to remain silent; that any statement could be
5 used against him in a court of law; the right to have a
6 lawyer present; that if he could not afford a lawyer, a
7 lawyer would be appointed to represent him without any
8 cost; and that he could stop making statements at any
9 time.

10 You must carefully consider all of these
11 surrounding circumstances before you give any weight to
12 an alleged statement. The State has the burden of
13 proof beyond a reasonable doubt that the alleged
14 statement was voluntary. If you determine that it was,
15 you may give the statement any further consideration
16 that you deem is proper.

17 You must decide what weight, if any, should be
18 given to the alleged statement. If you determine that
19 the alleged statement was not the free and voluntary
20 statement of the Defendant, you should not consider the
21 statement at all.

22 Now, ladies and gentlemen, that is the first
23 aspect of my charge. Just take a moment. If you want
24 to get up and move around, you may. If anybody needs
25 to take a personal break, you may. And just get up, or

JURY CHARGE

1 sit there, and then I'm going to get you the
2 substantive law that applies in this case.

3 Does anybody need any water or drink?

4 (No response.)

5 THE COURT: All right. Ladies and gentlemen,
6 this is the substantive law that applies.

7 First, I'm going to give you the law of murder.
8 Now, in this case, ladies and gentlemen, the Defendant
9 is charged with two counts of murder. The State must
10 prove beyond a reasonable doubt that the Defendant
11 killed another person with malice aforethought.

12 Malice is hatred, ill will, or hostility towards
13 another person. It is the intentional doing of a
14 wrongful act without just cause or excuse, and with an
15 intent to inflict an injury or under circumstances that
16 the law will infer an evil intent. Malice aforethought
17 does not require that malice exists for any particular
18 time before the act is committed, but malice must exist
19 in the mind of the Defendant just before and at the
20 time the act is committed. Therefore, there must be a
21 combination of the previous evil intent and the act.

22 Malice aforethought may be expressed or inferred.
23 These terms, "expressed" and "inferred," do not mean
24 different kinds of malice, but merely the manner in
25 which malice may be shown to exist. That is either by

JURY CHARGE

1 direct evidence or by inference from the facts and
2 circumstances which are proved.

3 Expressed malice is shown when a person speaks
4 words which express hatred or ill will for another, or
5 when the person prepared beforehand to do the act which
6 was later accomplished. For example, laying in wait
7 for a person or other acts of preparation going to show
8 that the deed was within the Defendant's mind would be
9 expressed malice.

10 Malice may also be inferred from conduct showing a
11 total disregard for human life.

12 Now, ladies and gentlemen, there is a
13 lesser-included offense to murder, which is considered
14 manslaughter. You may only -- and I'll go over this
15 with you, Mr. Foreman -- you may only consider this
16 under Indictment 2015 GS 27379, which is Kantibhai
17 Patel, the husband.

18 As to Ms. Patel, you'll need to decide if the
19 Defendant is guilty of murder or not guilty of murder.
20 But in considering the claim of murder against
21 Mr. Patel, there will be a lesser-included, which is
22 voluntary manslaughter.

23 And this is that law: If in fact the State has
24 failed to prove beyond a reasonable doubt that the
25 Defendant committed murder as to Kantibhai Patel, you

JURY CHARGE

1 may consider whether the State has proved beyond a
2 reasonable doubt that the Defendant committed a
3 voluntary manslaughter. To prove voluntary
4 manslaughter, the State must prove beyond a reasonable
5 doubt that the Defendant took the life of another in
6 the sudden heat of passion, based on sufficient legal
7 provocation.

8 Both heat of passion and sufficient legal
9 provocation must be present at the time of the killing
10 to constitute voluntary manslaughter. Sudden heat of
11 passion may for a time affect a person's self-control
12 and temporarily disturb a person's reason. The sudden
13 heat of passion must be the type that would make an
14 ordinary person unable to duly reflect on his actions,
15 and would produce an uncontrollable impulse to do
16 violence.

17 Sufficient legal provocation must be the type that
18 would cause a person of ordinary reason and caution to
19 becoming raised and to lose control temporarily.

20 The provocation needed for voluntary manslaughter
21 must come from some act of or related to the victim.
22 Words alone, however vulgar or insulting, are not
23 enough to be legal provocation. Where death is caused
24 by the use of a deadly weapon, the words must be
25 accompanied by some overt act threatening that which

JURY CHARGE

1 could have produced the heat of passion.

2 The exercise of a legal right, no matter how
3 offensive it is to another, is never sufficient legal
4 provocation for voluntary manslaughter.

5 If the heat of passion had cooled, or if there was
6 enough time between the provocation, if any, and the
7 killing, for the passion of a reasonable person to
8 cool, the killing would not be voluntary manslaughter.

9 In deciding whether a reasonable person would have
10 had enough time to cool off, you should consider all
11 the circumstances surrounding the killing. You may
12 consider the nature of the provocation, if any, the
13 Defendant's mental and physical state, and the
14 circumstances and relationships between the parties.

15 Also, as to the Indictment 2015 GS 27379, as it
16 applies to Kantibhai Patel, the husband, the Defendant
17 has raised the defense of self-defense. And this is
18 the law related to self-defense: The Defendant has
19 raised the defense of self-defense -- again, this is
20 only applicable to the charge with regard to the death
21 of Kantibhai Patel. Self-defense is a complete
22 defense, and if it is established, you must find the
23 Defendant not guilty. The State has the burden of
24 disproving the self-defense by proof beyond a
25 reasonable doubt.

JURY CHARGE

1 If you have a reasonable doubt of the Defendant's
2 guilt after considering all the evidence, including the
3 evidence of self-defense, then you must find the
4 Defendant not guilty.

5 On the other hand, if you have no reasonable doubt
6 of the Defendant's guilt after considering all the
7 evidence, including the evidence of self-defense, then
8 you must find the Defendant guilty.

9 The following elements are required to establish
10 self-defense: First, the Defendant must be without
11 fault in bringing on the difficulty. If the
12 Defendant's conduct was the type which was reasonably
13 calculated to and did provoke a deadly assault, the
14 Defendant would be at fault in bringing on the
15 difficulty and would not be entitled to an acquittal
16 based on self-defense.

17 The second element of self-defense is that a
18 Defendant was actually in imminent danger of death or
19 serious bodily injury or that the Defendant actually
20 believed he was in imminent danger of death or serious
21 bodily injury.

22 If the Defendant was actually in imminent danger,
23 it must be shown that the circumstances would have
24 warranted a person of ordinary firmness and courage to
25 strike the fatal blow to prevent death or -- excuse me.

JURY CHARGE

1 Let me do that again.

2 If the Defendant was actually in imminent danger,
3 it must be shown that the circumstances would have
4 warranted a person of ordinary firmness and courage to
5 strike the fatal blow to prevent death or serious
6 bodily injury. If the Defendant believed he was in
7 imminent danger of death or serious bodily injury, it
8 must be shown that a reasonable prudent person of
9 ordinary firmness and courage would have had the same
10 belief.

11 In deciding whether the Defendant was or actually
12 believed he was in imminent danger of death or serious
13 bodily injury, you should consider all of the facts and
14 circumstances surrounding the crime, including the
15 physical condition and characteristics of the Defendant
16 and the victims.

17 The Defendant does not have to show that he was
18 actually in danger. It is enough if the Defendant
19 believed he was in imminent danger, and a reasonably
20 prudent person of ordinary firmness and courage would
21 have had the same belief.

22 The Defendant has a right to act on appearances
23 even though the Defendant's beliefs may have been
24 mistaken. It is for you to decide whether the
25 Defendant's fear of immediate danger or death or

JURY CHARGE

1 serious bodily injury was reasonable and would have
2 been felt by an ordinary person in the same situation.

3 Words accompanied by hostile acts depending on the
4 circumstances may establish self-defense. Now, also
5 the relative size, ages, and weights of the Defendant
6 and the victims may be considered in deciding the
7 apparent or actual need for force in self-defense and
8 the amount of force needed.

9 The final element of self-defense is that the
10 Defendant had no other probable way to avoid the danger
11 of death or serious bodily injury other than to act as
12 the Defendant did in this particular case.

13 All right. Ladies and gentlemen, that brings me
14 to the charge of armed robbery.

15 The Defendant is charged with armed robbery. In
16 order to prove this offense, the State must first prove
17 beyond a reasonable doubt that the Defendant took
18 personal property from the person or presence of
19 another person. Property is in the presence of a
20 person if it is within the person's reach, inspection,
21 observation, or control so that the person could, if
22 not overcome with violence or prevented by fear, keep
23 possession of the property.

24 The State must also prove beyond a reasonable
25 doubt that the Defendant carried the property away,

JURY CHARGE

1 intending to permanently deprive the owner of the
2 property and to keep the property for the Defendant's
3 own use. The slightest removal of the property or the
4 complete possession of the property, even for an
5 instant by Defendant, is sufficient to show a taking
6 and carrying away of the property.

7 The taking and carrying away of the property must
8 have been done with violence or by putting the owner of
9 the property in fear of violence.

10 Finally, the State must prove beyond a reasonable
11 doubt that the Defendant was armed with a deadly weapon
12 during the robbery. A deadly weapon is any article,
13 instrument of substance, which is likely to cause death
14 or great bodily harm. Whether an instrument has been
15 used as a deadly weapon depends on the facts and
16 circumstances of each case.

17 Now, the following are examples of instruments
18 which may be considered deadly weapons: A shotgun, a
19 rifle, a dirk, a dagger, a knife, a slingshot, metal
20 knuckles, razor -- razor blades, gasoline, a firebomb,
21 a Molotov cocktail, and lighter fluid. A gun may be a
22 deadly weapon even if it is not operating.

23 And finally, ladies and gentlemen, the law of
24 commission of a violent crime in possession of a
25 weapon. The Defendant is charged with possession of a

JURY CHARGE

1 weapon during the commission of a violent crime or
2 attempt to commit a violent crime. The State must
3 prove beyond a reasonable doubt that the Defendant was
4 in possession of a firearm or visibly displayed what
5 appeared to be a firearm during the commission of a
6 violent crime.

7 A firearm means any machine gun, automatic rifle,
8 revolver, pistol, or any weapon which will, is designed
9 to, or may be readily converted to expel a projectile.
10 In order to find the Defendant guilty of possession of
11 a weapon during the commission of a violent crime, you
12 must first find the Defendant guilty of either
13 committing a violent crime or attempting to commit a
14 violent crime.

15 I charge you, Mr. Foreman, that murder is a
16 violent crime, also armed robbery is a violent crime.
17 The State must prove beyond a reasonable doubt that the
18 weapon furthered in vast or helped in the commissions
19 of the crime.

20 Now, ladies and gentlemen, I do not send my charge
21 back to you. I'll go over it again with you as much --
22 as many times as you'd like. But let me go over a
23 couple of things with you before we close.

24 At the beginning of this case, you were picked by
25 both sides not to be partisans or advocates for one

JURY CHARGE

1 side or the other, but because you represented that you
2 could be fair and impartial to the State, and you could
3 be fair and impartial to this Defendant. And you are
4 the sole judges of the facts. You're not advocates for
5 one side or the other.

6 Now, deliberations is defined as this: It is a
7 careful consideration and weighing up with a view to a
8 decision.

9 Now, regardless what any of you may think about
10 our judicial system, I would submit to you that the
11 genius of the system is that it allows 12 men and women
12 such as yourselves, who come from different walks of
13 life, who have different experiences, who have
14 different perspectives and different outlooks to go
15 through the trial, to listen to the testimony and
16 evidence, and to listen to the law and ultimately to go
17 back and engage in deliberations with each other, and
18 hopefully to reach a verdict that is unanimous with
19 each other.

20 Now, you're not to be in a hurry. This is an
21 important case for the State, and it's an important
22 case for this Defendant. They don't have a chance to
23 come back for a second bite at the apple. This is
24 their one and only day in court.

25 Now, when you go back, you are to listen to

JURY CHARGE

1 everybody's points of view. Listen to their reasons
2 for their points of view, then let them discuss their
3 points of view. And everyone has a chance to speak,
4 and everybody should have an opportunity to discuss
5 what they think the facts in this case are. In other
6 words, what the verdict should be.

7 With that being said, each of you have to decide
8 this case for yourself in order to reach a verdict.
9 You should not and shall not be afraid to change your
10 verdict, or what you think the facts are, or what the
11 verdict's going to be if your deliberations with your
12 fellow jurors convinces you that that is the right
13 thing to do based on the testimony and the evidence and
14 the law.

15 But what you may not do is change a firmly held
16 belief about what your verdict should be simply to
17 appease your fellow jurors.

18 Now, Mr. Foreman, if at any time you need
19 anything, I'm going to ask that you write it down and
20 you let me know what the issues are. And you fold that
21 over, and you give it to the bailiff, and we'll receive
22 it out here and act accordingly.

23 If you need to hear any other testimony, any other
24 evidence or the law, you let us know and we'll be glad
25 to give it to you as often and as many times as you'd

JURY CHARGE

1 like.

2 Hopefully, shortly, there's going to be your
3 lunch. I'm going to have a brief meeting with these
4 attorneys, and then you can begin your deliberations
5 when we send word back for you to.

6 Now, this verdict form will also come back with
7 the exhibits. The order that the charges are in, or
8 that your options for each charge is in, is of no
9 consequence. I have to put them in some order or the
10 other.

11 But your options will be this: After the charge
12 of murder, this will under Indictment 2015 GS 27378,
13 and that's Hansaben Patel, and I put in parenthesis
14 "the woman," so you know who you're dealing with.

15 Your options will be -- will only be as to that
16 charge as to the charge of murder. We, the jury
17 unanimously find the Defendant not guilty, that would
18 be under A. If that is your verdict, you will check
19 that. Under B, as to the charge of murder, we, the
20 jury, unanimously find the Defendant guilty. If that
21 is your decision, then you will check that.

22 Then you'll go to the next charge of murder. And
23 that charge is under Indictment 2015 GS 27379, and that
24 is as to -- Kantibhai -- and I'm sure I'm going to
25 mispronounce it -- Patel. And I have in parenthesis,

JURY CHARGE

1 "man," so you'll know who you're dealing with.

2 And your options under that would be under A, as
3 to the charge of murder, we, the jury, unanimously find
4 the Defendant not guilty. If that is your
5 consideration, if he's not guilty of that charge, then
6 you'll check A. Next option, if you find that it's B,
7 that we, the jury, unanimously find the Defendant
8 guilty, then you'll check that. If it's A, you'll go
9 down to the lesser-included charge of voluntary
10 manslaughter. If it's guilty, you'll stop there and
11 you can go to the charge of armed robbery. Okay? So
12 if you don't understand, we will let you know.

13 But if you find the Defendant is not guilty as to
14 murder with regard to Mr. Patel, then you may consider
15 the lesser-included charge of voluntary manslaughter.
16 Your options under that would be: As to the charge of
17 voluntary manslaughter, we, the jury, unanimously find
18 the Defendant not guilty. If that is your finding, you
19 simply check A there.

20 Under B, your options will be: As the charge of
21 voluntary manslaughter, we unanimously find the
22 Defendant guilty. If that is your finding, you'll
23 check B.

24 Remember, he cannot be guilty of murder and guilty
25 of voluntary manslaughter. Okay?

JURY CHARGE

1 Next, you'll go to the charge of armed robbery.

2 Now, your options there is: As to the charge of armed
3 robbery, we, the jury, unanimously find the Defendant
4 not guilty. Again, you'll check A if that is your
5 option, or it's under B if you find him guilty of armed
6 robbery. You simply check that.

7 Now, the last charge is the weapons charge. You
8 have the same options of not guilty and guilty. But
9 you may only find the Defendant guilty of possession of
10 a weapon during the commission of a violent crime if
11 you find him guilty of one of the charges or both of
12 the charges of murder or the charge of armed robbery.
13 Okay? If you find him not guilty to all those charges,
14 you may not consider the charge of possession of a
15 weapon during the commission of a violent crime.

16 If you have any questions, we'll be glad to go
17 over them as many times as you need. I'm going to ask
18 you to go back to your jury room. We'll bring you back
19 out here or send you all the exhibits and the verdict
20 form and tell you to begin your deliberations. Okay.
21 Thank you.

22 (Jury exits the Courtroom.)

23 THE COURT: Additions or exceptions to the charge
24 by the State?

25 MR. STONE: No, sir, not from the State.

JURY CHARGE

1 THE COURT: From the Defense -- other than what
2 was raised in charge conference?

3 MR. PLEXICO: No, Your Honor. I'd just like to
4 make it more concise. I'd just like a charge
5 regarding the diminution of rights because I think
6 that's a specific issue the Defense covered.

7 THE COURT: All right.

8 MR. PLEXICO: And I have that for both in Jury
9 Charge 2 and also as to addition of the actual
10 dictionary definition of diminution in my larceny
11 folders, Judge.

12 THE COURT: Okay, sir.

13 And for the record, I assume that's a renewal of
14 your objections at the charge conference, as well as
15 your request to charge that will make a court exhibit
16 in this matter; is that correct?

17 MR. PLEXICO: Yes, Your Honor.

18 THE COURT: And you're renewing your other trial
19 motions at this point? I guess you don't need to, but
20 just in case.

21 MR. PLEXICO: Yes, Your Honor.

22 THE COURT: All right. All right.

23 Did y'all go over the exhibits?

24 MR. STONE: Yes, sir.

25 THE COURT: And I assume that the playing of the

JURY CHARGE

1 tape will have to be out here in the courtroom?

2 MR. STONE: Yes, sir. I think so. I think we
3 could probably do it. I know we can do it out here, I
4 guess we could do it in there, if that's fine with
5 you.

6 THE COURT: Do you have a clean computer or --

7 (Discussion off the record.)

8 THE COURT: Would you go over the exhibits?

9 MR. PLEXICO: Yes, sir.

10 THE COURT: Would you let the alternates come out
11 and would you bring them back to my chambers?

12 THE CLERK: Yes, sir.

13 (Jury deliberations.)

14 THE COURT: Please be seated.

15 All right. This is from the jury. It says, "The
16 question is, did the Defendant said he knocked on the
17 doors when he was at the Best Western looking for a
18 lighter?"

19 MR. STONE: I apologize. I thought I -- if I
20 made -- he asked -- the question is, did the Defendant
21 say he knocked on other doors looking for a lighter?

22 MR. PLEXICO: Yeah.

23 THE COURT: Okay. Let me just say this. Now, my
24 position is, I can't comment on the facts, but they
25 have a transcript of his interview and they have a

JURY CHARGE

1 tape of his interview if they wish to read it or watch
2 it.

3 Does anybody have a problem with that?

4 MR. PLEXICO: I don't think that they have our
5 transcript.

6 THE COURT: I'm sorry?

7 MR. PLEXICO: They don't have the State's
8 transcript.

9 THE COURT: So would y'all just rather me leave
10 it, I can't comment on the facts and --

11 MR. STONE: I think so. I get real worried about
12 directing them toward any pieces of evidence because
13 --

14 THE COURT: No, that's fair.

15 Do you agree with that?

16 MR. PLEXICO: I do, Your Honor.

17 THE COURT: Okay. Bring the jury in.

18 (Jury enters the courtroom.)

19 THE COURT: All right. Mr. Foreman, you asked
20 that I disregard the first question, but the second
21 is, "Did the Defendant say he knocked on other doors
22 when he was at the Best Western looking for a
23 lighter?"

24 THE FOREPERSON: That's right, Your Honor.

25 THE COURT: Let me respond in this manner. Do

JURY CHARGE

1 you remember what I told you in my charge, I'm not
2 allowed to comment or have an opinion on the facts,
3 and I'm not allowed to make any statements about what
4 the facts are or the facts aren't. Remember, that is
5 up to you and you will have to make that determination
6 based on the evidence before you that's been
7 submitted. Okay, sir? I hate to pass the buck, but
8 that's the rules.

9 That being said, I'm going to ask you to go back
10 to your jury room, stop your deliberations right now
11 and make sure I don't need to bring you back out here
12 for anything else. Then we'll send word for you to
13 either come back or resume your deliberations. Okay,
14 sir?

15 (Jury exits the courtroom.)

16 THE COURT: Any additions or exceptions from the
17 State?

18 MR. STONE: No, sir.

19 THE COURT: Defense?

20 MR. PLEXICO: None, Your Honor.

21 THE COURT: All right, guys. I'm going to make
22 this a Court Exhibit.

23 (Discussion off the record.)

24 THE COURT: Tell them to start back deliberating.
25 Mark this as a Court's Exhibit.

JURY CHARGE

1 *(Whereupon, Court's Exhibit No(s). 10 marked for*
2 *identification and received in evidence.)*

3 (Jury deliberating.)

4 THE BAILIFF: The time is 1:48 p.m. The jury has
5 a verdict.

6 THE COURT: Please be seated.

7 All right. Gentlemen, my understanding is the
8 jury has a verdict. I'm going to ask people in the
9 gallery just to conduct themselves accordingly
10 regardless of what the verdict is. I don't know what
11 it is.

12 Would you bring the jury out, please.

13 (Jury enters the Courtroom.)

14 THE COURT: All right. Mr. Foreman, has the jury
15 reached a verdict?

16 THE FOREPERSON: We have, Your Honor.

17 THE COURT: Is it unanimous?

18 THE FOREPERSON: It is, Your Honor.

19 THE COURT: Okay. Would you pass it to the
20 clerk, please.

21 (Foreperson complies.)

22 THE COURT: All right. Madam Clerk, would you
23 like to publish the verdict, please, ma'am.

24 THE CLERK: State of South Carolina, County of
25 Jasper, State of South Carolina versus Joshua Poacher,

JURY CHARGE

1 Indictment No. 2015 GS 27378; 2015 GS 27379; 2015 GS
2 27490; 2015 GS 27491.

3 Number one, murder, 16-3-10, Hansaben Patel,
4 woman. Verdict of the jury as to the charge of murder
5 Indictment No. 2015 27378, we, the jury, unanimously
6 find the Defendant guilty.

7 Number two, murder, 16-3-10, Kantibhai Patel, man,
8 B, as to the charge of murder, Indictment 2015 GS
9 27379; we, the jury, unanimously find the Defendant
10 guilty.

11 Number four, armed robbery, 16-11-330, B, as to
12 the charge of armed robbery, Indictment No. 2015 GS
13 27490, we the jury, find the Defendant unanimously
14 guilty.

15 Five, possession of a weapon in the commission of
16 a violent crime, 16-23-490, B, as to the charge of
17 possession of a weapon during the commission of a
18 violent crime, Indictment No. 2015 GS 27491, we, the
19 jury, unanimously find the Defendant guilty. Signed by
20 the foreperson, Juror No. 169.

21 THE COURT: All right. Thank you, ma'am.

22 Ladies and gentlemen of the jury, if that was your
23 verdict in the jury room, and if that continues to be
24 your verdict here in the courtroom as to each charge,
25 raise your hand, please.

JURY CHARGE

1 (All jurors raise their hands.)

2 THE COURT: Let the record reflect the jurors
3 raised their hand to that question.

4 Mr. Foreman, I need to get my clerk to bring these
5 indictments back for you to sign off on for me, please,
6 sir.

7 And before I release you, number one, the Court is
8 never concerned with what your verdict is, but that you
9 participated, you followed the instructions, you
10 listened to the testimony, and you listened to the
11 evidence. And you listened to the law as I gave it to
12 you. And for that, we thank you. Not for your
13 verdict, but for your service.

14 Without people such as yourselves who are willing
15 to come forward and to do their civic duty, then the
16 rule of law is non-existent. Because without you the
17 judicial system, either the civil side or the criminal
18 side, is non-existent. So we thank you for your
19 service of that.

20 You're done for the week. We have no more trials
21 for you to do this week, it's my understanding. And
22 does anybody have any question or comments whatsoever
23 from the jury?

24 (No response.)

25 THE COURT: Well, let me tell you, besides you,

JURY CHARGE

1 Mr. Foreman -- what?

2 MR. PLEXICO: We need to poll the jury, Your
3 Honor. We request the jury be polled.

4 THE COURT: I'll be glad to poll them. I thought
5 I did that, but I'll be glad to do each one.

6 MR. PLEXICO: Yes, Your Honor. Thank you.

7 THE COURT: Let me start with the front row and
8 go all the way around.

9 Mr. Foreman, if that was your verdict in the jury
10 room and if that's your verdict here in the courtroom,
11 raise your right hand. (Juror indicates.)

12 Okay. You can put it down. Good.

13 Ma'am, same question. Was that your verdict in
14 the jury room and is it here? (Juror indicates.)

15 Very good.

16 Next one down, was that your verdict in the jury
17 room and in the courtroom? (Juror indicates.)

18 Very good.

19 Ma'am, was that your verdict in the jury room and
20 the courtroom?

21 JUROR: Yes, sir.

22 THE COURT: Very good.

23 Sir?

24 (Juror indicates)

25 Very good.

JURY CHARGE

1 Ma'am, from the back row.
2 (Juror indicates.)
3 Yes, ma'am.
4 (Juror indicates.)
5 Yes, sir.
6 (Juror indicates.)
7 Yes, ma'am.
8 (Juror indicates.)
9 Yes, ma'am.
10 (Juror indicates.)
11 Yes, ma'am.
12 (Juror indicates.)
13 Yes, ma'am.
14 (Juror indicates.)
15 Yes, ma'am.
16 (Juror indicates.)
17 Any additional polling or questioning by the
18 Defense?
19 MR. PLEXICO: No, Your Honor.
20 THE COURT: Very good. Thank you.
21 Ladies and gentlemen, I'm going to sentence this
22 gentleman in a few minutes. You're more than welcome
23 to stay. You're more than welcome to leave. If you
24 would like to leave, you'll be escorted by one of our
25 deputies back to your vehicle. And if you don't have

JURY CHARGE

1 any questions, you can go inside, then if you can come
2 back out, we'll escort you after the sentencing. So
3 whatever you'd like to do. Okay.

4 Mr. Foreman, before you go, my clerk is going to
5 come meet you. Okay, sir?

6 (Jury exits the courtroom at 1:56 p.m.)

7 THE COURT: Could I get the State to prepare me
8 the sentencing sheets? Very good.

9 MR. STONE: I have that. I'm signing the last
10 one now.

11 THE COURT: All right.

12 MR. STONE: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 MR. STONE: I think I have everything filled out.
15 If I need to fill something out, then I will.

16 THE COURT: Yes, sir.

17 All right. Mr. Poacher, will you and your
18 attorney come around, please, sir.

19 Are there any representatives from the victims'
20 family at all?

21 MR. STONE: No, sir, there are not.

22 THE COURT: Okay, sir.

23 Anything further that the State would like me to
24 consider other than what I've already heard? I think
25 he has no record?

JURY CHARGE

1 MR. STONE: He does not. And you've heard,
2 obviously, all the facts in this case. I spoke to
3 Mr. Plexico, the Defendant's attorney, several months
4 ago, and I told him then that if the Defendant plead
5 guilty, I would still ask the court for a life
6 sentence because I truly believe, with the evidence
7 that you've heard and what we know of this case, that
8 that is the only appropriate sentence in this from the
9 State's perspective.

10 And I think a lot of that, Your Honor, comes from
11 not only the fact that you had two people living and
12 working and causing no harm to anybody, they were
13 defenseless, they did not have weapons. And then the
14 manner in which they were killed, and in particular
15 Mrs. Patel. And I think the testimony from the
16 pathologist yesterday was particularly clarifying in
17 that matter.

18 The way that I understood that testimony and the
19 way the bodies were positioned and what you see in that
20 scene, there was no threat to Mr. Poacher, and that was
21 a -- just a cold-blooded execution of two people who
22 were trying to get away from him, and Mrs. Patel, in
23 particular.

24 It appears to me from the crime scene sketch, or
25 from the photographs, that she is hovering over her

JURY CHARGE

1 dead husband when she's shot in the back and murdered.

2 From the State's perspective, I don't believe
3 there's any appropriate sentence, and to pray this is
4 your responsibility, and I'm not trying to tell you,
5 obviously, how to do it. But from our position, this
6 is a life sentence.

7 Thank you, sir.

8 THE COURT: Thank you, sir.

9 Mr. Plexico.

10 MR. PLEXICO: Thank you, Your Honor.

11 My client is 22 years old now. He was 20 when
12 this happened. There is no criminal record that
13 they've put on record in regards to this. So he's
14 actually here a first-time offender for these extremely
15 serious matters, Your Honor.

16 I think that he has a long -- he has a long life,
17 I think he can be punished adequately by society and
18 still have some life left, where he doesn't -- I don't
19 think that it calls for the life sentence in regards to
20 these matters.

21 I'm particularly asking that you do not give him a
22 life sentence, and that if you could give him the
23 30-year sentence in view of his background, his working
24 doing golf course maintenance at the time, Your Honor.
25 He has children, he has Shatera Walker here, the mother

JURY CHARGE

1 of his children and his girlfriend. She would like to
2 approach and make a brief statement, Your Honor.

3 THE COURT: Absolutely.

4 Mr. Poacher, let me just tell you now. Any
5 sentence I give, you will have ten days to appeal.
6 Okay, sir?

7 Any member of Mr. Poacher's family who are here on
8 his behalf, who would like to speak, you can come
9 forward now.

10 MR. PLEXICO: Shatera -- he's also here with his
11 brother and his dad, Your Honor, and his brother's
12 wife. This is Ms. Poacher, this is the mother of my
13 client.

14 THE COURT: Okay. Ma'am. I know this is not an
15 easy time to speak.

16 THE MOTHER: No, it's not, Your Honor. Forgive
17 me.

18 THE COURT: Would you like a glass of water or
19 something?

20 THE MOTHER: No, sir.

21 Your Honor, this is my baby. I have children and
22 Josh has never been a troubled child. Most times a
23 mother knows. Your Honor, sometime maybe, you get an
24 inkling that there's something going on. But Joshua
25 was staying in my house with me and his daddy. And

JURY CHARGE

1 he's taking care of his kids. He had been working and
2 had recently lost his job. I'm just asking, please,
3 Your Honor, to have mercy for him. A hope is what I'm
4 asking for. You know. I know he can be redeemed.

5 I know that he did a bad thing. I'm so sorry for
6 the Patel family. I actually spoke to them. I know
7 them. Because we lived right close, and I worked with
8 them at one time. And I went in there and I spoke to
9 them and they told me themselves that they had forgiven
10 him. That was the two people that had been murdered,
11 their son. And Mr. Roger and the rest of the family,
12 and I spoke with them a couple of times.

13 See, I don't -- I don't want to ramble on, Your
14 Honor, I'm just asking for a hope for my boy that one
15 day he will have a chance to be a productive and
16 contributing person in society.

17 Again, I know it's wrong what he did, and I'm so
18 sorry for them. I feel for them real bad. But this is
19 my baby, Your Honor. Thank you.

20 THE COURT: Thank you, ma'am.

21 MR. PLEXICO: This is Mr. Shatera Walker. She's
22 his girlfriend and the mother of his children, Your
23 Honor.

24 THE GIRLFRIEND: I've known Josh for about going
25 on ten years now. He has never been a bad person. We

JURY CHARGE

1 all make mistakes. He's a good kid, he have two
2 beautiful children, beautiful, that I struggle daily
3 -- daily -- to take care of. I'm not testifying the
4 situation that these things are right, because it's
5 not. I feel for both sides of the family, but I ask
6 that you have some type of mercy. Thank you.

7 THE COURT: Thank you, ma'am.

8 MR. PLEXICO: And this is Ms. Dora Michael. This
9 is the aunt of Mr. Poacher, Joshua Poacher.

10 THE COURT: Good afternoon.

11 THE AUNT: Good afternoon. I'm standing here on
12 my nephew's behalf. And just like what his mother
13 told you and his -- you know, everybody told you, he
14 is a nice person. He never got into too much of
15 anything. You know, I been knowing him ever since he
16 was in school. And before he got, you know, him and
17 my niece got together, you know, everything was good.
18 He was respectful. He never disrespect nobody that I
19 know, you know. And I'm begging on his behalf and
20 mine, and the children, that you know, give him a
21 chance. Because he have two little kids right here
22 now, and they really miss him, and he need to be with
23 his children.

24 THE COURT: Thank you so much.

25 Tell me about his background. I hadn't heard much

JURY CHARGE

1. about -- oh, there's somebody else? Yes, ma'am.

2. MR. PLEXICO: This is his sister-in-law.

3. THE SISTER-IN-LAW: I'm Shanna (phonetic)

4. Poacher. I am Joshua's sister-in-law. I met Josh, I

5. was married into the family and met Joshua about six

6. and a half years ago. He is a real good person, and

7. everybody makes mistakes. And he made a big mistake.

8. And he had a lot of pressure on him. Not saying

9. that's an excuse for anything that he did, but not

10. knowing -- everybody knows right from wrong, and we

11. are not raised up to actually with the support that

12. he -- with the support, you know, he's the youngest of

13. the children. So, you know, everybody else was grown,

14. so he just felt like he was by himself, which caused

15. him to make bad decisions.

16. But he still has two children that need him. And

17. he can still be an example for his children. If he

18. doesn't get life and, you know, show that he did his

19. time for what he did, and that you can change, and he

20. can be a better person after you do something bad.

21. THE COURT: Okay. Thank you, ma'am.

22. I want to hear a little bit about him. I mean, I

23. really don't know much about the facts except that he

24. didn't have a criminal record. But he had a drug

25. problem.

JURY CHARGE

1 MR. PLEXICO: Yes, Your Honor. Not on the
2 surface, where anybody noticed, but he was -- he lived
3 with his mom. His mom was actually with his dad. He
4 is -- his mom is actually a preacher and he attended
5 church where his mother preaches at. He seemed to
6 have a reverent life and a good life, going into
7 service. His mom provided a steady home. Her oldest
8 son, I believe, is a deputy chief of police in a town
9 in Mississippi or Alabama.

10 THE COURT: I saw that.

11 MR. PLEXICO: He is a really good -- real good
12 person. She's raised a lot of good responsible
13 people, and he was sort of on his own. He didn't have
14 a big brother or a big sister there in his formative
15 years, and I don't know what happened.

16 But there weren't any problems that came to light
17 until just recently. In view of his lack of a
18 background, kind of a criminal background, Judge, I
19 know this is a serious, serious matter, but we're
20 asking that you give him concurrent sentences and if
21 you could give him the minimum. Of course, that's 30
22 years, and he'll serve every single day of that. And I
23 think in view of his background, and who he is and his
24 age, that will leave some productive years for him, and
25 I believe that would be a fair sentence.

JURY CHARGE

1 Thank you, Your Honor.

2 THE COURT: Thank you, sir.

3 Mr. Poacher, now is your time to say whatever you
4 want to say.

5 THE DEFENDANT: Your Honor, I just want to say, I
6 apologize to the court, and more important, to the
7 Patel family. I want to say sorry to my family also
8 because I let them down. Most important, my kids.
9 Your Honor, I'm asking that you have mercy on me. I
10 know what I did was wrong, and I'm ready to -- to make
11 right, and I ask that you please give me a second
12 chance. Please. So I can come home and be with my
13 kids one day.

14 And, you know, I have a little son, I've only been
15 out with him for a month. He's one now. These are
16 very important days of his life.

17 I have a little girl, she eight. She about to
18 turn nine. We got the same birthday. I miss them
19 dearly. I talk to them everyday on the phone. I go in
20 my room and cry at night because I know I shouldn't
21 have done what I done. And I was better than that.

22 I'm just asking you to please forgive me, and the
23 rest of the court, and have mercy on me. Please.

24 THE COURT: Well, I'm going to say this. Yeah,
25 this is never easy when you have this situation that I

JURY CHARGE

1 have to make this call in. But you have, on one hand,
2 you have two people who you obviously didn't know, who
3 were minding their business, hard working people, and
4 you came out of the blue and just killed them. For
5 money, for drugs, and it's obvious to me that's what
6 the whole thing was about.

7 I don't believe there was ever really any
8 struggle, or you were ever any threat for you being in
9 trouble.

10 But at the same time, I see that you don't have a
11 record. I haven't heard anything that really gives me
12 much -- he's got children. A lot of people have
13 children. I don't know about your work, what have you
14 done to be a productive member of society. You will be
15 gone for a long time regardless of what I do. I mean,
16 the minimum is 30 years. And so regardless.

17 What I'm going to do, I am sorely, sorely
18 tempted -- I agree with our Solicitor, or your
19 Solicitor, that life is probably the proper sentence
20 for you. I'm not doing that now. I'm going to direct
21 that he be held in the detention center. I'm going to
22 sleep on it overnight. I'm going to give your attorney
23 the opportunity to come up with any other information
24 that he may want to give to me to change my mind.

25 But this is a fairly gruesome set of facts in this

JURY CHARGE

1 case, and I know you show remorse now, but you didn't
2 show any time in between that. So, I'm going to give
3 that consideration.

4 Tomorrow morning, we'll bring you back here and I
5 intend to sentence you at that point. Okay, sir.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right.

8 MR. PLEXICO: Your Honor, what's the hour, 9:30?

9 THE COURT: Yes, sir.

10 (Off-the-record discussion held.)

11 (Trial concluded. Sentencing to be held the
12 following day.)

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JURY CHARGE

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In the Court of General Sessions for the

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State of South Carolina, County of Jasper

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Case No.: 2015-GS-27-00378+

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State of South Carolina,

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, Plaintiff(s),

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vs.

Transcript of Record

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Joshua Lenard Poacher,

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Defendant(s).

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April 13, 2017

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Ridgeland, South Carolina

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22 BEFORE:

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The Honorable R. Lawton McIntosh

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SENTENCING

1 THE COURT: All right. We are back on the
2 record. Joshua Poacher, the jury found him guilty
3 yesterday of two counts of murder, one count of armed
4 robbery and a count of possession of a weapon during
5 the commission of a violent crime. I had Mr. Poacher
6 before me for sentencing and, quite frankly, wanted to
7 think about what sentence I wanted to impose. He is
8 looking at a possible life imprisonment sentence for
9 the murder charges.

10 For the record, yesterday it was represented to me
11 that Mr. Poacher had never been in trouble, or had any
12 other problems, but he had a drug problem and that led
13 to the events leading up to his arrest and conviction
14 in this matter. The State, pursuant to South Carolina
15 Code Annotated 63-19-2010 et al, obtained Mr. Poacher's
16 juvenile record, which is fairly lengthy, contrary to
17 what was related to me.

18 According to what I have been provided,
19 Mr. Poacher's record dates back to April 11th, 2008.
20 He was charged or found guilty or plead guilty to
21 burglary second degree, non-violent. On November 2008,
22 he had a simple assault and battery. April 14, 2009 he
23 had a burglary second, non-violent.

24 And I don't know if these are related to the same
25 charges, but it says on April 15th, 2009, grand larceny

SENTENCING

1 charge between one and \$5,000. Assault and battery
2 third degree on March the 11th, 2011. April 24, 2011
3 common law strong armed robbery. That appears to be
4 the extent of the records that I have been provided.

5 I will be glad to hear from the Defense in this
6 matter.

7 MR. PLEXICO: Does the prosecution have anything
8 to add to this?

9 MR. STONE: I do, Your Honor, if you will hear
10 from me on this as well. If you also go to Section
11 63-19-20-30 allows the State to go in, without a court
12 order and pull the police records that gives us maybe
13 a better understanding of that criminal history. I
14 have that with me, if I could publish that to you.

15 THE COURT: Sure.

16 MR. STONE: Specifically I'll stay with the ones
17 in which he was actually sentenced. I know that the
18 first two he was on a contract. But in April of 2009
19 he was charged and convicted of a burglary on
20 Alexander Road. And I think if you will recall on the
21 individual video, in the statement, there was a good
22 bit of discussion about where Alexander Road was and
23 these other areas that he was talking about from the
24 thing.

25 This is actually a burglary that he committed with

SENTENCING

1 some codefendants back in April 2009. The items that
2 were stolen out of the home, and there were two
3 trailers on the premises, included a video game, some
4 other items found in other locations, however -- and I
5 will hand this up to you as Court's Exhibit 1, this is
6 a photograph of the gun that was retrieved. This was
7 retrieved at Mr. Poacher's home outside of his house.

8 The law enforcement met with Mr. Poacher as well
9 as his mother at the house and he showed law
10 enforcement where the gun was. They retrieved that out
11 of the woods. Again, that was in April of 2009. In
12 March of 2011 he was charged and convicted for choking
13 his girlfriend. This was the -- the lady that came
14 here and spoke to you yesterday, Shatteria Walker. She
15 was a victim. The actual -- the middle school guidance
16 counselor, they are in the high school but there was a
17 middle school guidance counselor who witnessed it.

18 He sees -- he hears yelling out in the hallway.
19 He goes out there and he sees Mr. Poacher choking
20 Ms. Walker. He, at that point, calls him and says, Let
21 her go. He let's her go and he goes to walk back into
22 his office, the middle school guidance counselor does,
23 Mr. Poacher grabs a rock and throws it at both him and
24 Ms. Walker. That is the assault and battery.

25 Then -- and again, that was in March of 2011. In

SENTENCING

1 April of 2011, a month later, he is -- he is actually
2 charged and convicted -- he's convicted for strong
3 armed robbery, at least as far as that record is
4 indicating. I'll tell you that the incident report and
5 all of these reports that I have given to the defense
6 as well, this happened April the 24th, 2011 at about
7 12:10 a.m. It was at the Shell station at Pointe
8 South, the same location that this murder took place.
9 The suspect, as the report reads, the victim was
10 closing the store, the Shell station, Mr. Poacher came
11 in holding a gun.

12 He was wearing jogging pants, black and blue Nike
13 shoes and a blue bandana covering his face. He entered
14 the store, pointed the gun at her and demanded money.
15 She ended up giving him -- or opening the safe for him.
16 And he instructed the victim and another person who was
17 there to go into a bathroom and then when they came out
18 they called law enforcement.

19 That is some clarification, as far as his -- as
20 far as his experience in juvenile court. We followed
21 the code section yesterday to unseal that record and
22 then gathered these materials as well. What we had
23 described earlier as no prior record was obviously the
24 adult record and we needed to go through the sealing
25 process to produce that.

SENTENCING

1 But that is the clarification, as far as his
2 juvenile record. And, again, I think that the crime
3 itself speaks, from the Solicitor's standpoint, that it
4 deserves a life sentence. This record does nothing but
5 support that.

6 THE COURT: Mr. Plexico, glad to hear from you.

7 MR. PLEXICO: Thank you, Your Honor. I don't see
8 the reading on the robbery case as the Solicitor does.
9 And I quote from the report in the robbery case, the
10 co-Defendant indicated that Poacher never entered the
11 store and the video surveillance clearly indicated
12 that as well. So, he is not the one that went in the
13 store. This is just black and white. And, if this is
14 not already a part of the record, this is on the last
15 page, on Page 15 Judge, so he's not the one who
16 actually went in. There was an older person who
17 should have went to general sessions court who
18 actually went in.

19 So, the other one is accurate that. He did get in
20 a fight with his girlfriend at the high school, your
21 Honor. But the first two, the assault and battery and
22 the burglary in 2008, that never went to court and that
23 was subsequently a behavioral contract with the
24 Department of Juvenile Justice. So, there was no
25 adjudication on that. So, he actually only has a

SENTENCING

1 robbery where he never entered the store. There is no
2 evidence that he touched the gun. And the video
3 clearly says that he didn't do the robbery.

4 And then you have the burglary, and also that was
5 with other people. So, that was with people that he
6 certainly shouldn't have been. But he did get punished
7 from that, Your Honor. I do have some things that I
8 want to show you and two people today that I would like
9 for you to hear from. You have already heard from some
10 of them and I expect them to be brief.

11 This is a certificate of his baptism and I would
12 like to, not put that into evidence, but I would like
13 to show it to the Court because I am sure it is a
14 treasure of his mom.

15 This is a picture of his graduating class. They
16 sent him to Beaufort Marine Institute and he did -- he
17 was a stellar student. He was at the top of his class.
18 As a matter of fact, Rotarian Club, after that, since
19 he did so well, and this is a picture of him with a
20 Rotarian. They had him give an impromptu speech to
21 encourage the giving of \$50,000 to the Technical
22 College of the Low Country and they thought that he had
23 done a great job in helping them fund raise to help
24 other people, Judge.

25 He also, while he was in school, received awards

SENTENCING

1 while he was there. And this is for his prep test
2 score, which was high. And this is for his 2007-2008
3 honor roll for him. So, he's a capable bright young
4 man, Your Honor. He knows that he's made some bad
5 choices and there's certainly no question about that.
6 He was younger, his older brothers and sister had grew
7 up and they weren't in the house to guide him and he
8 certainly picked the wrong type of guidance.

9 I would like you to hear from Shatteria, who is
10 the mother of his children.

11 THE COURT: I will be glad to have whoever it is
12 to come around, please.

13 MR. PLEXICO: Thank you.

14 THE COURT: Good morning. Would you state your
15 name for the record, ma'am?

16 MS. WALKER: Shatteria Walker.

17 THE COURT: Glad to hear from you.

18 MS. WALKER: I came to speak on Josh's behalf.
19 Like I was saying yesterday. Nobody is perfect. You
20 know, he had a very, very unstable childhood. I mean,
21 when I met him he was -- he is a good person. I mean,
22 we had our daughter early, you know, in 2008. And he
23 just felt like he needed to do anything to take care
24 of her. But I'm not justifying anything or saying
25 that it's right, because it's not. But he can be a

SENTENCING

1 better person. I can say that. Thank you.

2 MR. PLEXICO: Now, I would like you to hear from
3 his mama again. His mama is Ms. Gloria Poacher.
4 Please come up.

5 MS. POACHER: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MS. POACHER: I'm Gloria Poacher, I'm Joshua's
8 mother. I just want to give you a little bit of
9 background on our family and Josh. He comes from a
10 family of eight brothers and sisters, six boys and two
11 girls of my family. He is the baby. The next child
12 next to him is six years older than him. So, by the
13 time that he got into his teen years the others were
14 already grown and out of the home.

15 My oldest son is deputy sheriff in Pascagula. My
16 daughter, who is next to him, she is operating heavy
17 equipment in San Antonio, Texas, her and her husband
18 and one daughter. My other son is right here in the
19 courtroom. That is his wife. They have three children
20 and a home in Savannah. And he works for RB Baker. He
21 is a heavy equipment operator. My next son, he was
22 here for a few days, he is from -- he lives in Fort
23 Lauderdale, Florida but he had to return to work
24 unfortunately. But he was here to support his brother.
25 And he works in security in Fort Lauderdale.

SENTENCING

1 Loretta Blackwood, his other sister, you met her.
2 She testified about him. And his other brother,
3 another brother was here, Ernest, he was here Monday
4 but unfortunately he works for Beaufort County and he
5 has a wife and five children. His oldest is in
6 college. My oldest grandson is in the Armed Forces in
7 Afghanistan at this moment as we speak. I just wanted
8 to let you know, my niece is here, my sister has been
9 here, and different relatives have come through for the
10 few days. So, we are a very close-knit family and
11 Joshua happens to be the baby.

12 And I'm not putting blame on anything, it is this
13 generation, the younger generation that we have seems
14 like they are kind of violent and getting into a lot of
15 trouble.

16 Joshua is a good kid. And he just had a rough
17 childhood. I am his mom and all of the time I wasn't
18 at the house. And I was into drugs myself at one time.
19 And Josh, I have never had a discipline problem with
20 him at home. He's always been very respectful to me
21 and his dad. He's never shown me any, you know, any
22 violence toward him or, you know, the brothers that he
23 had, you know, his brothers and siblings and all, they
24 used to have their fights, quarrels and fall out.

25 But our family is very close, we are a very loving

SENTENCING

1 family. My sister is on her way here, she is in
2 insurance, that is her daughter there and she is a
3 beautician. Everybody is hard-working people and good
4 people and they have always been there for Josh since,
5 from the beginning of this. I feel like I fell
6 somewhere, I don't know at what point, Your Honor. But
7 he is a good kid and I mean, life -- I understand he
8 knows -- and I wanted to tell you about this too. He
9 got locked up that Sunday. That Saturday was the first
10 day that I was able to go see him. And when I went to
11 the jail house and he came out he had tears in his
12 eyes, he was boo hoo crying, and he said, mama, I gave
13 it up, I had to because it had been bothering me. He
14 said, I couldn't hold it in any longer. I had to let
15 them know what I did and take the consequences because
16 it was wrong. That is what he told me.

17 And he, most of that visit, we just sat there and
18 cried, the two of us, over what had happened. And I
19 just let him know that we loved him and that we would
20 always be there for him.

21 Your Honor, I am 65 years old. A life sentence is
22 even a 30-year sentence, but I have been assured that
23 he has his family in place. He has plenty of cousins
24 who couldn't make it because everybody is working, that
25 they would be there for him. Your Honor, I feel that

SENTENCING

1 everybody deserves a chance, you know, at
2 rehabilitation. I'm not diminishing the fact that he
3 took two lives. That is just a bad thing.

4 But I feel that with a lesser sentence he would
5 have time to sit. Because, even during that short
6 time, a few days in jail there, he realized what he had
7 done; it had been bothering him. Joshua grew up in a
8 church from a little boy. You know, he went to church
9 and church and go to school and did the right thing.
10 I'm just asking for some mercy, some hope at the end of
11 the tunnel. I'm not biblical, but Moses, David, God
12 gave him a chance and I'm asking you for the same
13 chance for my son from you, please. Thank you.

14 MR. PLEXICO: Your Honor, I would like to point
15 out. He started working at 17 with Two Waste
16 Collection Company, that is Republic Trash Company,
17 and he worked on the truck. And then he got another
18 job with Palm Waste, he was a helper on the truck.
19 And then he got another job, to replace the job that
20 he had just lost in July, when this happened, Judge.
21 He worked since he was 17. So, he will get out and go
22 to work. I think that he has got something that he
23 wants to say to you.

24 THE DEFENDANT: Yes, Your Honor. And as I said
25 yesterday, I would like to apologize to my family and

SENTENCING

1 most important, to the Patel family. I got into --
2 the night before this incident I got into some drugs
3 that I shouldn't have used. But it made me paranoid.
4 And after the incident happened and I was in jail I
5 realized that I shouldn't have used those drugs. And
6 while I am in the jail for these past three years, I
7 have used my time wisely and got a little bit more
8 closer to God. And I told myself and I made a promise
9 to God, if I get my life spared again, not saying that
10 I know what I did and I know that I was going to
11 prison for it.

12 But I say, if I get my life spared again I was
13 going to get out there and do the right thing and not
14 use drugs any more. And I know I did have a little
15 trouble in my background, but that was because I was
16 hanging around the wrong people and not having no
17 guidance.

18 But, once I hit the age of 17, I started
19 progressing, going to work, taking care of my kids. I
20 just had that one little relapse. And I can assure
21 you, if you spare me and have mercy on me that it won't
22 happen again.

23 THE COURT: All right. Anything further from the
24 State?

25 MR. STONE: Just in all fairness, I want to make

SENTENCING

1 sure that that on the robbery itself, he did have
2 codefendants. The other defendant was the one that
3 actually had the gun. The statement from Poacher at
4 the time was that he went with the other guy who had
5 the gun, knew what they were going to do before they
6 got there. And it is really confusing as far as which
7 one actually went in, that kind of thing, but it was
8 an armed robbery, it was at that Shell station and
9 Poacher was there with the codefendants.

10 MR. PLEXICO: May I, Your Honor, a little bit
11 more. I have a little bit more. And, Your Honor, he
12 knows that a minimum sentence here would be 30 years,
13 day for day, and he's looking at life several times,
14 in addition to the armed robbery and possession of a
15 weapon during the commission of the violent crimes.
16 Which is also day for day. But the black and white
17 document cannot be disputed that he is not on the
18 videotape, that he is not inside. There is no
19 confusion at all. Black and white when it is written
20 down he is just not on the videotape by the police
21 officer, which means that he wasn't actually inside
22 the Shell station during the robbery.

23 I just give you -- I just want you to know that.
24 He's been a lesser involved person in the prior
25 juvenile crimes, Your Honor. And that is how it is

SENTENCING

1 when you have older people there, used to be they
2 looked up to them. And I am not justifying anything
3 that happened, Judge. We just believe that there is
4 good in Joshua, that he is here, he is willing to take
5 the punishment and he eventually did tell them very
6 quickly, within a week, exactly everything that did
7 happen.

8 He tells me that he was taking Molly, which I find
9 with other clients is a drug that does make you
10 paranoid. I ask you to take that into consideration,
11 although I know that it is a self-induced creation.
12 But I think that may be his character. And I know that
13 it is a serious matter. And we just ask that you allow
14 him some time in his life when he gets out. We ask for
15 a sentence of 30 to 35 years. Thank you.

16 THE COURT: All right.

17 Let me just say this, it's never easy sitting here
18 regardless of whatever my decision may be, to make the
19 call. Under the circumstances life is the appropriate
20 sentence and I am going to sentence you to life on
21 Indictment 2015-387 and 2015-379. Under Indictment
22 2015-490 it will be 30 years. Under Indictment
23 2014-491 it will be 5 years. All concurrent. Good
24 luck to you.

25 MR. PLEXICO: Thank you, Your Honor.

SENTENCING

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 29th day of September, 2017.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

(850) 893-6662

mmanley@sccourts.org

15

16

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18

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20

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25

WITNESSES

Richard Johnson - SLED

DOCKET NO. 2015GS2700378

The State of South Carolina
County of JasperAfter being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2015

I
hereby appear in my own proper
person and plead guilty to the within
indictment or to

THE STATE

vs.

Joshua Lenard Poacher

ARREST WARRANT NUMBER

2015A2710300004

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

TRUE BILL *TLG*

NO BILL

FOREMAN *John D. Miller*DATE *12/17/15*

Foreperson of Grand Jury

Date:

Defendant

VERDICT

X Guilty

Witness:

Foreperson of Petty Jury

Date: *4-12-17*

INDICT

C.C.C. PLS. and G.S.

8432345678

03:08:36 p.m. 04-17-2017

4 / 9

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF JASPER)

2015GS2700378

At a Court of General Sessions, convened on December 17, 2015, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about August 16, 2015, the Defendant, Joshua Lenard Poacher, did, with malice aforethought, kill Hansaben Patel and Hansaben Patel did die as a proximate result of Joshua Lenard Poacher's actions, to wit: by means of shooting him, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

WITNESSES

Richard Johnson - SLED

DOCKET NO. 2015GS2700379

The State of South Carolina

County of Jasper

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2015

I _____
hereby appear in my own proper
person and plead guilty to the within
indictment or to

ARREST WARRANT NUMBER

2015A2710300005

THE STATE

vs.

Joshua Lenard Poacher

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

Defendant

Witness:

C.C.C. PLS. and G.S.

TRUE BILL *True*

NO BILL

FOREMAN *Let's Poacher*DATE *12/17/15*

Foreperson of Grand Jury

Date:

VERDICT

*X Guilty**X Not Guilty*

Foreperson of Petit Jury

Date: *4-12-17*

INDICT

8432345678

03:09:07 p.m. 04-17-2017

6/9

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF JASPER)

2015GS2700379

At a Court of General Sessions, convened on December 17, 2015, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about August 16, 2015, the Defendant, Joshua Lenard Poacher, did, with malice aforethought, kill Kantibha Patel and Kantibha Patel did die as a proximate result of Joshua Lenard Poacher's actions, to wit: by means of shooting her, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

03:08:15 p.m. 04-17-2017 3/9

8432345678

WITNESSES

Richard Johnson - SLED

DOCKET NO. 2015GS2700490

The State of South Carolina
County of Jasper

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2015

I hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

Joshua Lenard Poacher

ARREST WARRANT NUMBER

2015GS2700490 / JAE0851

Indictment For

Robbery - Armed or Alleging Armed
With Deadly Weapon

SC Code: 16-11-330(A)

CDR Code: 0139

TRUE BILL TRUE

NO BILL

DATE 12/17/15

Foreperson of Grand Jury

Date:

Defendant

VERDICT

X Guilty

Witness:

X J. E. Hill

Foreperson of Petit Jury

Date: 4-12-17

C.C.C. PLS. and G.S.

INDICT

8432345678

03:07:54 p.m. 04-17-2017

2 / 9

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

INDICTMENT
2015GS2700490

At a Court of General Sessions, convened on December 17, 2015, the Grand Jurors of Jasper County present upon their oath:

Robbery - Armed or Alleging Armed With Deadly Weapon

That in Jasper County, South Carolina, on or about August 16, 2015, the Defendant, Joshua Lenard Poacher, did commit robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did take and carry away goods and/or monies from the person or immediate presence of Hansaben and Kantibha Patel with the intent to permanently deprive them of possession thereof, all in violation of Section 16-11-330(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

518

8432345678

03:09:56 p.m. 04-17-2017

9/9

WITNESSES

Richard Johnson - SLED

DOCKET NO. 2015GS2700491

The State of South Carolina

County of Jasper

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

December Term 2015

I hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

Joshua Lenard Poacher

ARREST WARRANT NUMBER

2015GS2700491

1A00353

Indictment For

Possession of Weapon During Violent Crime

SC Code: 16-23-490

CDR Code: 0549

TRUE BILL

NO BILL

FOREMAN

DATE

TRUE

12/17/15

Foreperson of Grand Jury

Date:

VERDICT

X

Guilty

Foreperson of Petit Jury

Date:

4-12-17

INDICT

Defendant

Witness:

C.C.C. PLS. and G.S.

8432345678

03:09:39 p.m. 04-17-2017

8 / 9

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

INDICTMENT
2015GS2700491

At a Court of General Sessions, convened on December 17, 2015, the Grand Jurors of Jasper County present upon their oath:

Possession of Weapon During Violent Crime

That in Jasper County, South Carolina, on or about August 16, 2015, the Defendant, Joshua Lenard Poacher, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

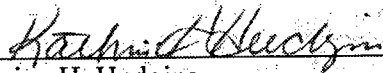
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


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."

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

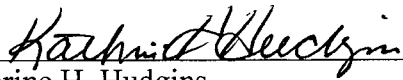
ATTORNEY FOR APPELLANT

This 4th day of April, 2018.

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."

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 4th day of April, 2018.

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