

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Thomas W. Cooper, Circuit Court Judge

**RECEIVED**  
JUN 14 2018  
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

NATHANIEL ANTRON HUNTER,

APPELLANT

APPELLATE CASE NO 2017-001125

RECORD ON APPEAL

KATHRINE H. HUDGINS  
Appellate Defender

ALAN WILSON  
Attorney General

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

JOSHUA A. EDWARDS  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEY FOR APPELLANT

S.R. HUBBARD III  
Solicitor, Eleventh Judicial Circuit  
205 E. Main Street, 3<sup>rd</sup> Floor  
Lexington, SC 29072  
(803) 785-8352

ATTORNEYS FOR RESPONDENT

INDEX

INDEX ..... i

TRIAL TRANSCRIPT DATED APRIL 24-28, 2017 ..... 1

TESTIMONY

    THOMAS GRIFFIN (IN-CAMERA)

        Direct examination by Ms. Mayes ..... 65

        Cross-examination by Mr. Phillips ..... 91

        Redirect examination by Ms. Mayes ..... 102

    SCOTT NEAL (IN-CAMERA)

        Direct examination by Mr. McNair ..... 104

        Cross-examination by Mr. Phillips ..... 110

        Redirect examination by Mr. McNair ..... 115

    BRUCE WADE (IN-CAMERA)

        Direct examination by Ms. Mayes ..... 116

        Cross-examination by Mr. Phillips ..... 121

    NATHANIEL ANTRON HUNTER (IN-CAMERA)

        Direct examination by Mr. Phillips ..... 126

        Cross-examination by Ms. Mayes ..... 131

        Redirect examination by the Court ..... 136

OPENING STATEMENT BY MS. MAYES ..... 188

OPENING STATEMENT BY MR. PHILLIPS ..... 194

TESTIMONY

    SHAWN MCGILL LUDWIG

        Direct examination by Ms. Mayes ..... 204

        Cross-examination by Mr. Chelioski ..... 217

    TIFFANY GREEN

        Direct examination by Mr. McNair ..... 218

    CHRIS HALL

        Direct examination by Mr. McNair ..... 227

CHRISTOPHER YARBROUGH	
Direct examination by Ms. Mayes .....	234
CHRISTOPHER T. BERNARD	
Direct examination by Mr. McNair .....	242
Cross-examination by Mr. Phillips .....	248
Redirect examination by Mr. McNair .....	252
Recross examination by Mr. Phillips .....	254
LARENDA SIMON	
Direct examination by Ms. Mayes .....	272
Cross-examination by Mr. Chehoski .....	305
Redirect examination by Ms. Mayes .....	309
Recross examination by Mr. Chehoski .....	312
COLLEEN BELK	
Direct examination by Ms. Mayes .....	315
LAURIE CALDWELL (IN-CAMERA)	
Direct examination by Ms. Mayes .....	328
Cross-examination by Mr. Phillips .....	340
Redirect examination by Ms. Mayes .....	343
MINOR (IN-CAMERA)	
Direct examination by Ms. Mayes .....	350
Cross-examination by Mr. Phillips .....	358
LARENDA SIMON	
Further Redirect examination by Ms. Mayes .....	384
Further Recross examination by Mr. Chehoski .....	385
LAURIE CALDWELL	
Direct examination by Ms. Mayes .....	386
Cross-examination by Mr. Phillips .....	393
Redirect examination by Ms. Mayes .....	394
MINOR	
Direct examination by Ms. Mayes .....	395
Cross-examination by Mr. Phillips .....	405
Redirect examination by Ms. Mayes .....	406
Recross examination by Mr. Phillips .....	406
Further redirect examination by Ms. Mayes .....	407
JILL SPARKS	
Direct examination by Mr. McNair .....	408
Cross-examination by Ms. Gilreath .....	411

Redirect examination by Mr. McNair.....	416
Recross examination by Ms. Gilreath.....	421
<b>THOMAS GRIFFIN</b>	
Direct examination by Ms. Mayes.....	438
Continued Direct examination by Ms. Mayes.....	494
Cross-examination by Mr. Phillips.....	505
Redirect examination by Ms. Mayes.....	531
Recross examination by Mr. Phillips.....	540
<b>LEAH CALDWELL BONNEVILLE</b>	
Direct examination by Ms. Mayes.....	548
<b>CAIN MAYRANT</b>	
Direct examination by Mr. McNair.....	560
Cross-examination by Mr. Chehoski.....	563
Redirect examination by Mr. McNair.....	564
<b>JOHN CHARLES GRESHAM</b>	
Direct examination by Ms. Mayes.....	565
Cross-examination by Mr. Phillips.....	570
<b>SCOTT NEEL</b>	
Direct examination by Mr. McNair.....	574
<b>CHRISTOPHER JAMES WATKINS (IN-CAMERA)</b>	
Direct examination by Ms. Gilreath.....	654
Examination by the Court.....	680
Cross-examination by Mr. McNair.....	684
Redirect examination by Ms. Gilreath.....	692
Recross examination by Mr. McNair.....	695
<b>MICHAEL STEWART PHIPPS (IN-CAMERA)</b>	
Direct examination by Ms. Gilreath.....	696
Examination by the Court.....	713
Cross-examination by Mr. McNair.....	714
Redirect examination by Ms. Gilreath.....	715
<b>SCOTT NEEL</b>	
Continued Direct examination by Mr. McNair.....	723
Cross-examination by Mr. Phillips.....	724
Redirect examination by Mr. McNair.....	757
Recross examination by Mr. Phillips.....	760
Further Redirect examination by Mr. McNair.....	765
Further Recross examination by Mr. Phillips.....	767

<b>CRYSTAL OWENS</b>	
Direct examination by Ms. Mayes .....	768
Cross-examination by Ms. Gilreath .....	771
Redirect examination by Ms. Mayes .....	773
Recross examination by Ms. Gilreath .....	773
<b>THERESA HINES</b>	
Direct examination by Ms. Mayes .....	777
Cross-examination by Mr. Chehoski .....	780
Redirect examination by Ms. Mayes .....	781
<b>PAGE MCCRAW</b>	
Direct examination by Ms. Mayes .....	783
Cross-examination by Ms. Gilreath .....	789
Redirect examination by Ms. Mayes .....	790
<b>TANISHA TAYLOR</b>	
Direct examination by Mr. McNair .....	791
Cross-examination by Mr. Phillips .....	805
Redirect examination by Mr. McNair .....	814
<b>CHAD SMITH</b>	
Direct examination by Mr. McNair .....	817
Cross-examination by Mr. Chehoski .....	829
<b>JACKIE DAVIS</b>	
Direct examination by Ms. Mayes .....	831
Cross-examination by Mr. Phillips .....	836
<b>VERONA HERRERA</b>	
Direct examination by Ms. Mayes .....	840
Voir Dire examination by Mr. Chehoski .....	842
Continued Direct examination by Ms. Mayes .....	843
Cross-examination by Mr. Chehoski .....	855
Redirect examination by Ms. Mayes .....	859
<b>MARY ANN BOEHM</b>	
Direct examination by Ms. Mayes .....	860
Voir Dire examination by Mr. Chehoski .....	862
Continued Direct examination by Ms. Mayes .....	863
Cross-examination by Mr. Chehoski .....	877
Redirect examination by Ms. Mayes .....	888
Recross examination by Mr. Chehoski .....	890
Further Redirect examination by Ms. Mayes .....	893

MICHAEL STEWART PHIPPS  
Direct examination by Mr. McNair .....924  
Cross-examination by Ms. Gilreath .....942  
Redirect examination by Mr. McNair .....944

CLOSING ARGUMENT BY MS. MAYES .....959

CLOSING ARGUMENT BY MS. GILREATH .....972

VERDICT .....1035

SENTENCING .....1056

STATE'S EXHIBIT NO. 122 (COLOR CODED SUMMARY) .....1059

INDICTMENTS AND SENTENCING SHEETS .....1064

CERTIFICATE OF COUNSEL .....1076

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

**STATE'S EXHIBIT NO. 67 (RECORDED STATEMENT)**

**STATE'S EXHIBIT NO. 112 (PHOTOGRAPH)**



	<u>I N D E X</u>	PAGE
1		
2	Thomas Griffin (In-Camera)	
	Direct Examination by Ms. Mayes	121
3	Cross Examination by Mr. Phillips	147
	Redirect Examination by Ms. Mayes	158
4		
	Scott Neal (In-Camera)	
5	Direct Examination by Mr. McNair	160
	Cross-Examination by Mr. Phillips	166
6	Redirect Examination by Mr. McNair	171
7		
	Bruce Wade (In-Camera)	
	Direct Examination by Ms. Mayes	172
8	Cross-Examination by Mr. Phillips	177
9		
	Nathaniel Antron Hunter (In-Camera)	
	Direct Examination by Mr. Phillips	182
10	Cross-Examination by Ms. Mayes	187
	Redirect Examination by the Court	192
11		
	Opening Statement	
12	By Ms. Mayes	244
	By Mr. Phillips	250
13		
	Shawn McGill Ludwig	
14	Direct Examination by Ms. Mayes	260
	Cross-Examination by Mr. Chehoski	273
15		
	Tiffany Green	
16	Direct Examination by Mr. McNair	274
17		
	Chris Hall	
	Direct Examination by Mr. McNair	283
18		
	Christopher Yarbrough	
19	Direct Examination by Ms. Mayes	290
20		
	Christopher T. Bernard	
	Direct Examination by Mr. McNair	298
21	Cross-Examination by Mr. Phillips	304
	Redirect Examination by Mr. McNair	308
22	Recross Examination by Mr. Phillips	310
23		
	Larenda Simon	
	Direct Examination by Ms. Mayes	328
24	Cross-Examination by Mr. Chehoski	361
	Redirect Examination by Ms. Mayes	365
25	Recross Examination by Mr. Chehoski	368

1	Further Redirect Examination by Ms. Mayes	440
2	Further Recross Examination by Mr. Chehoski	441
3	Colleen Belk Direct Examination by Ms. Mayes	371
4	Laurie Caldwell (In-Camera) Direct Examination by Ms. Mayes	384
5	Cross-Examination by Mr. Phillips	396
6	Redirect Examination by Ms. Mayes	399
7	Minor (In-Camera) Examination by Ms. Mayes	406
8	Cross-Examination by Mr. Phillips	414
9	Laurie Caldwell Direct Examination by Ms. Mayes	442
10	Cross-Examination by Mr. Phillips	449
11	Redirect Examination by Ms. Mayes	450
12	Minor Examination by Ms. Mayes	451
13	Cross-Examination by Mr. Phillips	461
14	Redirect Examination by Ms. Mayes	462
15	Recross Examination by Mr. Phillips	462
16	Further Redirect Examination by Ms. Mayes	463
17	Jill Sparks Direct Examination by Mr. McNair	464
18	Cross-Examination by Ms. Gilreath	467
19	Redirect Examination by Mr. McNair	472
20	Recross Examination by Ms. Gilreath	477
21	Thomas Griffin Direct Examination by Ms. Mayes	494
22	Continued Direct Examination by Ms. Mayes	550
23	Cross-Examination by Mr. Phillips	561
24	Redirect Examination by Ms. Mayes	587
25	Recross Examination by Mr. Phillips	596
	Leah Caldwell Bonneville Direct Examination by Ms. Mayes	604
	Cain Mayrant Direct Examination by Mr. McNair	616
	Cross-Examination by Mr. Chehoski	619
	Redirect Examination by Mr. McNair	620

1	John Charles Gresham	
	Direct Examination by Ms. Mayes	621
2	Cross-Examination by Mr. Phillips	626
3	Scott Neel	
	Direct Examination by Mr. McNair	630
4	Continued Direct Examination by Mr. McNair	779
	Cross-Examination by Mr. Phillips	780
5	Redirect Examination by Mr. McNair	813
	Recross Examination by Mr. Phillips	816
6	Further Redirect Examination by Mr. McNair	821
	Further Recross Examination by Mr. Phillips	823
7	Christopher James Watkins (In-Camera)	
8	Direct by Ms. Gilreath	710
	Examination by the Court	736
9	Cross-Examination by Mr. McNair	740
	Redirect Examination by Ms. Gilreath	748
10	Recross Examination by Mr. McNair	751
11	Michael Stewart Phipps (In-Camera)	
	Direct Examination by Ms. Gilreath	752
12	Examination by the Court	769
	Cross-Examination by Mr. McNair	770
13	Redirect Examination by Ms. Gilreath	771
14	Crystal Owens	
	Direct Examination by Ms. Mayes	824
15	Cross-Examination by Ms. Gilreath	827
	Redirect Examination by Ms. Mayes	829
16	Recross Examination by Ms. Gilreath	829
17	Theresa Hines	
	Direct Examination by Ms. Mayes	833
18	Cross-Examination by Mr. Chehoski	836
	Redirect Examination by Ms. Mayes	837
19	Page McCraw	
20	Direct Examination by Ms. Mayes	839
	Cross-Examination by Ms. Gilreath	845
21	Redirect Examination by Ms. Mayes	846
22	Tanisha Taylor	
	Direct Examination by Mr. McNair	847
23	Cross-Examination by Mr. Phillips	861
	Redirect Examination by Mr. McNair	870
24	Chad Smith	
25	Direct Examination by Mr. McNair	873
	Cross-Examination by Mr. Chehoski	885

1	Jackie Davis	
	Direct Examination by Ms. Mayes	887
2	Cross-Examination by Mr. Phillips	892
3	Verona Herrera	
	Direct Examination by Ms. Mayes	896
4	Voir Dire Examination by Mr. Chehoski	898
	Continued Direct Examination by Ms. Mayes	899
5	Cross-Examination by Mr. Chehoski	911
	Redirect Examination by Ms. Mayes	915
6		
	Mary Ann Boehm	
7	Direct Examination by Ms. Mayes	916
	Voir Dire Examination by Mr. Chehoski	918
8	Continued Direct Examination by Ms. Mayes	919
	Cross-Examination by Mr. Chehoski	933
9	Redirect Examination by Ms. Mayes	944
	Recross Examination by Mr. Chehoski	946
10	Further Redirect Examination by Ms. Mayes	949
11	Michael Stewart Phipps	
	Direct Examination by Mr. McNair	980
12	Cross-Examination by Ms. Gilreath	998
	Redirect Examination by Mr. McNair	1000
13		
	Closing Argument	
14	By Ms. Mayes	1015
	By Ms. Gilreath	1028
15		
	Charge of the Court	1058
16		
	Verdict of the Jury	1091
17		
	Sentence of the Court	1112
18		
	Certificate of Reporter	1114
19		
20		
21		
22		
23		
24		
25		

E X H I B I T S				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	C-1	Defendant's Voir Dire	13	
4	C-2	Juror Background Check	68	
5	C-3	12/2/14 Transcript	116	
6	C-4	4/17/14 Miranda Warning	130	
7	C-5	4/21/14 Miranda Warning	142	
8	C-6	Curriculum Vitae Laurie Caldwell	385	
9	C-7	Un-redacted Audio Statement	484	
10	C-8	Crystal Owens Statement	549	
11	C-9	SLED Narrative	615	
12	C-10	Transcript of Interview	831	
13	C-11	Color-coded Cell Phone Summary	958	
14	C-12	Motion to Suppress Phone Calls	979	
15	C-13	Jury Note	1088	
16				
17	S-1	9-1-1 Call Recording	231	231
18	S-2	Photograph	232	233
19	S-3	Photograph	232	233
20	S-4	Photograph	232	233
21	S-5	Photograph	232	233
22	S-6	Photograph	232	279
23	S-7	Photograph	232	233
24	S-8	Photograph	232	279
25	S-9	Bag with robe	281	281

1	S-10	Photograph	295	295
2	S-11	Photograph	317	348
3	S-12	Photograph	317	380
4	S-13	Photograph	317	348
5	S-14	Photograph	317	348
6	S-15	Photograph	317	348
7	S-16	Photograph	317	348
8	S-17	Photograph	317	348
9	S-18	Photograph	317	348
10	S-19	Photograph	317	348
11	S-20	Photograph	317	348
12	S-21	Photograph	317	348
13	S-22	Photograph	317	348
14	S-23	Photograph	317	348
15	S-24	Photograph	317	348
16	S-25	Photograph	317	348
17	S-26	Photograph	317	348
18	S-27	Photograph	317	348
19	S-28	Photograph	317	348
20	S-29	Photograph	317	348
21	S-30	Photograph	317	348
22	S-31	Photograph	317	348
23	S-32	Photograph	317	348
24	S-33	Photograph	317	636
25	S-34	Photograph	317	636

1	S-35	Photograph	317	348
2	S-36	Photograph	317	348
3	S-37	Photograph	317	348
4	S-38	Photograph	317	348
5	S-39	Photograph	317	348
6	S-40	Photograph	317	348
7	S-41	Photograph	317	348
8	S-42	Photograph	317	348
9	S-43	Photograph	317	348
10	S-44	Photograph	317	636
11	S-45	Photograph	317	636
12	S-46	Photograph	317	348
13	S-47	Photograph	317	348
14	S-48	Photograph	317	348
15	S-49	Photograph	317	348
16	S-50	Photograph	317	348
17	S-51	Photograph	317	348
18	S-52	Blowup of April Calendar	317	
19	S-53	Blowup of Apartment Layout	317	
20	S-54	Blowup of Aerial View	317	
21	S-55	Blowup of Bathroom Floor	317	460
22	S-56	Photograph	317	
23	S-57	Photograph	317	
24	S-58	Photograph	317	
25	S-59	Photograph	327	498

1	S-60	Photograph	327	498
2	S-61	Photograph	327	498
3	S-62	Photograph	327	498
4	S-63	Buccal Swabs	378	932
5	S-64	Redacted Forensic Interview	446	446
6	S-65	Sprint Records	465	466
7	S-66	Call Detail Record Printout	473	474
8	S-67	Larenda Simon Statement 4-13-14	503	503
9	S-68	Photograph	515	515
10	S-69	Photograph	515	515
11	S-70	Cell Phone	517	517
12	S-71	Nylon Cap	517	517
13	S-72	4/17/14 Miranda Warning	525	525
14	S-73	Photograph	525	525
15	S-74	Photograph	525	525
16	S-75	Photograph	525	525
17	S-76	Photograph	525	525
18	S-77	Photograph	525	525
19	S-78	Photograph	525	525
20	S-79	Photograph	525	525
21	S-80	Photograph	525	525
22	S-81	Photograph	527	
23	S-82	4/21/14 Miranda Warning	555	555
24	S-83	Body Diagram	609	609
25	S-84	Carolina Trader Document	624	624

1	S-85	Photograph	635	636
2	S-86	Photograph	635	636
3	S-87	Photograph	635	636
4	S-88	Photograph	635	636
5	S-89	Photograph	635	636
6	S-90	Photograph	635	636
7	S-91	Photograph	635	636
8	S-92	Photograph	635	636
9	S-93	Photograph	635	636
10	S-94	Photograph	635	636
11	S-95	Photograph	635	636
12	S-96	Photograph	635	636
13	S-97	Photograph	635	636
14	S-98	Photograph	635	636
15	S-99	Photograph	635	636
16	S-100	Photograph	635	636
17	S-101	Bag with hoodie and cap	650	651
18	S-102	Black Cloth	651	651
19	S-103	Clothing item	651	652
20	S-104	Clothing item	651	652
21	S-105	Clothing item	651	653
22	S-106	Projectiles	653	654
23	S-107	Shell casings	654	655
24	S-108	Swab from door	655	656
25	S-109	Photograph	658	659

1	S-110	Photograph	658	659
2	S-111	Extraction Summary	719	
3	S-112	Photograph	719	
4	S-113	Photograph	719	
5	S-114	Photograph	719	
6	S-115	Photograph	719	
7	S-116	Photograph	719	
8	S-117	Data files	725	
9	S-118	Blowup Photograph	778	845
10	S-119	Known Standard Buccal Swabs	845	845
11	S-120	Photograph	883	883
12	S-121	Swabs and cuttings	910	910
13	S-122	Color-coded Summary	986	987
14				
15	D-1	Defendant's Witness List	13	
16	D-2	State vs. Beatty Case Law	13	
17	D-3	List of Pretrial Motions	13	
18	D-4	Defendant's Voir Dire	13	
19	D-5	Motion to Suppress DNA	13	
20	D-6	Motion to Suppress Statement	13	
21	D-7	Motion re: Testimony of Child	13	
22	D-8	Motion re: Out of Court Statement	13	
23	D-9	Motion re: Hearsay	13	
24	D-10	Lyle Motion	13	
25	D-11	Motion re: Use of "CODIS"	13	

1	D-12	Motion re: Use of "Forensic"	13
2	D-13	Motion re: Continuance	13
3	D-14	Cell Phone Extraction	678
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1           **MS. GILREATH:** Your Honor, the first motion I'd make  
2 is just a motion to sequester witnesses. I think that's  
3 a fairly standard motion in a lot of trials like this just  
4 to avoid the possibility that there would be any changing  
5 of stories or anything along those lines, that each  
6 witness's story is their own, so we would move to sequester  
7 the witnesses, Your Honor.

8           **THE COURT:** Do you have any objection to that,  
9 Ms. Mayes?

10           **MS. MAYES:** Your Honor, we have no objection as  
11 long as it is mutual. We have the chief investigating  
12 officer, Thomas Griffin. We have the solicitor's office  
13 investigator, James Sullivan, and then we have the  
14 victims of the crime who would be excluded per statute  
15 from the sequestration order. Other than that, we can  
16 have all others witnesses step out. That would include  
17 Ms. Ottenbacher.

18           **THE COURT:** Okay. The sequestration order will be  
19 reciprocal and it will go into effect immediately  
20 following the opening statement, okay?

21           All right.

22           **MR. GILREATH:** Thank you, Your Honor. My second  
23 motion would be to request that the solicitor's office  
24 certify under oath that compliance has been made with all  
25 Brady, Rule 5 and all other rules of discovery prior to

1 proceeding with any other pre-trial motions.

2       **THE COURT:** All right. As officers of the court, I'm  
3 not gonna require them to take an oath beyond that. Their  
4 license to practice is probably a greater threat than  
5 perjury would be, so I'll take their statements in that  
6 regard.

7       Ms. Mayes?

8       **MS. MAYES:** Yes, sir, Your Honor. This has been an  
9 on-going discovery. There has been extensive discovery  
10 in this case dating back to 2014. If I had to estimate,  
11 I would say over a thousand pages of discovery has been  
12 provided. In addition to that, that's not only the SLED  
13 lab reports, but that's the actual bench notes and  
14 worksheets for each of the analysts in this case for  
15 latent prints, ballistics, DNA and evidence processing or  
16 serology. So all of that has been provided.

17       Your Honor, as recently as this morning the evidence  
18 custodian, Jan Ottenbacher, brought with her the most  
19 updated form of chain of custody from internally at the  
20 West Columbia Police Department just documenting everything  
21 in evidence there and when or where it had been moved. We  
22 previously provided that with the updated version and I  
23 believe that both parties have gone over to West Columbia  
24 Police Department and actually examined that evidence. My  
25 understanding is the defense did that within the last

1 two weeks and also during previous hearings we stated that  
2 it would be available for any of their experts to review as  
3 well, including latent prints or ballistics experts. I'm  
4 not sure whether or not that's occurred, but that's  
5 certainly been available.

6 In addition to that, Your Honor, the phone that's in  
7 evidence in this case, we had an extraction done by the  
8 Lexington County Sheriff's Department. That extraction  
9 report was given to the defense, but on top of that I  
10 believe they've had their own independent examiner go over  
11 twice and did his own independent extraction from that.

12 Your Honor, the only other thing I can think of at  
13 this point would be we may -- at a later point in time may  
14 take up a motion concerning any type of third-party guilt.  
15 If it does appear that that there's any third-party guilt  
16 that the defense may raise, our understanding is that one  
17 of the people who was initially looked at in this case is  
18 a Michael Thomas. Our understanding is that he was  
19 actually incarcerated at the time of this offense and  
20 that's something that I believe we can produce some  
21 paperwork on to verify, but it certainly is available  
22 based on information from the Department of Corrections  
23 that indicates he's actually been incarcerated and in  
24 custody since April 10th of 2013, which means he was  
25 incarcerated at the time this crime was committed. So

1 that's the only other thing I think that we haven't given  
2 paperwork on, but I'm disclosing it at this time. I don't  
3 think that's gonna become an issue because I don't think  
4 that there's anything -- any basis here to pursue a  
5 third-party guilt argument, but if that becomes an issue  
6 we could certainly provide any paperwork documenting  
7 Mr. Thomas was incarcerated.

8 **THE COURT:** All right. Thank you.

9 Ms. Gilreath, any response to that?

10 **MS. GILREATH:** Your Honor, not at this time. I don't  
11 think that at this point we'd be requesting anything as it  
12 relates to Michael Thomas in terms of his incarceration  
13 records or anything along those lines, so.

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

15 **MS. GILREATH:** Your Honor, the following motion would  
16 be the motion that I provided a copy of this morning. I've  
17 also made it a Court's exhibit. It is our motion for a  
18 continuance.

19 **THE COURT:** All right.

20 **MS. GILREATH:** Your Honor, just a little bit of  
21 procedural history that's relevant specific to this motion.  
22 The first time that this case was noticed for trial was  
23 actually December 21st of 2016. Mr. Hunter was arrested on  
24 April 17th of 2014. He's been continuously incarcerated  
25 ever since. At the point where -- the first time that I'm

1 aware of a trial was ever set was December 21, 2016. It  
2 was scheduled for April 10th of 2014. Between that time  
3 and February 22nd of 2017, it appears that there wasn't  
4 really a whole lot of discovery that was exchanged during  
5 that time. It was kind of a fairly dead period in terms  
6 of things being turned over. As far as everyone knew,  
7 things were planning to proceed on April the 10th. As of  
8 somewhere around April the 22nd of 2017, Solicitor Mayes  
9 had notify Mr. Chehoski, who is the lead counsel on this  
10 case, that the trial would be rescheduled for the week of  
11 May the 8th. From what I understand from Mr. Chehoski, no  
12 specific reason was provided for this. It was simply just  
13 indicated that it was going to be moved to May 8th.  
14 Mr. Chehoski had already, I think, obtained protection for  
15 that week. He already had a trip scheduled for out of  
16 town. At that point they agreed upon this week, Your  
17 Honor. And as I said, at that point from the time it was  
18 originally noticed until the date that they agreed upon  
19 this week, that had been a fairly quiet period in terms of  
20 any sort of exchange of discovery. So at that point there  
21 was no reason to request any kind of continuance. As far  
22 as defense counsel knew, everything had been -- had been  
23 provided. At some point after -- between -- basically  
24 between February 23rd when the new trial date of April 24th  
25 was proposed, starting on March the 2nd that's when all

1 this new discovery started being received. It included  
2 the new reports for the cell phone, which included the  
3 extraction report that was mentioned by Solicitor Mayes a  
4 few minutes ago.

5 Between March the 2nd and April the 5th there were  
6 several new things that were received, including the phone  
7 extraction report, including ballistic reports that had  
8 never been seen before for analyses that been done on  
9 projectiles and things that were -- had been in the custody  
10 of the State since April of 2014. So on April the 6th  
11 there was a motion that was filed for a continuance. That  
12 was scheduled to be heard in front of Judge Griffith on  
13 April the 12th. That -- at that hearing Judge Griffith  
14 denied the motion. I think it was largely based on that --  
15 the biggest thing that had been turned over for which the  
16 defense did not yet have an expert or had much of an  
17 opportunity to review was the ballistics. We were in the  
18 process -- we had an expert that was working on getting our  
19 own phone extraction, an independent review of that, and  
20 so Judge Griffith denied it at that time and it kind of  
21 appeared from the hearing that Judge Griffith felt there  
22 wasn't really all that much new discovery that had been  
23 provided, so there wasn't enough basis for the continuance  
24 motion.

25 Your Honor, at the point where that hearing ended

1 before Mr. Chehoski actually even left the podium, he was  
2 provided at that point with a new batch of discovery. I  
3 believe that new batch on April the 12th was fifty-two  
4 pages long. Following that, on April the 14th we received  
5 an additional four pages. After that, on the 17th, 18th,  
6 19th, two batches on the 21st, and then as recently as  
7 receiving something last night I think around 7:00 PM,  
8 we've been receiving new batches of discovery.

9 So, Your Honor, our argument at this point is that  
10 not only is this a renewal of our original motion for  
11 continuance based on all the new discovery that was  
12 provided between February the 23rd and that April the 12th  
13 date, now we've got about eight batches of entirely new  
14 discovery that had been received that we've been doing  
15 everything we can to investigate, but obviously there's a  
16 lot there and, of course, we're trying to prepare for  
17 trial.

18 Your Honor, we believe that with the trial originally  
19 being scheduled and being noticed for a particular date,  
20 which it was noticed by the solicitor's office here in  
21 Lexington County, we're still a solicitor-controlled docket  
22 despite the Court's holding in State v. Langford, the  
23 solicitor's office scheduled it for trial. They then  
24 unilaterally changed the date. Now they did come to an  
25 agreement with defense counsel as to a new date when that

1 original date they scheduled it for did not work, but then  
2 at the point where defense counsel needed a continuance on  
3 the basis of all this new discovery being provided by the  
4 State, the State was not willing to agree to a continuance.  
5 Your Honor, we believe that if it had been them needing the  
6 additional time they likely would have just gone ahead and  
7 changed the scheduling date without having a hearing in  
8 front of a judge based on the fact that that's what they  
9 did the first time.

10         So, Your Honor, we believe that this trial has been  
11 -- the date of this trial has been unconstitutionally  
12 scheduled and rescheduled. Under State v. Langford we  
13 believe that this is a violation of the separation of  
14 powers. We believe that based on the substantial advantage  
15 to the State of knowing in advance when they're gonna set  
16 it for, knowing whether they may or may not have additional  
17 discovery, having the vast resources of law enforcement  
18 and all the investigatory resources that are typically not  
19 available to the defense, they're able to change the  
20 scheduling unilaterally when they need more time, Your  
21 Honor, I would argue that that creates a substantial  
22 disadvantage to the Defendant, to Mr. Hunter in this case,  
23 and that going forward today would violate his due process  
24 right as a result of that. With the limited resources that  
25 defendants typically have to begin with, much less dealing

1 with a client who's subject to having to obtain orders for  
2 funding and things of that nature to obtain experts, of  
3 course, that creates an additional delay that isn't  
4 necessarily present for all defendants, but is certainly  
5 for public defender defendants at times. Your Honor, we  
6 would argue that that puts Mr. Hunter at a substantial  
7 disadvantage if this trial goes forward today.

8         Additionally, Your Honor, with all of the new  
9 discovery that's been provided it still appears that  
10 there may be some things that we either do not have or  
11 perhaps contain -- things that we have are missing segments  
12 of. The things that I would point to, Your Honor, we  
13 believe that there may be some additional evidence under  
14 Brady and Kyle v. Whitley, and potentially even Rule 5.  
15 As recent as today, Your Honor, with the new and updated  
16 chain of custody and property room report that we were  
17 provided, our attention was drawn to -- it's Page 33 of the  
18 report, Your Honor, and it indicates that there was a set  
19 of finger and palm prints of Mr. Hunter that was received  
20 from the sheriff's department on March the 21st of 2017.  
21 Now it appears that this was actually checked in there,  
22 and from what I understand from Ms. Ottenbacher it wasn't  
23 actually checked out to go to SLED, but in discussing where  
24 this came from it sounds like there may have been some  
25 additional attempts more recently than what even we have

1 to compare other fingerprints, palm prints that Mr. Hunter  
2 may have in the system to those found at the scene. My  
3 understanding is that nothing came back, but we believe  
4 that that's exculpatory and if there is some sort of report  
5 or notes or anything showing where those attempts were made  
6 and they were not identified back to Mr. Hunter, that would  
7 be something exculpatory that we would be entitled to  
8 review in preparing his defense.

9 Your Honor, the thing that we received last night  
10 around 7:00 was a diagram that I believe purports to show  
11 the incident location. It's marked on there not to scale.  
12 We would argue that receiving it last night at 7:00 PM  
13 doesn't give us sufficient time to do any sort of  
14 investigating to determine if, although it's marked not to  
15 scale, it's in some way misleading in terms of what it  
16 might show about the incident location and what could have  
17 happened there.

18 One of the -- let's see. There were phone reports  
19 that were supplied. We originally had the extraction  
20 report, which by their own contents page of the extraction  
21 report indicates that a substantial amount of information  
22 was actually left out of the report. There's an extraction  
23 from the phone that contains everything. The report that  
24 we received on the index page shows that there's actually  
25 a lot of data, phone calls, text messages and things like

1 that, that weren't actually included in the State's report.  
2 We've been having our expert work to try to determine what  
3 all was left out. It's difficult to say because with these  
4 extractions you have to determine whether the extraction  
5 contains the exact same information, but one of our  
6 questions that we've been trying to have our expert  
7 determine is what all was left out of those reports. We  
8 received some additional reports that the State created  
9 that are highlighted and contain updates to phone numbers,  
10 inclusions of information that did not come from the  
11 extraction report, these that they updated, I think, to  
12 show who these phone numbers belong to, things like that,  
13 and with just having those for a few days is simply not  
14 enough time for us to investigate to determine whether  
15 these would potentially be admissible or something that  
16 would be proper to show in front of the jury depending on  
17 what was removed, what was added. It just simply isn't  
18 enough time.

19 Your Honor, there's some additional things that we  
20 received. There were new statements, a couple from people  
21 that we had not -- that the only way we'd ever heard of  
22 these people were there's an evidence log or a crime scene  
23 log showing who came on-scene. Within the past week we've  
24 been notified that a couple of those people for whom we've  
25 never received any other reports, any other statements, any

1 indication that they took any statements, these are EMS  
2 workers, and now we're being told that they actually are  
3 saying that, you know, there were statements made on-scene  
4 that they intend to testify to, as well as some other  
5 statements made by witnesses that this is the first time  
6 we've ever heard of it. Of course, getting this within the  
7 past week is just simply not enough time for us to exercise  
8 our duty in investigating and presenting a full and  
9 complete defense under Strickland and cases like Elmore and  
10 Nix and cases like that that impose upon counsel a duty to  
11 fully investigate, prepare a full and complete defense to  
12 ensure that Mr. Hunter has the most fair and adequately  
13 represented trial as possible and, Your Honor, I believe  
14 that going forward today would put Mr. Hunter at a  
15 substantial disadvantage, violate his due process rights,  
16 his rights to compulsory process and to prepare and present  
17 a full and complete defense. And, Your Honor, I also  
18 believe it would render us as his counsel per se  
19 ineffective due to our inability to investigate this new  
20 information.

21 **THE COURT:** All right. Well, a couple of things.  
22 First of all, I think as to -- as to April the 12th, I'm  
23 bound by Judge Griffith's ruling on any prior discovery  
24 that you had received and I think -- but I am free, of  
25 course, to deal with what you've received since that time

1 and to determine whether or not the lateness in that  
2 reporting, the scope of it, the content of it, what you  
3 might have to do in response to it and those other things  
4 that all flow out of discovered discovery, would be --  
5 would be appropriate to -- to grant a continuance. In  
6 other words, I think what you told me was that on that  
7 day Mr. Chehoski -- I believe it was Mr. Chehoski got  
8 fifty-two pages of new material and then some more came in  
9 and you mentioned eight batches of new discovery. I'm not  
10 sure what the -- how many pages that represented and how  
11 much of it really would require an additional evaluation.  
12 The palm print, the fingerprint that you mentioned, I'd  
13 like to hear a little bit more about that and what that's  
14 all about. I think that could be something that needs  
15 examining a little more closely.

16 Ms. Mayes, first of all, tell me about the on-going  
17 saga of this -- of this discovery. I'm confident that  
18 you're turning it over as soon as you got it, but under  
19 Kyle versus Whitley, of course, as we know the  
20 responsibility is with the State regardless of whether  
21 the investigating officers were holding it or sitting on  
22 it for whatever reason. So how about addressing that  
23 issue, why the delay and then what it is that has been  
24 delayed and let me try to put myself in a position to  
25 try to weigh the prejudicial impact of all that coming

1 in so late and the limited time that Ms. Gilreath and  
2 Mr. Phillips and Mr. Chehoski have had to investigate it.

3 **MS. MAYES:** Yes, Your Honor. The fifty-two pages  
4 that were referred to at the time of the hearing was an  
5 updated chain of custody from SLED. So we had previously  
6 provided both the chain of custody from SLED, that's their  
7 internal chain that shows where every item goes from the  
8 time that it's logged in until it reaches the lab, and  
9 also we have provided the West Columbia Police Department  
10 internal chain of custody which documents all items that  
11 have been stored in evidence. The reason those change and  
12 are subject to being updated is because if an item is  
13 returned back to the West Columbia Police Department, for  
14 example, then there's gonna be an updated chain. So the  
15 chain that was provided on April 12th was basically the  
16 same chain that we had previously provided, but it did  
17 account for the evidence that had been sent back to the  
18 West Columbia Police Department on --

19 **THE COURT:** This is evidence that had already been  
20 turned over to the defense at some point in the past and  
21 it's just showing it continuing to be moved back and forth  
22 for whatever reason; is that right?

23 **MS. MAYES:** Yes, sir, Your Honor. It would have been  
24 included either on the original chain of custody from SLED  
25 that we had provided or in the bench notes that were

1 provided. And then any updated information I believe with  
2 Larenda Simon, who's the victim in this case. They had  
3 done an initial analysis of her prints back in 2014, but  
4 they wanted a better quality set of prints on her, so some  
5 new prints were taken in 2017, and submitted and they  
6 generated a report back in March in that regard. So all  
7 of that evidence was then ultimately returned back to the  
8 West Columbia Police Department. My understanding is that  
9 all of the evidence is there now and has been there since  
10 the time that defense counsel went and viewed that  
11 evidence. So that -- that was on April 12th, Your Honor,  
12 and that was fifty-two pages which accounted for the SLED  
13 chain of custody. And, again, the SLED chain of custody  
14 had been previously provided. It just was not the most  
15 updated version accounting for the current whereabouts of  
16 all evidence.

17 Then on April 13th, there was a towing receipt for a  
18 rental car that Mr. Hunter was driving at the time of his  
19 arrest. Also a document from A-1 Wrecker Service. I  
20 believe that's just documenting that that vehicle was  
21 towed. And then Michael Swain says that there was a DL  
22 run on him or there was a document reflecting a DL  
23 regarding a Michael Swain. He's actually the rental car  
24 company owner or operator. So those dealt with a vehicle  
25 that was towed following Mr. Hunter's arrest.

1           On April 14th, that is when they had requested  
2 updated lab and bench notes from the State Law Enforcement  
3 Division. I believe the first set of bench notes and lab  
4 materials were provided back in November of 2016 and that  
5 was a very thorough, detailed -- that's about a thousand  
6 pages altogether that deals with notes from the DNA  
7 analyst, the evidence processing analyst, as well the  
8 latent print analyst and the firearms analyst. We had  
9 received a request from Mr. Chehoski for updated  
10 information regarding prints and firearms and we provided  
11 that in the form of a CD on April 14th.

12           **THE COURT:** Updated information, is this new  
13 information that they never had seen before or is it --

14           **MS. MAYES:** It would have been the corresponding  
15 information that went with the reports. There was a SLED  
16 lab report on ballistics dated March of 2017 and a SLED  
17 latent prints report also dated March of 2017 and that's  
18 the one that determined -- that's the one where they were  
19 looking at the victim's prints. And, Your Honor, the lab  
20 notes were contained on that CD that was provided on  
21 April 14th. So in a nutshell, those lab notes and bench  
22 notes corresponded with the two most recent SLED reports  
23 that were issued in March of 2017.

24           **THE COURT:** Okay. How much of that information --  
25 the new information, the updated information, dealt with

1 either exculpatory or inculpatory evidence regarding the  
2 Defendant itself?

3 **MS. MAYES:** Well, Your Honor, as for the ballistics,  
4 we do not have a gun in this case so it's not a situation  
5 where we can actually match either the projectiles or the  
6 casings to a weapon, but it would be inculpatory because it  
7 does link him to a Glock and we do have photographs of the  
8 Defendant with a Glock, so I would consider that to be  
9 inculpatory. That would be the March 2017 ballistics  
10 report.

11 The March 2017 latent prints results, Your Honor,  
12 that was dealing with the victim's prints and whether or  
13 not they could determine whether or not any of the prints  
14 at the location were hers and they were not.

15 **THE COURT:** Okay.

16 **MS. MAYES:** Now as for the Defendant's prints, Your  
17 Honor, that dates back to 2014. In 2014, the analyst,  
18 who is Tom Darnell, he looked at some prints on file for  
19 Nathaniel Hunter and was not able -- in his opinion  
20 Nathaniel Hunter was eliminated from one of the prints  
21 and there was another print, which he did not consider the  
22 prints he had from AFIS to be of sufficient quality to  
23 reach a determination one way or the other. So he's not  
24 saying that it's not him, he's not saying that it is him.  
25 He's saying that the prints in AFIS are of insufficient

1 quality, and that dates back to 2014. The prints that  
2 Ms. Gilreath referred to just a few moments ago, Your  
3 Honor, the prints that are in evidence, those are among  
4 the same prints that Tom Darnell, the SLED agent has pulled  
5 and looked at through AFIS. He doesn't have to receive  
6 them from the West Columbia Police Department because he  
7 has access to AFIS and can pull them there. It is not  
8 actually noted in his March 2017 report, but he did look  
9 at the most recent AFIS prints from this arrest, the ones  
10 that have actually been on file since 2014 and, again,  
11 they were of insufficient quality for him to reach a  
12 determination one way or another to rule him in or rule  
13 him out. He just says the prints are of insufficient  
14 quality. Agent Darnell is actually gonna be here this  
15 afternoon. He should be here any moment in case any  
16 additional follow-up is needed on that.

17 Your Honor, as to the April 17<sup>th</sup> discovery, that's a  
18 -- what we call a CAD sheet. That goes with the 9-1-1  
19 call. They've had the 9-1-1 call since 2014, but that's  
20 the CAD sheet that confirms the time that the call came in  
21 and that the first unit was dispatched.

22 In addition to that, Your Honor, we provided the  
23 criminal history on all of our lay witnesses, if any.  
24 When we went over and looked at evidence ourselves within  
25 the last month, we took photos of the outside of some of

1 the bags which note who it was taken from, so we turned  
2 that over. Those, I believe, were two photographs showing  
3 two bags of evidence. One moment.

4 **THE COURT:** These were the bags that the evidence  
5 were in?

6 **MS. MAYES:** Yes, Your Honor. It's the external -- the  
7 external bags. Your Honor, also the CV of qualifications  
8 for Agent Smith and Agent Darnell at the State Law  
9 Enforcement Division. Then there was a one-page property  
10 release form which just shows evidence returned to  
11 Nathaniel Hunter or at least to a family member on his  
12 behalf. I believe it was two gold rings and maybe  
13 something else. That just documents what items were  
14 actually taken from him and then turned over to a family  
15 member apparently after he signed a property release.

16 And in addition to that, Your Honor, the document that  
17 Ms. Gilreath is referring to is -- that we have previously  
18 provided, that is demonstrative evidence. That's not  
19 intended for evidence. It's intended for us to use to  
20 basically be a demonstrative aid for use with witnesses.  
21 That is a diagram of the interior of the apartment. And  
22 also the phone chart that she referred to, that is an  
23 exhibit that we created off of the phone records, but it  
24 shows the dates and times that certain calls were made and  
25 who those calls were placed to.

1           Other than that, Your Honor, the certified conviction  
2 of Mr. Hunter for his burglary tools, although I believe  
3 that was already -- I'm not sure if it was the certified  
4 version or not, but there was previously notations in the  
5 SLED file about his certified conviction for burglary tools  
6 because that is what put him into the CODIS for the DNA  
7 database, which led to -- it was a hit -- it was a hit  
8 through CODIS and the DNA database that led to him being  
9 developed as a suspect in this case. They actually had an  
10 item of evidence from the crime scene that when DNA was  
11 developed from that stocking cap and put into CODIS, it  
12 came back as a hit to Nathaniel Hunter and so that's what  
13 led to him being developed as a suspect in this case.

14           **THE COURT:** All right. Thank you.

15           Ms. Gilreath, did Ms. Mayes leave anything out of the  
16 evidence that was disclosed after April the 12th?

17           **MR. GILCHRIST:** Well, Your Honor, the -- of that  
18 fifty-two pages that was disclosed on April 12th after the  
19 end of the continuance hearing that we had in front of  
20 Judge Griffith, some of that was the chain -- updated chain  
21 of custody.

22           Additionally, Your Honor, there were a number of pages  
23 of handwritten notes that included both diagrams, as well  
24 as several pages of mostly single-spaced handwritten notes  
25 by one of the investigators. That was the first time that

1 we had seen any of that. There are a number of things that  
2 could be impacted there between various names of different  
3 individuals and some of that relates to Mr. Hunter, some  
4 of it relates to other witnesses. In any case, that's --  
5 it looks like it's from pages 10 of that fifty-two --  
6 actually pages 6 through 17 are these handwritten -- are  
7 exclusively these handwritten notes that include the  
8 diagrams, and that was the first time we had seen those.  
9 There's also a couple of search warrants in here that were  
10 included. The handwritten notes contain by far the most  
11 that we were interested in investigating that we had not  
12 had access to prior to that date. So from the 12th when  
13 we received that fifty-two pages, that -- that was the --  
14 the main thing that was -- I guess I would say the most  
15 new that we had just never seen before period. From --  
16 let's see here.

17 From the 13th, that's correct, it was the towing  
18 receipts that we hadn't had previously that did identify  
19 Mr. Swain. The updated lab and bench notes. Of course,  
20 these are -- we're talking about latent prints that are  
21 being run being or that are being checked in March of 2017.  
22 I understand there were some that were checked back in  
23 2014, but it was actually, I think, news to me. And I can  
24 check with my co-counsel if they knew something that I  
25 didn't, but as to the -- where it mentioned -- where she

1 mentioned that it wasn't in the report -- in Mr. Darnell's  
2 report, but that he did look at additional prints from  
3 Mr. Hunter relating to this arrest, we haven't had anything  
4 that tells that that happened, that there was a comparison.  
5 All we have is this one individual page from the chain of  
6 custody showing that some prints -- one set of prints that  
7 were his, that some were taken on March 21st and logged  
8 into West Columbia. We didn't have an explanation of how,  
9 why, whether anything was run relating to that. So this  
10 is -- I mean, today is the first time that we're hearing  
11 that there was an additional attempt done to compare his  
12 prints and other prints besides the ones that we do have  
13 reports for and the reports we have do indicate that there  
14 are prints that they can't -- I guess neither confirm or  
15 deny that it's him because it's insufficient for  
16 comparison, but --

17 **THE COURT:** Right.

18 **MS. GILREATH:** -- I mean, today is the first time  
19 we're hearing about that in terms of that report that he  
20 would have had there.

21 The -- let's see. As far as, again, with the exhibits  
22 for the call records, they're not just sort of, you know,  
23 copy and pasted or identical images from this extraction  
24 report. There's highlighting that's done and most  
25 importantly they're taking and then looking up phone

1 numbers and adding in names that are with phone numbers  
2 that are otherwise in the extraction report largely without  
3 any names to them, things like that. And, of course, one  
4 of the things we want to make sure is that, you know, we're  
5 -- we're clear about exactly what is going to be in this  
6 exhibit they're going to be showing, that it's not  
7 something that's gonna be confusing or unduly prejudicial  
8 to the jury. And so, of course, trying to compare that  
9 with both what they have and what our expert is working on  
10 in such a short period of time, that is something that  
11 takes a period of time, particularly when we're trying to  
12 also investigate all of these other things that have been  
13 provided over the course of the past just about two weeks.

14 **THE COURT:** All right.

15 **MS. GILREATH:** Your Honor, I think the last thing I  
16 may not have addressed and I do believe I -- I may have  
17 included it as an attachment, it's an e-mail dated  
18 April 21, 2017, at 4:44 PM. This was a Friday afternoon  
19 -- just this past Friday afternoon.

20 **THE COURT:** Right.

21 **MS. GILREATH:** As you can see, there are several  
22 statements in here that we're told are being made. Prior  
23 to this Mr. Hall and Mr. Bernard, the only time their names  
24 have ever been seen is in this crime scene log that they  
25 did at some point come to the scene and leave. We've never

1 been informed prior to this that they had seen anything  
2 happen in terms of these projectiles falling or statements  
3 being made and it appears based on the way that they're  
4 presenting that that she thought she was going to die and  
5 then giving a description, that they're going to attempt to  
6 get that in. And then, additionally, this statement from  
7 Captain Wade where he recalls this new information about  
8 the phone being off during the timeframe of the event on  
9 4-13-14. That was something completely new to us.  
10 Although they recorded pretty much all the other  
11 witnesses's statements, Mr. Hunter's statement was not  
12 actually recorded, so this isn't something where we can  
13 just kind of flip back to a recording and see if it was  
14 there. I mean, it requires us to do additional  
15 investigation in terms of the phone and things like that  
16 for potential impeachment purposes, so all of that was  
17 completely new information to us as well.

18 **THE COURT:** How would you check to see if his phone  
19 was, in fact, off?

20 **MS. GILREATH:** Your Honor, I mean, there's searches  
21 and data that can be pulled from these phones dating back  
22 that far from experts that would be able to give us an  
23 opinion as to whether there was any activity going on or  
24 whether it appeared that the phone was off and our expert  
25 has been working around the clock between that and

1 comparing the phone records and the other things and  
2 preparing that information for us as it relates to all  
3 these things that we've been getting over the past couple  
4 of weeks. That's stuff that we've been working on, but it  
5 just simply takes time when you only have one expert that  
6 you're able to retain who's working on it and trying to  
7 deal with all of the phone stuff at one time.

8 **THE COURT:** Right. Ms. Mayes, I gathered from your  
9 response -- your initial response that much of this  
10 information was updated information that was just now being  
11 generated because it was just now being generated. In  
12 other words, they were just working on these updated chains  
13 of custody and things of that nature.

14 The phone record -- the information that the phone  
15 was turned off during this period of time, which was either  
16 an oversight or for some other reason was not revealed  
17 before in some of that other information, was there any  
18 consistent reason for some of this information being turned  
19 over to you so late by the investigating officers? I  
20 appreciate the fact that these things, regardless of how  
21 old they are and this is a nearly three-year-old case,  
22 that nobody, especially the investigating agencies, really  
23 get ramped up until the specter of the trial is looming,  
24 but is there any reason why some of this information that  
25 was in the files of the investigators officers since 2014

1 was so late being turned over to you-all?

2 **MS. MAYES:** Your Honor, I can't speak as for the  
3 statement from Captain Wade. I know that I never actually  
4 sat down with Captain Wade before to go over this case.  
5 The two chief investigating officers were Investigator  
6 Griffin and Investigator Neel, who we had met with before.  
7 Apparently Captain Wade sat in for portions of the  
8 interviews and that statement was made during the course  
9 of one of the interviews.

10 But if I can backtrack for a moment, for the search  
11 warrant that was executed in 2014 for not only all of the  
12 cell records for the Defendant, but also all of the cell  
13 tower information and location or GPS data affiliated with  
14 those cell towers, so all of that information was turned  
15 over in 2014 which do document through the phone records  
16 that there were no in-going or outgoing calls or in-going  
17 or outgoing text messages during the timeframe of the  
18 offense, and I would estimate that to be anywhere from  
19 2 AM and 4 AM in the early morning hours of April 13, 2014.  
20 So they've had both in-going and outgoing phone and text  
21 data, as well as a letter, an official letter, from Sprint  
22 saying that no cell tower information could be obtained for  
23 that timeframe because the phone -- and I'm paraphrasing,  
24 but because there was no phone activity in order for it  
25 to be picked up by a cell tower. Investigator Griffin

1 actually testified at one of the pre-trial hearings that  
2 we had in this case, it was one of the Schmerber hearings,  
3 and he was questioned about that at that time or at least  
4 we had stated on the record, there were previous discovery  
5 hearings, that we believe the phone was off because there's  
6 no corresponding cell tower location data for the phone  
7 at the timeframe of this event, as well as no record of  
8 in-going or outgoing calls.

9       So that's the technical evidence that we have  
10 associated with his phone use and all of that has been  
11 provided since 2014. That was all pretty much confirmed  
12 as well by the phone extraction that we have in this case  
13 and that their own expert did. There's no indication of  
14 activity whatsoever in the timeframe of the actual crime.  
15 No in-going or outgoing calls or texts during that  
16 timeframe. And there is some Internet use that occurs  
17 prior to, I believe, 12:30 midnight or thirty minutes after  
18 midnight, somewhere in that -- in that range leading up to  
19 about 12:30 AM, but then after that nothing during the  
20 timeframe of the offense. So I suppose what we can do  
21 there would be the information from Captain Wade, that  
22 that was something verbally stated by the Defendant as well  
23 when he was confronted by officers in this case about cell  
24 tower information that he stated that his phone was off.

25       **THE COURT:** All right. Thank you, ma'am.

1           Ms. Gilreath, it's your motion. I'll give you the  
2 last word.

3           **MS. GILREATH:** Your Honor, just to respond to what  
4 she had just mentioned, the records that they obtained back  
5 in 2014, they did obtain some records from Sprint. I will  
6 say that the search warrant that they executed was fairly  
7 narrow and included only calls and text messages at that  
8 time and the cell tower data was really for a very specific  
9 time period and largely relating to those outgoing and  
10 incoming phone calls and text messages. When they did  
11 their search on the phone back in 2014, I believe the only  
12 thing they were really able to pull information off of was  
13 the SD card, which is -- of course, it's a removal memory  
14 device that goes from phone to phone --

15           **THE COURT:** Right.

16           **MS. GILREATH:** -- and it's my understanding they were  
17 able to pull information off of that, but it wasn't until  
18 March of 2017 that they actually did the full extraction,  
19 which, of course, shows very different things and a number  
20 of other kinds of activity. I think that from what they  
21 have from Sprint with it only showing the incoming and  
22 outgoing phone calls, we understand what they're getting  
23 at with that, is that at this point it's kind of far  
24 removed and I don't think Sprint would be retaining more  
25 information beyond that at this point, however, based on

1 the ability now to look at these extraction reports that  
2 it does give us an ability to look at other types of data  
3 and activity that could have been going on with the phone  
4 and, of course, comparing to see whether any of those  
5 things may have made it onto the extraction report that  
6 wouldn't otherwise be on the Sprint report or that wouldn't  
7 have been on this SD card because the memory on the phone  
8 is going to contain different and usually more things than  
9 the SD card, the removable memory piece. So I would just  
10 argue that's a little bit different situation and overall,  
11 Your Honor, I would just argue that the totality of the  
12 circumstances given that we have the hearing on the 12th  
13 where we're telling Judge Griffith, you know, here's this  
14 new information that we've been getting, we're asking for  
15 a continuance to continue investigating it, that's not  
16 granted and then on top of what we're already trying to  
17 rush to get done prior to today's date we're being handed  
18 all of this new information. Even with something like an  
19 updated chain of custody or property receipt, we still  
20 have to go back and investigate and compare and things  
21 like that, but, again, with that fifty-two pages, the  
22 bigger -- my bigger concern with that were all these pages  
23 of handwritten notes that contain information that we  
24 haven't ever seen before. So when you compile all of  
25 this on top of each other I'm just arguing that under

1 the totality of the circumstances that we would need  
2 additional time in order to fulfill our ethical duties  
3 to Mr. Hunter to ensure that his due process rights are  
4 protected.

5 **THE COURT:** Are the handwritten notes that you're  
6 referring to, are they investigative notes?

7 **MS. GILREATH:** They are, Your Honor.

8 **THE COURT:** Would you be entitled to that in any event  
9 if they were not exculpatory under Rule 5(a)(2)?

10 **MS. GILREATH:** Well, Your Honor, I mean, I believe  
11 that we would in terms of -- if this is information that  
12 they are intending to present, Your Honor, I believe that  
13 there is potential exculpatory information in here that  
14 we have a duty to investigate and so that's -- that's my  
15 primary argument as to those handwritten notes.

16 **THE COURT:** And so there is -- there is exculpatory  
17 information in those notes is what you're saying?

18 **MS. GILREATH:** We believe there's potentially  
19 exculpatory information that we're in the process of  
20 investigating and that's why we're requesting additional  
21 time to confirm or deny whether any of this information  
22 would be exculpatory.

23 **THE COURT:** All right. Thank you.

24 **MS. MAYES:** Those would be the notes of Charles  
25 Bramlett, Your Honor. He is deceased. He was at the crime

1 scene on the night of this event, he did collect some  
2 evidence. We originally turned over the investigative  
3 notes of Investigator Griffin and somehow, I'm not sure who  
4 at the department, was able to get their hands on Sergeant  
5 Bramlett's notes as well, and we turned those over actually  
6 because there was a request for any notes that he may have.

7 **THE COURT:** Okay.

8 **MS. GILREATH:** Your Honor, I would argue we would have  
9 a heightened duty to investigate at that point considering  
10 we would not have him to cross-examine on the stand as it  
11 pertain to these notes that we never had at any point when  
12 we had the case while he was alive.

13 **THE COURT:** Right. And, of course, that's the subject  
14 of another motion that you have, as I understand, but I  
15 guess -- I'm not sure what you can do because we don't know  
16 what the notes say. As you say, he's not -- he's not here  
17 to be cross-examined on those notes and I'm not exactly  
18 sure where -- where would you go, I guess, to check the  
19 points that the notes raise to see if you could confirm or  
20 disprove those things. I suppose you could do that just as  
21 you could do for any other notes that you get. Of course,  
22 I'm concerned about the fact that -- that some of this  
23 information has been turned over at the eleventh hour. I  
24 recognize though, as Ms. Mayes has outlined here, that much  
25 of this information builds on evidence that has been turned

1 over in the past, the cell phone records, for example, and  
2 the extraction notes which confirm those according to what  
3 Ms. Mayes has told me rather than introduce anything else.  
4 Clearly the extraction would tell you more than the cell  
5 phone records would tell you, but you-all have had some  
6 time and had people working on that as well as I understand  
7 it.

8 I cannot find that the reasons given for the  
9 additional disclosures between the hearing on April the  
10 12th and today's date are sufficient to warrant a  
11 continuance in this case given the nature of that  
12 information and the somewhat cumulative effect of some of  
13 this such as the handwritten notes, the chain of custody.  
14 I suppose anything that's given to you at the eleventh  
15 hour, even introduced to you during trial itself, there's  
16 something else that can be done with it. But that is not  
17 to say that the introduction of that information is in and  
18 of itself prejudicial or that Mr. -- the Defendant in this  
19 case, that being Mr. Hunter, is being denied a fair trial  
20 as a result of these late disclosures. The motion for  
21 continuance in that respect is respectfully denied.  
22 You-all have been working on this case for some time and  
23 working hard on it and working late on it, and I appreciate  
24 all that, but -- but nothing has been revealed to me that  
25 seems to indicate that there is out there some stone left

1 yet unturned or some evidentiary item that is -- that is  
2 critical to the defense in this particular case that they  
3 have not -- that you-all have not fairly had a chance to  
4 examine and to analyze. The motion for continuance is,  
5 therefore, respectfully denied.

6 **MS. GILREATH:** Your Honor, can I make an additional  
7 request for a ruling on the Langford issue that was raised  
8 given that the case was originally scheduled for trial,  
9 then changed unilaterally by the State?

10 **THE COURT:** That's a good point, Ms. Gilreath. And,  
11 frankly, I think Mr. Hunter's got a much better case than  
12 Mr. Langford had when it comes to the delay; that the --  
13 the denial of your motion for continuance in regard to  
14 Langford gives you-all a much better chance under these  
15 circumstances for reversal based on my denial of your  
16 motion than Mr. Langford had.

17 Anybody who reads Mr. Langford realizes that that  
18 was just a case that they happened to take up and it lent  
19 itself to that particular constitutional issue of whether  
20 or not the separation of powers were being violated by the  
21 fact that the solicitor had sole control of the docket.  
22 The facts as I see them in this particular case in regard  
23 to Mr. Hunter are somewhat stronger as a result of these  
24 delays than Mr. Langford's were, so I don't know what else  
25 to tell you other than that. All of us who have read

1 Langford and have tried to understand it and have tried to  
2 understand the underlying facts as they relate to the  
3 holding in that particular case realizing -- realizes, I  
4 think, that -- that the connection is at points somewhat  
5 tenuous in Langford. Beyond that I say no further. I  
6 recognize as I'm apparently criticizing the Langford  
7 decision that the decision that I'm criticizing is gonna  
8 be -- this record is gonna be reviewed by some of those  
9 same folks. Beyond that I don't know anything that I need  
10 to add to that. I think that -- as I say, I don't need to  
11 clutter up this record any more than I already have in that  
12 regard. I've addressed the reasons for my ruling on the  
13 information disclosed since April the 12th and I think I've  
14 adequately addressed those in so far as that's concerned.  
15 I won't go behind those decisions. I've simply addressed  
16 these issues that were presented to me today in that  
17 regard. That's the best I can do, Ms. Gilreath.

18 **MS. GILREATH:** Thank you, Your Honor.

19 **THE COURT:** All right.

20 **MS. MAYES:** Briefly, Your Honor, on that matter of  
21 the change of date, that was due to another murder case  
22 that was continued. That was the Walker case that was  
23 originally set for January. I believe it got continued  
24 and knocked back to a later date and as a result other  
25 cases on our schedule also got knocked back, including a

1 murder case that I had that I had to move to April 10th  
2 and that then moved this case back two weeks to April 24th.

3 **THE COURT:** Okay. As I understand it, it was  
4 originally scheduled to be tried on April the 10th of 2017,  
5 there was no objection to that, it is being tried two weeks  
6 later than that original date, it's been moved back and  
7 forth, but I don't see any prejudice in that beyond the --  
8 the move back and forth was done to accommodate apparently  
9 both sides, the defense on one hand and the State on the  
10 other.

11 Mr. Chehoski, what's next?

12 **MR. CHEHOSKI:** Thank you, Your Honor. At this point,  
13 the defense is moving to suppress both the DNA evidence  
14 as part of and in total all of the evidence that's been  
15 collected and stored and processed by Sergeant Bramlett of  
16 the West Columbia Police Department. We are -- the basis  
17 for this motion is that it's in violation of the Fifth and  
18 Sixth Amendment -- Fourth, Fifth, Sixth and Fourteenth  
19 Amendment of the United States Constitution and Article 1,  
20 Section 3 and 14 of the South Carolina Constitution.  
21 Essentially his due process rights, Your Honor -- his due  
22 process rights and his right of confrontation of witnesses  
23 called to testify against him.

24 A little bit of background, Your Honor. As you're  
25 aware now, Mr. Hunter was arrested on December 17th and the

1 public defender was appointed on December the 18th --

2 **THE COURT:** April.

3 **MR. CHEHOSKI:** I'm sorry, April the 17th and April the  
4 18th of 2014 --

5 **THE COURT:** Right.

6 **MR. CHEHOSKI:** -- respectively. December 2, 2014,  
7 a hearing was conducted pursuant to Schmerber where  
8 Investigator Bramlett testified. As you're aware,  
9 Your Honor, the purpose of the Schmerber hearing is to  
10 determine if there's probable cause to believe the suspect  
11 has committed a crime, whether or not there's a clear  
12 indication that relevant material evidence will be found  
13 and the method that is used to secure that evidence is safe  
14 and reliable.

15 Your Honor, at that time Mr. Phillips was lead counsel  
16 for Mr. Hunter. I was in private practice at that time and  
17 not practicing criminal law --

18 **THE COURT:** Right.

19 **MR. CHEHOSKI:** -- and so the basis -- he had an  
20 opportunity to cross-examine him, but only in a limited  
21 way limited to that hearing. If I may approach, Your  
22 Honor, I'm gonna hand up a copy of -- hand up a copy of the  
23 transcript of the hearing.

24 **THE COURT:** Thank you.

25 **MR. CHEHOSKI:** Your Honor, at the beginning of the

1 hearing Mr. Phillips moved for a continuance. That will  
2 be referenced on Page 4. The basis of the continuance is  
3 that the previous month, I believe in October, he had  
4 filed a supplemental discovery request requesting, among  
5 other items, the DNA evidence and all materials related  
6 to that, cell phone evidence and all materials related to  
7 that as well, in an effort to fully prepare for the  
8 hearing.

9 As you can see on Page 5, Judge Russo indicated that  
10 the purpose of the hearing was, quote, just a Schmerber  
11 hearing, and so despite Mr. Phillips's effort to get the  
12 hearing continued to allow himself a full opportunity  
13 to prepare, allow him -- give himself a meaningful  
14 opportunity to cross-examine all of the witnesses and  
15 present a complete defense as is indicated under the  
16 previously mentioned constitutional amendments and  
17 State v. May, Your Honor, Mr. Phillips went ahead with  
18 the hearing pursuant to Judge Russo's ruling.

19 **THE COURT:** Right.

20 **MR. CHEHOSKI:** Subsequently, Your Honor, after that  
21 on -- well, let me keep going here. At that hearing,  
22 Your Honor, Mr. Phillips did not have the opportunity to  
23 cross-examine Sergeant Bramlett regarding what was -- what  
24 else was collected. He only was able to testify to a  
25 couple of items; a hoodie that had a cap inside of it and

1 a black nylon cloth that was collected outside at the  
2 scene.

3 **THE COURT:** Right.

4 **MR. CHEHOSKI:** Your Honor, he did not have the  
5 opportunity to go into anything else that was collected,  
6 what procedures were followed in collecting such  
7 information, whether or not there was any contamination  
8 regarding other lay witnesses, other personnel, service  
9 animals that may have been present at the scene, or, in  
10 addition, to test Sergeant Bramlett's recollection at the  
11 scene to determine whether or not that was, in fact, the  
12 way that everything was perceived and the way it was.

13 So, Your Honor, just by the limited scope of the  
14 hearing he had no opportunity to follow -- to see if those  
15 procedures were followed in line with the constitution of  
16 both the United States and South Carolina, with State law,  
17 with case law and with West Columbia Police Department  
18 guidelines, and so being that first critical link in the  
19 chain of custody he had no opportunity to determine that  
20 and explore those as he would at a -- as he would be able  
21 to at a full trial or hearing, Your Honor, since all of  
22 those matters are outside the scope of the hearing that  
23 was in place.

24 Further, Your Honor, there was -- a month later on  
25 January 5th I want to say of 2015, the State turned over

1 further discovery involving -- pursuant to Mr. Phillips's  
2 motion pursuant to some of the DNA. In that -- in that  
3 discovery that was provided there were reports that were  
4 written by agents that detailed their interaction with  
5 West Columbia Police Department in reference to the items  
6 that they were testing for the presence of DNA. One of  
7 those reports detailed a conversation that they had with  
8 Sergeant Bramlett that was stating that the cap that was  
9 tested and ultimately was found with -- with Mr. Hunter's  
10 DNA was found inside the pocket of the hooded sweatshirt,  
11 which is inconsistent with what he testified to at the  
12 hearing.

13 Now being that this information was provided a  
14 month after and despite Mr. Phillips's efforts to get a  
15 continuance was denied, then he was -- Mr. Phillips was  
16 essentially denied the opportunity for an effective  
17 cross-examination effectively -- and have a meaningful  
18 cross-examination and the ability to present a complete  
19 defense.

20 **THE COURT:** What did Mr. Bramlett -- where did  
21 Mr. Bramlett say the cap was actually located?

22 **MR. CHEHOSKI:** I believe, Your Honor, that is Page 51.

23 **THE COURT:** Okay. And this says there was a hoodie  
24 found in the bathroom and inside there was a cap.

25 **MR. CHEHOSKI:** Right. Your Honor, I think it might

1 be 52 or 53. I'm not --

2 **THE COURT:** What did the conversation with West  
3 Columbia Police Department indicate was the location of  
4 it?

5 **MR. CHEHOSKI:** Your Honor, that's -- well, that's --  
6 I think the key point is that Sergeant Bramlett is the  
7 person who collected it and --

8 **THE COURT:** Right.

9 **MR. CHEHOSKI:** It's on Page 52, Your Honor, lines 7  
10 and 8. Inside a section of the hoodie. As the reports  
11 indicate that Mr. -- that Sergeant Bramlett told SLED that  
12 it was found inside a pocket of the hoodie, therefore,  
13 we're arguing that Mr. Phillips was essentially denied  
14 opportunity to -- to pursue that line of questioning under  
15 South Carolina Rules 613(b) and 801(b)(2) saying that, you  
16 know, this would be a prior inconsistent statement, Your  
17 Honor.

18 **THE COURT:** Okay.

19 **MR. CHEHOSKI:** Finally, Your Honor, there's also  
20 -- we're arguing that Sergeant -- that this evidence needs  
21 to be suppressed from Sergeant Bramlett due to a lack of  
22 completeness. This comprises both the -- both the lack of  
23 discovery and the limited scope of the hearing, Your Honor,  
24 citing State versus Sanders, which can be found at 356 SC  
25 214, a 2003 court of appeals case, also found at 588 S.E.2d

1 142. In that case, the Appellant Sanders made a similar  
2 argument regarding prior testimony of a jailhouse informer  
3 that was -- the jailhouse informer had testified at a  
4 previous trial and then was subsequently unavailable and  
5 was contesting whether or not it should be admitted at the  
6 retrial. Your Honor, obviously in that case you're having  
7 a full-blown trial in front of the jury where the jury has  
8 the opportunity to see and hear the witness and assess  
9 their credibility and, therefore, the defense was entitled  
10 to a meaningful opportunity to cross-examination since that  
11 discovery was fully provided and that they -- and there was  
12 no limit to the scope of their cross-examination because it  
13 was a full-blown trial and so all matters were fair game.

14 In this case, we don't have that. What we have is a  
15 limited hearing just to determine probable cause where the  
16 judge is specifically saying that it's only a Schmerber  
17 hearing and if Mr. Phillips had gone into it he probably  
18 would have been shut down or -- and also he didn't have  
19 full discovery where he could have pursued lines of  
20 inconsistent statements at that point.

21 So we're arguing, Your Honor, that there was no  
22 meaningful opportunity to cross-examine Sergeant Bramlett.  
23 Therefore, since there's no opportunity and a lack of  
24 completeness his testimony and all evidence -- his  
25 testimony and all evidence connected to that, including

1 the DNA, should not be allowed in evidence.

2       **THE COURT:** I'm looking at the transcript, of course,  
3 for the first time right now. It looked like while  
4 Mr. Phillips was examining Mr. Bramlett that there was  
5 some colloquy beginning on Page 53. It started out the  
6 location of the hoodie itself on the floor of the bathroom  
7 and then he gets into the report itself and what it said.  
8 There was a black nylon cloth that was there on the ground  
9 and the tracking dog picked it up. And then Mr. Bramlett  
10 goes on to say about the -- inside the house was where the  
11 hoodie and the cap was and then the question -- and then  
12 this cloth that's inside the hoodie is marked separately  
13 as well. At that point in time there's some conversation  
14 about the cloth and the officer had testified that -- at  
15 some point in time that the cap was inside the hoodie  
16 itself. I can't -- I realize that this was a Schmerber  
17 hearing. I don't see the Court cutting anybody off in the  
18 scope of their examination in that very brief page that I  
19 read there in any event.

20       **MR. CHEHOSKI:** Correct, Your Honor. If I may?

21       **THE COURT:** Sure. Because you've been here longer  
22 and I haven't read it.

23       **MR. CHEHOSKI:** First of all, the cloth that you're  
24 mentioning is a separate piece of evidence, the cloth that  
25 was found outside the -- outside the residence --

1           **THE COURT:** Right.

2           **MR. CHEHOSKI:** -- and was not -- I don't think it's  
3 at issue in -- or it's at issue to the extent that it's  
4 collected by Bramlett, but I don't think that the State's  
5 gonna show that that cloth was worn by Mr. Hunter.

6           **THE COURT:** Right.

7           **MR. CHEHOSKI:** My point as to the limited nature is  
8 all the other items that Mr. Phillips could have gone into  
9 regarding what Mr. Bramlett did at the scene -- or, I'm  
10 sorry, regarding what Mr. Bramlett was able -- collected  
11 at the scene, the procedures that he followed, whether or  
12 not there was any contamination at the scene, whether by  
13 those people. Again, that's where -- that's where the  
14 limited cross comes in and everything that he did testify  
15 to due to the limited nature of that cross.

16           **THE COURT:** Right.

17           **MR. CHEHOSKI:** Further, Your Honor, I think that  
18 Mr. Phillips was also constricted in his cross-examination  
19 of the DNA analyst, Mary Ann, and I believe it's pronounced  
20 Boehm. Please correct me if I'm wrong. Again, because --  
21 and also there is a limited cross-examination in that.

22           **THE COURT:** Okay. Is that -- and I haven't read the  
23 early part of this dealing with Ms. Boehm's testimony in  
24 any event, but I see the point that you're making. And I  
25 want to hear what Ms. Mayes has got to say in response and

1 then I'm gonna come back to you, Mr. Chehoski, and let you  
2 have the last word.

3 **MR. CHEHOSKI:** Yes, sir.

4 **THE COURT:** Is there anything else you want to say on  
5 this motion before I hear from her?

6 **MR. CHEHOSKI:** No, Your Honor.

7 **THE COURT:** All right. Ms. Mayes.

8 **MS. MAYES:** Yes, sir, Your Honor. Your Honor, I'm  
9 gonna submit to the Court a copy of United States versus  
10 Evans and this is a case where testimony from a  
11 co-defendant was admissible even though the co-defendant  
12 was unavailable and that also dealt with a pre-trial  
13 hearing. And, Your Honor, the State's position is that  
14 this is exactly the scenario that Rule 804(b)(1) was  
15 intended to cover. Sergeant's Bramlett's death was  
16 completely unexpected by everyone, all of his co-workers.  
17 Also present that night with him -- along with him was  
18 Sergeant -- or Investigator Scott Neel, who is present for  
19 this trial and these proceedings, Your Honor. He did  
20 observe Sergeant Bramlett collecting evidence throughout  
21 the crime scene as they went along, but the testimony  
22 from Sergeant Bramlett in that Schmerber hearing about  
23 what he recovered and the fact that he recovered that  
24 item together and then packaged it together is certainly  
25 critical in this case, Your Honor, because that is the

1 item that was submitted to the State Law Enforcement  
2 Division when the perpetrator of this crime was unknown.  
3 After the victim was shot, the perpetrator fled and they  
4 had no suspects, no real leads, they were just grasping at  
5 straws to even try and develop any persons of interest and  
6 when they submitted that article of clothing which had been  
7 pulled from him during the assault and submitted to SLED,  
8 it took about three days, but SLED was able to develop a  
9 match or a hit through their CODIS database and that, in  
10 fact, is how he was developed as a suspect. They alerted  
11 West Columbia Police Department that Nathaniel Hunter would  
12 be the suspect, that the DNA was a match and for them to go  
13 ahead and then submit new samples on Nathaniel Hunter,  
14 which was the purpose of the hearing -- of the Schmerber  
15 hearing that we had in the case.

16 In addition, Your Honor, I'll state that Mr. Phillips,  
17 who is counsel in this trial currently along with  
18 Ms. Gilreath and Mr. Chehoski, he was the one who actually  
19 conducted that cross-examination of Sergeant Bramlett. At  
20 that point in time for purposes of the Schmerber hearing  
21 we're really establishing probable cause as to whether  
22 there was sufficient reason to collect the Defendant's  
23 DNA, to collect a new buccal swab from him, so that came  
24 down to two key points. Number one, that a cap was  
25 collected at the crime scene and then, number two, that

1 that cap once submitted to the State Law Enforcement  
2 Division a DNA profile was developed from that cap was a  
3 match to Nathaniel Hunter in the CODIS system.

4 So those are the two key points. I mean, that cap  
5 was absolutely central to the cross-examination during  
6 that Schmerber hearing and along with that went the  
7 opportunity and motive for Mr. Phillips to follow-up  
8 further on the collection procedures and everything of  
9 that nature that relates back to that cap being submitted  
10 for analysis and Mr. Hunter being developed as the suspect.  
11 And so, Your Honor, of all things in Mr. Bramlett's  
12 testimony that is the key portion that is relevant and  
13 probative in this case and that is that he found that  
14 hoodie in that condition with the cap inside of it and then  
15 he collected it and packaged it as one item and then  
16 submitted it to State Law Enforcement Division. He was  
17 certainly subject to cross-examine on that item and how it  
18 was found and how it was packaged for purposes of that  
19 Schmerber hearing, it was probative at that point in time  
20 and related directly to the ultimate CODIS hit.

21 So, Your Honor, we believe that that was fully  
22 explored and explored to the extent it could be in how he  
23 found it and how he packaged it and how he submitted it  
24 and the fact that it was submitted together as one item  
25 and so, Your Honor, we do believe that this is the exact

1 scenario that Rule 804(b)(1) was intended to cover, the  
2 death of Sergeant Bramlett, and his prior sworn testimony  
3 subject to cross-examination in full on the discovery of  
4 that cap on that critical item of evidence that lead to  
5 Nathaniel Hunter being developed as a suspect and the need  
6 for his buccal swab at the date of the Schmerber hearing.

7 **THE COURT:** All right. Thank you.

8 **MR. CHEHOSKI:** First of all, Your Honor, understanding  
9 that this case is not controlling on this Court. It's a  
10 Federal case. It's not from the Fourth Circuit. Second,  
11 neither Investigator Griffin nor Investigator Neel know  
12 where the exact location where the cap was found is. And,  
13 third, there's -- distinguished in that case it looks like  
14 there was a thirty-seven-year delay from it. I would go  
15 further, Your Honor, going into my second -- my second  
16 point why Sergeant Bramlett's testimony should be excluded  
17 is that there was -- being it was only a probable cause  
18 hearing and Mr. Phillips did not have -- did not have  
19 complete discovery to enable himself to have a meaningful  
20 cross-examination and further explore the prior  
21 inconsistent statements between Mr. Bramlett's testimony  
22 and this conversation he had with agents at SLED.

23 **THE COURT:** All right. Isn't the real question the  
24 fact that the hoodie -- as Ms. Mayes has said, the hoodie  
25 and the cap were found together, packaged together and

1 analyzed together, isn't that the real -- the real crux  
2 of all this rather than dogs being there and other people  
3 being there and things of that nature?

4 **MR. CHEHOSKI:** As far as the DNA, Your Honor -- as  
5 far as the DNA itself is concerned, yes, but also I think  
6 that there's -- but if that's the crux of the issue, I  
7 think that kind of bolsters my argument in the fact that  
8 Mr. Phillips did not have a meaningful opportunity of  
9 cross-examination given that there was impeachment evidence  
10 that had been requested, had not yet been received and that  
11 Mr. Phillips had moved to continue the hearing in order to  
12 receive it and was thus denied that opportunity.

13 Your Honor, also if it please the Court we would like  
14 to make the transcript -- the transcript of this hearing a  
15 Court's exhibit. I have a clean copy. I think the one I  
16 handed up has been highlighted. I have a clean copy that I  
17 can provide the Court.

18 **THE COURT:** Okay. That will be fine.

19 **MS. MAYES:** I think we actually have a clean copy  
20 with the signature of the court reporter, Steve Le Blanc.  
21 We can make it a Court's exhibit, Your Honor.

22 (Court's Exhibit Number 3 was marked for  
23 identification.)

24 **THE COURT:** I note that Mr. Phillips requested the  
25 continuance. He had two things marked as exhibits.

1 First of all, a supplemental discovery motion regarding  
2 specifically the DNA and all of the evidence related to  
3 the DNA evidence in this case and the testing procedure,  
4 as well as the cell tower information regarding the cell  
5 phone, which was a matter of some contention raised again.  
6 The only evidence in this case, as Mr. Phillips said, is  
7 the DNA evidence that links him. There's a concern about  
8 the CODIS hit having the information, the DNA information,  
9 and his desire to be able to consult with the DNA expert.  
10 He cross-examined the SLED person who testified in that  
11 regard. I'm trying to see if there's some concern about  
12 some inconsistency and, frankly, the -- the only  
13 inconsistency that I see just from reading this, and y'all  
14 have read it and know a lot more than I do, is whether the  
15 cap was found in the -- in the hood of the hoodie or in the  
16 pocket of the hoodie. Is that the only inconsistency that  
17 I see?

18 **MR. CHEHOSKI:** In the transcript, yes, Your Honor. My  
19 argument is that there's an inconsistency that was not yet  
20 known to Mr. Phillips at the time. It came about a month  
21 later when more discovery was provided and the prior  
22 inconsistent statement was learned.

23 **THE COURT:** Right. All right. Thank you. I don't  
24 find that that inconsistency if, indeed, it exists -- I  
25 don't know what he told the officers, you-all do know.

1 Whether it was found in the cap of the hoodie or the pocket  
2 of the hoodie could be a matter of the nuance and -- and  
3 other than the fact that there is a possible inconsistency  
4 of those two locations, I don't know how that changes the  
5 DNA, the fact that they were found together, packaged  
6 together and analyzed together and resulted in the result  
7 which, of course, occurred. I don't find that that  
8 inconsistency, as I've said, if, in fact, it does exist at  
9 all, is sufficient to raise a question as to the results of  
10 the DNA testing so as to create an unfair prejudice or an  
11 unfair trial to violate Mr. Hunter's constitutional rights.

12 The motion to exclude the testimony of the deputy on  
13 that basis is respectfully denied. I find that the  
14 804(b)(1) is sufficient to allow that to come into evidence  
15 as an exception to the hearsay rule. It is not excluded by  
16 the hearsay rule in any event. The motion is respectfully  
17 denied.

18 **MR. CHEHOSKI:** Thank you, Your Honor. And, for the  
19 record, we have marked the transcript as Court's Exhibit  
20 Number 3.

21 **THE COURT:** Thank you. And here's your copy back,  
22 Mr. Chehoski.

23 **MR. CHEHOSKI:** May I approach?

24 **THE COURT:** Yes, sir.

25 **MR. CHEHOSKI:** Thank you.

1           **MS. MAYES:** Along those same lines, Your Honor, I see  
2 that one of the motions that they have would be to prohibit  
3 the word "CODIS". We've had this come up before in another  
4 trial and the way we handled it was to just refer to it as  
5 the DNA database. There will be testimony that the DNA  
6 database is maintained at SLED, that law enforcement has  
7 access to it, but there's no reference to it being an  
8 actual offender database. The word "CODIS" is simply a  
9 DNA database.

10           **THE COURT:** Okay. Is that -- that's Number 12 on  
11 your list, ladies and gentlemen. Does that satisfy your  
12 concern about the word "CODIS"?

13           **MR. CHEHOSKI:** Yes, Your Honor. Well, CODIS and SCIS,  
14 which is the State DNA database. The DNA database based on  
15 my understanding of case law would not be found as error.

16           **THE COURT:** Okay. All right. The truth of the matter  
17 is that nobody on that jury, including the trial court, is  
18 gonna know what CODIS stands for anyway, but a DNA database  
19 seems to be a clearer explanation of what it actually is.

20           **MR. CHEHOSKI:** And, Your Honor, if I may, also I  
21 think there was -- we brought up the issue of limited  
22 cross-examination in that hearing of Mary Ann Boehm.

23           **THE COURT:** Yes.

24           **MR. CHEHOSKI:** We'd request a ruling on that matter as  
25 well as far as -- again, as far as the DNA -- as far as the

1 suppression motion.

2 **THE COURT:** And I take it that's to Mr. Bramlett's  
3 testimony; is that right? They're linked together?

4 **MR. CHEHOSKI:** Yes.

5 **THE COURT:** All right. Then I'll deny that motion.  
6 Frankly, I did not read her portion of the testimony, but  
7 I assume since it was linked to Mr. Bramlett's testimony  
8 my ruling on the admissibility of his statement would also  
9 cover your concern about Ms. Boehm's testimony as well.

10 **MR. CHEHOSKI:** Thank you, Your Honor.

11 **THE COURT:** So that addresses Number 6 as well; is  
12 that right?

13 **MR. CHEHOSKI:** Yes, sir.

14 **THE COURT:** All right.

15 **MS. MAYES:** And just to clarify, Ms. Boehm is -- she's  
16 a witness in the case and she's testifying.

17 **THE COURT:** Okay. Well, then that's --

18 **MS. MAYES:** Yes, sir, Your Honor. We would only be  
19 admitting testimony -- former testimony of Sergeant  
20 Bramlett.

21 **THE COURT:** Okay.

22 All right, folks. Before we get to the Denno issues,  
23 let's take about fifteen minutes and start back at 3:30, if  
24 that's okay?

25 **MS. MAYES:** Yes, sir.

1           **MR. PHILLIPS:** Thank you, Your Honor.

2           **THE COURT:** Thank you.

3           (Recess taken.)

4           **BAILIFF:** All rise. Court is now in session.

5           **THE COURT:** Thank you, folks. Y'all can be seated.  
6           Are both sides ready to proceed to the Denno hearing?

7           **MS. MAYES:** Yes, sir, Your Honor.

8           **MR. PHILLIPS:** Yes, Your Honor.

9           **THE COURT:** Ms. Mayes.

10          **MS. MAYES:** The State calls Investigator Thomas  
11 Griffin.

12                   (Whereupon, Thomas Griffin was duly sworn by the Clerk  
13 of Court.)

14          **THE CLERK:** Once you're seated, state your full name,  
15 spelling your last please.

16          **THE WITNESS:** My name is Thomas Wessinger Griffin,  
17 G-R-I-F-F-I-N.

18   THOMAS GRIFFIN,

19           having been duly sworn, testified as follows:

20                           DIRECT EXAMINATION (In-Camera)

21 BY MS. MAYES:

22 Q.    Good afternoon.

23 A.    Good afternoon.

24 Q.    Can you give us some information concerning your  
25 background and training and what led you to become an

1 investigator?

2 A. Yes, ma'am. I've been with West Columbia Police  
3 Department since February of 2008. I became a detective.  
4 I've been a detective now for four years. I've been  
5 through the basic detective's course, as well as multiple  
6 trainings since then, and I've worked cases ranging from  
7 homicide, attempted murders, down to CSC's, to armed  
8 robberies.

9 **MS. MAYES:** If we may just turn that off. There's  
10 some feedback.

11 **THE CLERK:** Just speak up.

12 **THE WITNESS:** Yes, ma'am. I'll try.

13 BY MS. MAYES:

14 Q. Would you take us through your involvement in the case  
15 of Nathaniel Hunter and what led you to eventually conduct  
16 an interview with him on or about April 17, 2014?

17 A. Yes, ma'am. I was initially called to the scene,  
18 which is [REDACTED], Apartment [REDACTED].  
19 That's in the city limits of West Columbia. I was called  
20 in reference to a home invasion and a shooting that  
21 occurred there. I was contacted by Captain Wade. The  
22 victim at the time was identified to me as Larenda Simon.  
23 I was instructed to go to the hospital where I was to make  
24 contact with her. I arrived at the hospital. I did make  
25 contact with Ms. Simon. She had suffered a series of

1 gunshot wounds. I made contact with her there in the  
2 emergency room. While there with Ms. Simon, due to the  
3 nature of her offenses -- while there with Ms. Simon, due  
4 to the nature of her offenses we went ahead and took a  
5 recorded statement from her because we did not know one way  
6 or the other if she would survive or not the surgery that  
7 was upcoming. After speaking to Ms. Simon and getting a  
8 statement from her, I then returned to the scene where I  
9 believe Investigator Bramlett, Investigator Neel and  
10 Captain Wade were. They continued to process the scene,  
11 Investigator Bramlett and Investigator Neel.

12 You know, from the beginning stages of the  
13 investigation we didn't have much to go on as to who it  
14 could have been or who it might have been, so we did not  
15 receive a name on this incident until the 17th of April.  
16 The 17th of April is when we were notified by SLED that  
17 through the DNA database at SLED that a match had been  
18 found to be that of Nathaniel Hunter coming from the nylon  
19 hoodie or the nylon cap that was found inside the hoodie by  
20 Investigator Bramlett and Investigator Neel.

21 Once that was confirmed to be a potential suspect, we  
22 then coordinated with SLED in an effort to figure out who  
23 Nathaniel Hunter was. We were able to identify him through  
24 DMV services, as well as his locations. Due to the DNA  
25 hit, as well as the seriousness of the crimes and offenses,

1 warrants were obtained for Mr. Hunter. Ms. Simon did  
2 inform us that she had no knowledge of Mr. Hunter prior to  
3 any of this, as well as her daughter, Minor .

4 Q. All right. And just to stop you there, in other  
5 words, the victim was not familiar with Nathaniel Hunter?

6 A. She was not. No, ma'am.

7 Q. This was a stranger home invasion?

8 A. Correct.

9 Q. And his name was supplied to the West Columbia Police  
10 Department by the State Law Enforcement Division?

11 A. Correct.

12 Q. And on April 17, 2014, do you have a time for when  
13 your department began coordinating with the State Law  
14 Enforcement Division to actually locate the whereabouts of  
15 Nathaniel Hunter?

16 A. It looks like it was about 4:30 in the afternoon when  
17 I made contact with the SLED Fusion Center and the fugitive  
18 task force there.

19 Q. All right. And would this have been after you  
20 received confirmation of the DNA hit pursuant to CODIS?

21 A. It would have been. I believe we received that around  
22 10 AM that morning.

23 Q. All right. And what measures were utilized to located  
24 the suspect?

25 A. A lot of methods are utilized, but this one in

1 particular that we used was his cell phone location.

2 Q. All right.

3 A. We were able to obtain a number for him and then that  
4 number was utilized for this.

5 Q. All right. And ultimately can you tell us whether or  
6 not a warrant was obtained that same day?

7 A. A warrant was obtained that day for his arrest, yes,  
8 ma'am.

9 Q. All right. And who actually obtained the warrant?

10 A. I'd have to look that up. I obtained the warrant,  
11 yes. Yes, it was I.

12 Q. So when you began coordinating with the State Law  
13 Enforcement Division to locate him, it was for the purpose  
14 of what?

15 A. To arrest Mr. Hunter.

16 Q. To serve the arrest warrants?

17 A. Correct.

18 Q. And this would have included an arrest warrant for  
19 attempted murder?

20 A. Yes, ma'am.

21 Q. What about burglary first degree?

22 A. Yes, ma'am.

23 Q. What about criminal sexual conduct with a minor in the  
24 third degree?

25 A. Yes, ma'am.

1 Q. And possession of a weapon during a violent crime?

2 A. Yes, ma'am.

3 Q. Can you tell us approximately what time a location for  
4 Mr. Hunter was obtained by SLED Fusion or tracking systems?

5 A. It was around 5:00 PM that afternoon.

6 Q. And what happened next?

7 A. They -- he was shown in the Columbia area. I'm not a  
8 hundred percent familiar with SLED's procedures when it  
9 comes to tracking, but in the Columbia area they were able  
10 to narrow it down to his location and the location that  
11 they were able to narrow it down to was Bethel Bishop  
12 Apartments in Columbia, which is 100 Ripplemeyer Avenue in  
13 Columbia, so that's the area that we went to.

14 Q. All right. And what happened next?

15 A. The -- the agents that were tracking the phone were  
16 able to narrow it down to Nathaniel Hunter operating a  
17 white in color Nissan Versa. As they were giving us that  
18 information, we see the white in color Nissan Versa being  
19 driven by who we believe to be Nathaniel Hunter given his  
20 stature, size and his hair, at which point myself, along  
21 with SLED agents who were part of the fugitive task force  
22 they turned around to commence a traffic stop on him.

23 Now he wasn't -- the traffic stop wasn't initiated  
24 immediately because they were waiting for other units to  
25 arrive as well given the seriousness of the offense and

1 the possibility of him having a weapon. Once they did  
2 have enough units there, the blue lights and sirens were  
3 activated at which point Mr. Hunter fled from officers.

4 Q. Approximately where were you when the blue lights were  
5 activated?

6 A. I know we were at I-277.

7 Q. All right.

8 A. Highway 277, and I don't know exactly know the cross  
9 street. I know it's 277 heading into Columbia.

10 Q. All right. And were you also in a law enforcement  
11 vehicle following chase?

12 A. I was. Yes, ma'am.

13 Q. And ultimately where was he apprehended?

14 A. He was apprehended at -- the chase went for about  
15 approximately three miles. Mr. Hunter went through several  
16 red lights and continued to speed to avoid apprehension.  
17 He did come to a stop at 2548 North Main Street, which is  
18 located in the city of Columbia, where he was apprehended.

19 Q. At that point in time was he placed under arrest?

20 A. He was.

21 Q. Where was he taken following his arrest in Richland  
22 County?

23 A. Following his arrest, he was taken directly to the  
24 West Columbia Police Department.

25 Q. And can you tell us whether or not in addition to a

1 State Law Enforcement Division officer was there also a  
2 Richland County officer present?

3 A. There was. Yes, ma'am.

4 Q. Was a Richland County officer actually involved in the  
5 pursuit?

6 A. They were.

7 Q. And apprehension?

8 A. Yes, ma'am.

9 Q. What occurred once Mr. Hunter was taken into custody  
10 to the West Columbia Police Department?

11 A. Once he was taken into custody to the West Columbia  
12 Police Department, myself and Captain Wade attempted to  
13 interview the suspect.

14 Q. And that was at approximately what time?

15 A. 6:25 in the evening.

16 Q. Do you have with you a copy of -- or actually the  
17 original Miranda of rights form that would have been read  
18 to Mr. Hunter?

19 A. Yes, ma'am.

20 Q. And is the one you have the actual original?

21 A. This is the original, yes, ma'am, from the 17th.

22 Q. All right. I'm gonna ask you to start at the top of  
23 that document and tell us, first of all, what the date and  
24 time is as noted on the document and whose signature is on  
25 the document.

1 A. The top of the statement begins with Miranda Rights  
2 Warning in capital letters, which is underlined. The next  
3 line will say date. The date indicated on there is  
4 4-17-2014. The next line, the time. It's at 6:29 PM. The  
5 next line is the case number and it's Case Number 1407629.  
6 The next portion of the Miranda form is when you go to the  
7 particulars of who was actually filling it out. It's as  
8 follows, I, then a blank space where Mr. Hunter filled in  
9 his name, Nathaniel Hunter, live at, where he put in his  
10 address, [REDACTED] I believe it's Belle Claire Drive. He does  
11 not indicate what city and state. Next he indicates -- it  
12 says my phone number. He completes that his phone number  
13 is [REDACTED]-5216. The next portion where it indicates, it  
14 says my date of birth. Mr. Hunter completes [REDACTED]-83. And  
15 my Social Security number, which Mr. Hunter indicates is  
16 [REDACTED]. The next question -- or the next portion he  
17 completes it says I have finished the blank grade.  
18 Mr. Hunter filled in the -- the number 12 grade in school.  
19 And I can or cannot read, Mr. Hunter circled that he can  
20 read and initialled above it stating that he could.

21 Q. All right. So let me stop you right there. And you  
22 recognize this document because it contains your own  
23 signature as well?

24 A. It does. Yes, ma'am.

25 Q. Where is your signature located on the document?

1 A. At the bottom of the document.

2 **MS. MAYES:** Your Honor, at this time we would have  
3 this marked as Court's Exhibit 1 or I believe there is a  
4 Court's 1. This would be 3 then, I believe?

5 **THE COURT:** Court's 3?

6 **THE COURT REPORTER:** No. It would be 4.

7 **THE COURT:** 4. Okay.

8 **MR. PHILLIPS:** Of course, it's subject to the motion  
9 in limine.

10 **THE COURT:** Sure. That's right. Okay. This is a  
11 Court's exhibit, so.

12 (Court's Exhibit Number 4 was marked for  
13 identification.)

14 BY MS. MAYES:

15 Q. Now do you also have with you, Investigator Griffin,  
16 an exact duplicate of that form?

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

18 Q. And I'm gonna ask you whether you can state for the  
19 record the exact rights or warnings that were provided to  
20 Mr. Hunter and between yourself and -- who else was  
21 present?

22 A. At that time it was Captain Wade.

23 Q. Who would have actually been reading these rights to  
24 Mr. Hunter?

25 A. He would have been. Yes, ma'am.

1 Q. Okay. Can you state exactly what was read to  
2 Mr. Hunter?

3 A. Yes, ma'am. When we go over these with the  
4 individuals that we're questioning, we do read them line  
5 for line prior to them filling out anything. What was  
6 read to Mr. Hunter is, the Constitution requires me to  
7 inform you you have the right to remain silent. Anything  
8 you say can and will be used in court as evidence against  
9 you. You're entitled to talk to a lawyer now and to have  
10 him present now or at any time during questioning. If you  
11 cannot afford a lawyer, one will be appointed for you  
12 without cost. Do you understand these rights? Indicate  
13 yes or no. If you decide to answer questions now without  
14 a lawyer present, you will still have the right to stop  
15 answering questions at any time. You also have the right  
16 to stop answering questions at any time until you talk to  
17 a lawyer.

18 Those are labeled one through six. After reading  
19 those to him, Mr. Hunter did initial by one through six  
20 stating that he understood those. When asked do you  
21 understand these rights, he did indicate by circling yes  
22 and putting his initials above that. Also after stating  
23 that he could have a lawyer present, he did sign stating he  
24 understood that.

25 The next line is the Waiver of Miranda Rights. It

1 says, I'm willing to make a statement and answer questions.  
2 I understand and know what I'm doing. No promises or  
3 threats have been made to me. No pressure or coercion of  
4 any kind has been used against me. That was also signed  
5 and dated by Mr. Hunter.

6 Q. All right. And that would be Nathaniel Hunter on what  
7 date?

8 A. On 4-17-2014.

9 Q. And does that contain your signature as a witness?

10 A. It does. Yes, ma'am.

11 Q. And also that of Captain Wade as a witness?

12 A. Yes, ma'am.

13 Q. Having been present for that interview, Investigator  
14 Griffin, and for the reading of the Miranda rights and his  
15 acknowledgment of understanding the Miranda rights, can  
16 you tell us whether or not it appeared that he freely and  
17 voluntarily waived those rights?

18 A. He did.

19 Q. At any point in time did he appear to be under the  
20 influence of alcohol or drugs and incapable of  
21 understanding his rights?

22 A. No, ma'am.

23 Q. Was he able to respond to any questions that you had  
24 or interact with you and communicate with you freely?

25 A. He was.

1 Q. Were you able to understand his responses?

2 A. Yes, ma'am.

3 Q. His speech was -- can you tell us whether or not his  
4 speech was coherent?

5 A. His speech was coherent. We could understand what he  
6 was saying.

7 Q. Did he ever at any time indicate that he wanted an  
8 attorney present?

9 A. He did not. No, ma'am.

10 Q. Was he threatened in any way in order to participate  
11 in the interview?

12 A. No, ma'am.

13 Q. Were any promises made to Mr. Hunter in order to have  
14 him participate in the interview?

15 A. No, ma'am, there weren't.

16 Q. Did you threaten him in any way to have him  
17 participate in the interview?

18 A. No, ma'am.

19 Q. Did he at any point in time ask for the interview to  
20 stop so that he could have an attorney?

21 A. No, ma'am.

22 Q. Based on all of these factors, Investigator Griffin,  
23 can you tell us whether or not he appeared to freely and  
24 voluntarily participate in the interview?

25 A. He did.

1 Q. Now following the waiver of rights and his signature  
2 on that document, did you actually pose questions to him?

3 A. We did. Yes, ma'am.

4 Q. And that was for what purpose?

5 A. To obtain information that he had about the crime.

6 Q. Do you have with you any notes that document your  
7 conversation and interview with Mr. Hunter on that date,  
8 the date of 4-17-14?

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

10 Q. And approximately what time would the interview have  
11 taken place following the waiver of those rights?

12 A. After the waiver of rights, it would have taken place  
13 immediately.

14 Q. Okay. I want to refer you to your notes, particularly  
15 the notes that you have entered into your investigative  
16 summary noted at 6:25 PM. Can you tell us whether or not  
17 you made notations and entered this within a fair amount of  
18 time of the actual interview?

19 A. I'm sorry, could you repeat that question?

20 Q. Yes. Can you tell us whether or not the information  
21 contained your summary of the interview would have been  
22 noted and entered within a fair amount of time from the  
23 interview?

24 A. It would have been. Yes, ma'am.

25 Q. It would have been fresh in your memory at that time?

1 A. It would have been. Yes, ma'am.

2 Q. I'm gonna ask you to refer directly to your notes and  
3 start with your entry at 6:25 --

4 A. Yes, ma'am. It says --

5 Q. -- regarding your interview with Nathaniel Hunter.

6 A. It says, I and Captain Wade conducted an interview  
7 with the suspect, speaking of Mr. Hunter. He was advised  
8 of his Miranda rights. He completed and signed the form  
9 stating that he was waiving those rights to speak with us.  
10 When confronted to how -- when confronted as to how his DNA  
11 was at the scene of the crime, the suspect stated that he  
12 had given some clothes away to a thrift store. He further  
13 stated that he had given away jeans, hoodies and shirts.  
14 When asked about the cut on his forehead, which was covered  
15 with a band-aid, he stated that he received the cut from  
16 his cousin, Tanisha Taylor. He stated that he and Tanisha  
17 were play fighting "when she scratched my head". The  
18 suspect continued to state that he was not at the  
19 apartment.

20 Q. All right. So I want to back up a little bit. When  
21 you noted that he had given some clothes away to a thrift  
22 store, do you know if he made any other statements in that  
23 regard --

24 A. No, ma'am.

25 Q. -- as to what happened to his clothing or who he would

1 have given them to?

2 A. I believe he also stated that -- he was just trying to  
3 explain that he had given them away in some sort of way or  
4 fashion. One of them was a thrift store and I believe he  
5 also said a crackhead.

6 Q. All right. And specifically you mentioned a band-aid.  
7 What, if anything, was significant about that band-aid?  
8 What did you observe in that regard concerning Mr. Hunter?

9 A. The band-aid was definitely -- it stood out because  
10 the cuts were fresh, as in within the same timeline from  
11 when this incident occurred as to when he was apprehended.  
12 So they were in the healing process and they weren't fresh  
13 cuts, but they were very readily apparent.

14 **THE COURT:** Where was the band-aid located?

15 **THE WITNESS:** They were located on the left side of  
16 his forehead, I believe, Your Honor.

17 **THE COURT:** Thank you.

18 BY MS. MAYES:

19 Q. And were you aware as to whether or not the victim in  
20 this case had -- since had engaged in a struggle with the  
21 intruder?

22 A. I knew there was a struggle, yes, ma'am. A pretty  
23 intense struggle.

24 Q. All right. And were photographs taken of those  
25 injuries?

1 A. Photos were taken. Yes, ma'am.

2 Q. And specifically the band-aid?

3 A. Specifically the band-aid. Yes, ma'am.

4 Q. And at any point in time did you ask him to remove the  
5 band-aid for additional photographs of the abrasions or  
6 cuts underneath the band-aid?

7 A. We did.

8 Q. And all of those were made a part of evidence?

9 A. Yes, they were. Yes, ma'am.

10 Q. Following this interaction with Mr. Hunter on  
11 April 17, 2014, can you tell us whether or not he remained  
12 in custody?

13 A. He did. He went direct directly to the Lexington  
14 County Detention Center after that.

15 Q. Okay. So he had been served with the arrest warrants,  
16 placed into custody and was now in the detention center,  
17 correct?

18 A. Yes, ma'am.

19 Q. So moving forward, what was your next date of  
20 interaction with Mr. Hunter?

21 A. The next time I had contact with Mr. Hunter, I believe  
22 it was on the 21st of April. It was.

23 Q. All right. Now going back to the 17th, at any point  
24 in time had he requested an attorney?

25 A. No, ma'am, he did not.

1 Q. At any point in time had he indicated that he had an  
2 attorney?

3 A. No, ma'am.

4 Q. What can you tell us about your interaction with  
5 Mr. Hunter on the date of April 21st and at what time?

6 A. It happened on the 21st of April, 2014, at 10:25 that  
7 morning. Again, prior to speaking to Mr. Hunter he was  
8 advised of his Miranda rights with the exact same form,  
9 which he, again, completed, signed and waived.

10 Q. All right. And do you have with you a copy of that  
11 Miranda form?

12 A. I have the original of that form.

13 Q. All right. And the purpose of this interview would  
14 have been what?

15 A. Given the information that he had given us previously,  
16 that being the scratch that he received to his head, his  
17 clothing and then finding out later on that some of the  
18 stuff he told us was not true, we were questioning him,  
19 confronting him, about those -- those new facts that were  
20 discovered.

21 Q. All right. And so just -- just to clarify, because in  
22 that he indicated who he had gotten into a confrontation or  
23 a struggle with, did you have the opportunity to locate  
24 that individual and interview her?

25 A. We did. Yes, ma'am.

1 Q. Did she confirm any of the information he had provided  
2 about a struggle?

3 A. No, ma'am. She denied it completely stating that that  
4 is not how he received those wounds.

5 Q. Okay. And did you also have interaction with  
6 Mr. Hunter on that date?

7 A. Would that be the 21st?

8 Q. Correct.

9 A. Yes, ma'am, we did.

10 Q. Do you have with you information concerning the date  
11 and time of that?

12 A. Yes, ma'am. It's the exact same form that I showed  
13 earlier just with different stuff completed. The date for  
14 that one was 4-21-2014. The time was 10:28 AM. The case  
15 number would have remained the same, which was 1407629.

16 Q. All right. And where did you go to have contact with  
17 Mr. Hunter?

18 A. The Lexington County Detention Center.

19 Q. All right. And where was he taken?

20 A. Mr. Hunter was brought from Lexington County Detention  
21 Center to the West Columbia Police Department for an  
22 interview.

23 Q. Now just to clarify, was there a series of facts and  
24 information that you intended to follow up with Mr. Hunter  
25 on?

1 A. Yes, ma'am, there was.

2 Q. So there were multiple questions that you had for  
3 him --

4 A. Yes.

5 Q. -- regarding various aspects of the investigation?

6 A. Yes, ma'am.

7 Q. Where was he taken once he arrived at the West  
8 Columbia Police Department?

9 A. To our interview room.

10 Q. And in the interview room, can you tell us who was  
11 present?

12 A. It was myself, Investigator Neel and I believe  
13 Investigator Wade came in later on -- I'm sorry, Captain  
14 Wade.

15 Q. All right. So yourself and Investigator Scott Neel?

16 A. Yes, ma'am.

17 Q. Can you tell us whether or not his Miranda rights were  
18 provided at that time?

19 A. They were.

20 Q. And who provided the rights?

21 A. They were provided by Investigator Neel.

22 Q. And do you have with you an original copy of those  
23 Miranda rights?

24 A. I do. I have the original. Yes, ma'am.

25 Q. Were you a witness of them being read to him?

1 A. I was. I was present.

2 Q. I'm gonna ask you to start at the top of that form and  
3 take us through those events.

4 A. It begins with the Miranda rights. It states Miranda  
5 Rights Warnings, which is underlined. The next line is  
6 date, which is 4-21-14. The time is 10:28 AM. The case  
7 number is 1407629. Then begins with I, it's a blank spot  
8 where Mr. Hunter completed Nate Hunter. After that he  
9 completed [REDACTED] Belle Claire Drive, Columbia, South Carolina,  
10 29203. My phone number is, he completed [REDACTED]-5216. My  
11 date of birth is, he completed [REDACTED]-83. And my Social  
12 Security number is, he completed [REDACTED]. I have  
13 finished the blank grade. He completed the twelfth grade  
14 in school. And I can or cannot read, he circled that he  
15 could.

16 Next it states the Constitution requires me to inform  
17 that you have the right to remain silent. Anything you say  
18 can and will be used in court as evidence against you.  
19 You're entitled to talk to lawyer now and to have him or  
20 her present now or at any time during questioning. If you  
21 cannot afford a lawyer, one will be appointed for you  
22 without cost. Do you understand these rights? Circle yes  
23 or no. Mr. Hunter circled yes and that he did understand  
24 the rights and put his initials above that circle. If you  
25 decide to answer questions now without a lawyer present,

1 you will still have the right to stop answering questions  
2 at any time. You also have the right to stop answering  
3 questions at any time until you talk with a lawyer.  
4 Mr. Hunter stated that he understood all those by putting  
5 initials by one through six, as well as signing.

6 The next line is the Waiver of Miranda Rights. It  
7 says I'm willing to make a statement and answer questions.  
8 I understand and know what I am doing. No promises or  
9 threats have been made to me and no pressure or coercion  
10 of any kind has been used against me. It been signed by  
11 Investigator Neel and it's signed by Mr. Hunter with a date  
12 of 4-21-2014.

13 Q. All right. And did you witness that entire process?

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

15 **MS. MAYES:** Okay. Your Honor, this will be State's  
16 Exhibit 5 as a Court's exhibit, I believe.

17 **THE COURT:** Court's 5.

18 (Court's Exhibit Number 5 was marked for  
19 identification.)

20 BY MS. MAYES:

21 Q. And, Investigator Griffin, can you tell us whether or  
22 not that appears to be a fair and accurate representation  
23 of the original?

24 A. Yes, ma'am, it does.

25 Q. It's the same document?

1 A. It is.

2 Q. Now referring to that and your memory of the events  
3 that transpired during the second interview on April 21st,  
4 can you tell us whether or not Mr. Hunter was threatened in  
5 any way to participate in an interview?

6 A. No, ma'am, he was not.

7 Q. Did he appear to understand the rights that were read  
8 to him?

9 A. He did.

10 Q. Did he appear to have any type of medical condition  
11 that would preclude him from understanding or communicating  
12 with you?

13 A. No, ma'am.

14 Q. Was his speech coherent on this date?

15 A. It was.

16 Q. Did he at any point in time ask for an attorney?

17 A. He did not.

18 Q. Did he agree to answer your questions and continue  
19 without an attorney?

20 A. He agreed to speak with us, yes, ma'am, without an  
21 attorney.

22 Q. Did you promise him anything in exchange for making  
23 the statement?

24 A. No, ma'am, we didn't.

25 Q. Do you coerce him in any way in order to obtain a

1 statement?

2 A. No, ma'am.

3 Q. Were any threats made to him?

4 A. No, ma'am.

5 Q. Did it appear to the best of your knowledge that his  
6 interview with you on this date, the 21st of April, was  
7 freely and voluntarily given?

8 A. It was.

9 Q. On this particular date, what, if any, statements did  
10 he make?

11 A. I know it was just verbal statements only that he  
12 made to officers after being advised of his rights.  
13 During of the course of the interview, Mr. Hunter wanted to  
14 bargain with the investigators and wanted certain charges  
15 dropped. Nathaniel never once denied committing the crime  
16 or questioned investigators about the DNA evidence.  
17 Investigators showed him the SLED confirmation sheet where  
18 the DNA collected matched him and he stated there was no  
19 reason for him to confess, that it would not help him if  
20 he told the truth. Investigators continued to tell  
21 Mr. Hunter that it would be better for him if he did take  
22 responsibility and told the truth. Mr. Hunter continued  
23 to bargain and asked for charges to be dropped. He asked  
24 about a deal cut for the man in the Gabbie Swainson case  
25 and that's what he wanted to do, but he couldn't do that

1 right now. He stated he needed time to think before he  
2 told the truth.

3 Q. All right. And let me stop you right there. You say  
4 that he wanted charges to be dropped?

5 A. Yes, ma'am.

6 Q. And you used the term "bargain". What was he saying  
7 or doing to indicate that he would be willing to talk  
8 further if he could get a bargain and get charges dropped?

9 A. Stating that, ma'am. He was saying that, you know,  
10 he would -- it seemed essentially he would confess or tell  
11 the truth should some charges be dropped because I know  
12 initially there were a good bit of charges.

13 Q. All right. And when you supplied him or confronted  
14 him with what you called the SLED confirmation sheet,  
15 you're referring to the notification of the CODIS hit?

16 A. Correct. Yes, ma'am.

17 Q. And his response to that was what?

18 A. He stated that there was no reason for him to confess,  
19 that it would not help him if he told the truth.

20 Q. And who brought up the mention of the Gabbie Swainson  
21 case?

22 A. Mr. Hunter.

23 Q. And he brought that up in regards to an attempt to  
24 have some type of bargain?

25 A. Yes, ma'am.

1 Q. And specifically what type of deal did he want in  
2 relation to the analogy with the Gabbiee Swainson case?

3 A. My understanding is it was either the charges being  
4 dropped or someone that he -- that may have helped him out  
5 or whatnot that charges would be dropped for them as well.

6 Q. In the Gabbiee Swainson case?

7 A. As in the Gabbiee Swainson case. Yes, ma'am.

8 Q. And who was the first to bring up that example or that  
9 particular case?

10 A. That was Mr. Hunter himself.

11 Q. And that is in reference to a murder investigation in  
12 Richland County?

13 A. It is.

14 Q. That had been covered by the press?

15 A. Yes, ma'am, it had been.

16 Q. What happened next?

17 A. Next after saying -- he stated that he needed time to  
18 think before he told the truth and making no headway  
19 Captain Wade went into the interview room and talked to  
20 Mr. Hunter.

21 Q. And were you present for that or was Captain Wade  
22 alone?

23 A. It was Captain Wade -- it was either Captain Wade  
24 alone or with Investigator Neel. I wasn't present for that  
25 portion.

1 Q. All right.

2 **MS. MAYES:** I beg the Court's indulgence.

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

4 **MS. MAYES:** Nothing further from this witness at that  
5 time, Your Honor.

6 **THE COURT:** Okay. Cross-examination, Mr. Phillips.

7 **MR. PHILLIPS:** Thank you, Your Honor.

8 **THE COURT:** Yes, sir.

9 CROSS-EXAMINATION (In-Camera)

10 BY MR. PHILLIPS:

11 Q. Good afternoon, Mr. Griffin. How are you?

12 A. Good. How about you?

13 Q. Doing well. So at the time you had been a detective  
14 about a year and -- about three years?

15 A. That would be correct. Yes, sir.

16 Q. And through that, you first went to the hospital that  
17 day, it was several days before you arrested or were part  
18 of the team that arrested Nathaniel Hunter; is that  
19 correct?

20 A. My first involvement was at the hospital. Yes, sir.

21 Q. All right. And you recorded Ms. Larenda Simon's  
22 statement; is that right?

23 A. Her statement was recorded due to going into surgery  
24 immediately following that and we did not know whether or  
25 not she would survive at that time.

1 Q. Okay. And what did you record that statement with?

2 A. An audio recorder.

3 Q. All right. Was that one that you have personally or  
4 one that was given to you through --

5 A. It's issued by the department.

6 Q. All right. So you record that statement with that  
7 recorder?

8 A. Correct.

9 Q. Then several days later when Mr. Hunter is arrested  
10 you have him where?

11 A. At the West Columbia Police Department.

12 Q. All right. And it's a specific interrogation room?

13 A. There is.

14 Q. And how big is this room?

15 A. It's approximately a ten by five or six room.

16 Q. Could you describe that room for me?

17 A. When you go into the room, there's a chair -- well,  
18 when you go in the room, there's a glass two-way mirror to  
19 your right, there's a chair right there as well with a desk  
20 where the investigator sits and another chair. So the  
21 suspect would sit here, you have the desk, an investigator  
22 and an investigator. The door is closest to the suspect.

23 Q. Right. So the suspect's back would be to the door?

24 A. No. No, sir. Their back is facing the wall. Where  
25 their feet are facing, the door is directly to the left and

1 the investigator they're speaking to is directly to the  
2 right.

3 Q. And there's two investigator chairs in the room?

4 A. Yes.

5 Q. How many investigators were in that room on the 17th?

6 A. At that time, two.

7 Q. And that was you and Captain Wade?

8 A. It was myself and Captain Wade, yes, sir.

9 Q. And how long were you in that room?

10 A. I would say approximately an hour.

11 Q. Okay. And during that time, was there any indication  
12 regarding his request to stop the questioning?

13 A. No, sir.

14 Q. All right. He never requested an attorney?

15 A. No, sir, he did not.

16 Q. He never invoked his right to silence?

17 A. He never did. No, sir.

18 Q. And specifically what did you tell him about making  
19 the statement other than the advisement of rights forms you  
20 testified about?

21 A. I'm sorry, can you say that again?

22 Q. You testified that you went through the advisement of  
23 rights form, the Miranda warnings.

24 A. Yes, sir.

25 Q. Other than that, what did you ask him about prior to

1 that form? Prior to giving him that form, what questions  
2 did you ask him?

3 A. It's just the basic questions that are on the list.

4 Q. Right. So --

5 A. Right.

6 Q. So not on that form, what questions did you ask him  
7 before you gave him that form?

8 A. If he wanted to speak to us.

9 Q. All right. And that was it? That was the only  
10 question asked?

11 A. Uh-huh.

12 Q. So at which point -- did you speak to him prior to  
13 going into that room or was the first time you spoke to  
14 him in the interrogation room?

15 A. I was on-scene when he was apprehended, so there may  
16 have been some dialog between him and myself that I don't  
17 recall.

18 Q. All right. So you have no recollection as to what the  
19 dialog would have been?

20 A. Prior to getting into that room, no, sir.

21 Q. All right. Were you in the car with him when he was  
22 arrested?

23 A. No, sir. He was arrested in another vehicle.

24 Q. Okay. So he was transported to West Columbia in an  
25 entirely different vehicle?

- 1 A. I'm actually unsure as to what -- who transported him  
2 to West Columbia.
- 3 Q. But it wasn't you?
- 4 A. It wasn't me. Not to my knowledge. Not me recalling.
- 5 Q. All right. And if you did ask him any questions  
6 on-scene, you don't remember?
- 7 A. No, sir.
- 8 Q. Okay.
- 9 A. I don't believe I did because I wouldn't ask any  
10 questions short of getting Miranda in place.
- 11 Q. All right. So the first question you asked him once  
12 you made it to the interrogation room was do you want to  
13 speak to us; is that right?
- 14 A. Yes, sir.
- 15 Q. Okay. And his answer was?
- 16 A. Yes, he'd speak to us.
- 17 Q. All right. And you went through the advisement form?
- 18 A. Yes.
- 19 Q. You said you interviewed him approximately an hour; is  
20 that right?
- 21 A. Yes, sir.
- 22 Q. In that room, is there any type of recording device?
- 23 A. No, sir, there's not.
- 24 Q. So there's no video surveillance camera that's  
25 incorporated in that room?

1 A. I believe there may be a live feed video, but not a  
2 recording of any sort.

3 Q. So it's your testimony that the West Columbia Police  
4 Department doesn't have the ability to record out of the  
5 interrogation room?

6 A. Right, short of an audio recorder of some type.

7 Q. Okay. And did you have your audio recorder?

8 A. I did not. No, sir.

9 Q. All right. And you did not record this statement?

10 A. The statement being used -- had he provided a  
11 statement or a confession, a recorded statement may have  
12 very well been made or recorded, but a conversation leading  
13 up to the statement would not be recorded typically.

14 Q. The advisement of constitutional rights would not be?

15 A. Not unless we were to actually do a statement. If we  
16 got to the point where he did confess and he told us about  
17 it, we would conduct a statement, a recorded statement, and  
18 on that recorded statement we would, again, advise of his  
19 rights through the statement -- or, I'm sorry, through the  
20 recording.

21 Q. You weren't the one who read the Miranda rights; is  
22 that correct?

23 A. On the 17th? No, that would have been Captain Wade.

24 Q. So you were just present when those were read to him?

25 A. Yes.

1 Q. And he appeared to understand everything that was  
2 said?

3 A. He did.

4 Q. And there was just the two officers in the room during  
5 the 17th?

6 A. Yes.

7 Q. Going to the 21st, were you aware -- or you are aware  
8 as a detective that in South Carolina even in a crime  
9 where you're facing life imprisonment and the magistrate  
10 can't set bond, they do appear before a magistrate within  
11 twenty-four hours?

12 A. I believe they do. Yes, sir.

13 Q. And it would appear on the 21st that would be more  
14 than twenty-four hours after the 17th?

15 A. Are you talking about -- yeah, the 17th to the 21st,  
16 that would be more than twenty-four hours, yes, sir.

17 Q. So as far as him being approved for a public defender,  
18 you had not looked into that as to whether he'd been  
19 approved to have a lawyer?

20 A. No, sir, we would have no knowledge of that.

21 Q. So as far as his right to counsel being attached, you  
22 were unaware on the 21st that he had been approved for a  
23 public defender and at that point he would have had a  
24 lawyer?

25 A. I would have no knowledge of that.

1 Q. All right. And you didn't look into it?

2 A. No, sir.

3 Q. All right. Going to the 21st since you were following  
4 up, one of things we wanted to make sure we nail down is  
5 the timeline. At which point did you speak with Tanisha  
6 Taylor and at which point did you speak with Nathaniel  
7 Hunter?

8 A. I have on my notes that we spoke to Tanisha Taylor on  
9 the 21st of April and as of 12:15 that afternoon.

10 Q. And what time did you speak with Nathaniel Hunter?

11 A. It has us speaking with Mr. Hunter at 10:25 that  
12 morning. So looking at these notes, it looks like it was  
13 before we spoke to Ms. Taylor.

14 Q. All right. And when you went in that day, you said  
15 there was three officers, two additional investigators?

16 A. I'm sorry?

17 Q. There were two additional officers other than you,  
18 Investigator Neel and Captain Wade?

19 A. No, sir, it was just Investigator Neel and myself.  
20 Captain Wade came in later on the 21st.

21 Q. Okay. Initially it was just two?

22 A. Correct.

23 Q. And then three later?

24 A. Not three. I left the room, Captain Wade came in, so  
25 it was Captain Wade and Investigator Neel.

1 Q. Okay. Thank you. And at that point you had not  
2 brought your audio recording devices?

3 A. No, sir.

4 Q. And when you went to interview him that morning, you  
5 asked him specific questions regarding having -- how he got  
6 the cut on his head; is that correct?

7 A. No, sir, I believe the cut was discussed on the 17th.  
8 Yes, sir, the cut was discussed on the 17th when he was  
9 apprehended. He stated that his -- that Tanisha and he  
10 were play fighting and she scratched him on the head. That  
11 was the 17th at 6:25 PM.

12 Q. And with his advisement of rights at that point, this  
13 is the same room that he was in on the 17th?

14 A. I believe so.

15 Q. And how long was he --

16 A. Which day are we speaking of right now?

17 Q. The 21st. I apologize.

18 A. Okay.

19 Q. And that was the same room as on the 17th?

20 A. I believe so. Yes, sir.

21 Q. All right. How many interrogation rooms does West  
22 Columbia have?

23 A. We have two.

24 Q. Okay. Are they vastly different in size?

25 A. They're approximately the same size. The setup

1 remains the same as well. There's the desk -- or the chair  
2 and the three desks -- or the desk and the three chairs.  
3 Just one has a window and one does not.

4 Q. Okay. So the only difference is a window?

5 A. Right. One you can see into the squad room and the  
6 other one you can't see anything except for the two-way  
7 mirror.

8 Q. Okay. Thank you. And how long was the interrogation  
9 on the 21st?

10 A. I'd say about the same. Approximately an hour. I  
11 don't know.

12 Q. You were there for the entire time?

13 A. I was -- I was there for the initial portion of it  
14 and once Captain Wade and Investigator Neel was in there,  
15 I would have been standing outside the room.

16 Q. As far as the -- you said he was asking for a Gabbiee  
17 Swainson deal and you said that was something that he  
18 brought up and it was not you or Neel or Captain Wade?

19 A. Correct, that was something Mr. Hunter brought up.

20 Q. And that was while you were in the room?

21 A. Yes.

22 Q. Okay. It's not something you heard from when Neel and  
23 Wade were in the room?

24 A. No, sir. That was discussed when Investigator Neel  
25 and myself were in there and I believe it was discussed

1 again when Captain Wade and Investigator Neel went in the  
2 second time.

3 Q. All right. And nobody, not you, not Neel, not Wade  
4 recorded this interview?

5 A. No, sir. Because, again, we only tape recorded  
6 statements, usually not just discussions or talks,  
7 conversations.

8 Q. In either of these interrogations was he handcuffed?

9 A. I believe in the first one he may have had leg chains  
10 on. The only reason I recall that is because I know there  
11 was a photo when we took the photo of the scratch he does  
12 have leg irons on in that. As far as the second one, I  
13 don't believe he would have had anything on because he  
14 would have already been in his jumpsuit from the county.

15 Q. And just two little follow-up questions. He didn't  
16 appear to be under the influence of any drugs or alcohol  
17 at the time?

18 A. No, sir, he did not.

19 Q. And at that point, at least while you were in the room  
20 for either the 17th or the 21st, no threats or coercive  
21 techniques were used?

22 A. No, sir, they never were.

23 **MR. PHILLIPS:** No further questions, Your Honor.

24 **THE COURT:** Redirect, Ms. Mayes?

25 **MS. MAYES:** Just briefly, Your Honor.

## 1 REDIRECT EXAMINATION (In-Camera)

2 BY MS. MAYES:

3 Q. On the 21st when he was brought to the West Columbia  
4 Police Department, can you tell us whether or not it's  
5 routine in such cases to follow up with a Defendant who  
6 initially agreed to give you -- or at least initially  
7 agreed to an interview?

8 A. Yes, ma'am, especially when there's new findings  
9 because we had three days to go from the case to that  
10 point, so we would have had more information.

11 Q. All right. And did that include also search warrants  
12 and a search for cell tower information and things of that  
13 nature?

14 A. It would have, yes, ma'am.

15 Q. Now moving forward to the 21st, had he ever indicated  
16 in the interview on the 17th that he had an attorney or  
17 wanted an attorney?

18 A. No, ma'am, he never spoke of an attorney.

19 Q. Or that he would be applying for a public defender or  
20 calling an attorney to represent him?

21 A. No, ma'am, he never mentioned an attorney.

22 Q. Had you or your department received any type of letter  
23 representation from an attorney?

24 A. No, ma'am.

25 Q. Or a phone call that indicates that he was represented

1 by an attorney?

2 A. No, ma'am.

3 Q. And when he arrived at the West Columbia Police  
4 Department, did he at any point in time convey to you that  
5 he had applied for a public defender or made any other  
6 attempts to potentially get legal representation?

7 A. No, ma'am, especially because we went over the Miranda  
8 rights form again.

9 Q. And during the course of those rights and the  
10 follow-up communications, did he at any point in time ask  
11 for an attorney?

12 A. He never did. No, ma'am.

13 Q. Did he make any requests other than that he wanted a  
14 bargain or a deal before he would, as you noted, tell the  
15 truth?

16 A. In the last interview he did make those requests, yes,  
17 ma'am.

18 Q. Those were his only requests?

19 A. Those were his only requests that I recall, yes,  
20 ma'am.

21 **MS. MAYES:** Nothing further.

22 **THE COURT:** Thank you. Any follow-up on those points,  
23 Mr. Phillips?

24 **MR. PHILLIPS:** No further questions.

25 **THE COURT:** Investigator, you can step down.

1           **THE WITNESS:** Thank you, Your Honor.

2           (Witness excused.)

3           **THE COURT:** Mr. McNair.

4           **MR. McNAIR:** Your Honor, the State calls Investigator  
5 Scott Neel.

6           (Whereupon, Scott Neel was duly sworn by the Clerk of  
7 Court.)

8           **THE CLERK:** Once you're seated, state your full name,  
9 spelling your last, please.

10          **THE WITNESS:** My name is Scott Neel. My last name is  
11 spelled N-E-E-L.

12                                   SCOTT NEEL,

13                   having been duly sworn, testified as follows:

14                                   DIRECT EXAMINATION (In-Camera)

15 BY MR. McNAIR:

16 Q. Investigator Neel, can you give us a little bit of  
17 your background in law enforcement?

18 A. I've been in law enforcement just over ten years now.  
19 I spent eight years employed at the West Columbia Police  
20 Department and I have been employed with the Aiken County  
21 Sheriff's Office now for just over two years.

22 Q. Were you employed with the West Columbia Police  
23 Department back in April of 2014?

24 A. Yes, sir, I was.

25 Q. And what was your position at that time?

1 A. I was an investigator.

2 Q. On April 13th of 2014, were you one of the  
3 investigators assigned to this case?

4 A. Yes, sir.

5 Q. And during the course of your investigation, did you  
6 have the opportunity to meet with Mr. Hunter?

7 A. Yes, sir, I did.

8 Q. And when was that?

9 A. That would have been on April the 21st.

10 Q. Was he under arrest and in custody at that point?

11 A. Yes, sir.

12 Q. Where did that interview take place?

13 A. At the West Columbia Police Department.

14 Q. Who was present for that interview?

15 A. Initially it started off as myself and Investigator  
16 Griffin and then Captain Wade also interviewed him by  
17 himself.

18 Q. All right. And prior to speaking to him on that date,  
19 was he Mirandized?

20 A. Yes, sir.

21 Q. And how do you typically Mirandize folks?

22 A. We have a standard form that we use.

23 **THE COURT:** Here they are.

24 BY MR. McNAIR:

25 Q. I'm gonna show you Court's Exhibit Number 5. Do you

1 recognize that form?

2 A. Yes, sir, I do.

3 Q. Is that the form you used to Mirandize Mr. Hunter on  
4 April 21st?

5 A. Yes, sir.

6 Q. All right. And how is that form presented to him?

7 A. It's a standard form that we use. The heading says  
8 Miranda Rights Warning. It includes the date, the time and  
9 the case number. The second part of it he would indicate  
10 his name as Nate Hunter, his address, phone number, date  
11 of birth, Social Security number. It also asks him the  
12 highest grade that they've completed in school and asks  
13 them whether they can or cannot read or write. On this  
14 particular form, Mr. Hunter indicated that he had finished  
15 the twelfth grade and he circled that he could read.

16 After the personal identifying information, it spells  
17 out the Miranda rights. The first one says you have the  
18 right to remain silent. Number two, anything you say can  
19 and will be used in court as evidence against you. Number  
20 three, you are entitled to talk to a lawyer now and to have  
21 him or her present now or at any time during questioning.  
22 Number four, if you cannot afford a lawyer one will be  
23 appointed for you without cost. Number five asks you if  
24 you've understood the previous rights and it asks you to  
25 circle yes or no. Number six says if you decide to answer

1 questions now without a lawyer present, you will still have  
2 the right to stop -- still have the right to stop answering  
3 questions at any time. You also have the right to stop  
4 answering questions at any time until you talk to a lawyer.

5 Q. Let me ask you right there. Are those rights read to  
6 him or are they just read by him in your presence?

7 A. Typically they're read by the investigator.

8 Q. Okay. And did you read those rights to Mr. Hunter?

9 A. Yes, sir.

10 Q. And the marks beside those rights, whose initials are  
11 those?

12 A. Mr. Hunter's.

13 Q. Were those made by Mr. Hunter?

14 A. Yes, sir.

15 Q. And the signature at the bottom of that, is that  
16 Mr. Hunter's signature?

17 A. Yes, sir.

18 Q. All right. So did he acknowledge that he understood  
19 all of his rights?

20 A. Yes, sir, he did.

21 Q. Did he appear to have any trouble understanding his  
22 rights?

23 A. No, sir.

24 Q. Did he appear to be under the influence of anything  
25 that would have prevented him from understanding his

1 rights?

2 A. No, sir.

3 Q. Did y'all threaten him in any manner to speak to you?

4 A. No, sir, not at all.

5 Q. Did you force him in any manner to speak to you?

6 A. No, sir.

7 Q. Did you promise him anything in exchange for speaking  
8 to you?

9 A. No, sir.

10 Q. To the best of your knowledge, did he knowingly waive  
11 his Miranda rights?

12 A. Yes, sir, he did.

13 Q. All right. Now did you take notes at the time of your  
14 interview with Mr. Hunter?

15 A. Yes, sir, I did.

16 Q. All right. Do you have a copy of those notes with  
17 you?

18 A. Yes, sir.

19 Q. Will you please read what Mr. Hunter said on that  
20 date?

21 A. After waiving his rights, he did tell us that he  
22 wanted a bargain, he wanted certain charges dropped.  
23 He never really once denied committing the crime. He  
24 questioned us about any DNA evidence that we may have in  
25 our investigation. I showed him during the course of the

1 interview a confirmation sheet that we would have received  
2 from SLED indicating that there was a DNA match located  
3 from the crime scene that matched Mr. Hunter's DNA. He  
4 continued to want to bargain during the course of the  
5 interview. He -- I did at one point tell him that in my  
6 opinion it would be best for him if he took responsibility  
7 and told us the truth and was honest with us about what  
8 happened. He continued to want to make what he kept  
9 calling a deal and he began to refer to a previous -- or  
10 unrelated case, I think Gabbie Swainson, which, I guess,  
11 some type of deal was made in that case.

12 Q. All right. And in regards to wanting a deal, is that  
13 something he brought up on his own accord?

14 A. Yes, sir, it was.

15 Q. All right. And y'all didn't promise him any type of  
16 deal, did you?

17 A. No, sir.

18 Q. All right. You said at some point during the  
19 interview Captain Wade came in as well?

20 A. Yes, sir.

21 Q. And you weren't present for that?

22 A. No, sir.

23 Q. You weren't present for Captain Wade's --

24 A. Whenever myself and Investigator Griffin, we finished  
25 our interview, Captain Wade continued the interview by

1 himself with just the two of them present.

2 Q. Okay. So any notes you have regarding Captain Wade's  
3 interview would be based on information Captain Wade told  
4 you after the interview?

5 A. Correct.

6 Q. All right. Approximately how long did this interview  
7 last?

8 A. I would say approximately an hour.

9 Q. During that time was he ever denied water or bathroom  
10 breaks or anything like that?

11 A. No, sir.

12 Q. At any point during the interview, did he ever say he  
13 wished to remain sealant?

14 A. No, sir.

15 Q. Did he ever request an attorney?

16 A. No, sir.

17 Q. All right.

18 **MR. McNAIR:** Nothing further, Your Honor.

19 **THE COURT:** Thank you. Cross-examine, Mr. Phillips?

20 **MR. PHILLIPS:** Thank you, Your Honor.

21 CROSS-EXAMINATION (In-Camera)

22 BY MR. PHILLIPS:

23 Q. Good afternoon.

24 A. Good afternoon, sir.

25 Q. Do you have an issued audio recording device?

1 A. I did at the time, yes, sir.

2 Q. And you decided -- or you made the conscious decision  
3 not to use it?

4 A. Yes, sir.

5 Q. All right. Why did you make that conscious decision?

6 A. Typically when you interview someone, it's a  
7 conversation that you're having with someone, you don't  
8 normally audio record that. The only time you would  
9 record it is if you're getting a formal statement from  
10 someone and at that point we weren't obtaining a formal  
11 statement.

12 Q. Okay. So you would believe that this wasn't a formal  
13 statement?

14 A. It was an interview.

15 Q. All right. So you would have led him to believe that  
16 this was informal, not any statement provided to police  
17 that could be used against him in court?

18 A. No, sir. You know, obviously it explains in the  
19 Miranda rights that anything you say can be used in court  
20 against him. Typically we either obtain a written  
21 statement or an audio statement depending upon the  
22 circumstances in the particular case. At this point in  
23 time, we were simply asking Mr. Hunter questions in order  
24 to elicit information about his knowledge of the crime.

25 Q. And at that time how long had you been an

1 investigator?

2 A. I would say maybe -- maybe six years.

3 Q. And were you aware that in South Carolina you have a  
4 right to appear before a bond judge within twenty-four  
5 hours?

6 A. Yes, sir.

7 Q. All right. And at that time certain people who are  
8 declared indigent are appointed counsel. Were you aware of  
9 that?

10 A. Yes, sir.

11 Q. And at this point knowing that it had been four days  
12 later, from the 17th to the 21st of his arrest, did you  
13 check to see whether he had been appointed counsel?

14 A. No, sir.

15 Q. In those interview rooms -- for the 21st, the one  
16 that you were in on, which interview room was it; do you  
17 remember?

18 A. I believe it was an interview room. It's basically  
19 an eight by eight square room adjacent to what we referred  
20 to as our squad room, which is kind of where everyone --  
21 the center point.

22 Q. Would it be fair to say they're similar, the two  
23 rooms?

24 A. Yes, sir, they're similar.

25 Q. Okay. And do those rooms have the ability to audio or

1 video record, like a camera in the corner?

2 A. As I recall, at this point we were in the process of  
3 making that -- I'm not sure at that point it was actually  
4 operational, but we were in the process of making it  
5 operational, yes, sir.

6 Q. So at that point, just to quickly go over the  
7 highlights, you had read -- you were there -- who read the  
8 Miranda rights on the 21st?

9 A. I did.

10 Q. It was you?

11 A. Yes, sir.

12 Q. Okay. And at that point it started off with  
13 Investigator Griffin and then after an hour you had the  
14 exchange where Captain Wade came in and Griffin left; is  
15 that right?

16 A. I believe the whole process took roughly an hour. I  
17 don't believe we spoke with him for an hour and then  
18 Captain Wade. I believe it was more --

19 Q. So if your notes kind of reflected at about an hour  
20 that's when they switched, would that be about right in  
21 your notes?

22 A. Yes, sir. Okay. Yes, sir.

23 Q. So your notes would probably be a little bit more  
24 accurate than your memory, now?

25 A. Yes, sir.

1 Q. With that -- again, as far as the people in the room,  
2 did he ever say that he wanted an attorney?

3 A. No, sir.

4 Q. Did he ever say that he was invoking his right to  
5 remain silent or I'm remaining silent?

6 A. No, sir.

7 Q. Did he ever say anything to make you believe that he  
8 was under the influence or couldn't understand what was  
9 being said to him?

10 A. No, sir.

11 Q. Was there anything that was said that was either  
12 threatening or coercive towards him?

13 A. No, sir.

14 Q. So at that point when he's brought -- who brings him  
15 from Lexington County Detention Center to the West Columbia  
16 Police Department?

17 A. Typically it's a patrol officer.

18 Q. But it wasn't you?

19 A. No, sir.

20 Q. All right. And as far as your knowledge, it wasn't  
21 Captain Wade or --

22 A. No, sir.

23 Q. -- Investigator Griffin?

24 A. If it is somebody with investigations, it's typically  
25 somebody unrelated to the -- to the case.

1 Q. So the first time you speak to him he's already  
2 sitting in the interrogation room?

3 A. Yes, sir.

4 Q. And what's the first thing said to him? What  
5 questions are asked prior to that Miranda rights warning  
6 being given to him?

7 A. Maybe something to the effect of how are you or, you  
8 know, do you need anything or something to that effect, but  
9 other than that there's no other questions that are asked  
10 other than maybe do you want to speak with us, do you want  
11 to answer any questions. If he indicates yes, we would go  
12 straight into advising him of his Miranda rights.

13 **MR. PHILLIPS:** No further questions, Your Honor.

14 **THE COURT:** Thank you. Redirect, Ms. Mayes? Excuse  
15 me. I'm sorry. Mr. McNair.

16 **MR. McNAIR:** Yes, sir. Your Honor.

17 REDIRECT EXAMINATION (In-Camera)

18 BY MR. McNAIR:

19 Q. Investigator Neel, when you met with the Defendant,  
20 he was charged with attempted murder, burg first, armed  
21 robbery, CSC with a minor, possession of a weapon during a  
22 -- during a violent crime and kidnapping, correct?

23 A. Yes, sir.

24 Q. Is it fair to say he understood the formality of the  
25 situation?

1 A. I believe so, yes, sir.

2 Q. He understood the severity of the situation he was in?

3 A. In my opinion, yes, sir.

4 **MR. McNAIR:** Okay. Thank you.

5 **MS. MAYES:** The State calls Captain Bruce Wade.

6 **THE COURT:** You can step down, Investigator. Thank  
7 you.

8 **THE WITNESS:** Thank you.

9 (Witness excused.)

10 **THE COURT:** Captain Wade come forward and be sworn.

11 (Whereupon, Bruce Wade was duly sworn by the Clerk of  
12 Court.)

13 **THE CLERK:** Have a seat please, sir. Once you're  
14 seated, state your full name, spelling your last, please.

15 **THE WITNESS:** My name is Bruce Wade, W-A-D-E.

16 BRUCE WADE,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION (In-Camera)

19 BY MS. MAYES:

20 Q. All right. And, Captain Wade, how long have you with  
21 the West Columbia Police Department?

22 A. About eleventh and a half years.

23 Q. All right. And during the course of that time, have  
24 you had the opportunity to interview suspects in crimes,  
25 including defendants who have already been charged with a

1 crime?

2 A. Yes, ma'am.

3 Q. And did you have the opportunity to be at the crime  
4 scene on the night of this incident, April 13th of 2014?

5 A. Yes, ma'am.

6 Q. And as captain, were you aware of the on-going  
7 investigation that was being conducted by investigators  
8 Scott Neel and Thomas Griffin?

9 A. Yes, ma'am.

10 Q. And as a result, did you have the opportunity to sit  
11 in on various portions of interviews that were conducted  
12 with Mr. Hunter?

13 A. Yes, ma'am.

14 Q. I want to start with the interview that would have  
15 been conducted on April 17th of 2014. I'm gonna show you  
16 this document, Court's Exhibit 4. Do you recognize  
17 anything about that document?

18 A. Yes, ma'am. I signed the bottom of it.

19 Q. All right. And can you tell us whether or not it's  
20 routine for you to sign a document once you have advised  
21 someone of their Miranda rights?

22 A. Yes, ma'am, that's correct.

23 Q. And who actually did the advisement of rights to  
24 Mr. Hunter on the date of April 17th?

25 A. I did.

1 Q. And can you tell us whether or not having been through  
2 those rights previously by Investigator Griffin, did he  
3 appear to understand those rights?

4 A. Yes, ma'am.

5 Q. Was he threatened by yourself or Investigator Griffin  
6 in order to participate in this interview?

7 A. No, ma'am.

8 Q. Was he promised anything in exchange?

9 A. No, ma'am.

10 Q. Was he coerced?

11 A. No, ma'am.

12 Q. Did he ask for an attorney at any point in time prior  
13 to the interview or during the course of the interview?

14 A. No, ma'am.

15 Q. Did he agree or appear to agree to speak with you and  
16 Investigator Griffin freely and voluntarily?

17 A. Yes, ma'am.

18 Q. Now at this point in time, April 17th, can you tell  
19 us whether or not measures were being taken by the West  
20 Columbia Police Department to ultimately locate phone  
21 records possibly associated with the Defendant's phone,  
22 and that would include cell tower-type information?

23 A. Yes, ma'am.

24 Q. At any point in time during the interview, did you  
25 confront Mr. Hunter about that?

1 A. I did.

2 Q. In what regard?

3 A. I had a conversation with Mr. Hunter when he said --  
4 he had made a comment about he had gave some clothing away  
5 to a crackhead and to Good -- well, to a thrift store and  
6 I explained to him, I said, look, you're an adult. I said  
7 when adults are caught, they usually man up. I said --  
8 and I explained to him, I said, they've got your DNA on  
9 the scene. I said, you've got the cuts and scratches and  
10 bruises on your face. I said, we have sent down for your  
11 cell tower records, your cell phone records, and they're  
12 gonna come back and put you on the scene. I said, so I  
13 don't know why you're denying this, and at that time he  
14 told me no, my cell phone was cut off that night.

15 Q. All right. So he indicated to you verbally that his  
16 cell phone was off that night referring to the incident  
17 date?

18 A. Yes.

19 Q. And also I want to ask you about the statement that  
20 you recall him making as to giving clothing away. Can you  
21 tell us what sources he stated he gave clothing to?

22 A. He said -- at one point he said he gave it to a  
23 crackhead and then at another point he said he gave it to  
24 a thrift store.

25 Q. All right. Following that interview on April 17th,

1 did you have the occasion to take part at any point in the  
2 interview that was conducted on April 21st?

3 A. I did.

4 Q. In what regard?

5 A. It's a -- it's actually a TV monitor set up in my  
6 office where I can watch an interview if I wanted to and  
7 I watched Investigator Griffin and Investigator Neel  
8 interview Mr. Hunter and he gave them several stories and  
9 pretty much what they got wrote in here when they did their  
10 testimony, but once they came out it's not unusual for me  
11 to go in and see if I can get somebody to confess and I did  
12 go into the interview room and talk to him, but he didn't  
13 confess to me. He made the comment about he was waiting  
14 on -- waiting to make a deal. He was gonna do like the  
15 Gabbiee Swainson case, the guy in that case, how he waited  
16 it out until the end and got a deal and his -- I want to  
17 say so his daughter didn't get charged in the case.

18 Q. All right. Referring to the offender in the Gabbiee  
19 Swainson case?

20 A. Yes.

21 Q. And who was the first to bring up the mention of the  
22 Gabbiee Swainson case?

23 A. Mr. Hunter.

24 Q. And can you tell us whether or not that was in regard  
25 -- in regards to wanting some type of deal or bargain in

1 exchange for making a statement?

2 A. Yes, that's correct.

3 **MS. MAYES:** Nothing further.

4 **THE COURT:** Thank you. Mr. Phillips.

5 **MR. PHILLIPS:** Thank you, Your Honor.

6 CROSS-EXAMINATION (In-Camera)

7 BY MR. PHILLIPS:

8 Q. Good afternoon, Mr. Wade.

9 A. Good afternoon.

10 Q. Do you have a West Columbia Police Department issued  
11 recording device?

12 A. No, sir.

13 Q. But you do have a live feed into your office of the  
14 interrogation room?

15 A. That's correct.

16 Q. And is it the conscious decision of the West Columbia  
17 Police Department not to record interviews?

18 A. That's correct. We don't record interviews.

19 Q. All right. In making the reports in this case as the  
20 supervising officer, what reports did you make?

21 A. None.

22 Q. No reports?

23 A. No, sir.

24 Q. And with that, the first time that the information  
25 had been provided about the cell phone being cut off was

1 provided to the solicitor's office on what date?

2 A. I want to say it might have been last Tuesday.

3 Q. And this critical piece of evidence regarding the  
4 statement did not find its way into either Investigator  
5 Neel or Investigator Griffin's statements; is that right?

6 A. That's correct.

7 Q. And as their supervisor you review those statements?

8 A. That's correct.

9 Q. And as the person who had the statement being told to  
10 him, you didn't try to supplement that report?

11 A. No, sir.

12 Q. And it has only become relevant as of last Tuesday?

13 A. I wouldn't say that's the only time it became  
14 relevant. When I go into an interview -- I don't take  
15 notes when I go into an interview. Normally it's the  
16 investigator sitting next to me or the investigator  
17 watching the TV that's taking notes. I'm not a good  
18 notetaker and I don't take notes when I go into an  
19 interview room. I usually lead the interview.

20 Q. How many interviews do you think you've been in or  
21 watched live feeds of since then, over the last three  
22 years?

23 A. In the last three years?

24 Q. Yeah.

25 A. At least three hundred.

1 Q. At least three hundred?

2 A. That would be my guess.

3 Q. And that's not just participated in, but also watched  
4 live?

5 A. Correct.

6 Q. At least three hundred?

7 A. (Nods head.)

8 Q. And for all three hundred of those you didn't record  
9 the interview?

10 A. No, sir.

11 Q. Was there a recording done in any of those interviews?

12 A. Not to my knowledge.

13 Q. In those interrogation rooms, is there an audio or  
14 video recording device?

15 A. Not in the interview rooms. We don't -- we don't have  
16 interrogation rooms, we have interview rooms, but no -- no  
17 recording device is in there. Just live feed only.

18 Q. Okay. So live feed only. That's the thing. There's  
19 no recording?

20 A. No. No, sir.

21 Q. Okay. And the live feed only goes to your office?

22 A. At that particular time it was only going to my  
23 office. Since they have put one in the investigations  
24 room.

25 Q. Okay. But still now there's no recordings made, just

1 live?

2 A. We do not have audio recordings of statements, no.

3 Q. What about video recordings?

4 A. I mean -- I'm sorry, video recordings. We don't have  
5 video recordings of statements, no, sir. Audio recording  
6 is hit or miss, but I tell them I don't like them audio  
7 recording statements. I prefer it to be handwritten.

8 Q. And why don't you like audio recordings?

9 A. If it's handwritten, it is what it is. I don't want  
10 -- I don't want anything to be misinterpreted in an audio  
11 recorded statement, but if it's handwritten that's exactly  
12 what it is, handwritten from that person.

13 Q. And in this case, did you have Nathaniel Hunter give  
14 a handwritten statement?

15 A. He didn't give us one. He didn't give us enough  
16 information for us to take one from him. He told me he  
17 wasn't there.

18 **MR. PHILLIPS:** No further questions, Your Honor.

19 **THE COURT:** Thank you. Redirect, Ms. Mayes?

20 **MS. MAYES:** Nothing further, Your Honor.

21 **THE COURT:** Thank you, Captain Wade. You may step  
22 down.

23 **THE WITNESS:** Thank you.

24 (Witness excused.)

25 **THE COURT:** Ms. Mayes.

1           **MS. MAYES:** Yes, sir, Your Honor. As Court's exhibits  
2 Number 4 and Number 5 indicate, Mr. Hunter did acknowledge  
3 his rights and sign each of those forms. Certainly from  
4 the standpoint of him being in custody he waived any -- he  
5 waived those rights in order to speak with law enforcement  
6 and also waived any right to an attorney, as that was  
7 advised of him as well. At no point during the interview  
8 did he request an attorney or ask for the interview to  
9 stop and, Your Honor, the requirement of it being freely  
10 and voluntarily given and that there was a waiver of his  
11 Miranda rights I believe has been -- the showing there has  
12 been met in regards to his signature on both of the waiver  
13 forms and his acknowledgment of each right as it goes.

14           **THE COURT:** Mr. Phillips, I didn't mean to cut you  
15 off and go straight to final argument. I was gonna ask  
16 you if you had any evidence that you wished to offer on --

17           **MR. PHILLIPS:** If I may, my client said he -- pursuant  
18 to Simmons versus United States may be testifying as to the  
19 limited purpose for a suppression hearing. He said he was  
20 thinking about it. Can I confirm whether or not he wishes  
21 to testify?

22           **THE COURT:** That's fine.

23           (Pause in proceedings.)

24           **MR. PHILLIPS:** Your Honor, he would like to testify  
25 for the limited purpose of the suppression hearing.

1           **THE COURT:** All right. Mr. Hunter, come forward,  
2 please, and be sworn.

3           (Whereupon, Nathaniel Hunter was duly sworn by the  
4 Clerk of Court.)

5           **THE CLERK:** Have a seat. Once you're seated, state  
6 your full name, spelling your last, please.

7           **THE WITNESS:** My name is Nathaniel Hunter,  
8 H-U-N-T-E-R.

9           **THE COURT:** Mr. Hunter, if you will pull that  
10 microphone a little bit closer to you, if you don't mind.

11          **BAILIFF:** I believe it's off.

12          **THE COURT:** It's off? Okay. Is it on now?

13          **MR. PHILLIPS:** Thank you, Your Honor.

14          **THE COURT:** All right.

15   NATHANIEL HUNTER,

16           , having been duly sworn, testified as follows:

17   DIRECT EXAMINATION (In-Camera)

18          BY MR. PHILLIPS:

19          Q. All right. Mr. Hunter, going to the date of your  
20 arrest on April 17th when you are pulled over at that time,  
21 was any questions asked of you?

22          A. No, sir.

23          Q. All right. While you were transported to the West  
24 Columbia Police Department, was any questions asked of you?

25          A. No, sir.

1 Q. The first time a question of was asked to you was  
2 inside the interrogation room at the West Columbia Police  
3 Department?

4 A. Yes, sir.

5 Q. And you met with on April 17th Investigator Griffin  
6 and Captain Bruce Wade?

7 A. Yes, sir. To my knowledge, I recall meeting with  
8 Bruce Wade, but I don't recall meeting with Thomas Griffin.

9 Q. So it was Captain Bruce Wade who read you to the  
10 Miranda rights form?

11 A. Yes, sir.

12 Q. Did he ask you any questions prior to reading that  
13 form?

14 A. No, sir.

15 Q. All right. So when he came in, what's the first  
16 question that he asked you?

17 A. I believe it was to like how are you doing today,  
18 something to that nature.

19 Q. And then he asked you -- he basically read the Miranda  
20 rights form?

21 A. Yes, sir.

22 Q. And at that point you said you wanted to make a  
23 statement. Do you agree with the testimony as far as that  
24 at that point you were voluntarily giving a statement?

25 A. That I would voluntarily participate in an interview,

1 but not give any statements like concerning the crime.

2 Q. All right. So during this interview, did you ever  
3 feel threatened by anything that was said to you by either  
4 Investigator Griffin or Captain Bruce Wade?

5 A. Yes, sir. Bruce Wade.

6 Q. Specifically, what did he say that was threatening to  
7 you?

8 A. He basically -- was basically pointing his finger in  
9 my face telling me -- asking me did my family ever tell me  
10 not to come across that bridge into Lexington County and  
11 commit crimes and basically told me that I was gonna do a  
12 whole lot of time because I committed this crime and I just  
13 denied it and told him I didn't do anything and he got  
14 angry and aggressive.

15 Q. Did you ever admit that you committed the crime?

16 A. No, sir.

17 Q. At that point did you ever feel -- or excuse me --  
18 did you ever request to have a lawyer present during the  
19 interview?

20 A. No, sir.

21 Q. Did you ever say that you wanted to remain silent or  
22 to cease questioning?

23 A. No, sir.

24 Q. So any of the -- which part of your statements that  
25 you provided to police do you dispute?

1 A. When he said that he asked me about my cell phone and  
2 he said that they was gonna ping my location and I was at  
3 a scene of a crime and he said -- and I told him that my  
4 phone was off. I never made no such statement to that  
5 nature. I just told him if that's what you have to do and  
6 you want to ping my phone, then that's what you do, but I  
7 never told him not one time that my phone was off at the  
8 time of the crime.

9 Q. Are there any other statements that you disagree with  
10 that you didn't make?

11 A. Yes, sir. On the 21st, I believe it was, that morning  
12 on April 21st where they stated that I told them about a  
13 deal, requesting a deal, that was not true. They brought  
14 up that case and asked me can they -- do I want to make a  
15 deal and can they help -- and help me out if I just told  
16 the truth and I told them my truth is not their truth, I'm  
17 not gonna admit to a crime that I didn't do, that's not  
18 what I'm gonna do, so he got angry and aggressive again.

19 Q. So to clarify, you said that you did not make the  
20 statement that your phone was off?

21 A. No, sir.

22 Q. And that any statements about you wanting a deal or  
23 specifically talking about Gabbie Swainson did not come  
24 from you?

25 A. No, sir.

1 Q. It was directed at you about whether you wanted a  
2 deal?

3 A. Yes, sir.

4 Q. Were any promises made to you at that time?

5 A. No, sir, no promises except that he just pointed his  
6 finger and told me you're gonna get twenty years or better.  
7 You go in front of that jury with that hair and you're  
8 black in Lexington County and they're gonna convict you,  
9 I've got your DNA to prove it, and I told him, well, I  
10 can't admit to a crime I didn't do. I'm just not gonna do  
11 it.

12 Q. Did they have you handcuffed at that time?

13 A. I'm not sure. I may have had one cuff on. I'm --  
14 I'm not sure.

15 Q. And at that point did you ever ask them to use the  
16 restroom or ask them for any water?

17 A. No, sir.

18 Q. So at this point what you're saying is that your main  
19 purpose for testifying during this hearing was simply to  
20 refute the statement that you didn't make?

21 A. To clarify, yes, sir.

22 **MR. PHILLIPS:** No further questions, Your Honor.

23 **THE COURT:** Thank you. Cross-examination,

24 Ms. Mayes?

25 **MS. MAYES:** Yes, sir, Your Honor.

1 CROSS-EXAMINATION (In-Camera)

2 BY MS. MAYES:

3 Q. Now, Mr. Hunter, at that point in time you were part  
4 of a work study program at Midlands Tech, correct?

5 A. Not at that particular time, no. I was off a -- I was  
6 off a semester. I took a semester off.

7 Q. Well, does that mean that you had actually been  
8 admitted to Midlands Tech at some point of time as a  
9 student?

10 A. Yes, ma'am.

11 Q. All right. So you had been admitted to college, so  
12 there's no doubt that you had the ability to communicate,  
13 to read and to write, correct?

14 A. Yes, ma'am.

15 Q. And these Miranda forms, which are Court's Exhibit 4  
16 and Court's Exhibits 5, whose signature is that?

17 A. Mine.

18 Q. And whose signature is that at the bottom --

19 A. Mine.

20 Q. -- where it states no promises or threats have been  
21 made to me, no pressure or coercion of any kind has been  
22 used against me?

23 A. Mine.

24 Q. I'm gonna show you the next one, which is dated the  
25 21st.

1 A. Uh-huh.

2 Q. Whose signature is on that document?

3 A. Mine.

4 Q. Whose initials are along the way not only on this  
5 document, but the preceding document?

6 A. Mine.

7 Q. And whose signature is at the bottom indicating that  
8 no threats or promises or coercion or pressure have been  
9 made?

10 A. Mine. That's at the beginning of the interview. The  
11 coercion was after.

12 Q. All right.. So you're saying that you voluntarily  
13 waived your rights and signed those forms --

14 A. Yes, ma'am.

15 Q. -- and then after you signed the forms you state that  
16 something that you term coercion was used, correct?

17 A. Aggressiveness, coercion. Whatever words you want to  
18 -- whatever you --

19 Q. You mean -- by aggressiveness and coercion, you mean  
20 that Captain Wade said to you I've got your DNA and I can  
21 put you at the scene, correct?

22 A. Yes, ma'am.

23 Q. You consider that aggression and coercion?

24 A. Raising your voice and pointing your finger in my  
25 face, yes, that is aggression.

1 Q. He's confronting you with the facts of the case, isn't  
2 he?

3 A. I don't know if they were facts or not.

4 Q. They showed you a document that your DNA was recovered  
5 from evidence found at the scene, correct?

6 A. Correct, but that doesn't mean that's evidence.  
7 Police have the ability to lie. You can lie -- law  
8 enforcement can lie to you as much as they want to. They  
9 don't have to tell the truth just to get a statement or a  
10 confession from you.

11 Q. All right. So is it your testimony that the document  
12 that was shown to you from the State Law Enforcement  
13 Division must have been a lie?

14 A. No, I didn't refute it. I just told them I didn't  
15 have anything to do with it.

16 Q. All right. You didn't refute it. Now regarding your  
17 background and your involvement with law enforcement to  
18 know exactly what your rights are and what your -- what  
19 your rights are when you're being interviewed by law  
20 enforcement, you've had multiple arrests, haven't you?

21 A. Yes.

22 Q. This wasn't your first and only interaction with law  
23 enforcement?

24 A. No.

25 Q. Let's start in 2002 when you had an arrest and

1 conviction for possession of burglary tools, correct?

2 A. Yes, ma'am.

3 Q. And then in 2004, you had an arrest for criminal  
4 domestic violence, correct?

5 A. Yes, ma'am.

6 Q. Also in 2004 you had an arrest on a drug charge. I  
7 believe it was distribution or possession with intent to  
8 distribute a controlled substance?

9 A. Yes, ma'am.

10 Q. Then in 2006 also a criminal domestic violence?

11 A. Yes, ma'am.

12 Q. In 2007, you had the arrest for the crimes that you  
13 were out on bond for, murder?

14 **MR. PHILLIPS:** Your Honor, I think at this point we've  
15 gone way far beyond the scope.

16 **THE COURT:** Well, if she's attempting to do that to  
17 attack his credibility, I will allow that, but I think that  
18 point has been made for the record.

19 **MR. MAYE:** I can lay a foundation further.

20 **THE COURT:** Okay. Thank you.

21 BY MS. MAYES:

22 Q. Regarding your involvement with law enforcement, you  
23 had had involvement with law enforcement in 2007, correct?

24 A. Yes.

25 Q. In fact, you were out on bond for those crimes,

1 correct?

2 A. Yes, ma'am.

3 Q. And then after that as recently as 2011 you were on  
4 probation, correct?

5 A. Yes, ma'am.

6 Q. And that involved interaction with a probation agent?

7 A. Yes, ma'am.

8 Q. You'd appeared in court before for you to be on  
9 probation, correct?

10 A. Yes, ma'am.

11 Q. And then in 2013, I believe you had an arrest for  
12 indecent exposure?

13 A. Yes, ma'am.

14 Q. So that's a year before, a year before this crime  
15 would have been committed and you had these interviews  
16 with law enforcement and waived your Miranda rights?

17 A. I don't recall having interviews in those cases.

18 Q. You had interviews in 2007 on that murder charge?

19 A. Okay.

20 Q. Do you admit that or deny that?

21 A. I admit that.

22 **MS. MAYES:** I beg the Court's indulgence.

23 **THE COURT:** All right.

24 BY MS. MAYES:

25 Q. So to summarize, Mr. Hunter, your signature is on

1 both of these documents and your testimony just moments ago  
2 was that you freely and voluntarily signed these documents  
3 and agreed to an interview but during the course of the  
4 interview you didn't like the attitude of Captain Wade,  
5 correct?

6 A. Correct.

7 **MS. MAYES:** Nothing further.

8 **THE COURT:** Thank you. Mr. Phillips, redirect?

9 REDIRECT EXAMINATION (In-Camera)

10 BY MR. PHILLIPS:

11 Q. Everything you testified to at the hearing was on your  
12 own free will?

13 A. Yes, sir.

14 Q. And it's honest?

15 A. Yes, sir.

16 Q. And that's as it was stated to the officers?

17 A. Yes, sir.

18 Q. So when they say you've made statements that you now  
19 dispute, that's you being honest that what you testified to  
20 here today is the truth?

21 A. Yes, sir.

22 Q. It's outside the scope, but it's been ten years since  
23 you were charged with that 2007 murder; is that correct?

24 A. Yes, sir.

25 Q. And it's still pending?

1 A. Yes, sir.

2 Q. And your attorney has told you the reason it's still  
3 pending ten years later is because they don't have a shred  
4 of evidence?

5 A. Yes, sir.

6 Q. And that was even indicated to the bond judge when we  
7 had a bond hearing?

8 A. Yes, sir.

9 Q. Because it's ten years later and somehow it's not  
10 dismissed?

11 A. The case is too weak, yes, sir.

12 **THE COURT:** All right. Thank you.

13 Mr. Hunter, you can step down.

14 (Witness excused.)

15 **THE COURT:** Mr. Phillips, any further evidence or  
16 testimony on the Denno issue for the case?

17 **MR. PHILLIPS:** No, Your Honor.

18 **THE COURT:** All right. I've heard from Ms. Mayes  
19 already in argument, so Mr. Phillips, I'll be glad to hear  
20 from you.

21 **MR. PHILLIPS:** Thank you, Your Honor. The Defendant  
22 respectfully moves to suppress all statements made to any  
23 Government agent and any evidence seized as a result of  
24 those statements that were obtained in violation of the  
25 Fourth, Fifth, Sixth and Fourteenth amendments to the

1 United States Constitution and Article 1, Sections 3, 10  
2 and 14 of the South Carolina Constitution.

3 This is a motion that's been presented to Your Honor  
4 about making factual determinations on the record. It's  
5 listed as Defense Exhibit Number 6. Your Honor has a copy  
6 and the State has been provided a copy of all motions that  
7 we presented in our pre-trial motions.

8 **THE COURT:** Right.

9 **MR. PHILLIPS:** Through the in-camera hearing certainly  
10 I think it was established that he was in custody, he was  
11 interrogated, there was custodial statements that were  
12 made, he was advised of his Miranda warnings and those  
13 were gone through in full detail, and that at that point  
14 certainly Your Honor can make the determination of whether  
15 they were adequately given. We certainly would stand on  
16 the fact that he did not dispute what was read to him or  
17 what he signed based on that, whether his waiver of that  
18 right was knowing and intelligent, and then based on his  
19 own testimony that at one point of the interrogation it  
20 changed from being a voluntary statement or voluntary  
21 interview until into a coercive interrogation where he  
22 felt that he was being pressured by law enforcement.  
23 Specifically, what we believe is our strongest motion in  
24 this hearing would be as to the April 21st statement, Your  
25 Honor. We believe once the bond judge appointed the

1 public defender's office the right to counsel had attached.  
2 Although I believe the case law says that the right to  
3 counsel does not attach at a bond hearing, I believe once  
4 the attorney has been appointed the right to counsel has  
5 been attached and those officers at that time needed to  
6 go to the public defender's office and needed to get  
7 permission from his appointed counsel at that time before  
8 questioning him on the 21st. I think at that point you  
9 can make the argument about the right to counsel had  
10 attached and that he had not made a knowing waiver based  
11 on that and that he had not provided voluntary statements  
12 based on the totality of the circumstances.

13 The only other follow-up -- I have two follow-up  
14 issues, Your Honor. One would be are there any statements  
15 that Your Honor believes would be admissible for  
16 impeachment purposes and then one that's semi-unrelated to  
17 the hearing regarding the Gabbie Swainson. Certainly if  
18 Your Honor finds that that statement is admissible, we  
19 would certainly -- based on the testimony, we're arguing  
20 that it be suppressed as to the April 21st interview, but  
21 we also would say given the intense publicity of that  
22 case and the fact that the State would intend to -- based  
23 on their questions to highlight the fact that it was a  
24 highly publicized murder case that was local would just  
25 further inflame the passions of the jury and would not be

1 admissible under Rule 403 and certainly the probative value  
2 would be substantially outweighed by the danger of unfair  
3 prejudice to the Defendant, so that would be a secondary  
4 argument that we would make. So based on those findings  
5 that's the defense's motions, Your Honor.

6 **THE COURT:** All right. Thank you.

7 **MR. PHILLIPS:** Thank you.

8 **THE COURT:** I don't think there's any argument  
9 that Mr. Hunter was clearly in custody at the time the  
10 questions were asked, that these were custodial  
11 interrogations, that he was properly Mirandized, that he  
12 was given his rights and he waived his rights. I do not  
13 find that -- that the State has an obligation four days  
14 after the initial investigation in which they asked if he  
15 had an attorney and he said no and the second interview on  
16 the 21st, even though four days later, that the State was  
17 under an obligation to go beyond the warnings on the  
18 Miranda form to inquire further of anyone else other than  
19 Mr. Hunter himself about his involvement with counsel.  
20 There's nothing to indicate that even he knew that he had  
21 a lawyer at that point in time. And I've, of course, been  
22 around long enough to know that it's not unusual for people  
23 to get well into the process before they get a lawyer  
24 appointed to them even though they apply and -- and so I  
25 don't find that -- that the State had an obligation to

1 check into whether or not he had been appointed a lawyer.  
2 He was advised of his right to a lawyer and of his right  
3 to remain silent and all the other rights that the Miranda  
4 form says that he has and he voluntarily waived those  
5 rights, so I don't see any violation there.

6 I find that the State has met its burden of proving  
7 by the preponderance of the evidence that -- that he was  
8 properly Mirandized, that he understood his rights, that  
9 he was not forced or threatened. I do not find that the  
10 statements by Captain Wade that we've got evidence on you  
11 and things of that nature amounts to coercion or to  
12 harassment such as to render a statement involuntary. The  
13 type of statements that we have case law to support as  
14 being coercive are those where there is actually threats  
15 of violence or direct or implied promises of improper  
16 influence were used or that the State has said it would  
17 not seek a life penalty or a death sentence or things of  
18 that nature, having family members threatened with other  
19 crimes and things of that nature, those are the sorts of  
20 things that our courts have said render a statement  
21 involuntary. If the police admonish someone to tell the  
22 truth, even if they make misrepresentations as Mr. Hunter  
23 is obviously aware, those harassing representations do not  
24 render the statement involuntary. So I find that the  
25 statements were voluntary given. The State has met its

1 burden of proving that by the preponderance of the  
2 evidence. Of course, the jury will have to determine  
3 ultimately whether the State has proven those same things  
4 beyond a reasonable doubt.

5 Now the -- there are a couple of things, however, that  
6 -- that raised red flags with me. Investigator Mitchell  
7 {sic} and Investigator Neel said that he never denied --  
8 that he never denied his guilt. I trust that that's not  
9 somewhere that you're gonna go when they're testifying  
10 themselves. That seems to be -- unless you can show me  
11 some law that says that's not burden shifting --

12 **MS. MAYS:** But that would be excluded, Your Honor.  
13 I believe they were reading the entire summary --

14 **THE COURT:** They were.

15 **MS. MAYES:** -- and so that was part of it. That  
16 would be excluded.

17 **THE COURT:** Well, make sure then.

18 **MR. PHILLIPS:** That would be a Doyle violation; is  
19 that correct?

20 **THE COURT:** What's that?

21 **MR. PHILLIPS:** That's a Doyle violation?

22 **THE COURT:** It's burden shifting, that's right. Is  
23 that Doyle?

24 **MR. PHILLIPS:** I believe so, Your Honor.

25 **THE COURT:** Okay. Doyle versus Alabama, is that it?

1 I'm not sure.

2 **MR. PHILLIPS:** I'll pull it up.

3 **THE COURT:** It's just burden shifting, so, and they're  
4 not gonna do it, so it's much ado about nothing. I have a  
5 concern that, frankly, occurred to me before Mr. Hunter  
6 testified as to the parts of the statement that he agreed  
7 that he had made and those that he denied that he'd made  
8 and that is the timing of this information about the phone  
9 being cut off. I want to know when that information was  
10 first made available to the State, that is to the  
11 prosecution, I want to know when it was first made  
12 available to the defense and I want to know when in the  
13 record that it first appeared. If y'all overnight can get  
14 me some information and get me those dates --

15 **MS. MAYES:** I can respond to that now, Your Honor.  
16 We met with Captain Wade on Wednesday and that's the first  
17 that we heard of that. He advised us of that during the  
18 course of his summation of what he recalled from the  
19 interview. That is not information that we had previously  
20 and I had not personally spoken with Captain Wade about it.  
21 After we prepared our final witness list, I sent to the  
22 defense on Friday a summary of any additional information  
23 from witnesses. That included not just that statement, but  
24 the statements of EMS as well and, Your Honor, as a result  
25 that was the first documentation that we had of that.

1 statement and that would have been last week. If that  
2 causes the Court concern, I have no objection to not using  
3 that statement from Captain Wade, that reference to the  
4 phone being off.

5 **THE COURT:** All right. And that might ease my mind  
6 because I wanted to know when the phone records themselves  
7 were obtained that indicated that as well.

8 **MS. MAYES:** That would have been 2014, Your Honor.

9 **THE COURT:** Okay.

10 **MS. MAYES:** That would have been the letter from  
11 Sprint in 2014 that indicated that the phone was off and  
12 then also his -- that would have been the cell tower  
13 records and then also the record of incoming and outgoing  
14 calls also indicated that there was nothing in that period  
15 and then, of course, we have the phone extraction that was  
16 done in 2017, which confirms that. So we would offer, of  
17 course, evidence and testimony in that regard, but as to  
18 the statement made by Captain Wade, we have no objection to  
19 withdrawing just that statement.

20 **THE COURT:** And that -- that was very probably gonna  
21 be my ruling and remove any appellate issue. Thank you  
22 very much.

23 All right. Now the Gabbiee Swainson thing. Of  
24 course, I've heard of Gabbiee Swainson and, frankly, I  
25 can't even remember, although I know about it. I'm not

1 sure how much the jury would know about it. Of course,  
2 it's fair game obviously for the officers to testify as --  
3 as they did; that he was looking for a bargain, that he was  
4 hoping that the charges would be dropped or there would be  
5 some leniency. They testified about that. How are we  
6 gonna deal with the Gabbiee Swainson matter? Because,  
7 first of all, across the river these folks might not even  
8 know who Gabbiee Swainson is, so somebody would have to  
9 tell them for it to have any relevance at all. How would  
10 you deal with that, Ms. Mayes?

11 **MS. MAYES:** Your Honor, it would be -- actually we  
12 discussed this with officers beforehand. That that would  
13 be somewhat redacted so that they would say he brought up  
14 an unrelated Richland County murder case and wanted a  
15 similar deal. There would not be a reference to what case  
16 that actually was.

17 **THE COURT:** Okay. That's a fair resolution of that.  
18 Thank you, Ms. Mayes. I note your exception to it in any  
19 event, Mr. Phillips, but that seems to be a fair way to  
20 deal with it.

21 **MR. PHILLIPS:** All right. So the objection is  
22 preserved?

23 **THE COURT:** Yes, ma'am -- yes, sir.

24 **MR. PHILLIPS:** Thank you, Your Honor.

25 **THE COURT:** Okay. All right, folks. I think we've

1 dealt then with that. Let me get back to my list and see  
2 where we are.

3 The next is the motion for competency and we'll have  
4 to conduct that tomorrow when the child is here. That's  
5 Number 8 on the list; is that right?

6 **MR. PHILLIPS:** Yes, Your Honor.

7 **THE COURT:** Okay. And then there's the objection to  
8 the State's motion to admit out of court statements and  
9 things of that nature. I've got to look at that video.  
10 I'll have to tell you-all the fight that I've been having  
11 with my computer. It's got something called a BitLocker  
12 on it and there's a number that you have to write down and  
13 I got it from the Help Desk and let me tell you that to  
14 write that number down is two complete lines from one  
15 margin to the other. You won't believe it.

16 **MS. MAYES:** We can provide a computer, Your Honor.

17 **THE COURT:** Thank you very much. That would help.  
18 I'm certain that they give me that number and I am the  
19 only person on the face of the globe that has that because  
20 they're more numbers than there are people in the world.  
21 That will help me. Thank you.

22 All right. So I'll have to review that and reserve  
23 ruling on that until tomorrow. Is that gonna give anybody  
24 heartburn?

25 **MR. PHILLIPS:** No. No, Your Honor.

1           **MS. MAYES:** And, Your Honor, as to any witness that  
2 has excited utterance testimony, the way that we normally  
3 proceed in those type of situations is I would call a  
4 witness and then we would be in the process of proffering  
5 that testimony or laying that foundation and then we can --

6           **THE COURT:** And you're right. You have to lay the  
7 foundation obviously for me to be able to rule. I think  
8 though that -- that the -- the objection was to the --  
9 this Objection Number 9 deals with the child witness. The  
10 excited utterance would deal with the adult victim; is  
11 that -- am I right on that?

12           **MS. MAYES:** Yes, sir, Your Honor.

13           **MR. PHILLIPS:** We'll certainly make that objection,  
14 too, and go ahead and say that we can deal with those  
15 issues as they come. Obviously, as Your Honor knows, with  
16 excited utterance they've got -- whether they have a moment  
17 of reflective thought.

18           **THE COURT:** That's right. It has to -- and I can't  
19 really rule on it until the foundation has been laid, so  
20 we'll -- as a good friend of mine says, we'll drive off of  
21 that bridge when we get to it.

22           There's been an agreement, I think, to limit the  
23 hearsay evidence to time and place. I think I understood  
24 that right in chambers. Am I right in that?

25           **MS. MAYES:** Yes, sir, Your Honor. That should only

1 apply to the child's forensic interview.

2 **THE COURT:** That's right.

3 **MS. MAYES:** We're not aware of any statements that  
4 the child made to other persons.

5 **THE COURT:** That's exactly right. I think Kromah  
6 and Shumpert and all those say that.

7 The intent to admit prior bad acts and Lyle evidence,  
8 I'll have to conduct an in-camera review of that before we  
9 let that in. The motion to prohibit the use of the word  
10 "CODIS". You-all are gonna say DNA database. I think  
11 everybody's agreed to that. You agreed to eliminate the  
12 word "forensic" and call it an investigative interview or  
13 something like that.

14 **MS. MAYES:** Yes, sir, Your Honor.

15 **THE COURT:** Okay. And then there's a motion to  
16 suppress cell phone data and records on the second page.  
17 Number 14. Let me hear from you on that.

18 **MR. PHILLIPS:** And just a moment to kind of interject  
19 in between that. Sorry, Your Honor.

20 **THE COURT:** All right.

21 **MR. PHILLIPS:** In the e-mail we received last Friday  
22 on the 21st at 4:44 PM, the one we received about Bruce  
23 Wade stating that the phone was off, in that same e-mail  
24 we were provided for the first time a statement by EMS  
25 provider Christopher Bernard stating that Ms. Simon told

1 him that the shooter was an unknown small guy while getting  
2 medical treatment and, of course, that -- that she was  
3 going to die, so that would be the biggest argument and one  
4 of the biggest hearsay statements.

5 **THE COURT:** Okay. Well, once again, we'll have to see  
6 what the res gestae of that was before I can rule on that.

7 Okay. Do I have a written motion on the cell phone  
8 record data?

9 **MR. PHILLIPS:** No, Your Honor.

10 **THE COURT:** Okay. I'll be glad to hear that motion  
11 now, folks. We've got to -- I want to clear the deck of  
12 all these pre-trial motions that I can today. I realize  
13 it's after the -- after the hour, but I've got this jury  
14 coming in at 10:00 tomorrow morning and there are gonna  
15 be other things we need to deal with in the morning. I'm  
16 confident of that. So let's deal with this. I'll take  
17 them in whatever order you want to present them.

18 **MS. GILREATH:** I just need a moment to get my stuff  
19 together.

20 **THE COURT:** All right. Folks, let's take about ten  
21 minutes for a quick bathroom break and start back at  
22 twenty-five after the hour.

23 (Recess taken.)

24 **BAILIFF:** All rise.

25 **THE COURT:** Thank you, folks.. Please be seated.

1 All right. We're at Motion Number 15 -- or Motion 14,  
2 I'm sorry. Motion to suppress cell phone data and records.  
3 Who's gonna argue that? Ms. Gilreath?

4 **MS. GILREATH:** And, Judge, we were just talking about  
5 this. I don't know what the -- what the Court's position  
6 is on it. I think this particular motion may take a little  
7 while. We're gonna have to call Mr. Phipps to the stand,  
8 the one who did the extraction report. There's a few  
9 different things that we're gonna be arguing as relates to  
10 the cell phone information, so I didn't know -- given what  
11 time it was how late Your Honor wanted to --

12 **THE COURT:** Well, I don't know anything about the  
13 motion because I don't have a copy of it, so I don't have  
14 any way of telling how long it's gonna take. So tell me  
15 what sort of information -- tell me what the basis of the  
16 motion to suppress the cell phone records is in the first  
17 place.

18 **MS. GILREATH:** Well, Your Honor, there's a few --  
19 there's a few different issues overall and I mentioned this  
20 extraction, of course, earlier on --

21 **THE COURT:** Right.

22 **MS. GILREATH:** -- and it's something that as far as  
23 I'm aware wouldn't have been made a Court's exhibit or  
24 anything like that at this point and I can certainly have  
25 this page -- a copy of this page because the contents page

1 of the State's extraction report I think gives a pretty  
2 good idea of at least the beginning point of our motion.

3 **THE COURT:** All right.

4 **MS. GILREATH:** Essentially, Your Honor, when they --  
5 when they extract records from a phone the full extraction,  
6 the total number of files on here, is a better reflection  
7 of what's actually on the phone. The extraction report  
8 as it is -- as it was provided to us has been very much  
9 narrowed down without really any kind of indication other  
10 than just the sort of raw numbers of what's been excluded,  
11 where those things have been excluded from, so obviously  
12 you could have -- just for an example, you could have  
13 several text messages in a row and based on this there's no  
14 way to see whether any text messages were taken out that  
15 might be context for a conversation or whether web browser  
16 search history may have been removed that would give  
17 context for a photo or things along those lines, so that's  
18 why I think that it's necessary to have Mr. Phipps testify  
19 because I think that he can sort of narrow down for us how  
20 the extraction report was obtained and perhaps if there's  
21 a way to get some context for some of it, some of it might  
22 not be quite as objectionable as what I'm thinking it is  
23 based on what I have here and given the fact that -- I  
24 mean, just for an example, data files, Your Honor, they've  
25 limited the data files from -- the total number that appear

1 to have been obtained in the State's extraction was 5,291  
2 and they've narrowed it down to 33.

3 **THE COURT:** I guess they just -- they probably --  
4 they've given you whatever they intend to offer, right?

5 **MS. GILREATH:** That's my guess. The problem there is  
6 that we don't know exactly what they took out or where.  
7 Now we know what we've gotten from our extraction report to  
8 some degree, but extractions can sort of vary from time to  
9 time. When you do the extraction, the number of files that  
10 come out can be different the way it's reported, the way  
11 that it's translated. So, I mean, one of our problems here  
12 is that I'm pretty sure there are a number of images, these  
13 33 images I presume that they're going to be intending to  
14 enter, they're photographs for the most part that contain  
15 guns, but the data, the actual web browser data that would  
16 show where these came from, when they were accessed, that  
17 information is not in here.

18 **THE COURT:** When you say where they came from, do you  
19 mean which phone or which tower? I'm sorry. This thing  
20 keeps spitting back at me. When you say -- first of all,  
21 are we talking about text messages or something like that  
22 or what are we talking about?

23 **MS. GILREATH:** Well, and that's part of the thing.  
24 I don't know how much of this report they're necessarily  
25 intending to enter, but I know that there are 33 data

1 files that I feel pretty confident they're intending to  
2 enter, so --

3 **THE COURT:** Can you -- I assume that sooner or later  
4 somebody's gonna have to describe some of this to a jury  
5 so it makes sense to a jury. Is that fair to say?

6 **MS. GILREATH:** I would assume.

7 **THE COURT:** And it ain't making any sense to me right  
8 this minute, so unless somebody's gonna be able to explain  
9 it to the jury better than it can be explained to me, it  
10 ain't gonna make -- excuse my French -- it's not gonna have  
11 any relevance at all. So when you talk about data files  
12 -- I know this is the State's problem because it's their  
13 evidence, but when you're talking about data files, can you  
14 tell me are you just talking about the information that  
15 shows a call from phone A to phone B, are you talking about  
16 text messages, are you talking about Twitter? Just what  
17 does a data file mean?

18 **MS. GILREATH:** Judge, if I may, if I can approach and  
19 just --

20 **THE COURT:** For Lord's sake, yes. That's right.

21 **MS. GILREATH:** Judge, if you look there in that middle  
22 box it says contents and you can see how it has -- I guess  
23 it would be three columns. One column for the kind of  
24 files we're talking about, one column for the number of  
25 those kind of files that made it into the report and one

1 column for the total number of that kind of file that the  
2 extraction where they took all the data from the phone for  
3 that particular date range what was obtained. So as you  
4 can see there's a pretty big difference between the numbers  
5 on the right and the left. For, for example, the data  
6 files that I was referencing, it was an easier one because  
7 there's only 33, those are images. I mean, the way they  
8 come out in the report is they're images, like small little  
9 photographs. There's nothing attached to that that would  
10 tell a juror or a layperson where that came from, what  
11 website it was, when it was accessed, how long it was  
12 accessed. There is some of that information that's in  
13 there, but there's nothing to show exactly where it comes  
14 from and also there's nothing to show whether -- with those  
15 33 data files whether there might have been, you know,  
16 other data files mixed in there that makes this look  
17 different, whether those are the only data files on the  
18 phone that appear that way, and I just think that there's  
19 -- there's a 403 issue there for sure that -- I think  
20 there's a degree that it's misleading, it's confusing, and  
21 I think that the way that it's presented the probative  
22 value of this is outweighed by the danger of unfair  
23 prejudice.

24 **THE COURT:** Well, right this minute as I look at it,  
25 it doesn't have probative value or prejudicial impact

1 because it doesn't mean a thing to me. What does anybody  
2 attempt to prove by this document? What are you going to  
3 -- is somebody gonna try to explain to the jury?

4 Ms. Mayes, can you help me with this?

5 **MS. MAYES:** Yes, sir, Your Honor. This phone  
6 extraction is basically dealing with the timeframe of  
7 this offense and the hours leading up to this offense, so  
8 I believe the report that we have starts on the 12th of  
9 April, 2014, and then proceeds on until he was arrested  
10 and when he was arrested the phone was actually seized  
11 from his person, so our report covered that time period.

12 Also recovered from the phone are photographs which  
13 are the same photographs that were originally recovered  
14 from the SD card of this phone back in 2014 and those are  
15 photographs of the Defendant, Nathaniel Hunter, with two  
16 firearms, one of which is a Glock, and that is ultimately  
17 the weapon that was used in this case.

18 And then in addition to that, Your Honor, there's  
19 going to be testimony about phone calls that Nathaniel  
20 Hunter made to the State Law Enforcement Division and to  
21 probation and parole attempting to get his DNA removed out  
22 of the database and that was in the time period between  
23 when the crime occurred and when he was apprehended, that  
24 four-day period between the 13th and the 17th. And so  
25 we've got testimony coming from both Crystal Owens of

1 probation and parole -- and she won't identify herself as  
2 a probation and parole agent, but as a State employee, and  
3 also Theresa Hines, affiliated with the database, that  
4 Mr. Hunter called them and wanted his DNA removed during  
5 that time period and the evidence was being analyzed and  
6 the hit had not yet been brought to anyone's attention,  
7 and that matches up with the actual phone extraction. The  
8 phone extraction shows those same phone calls.

9 In addition to that, Your Honor, there were numerous  
10 searches that he was doing on the phone, internet activity,  
11 as Detective Phipps would testify. That is shown on the  
12 phone extraction as he's researching the Most Wanted, he's  
13 researching Crimestoppers and how to get his DNA out of the  
14 database, as well as how long it takes for SLED to do DNA  
15 testing.

16 **THE COURT:** So this is a phone log that ties into  
17 photographs or telephone calls that were made to those  
18 folks that you're talking about?

19 **MS. MAYES:** Yes, sir, Your Honor.

20 **THE COURT:** Now there's several different phone calls.  
21 This is from several different phones. I take it all these  
22 phones are identified with Mr. Hunter some way or another?

23 **MS. MAYES:** This one phone -- it's only one phone,  
24 Your Honor, and this is the phone that the number ends in,  
25 I believe, 4055. We will be able to match that up to him.

1 Not only was it found on his person at the time of his  
2 arrest, but he also gave his phone number to a rental car  
3 company or, I'm sorry, a Carolina Trader company. I believe  
4 just a few days before his arrest.

5 **THE COURT:** None of them on this particular sheet have  
6 4055 as the ending digits, so I'm assuming that there are  
7 others obviously that --

8 **MS. GILREATH:** Your Honor, that's just the very first  
9 page that provides the -- kind of the table of contents  
10 there. They do give the overview of the kinds of files  
11 and it's sort of a mini representative of one of my main  
12 objections to this in that if you look at the total number  
13 of files for each column, for each kind of file, call logs,  
14 the messages, the data files, you can see the total number  
15 is much, much larger than the number that is under the  
16 report column, and so one of our objections to this is that  
17 as the report is in its current state with the phone calls  
18 and messages and data images they've removed so much that  
19 you're taking away any sort of context. Essentially, Your  
20 Honor, I believe that they've narrowed it down to show what  
21 they want the jury to see.

22 **THE COURT:** Of course.

23 **MS. GILREATH:** They're showing that there are some  
24 pictures of guns and things like that, but they're not  
25 showing whatever other normal things there are or things

1 that might give context or to provide explanation, so  
2 that's one of our primary objections to the things on here.

3 **THE COURT:** What is the relevance gonna be of the  
4 other five thousand entries if it doesn't -- it's not  
5 exculpatory or inculpatory from their perspective. What  
6 would the relevance be of a day in the life of Mr. Hunter's  
7 cell phone to be?

8 **MS. GILREATH:** Well, Your Honor, I think that one of  
9 the things that it appears that they are trying to do is  
10 essentially make it look as though this is kind of all he  
11 was doing. They have these photos and, Your Honor, she  
12 mentioned that their extraction went from April the 12th  
13 through April the, I believe, 17th when he was arrested,  
14 but a number of these data files, those -- the little  
15 images that we were talking about, the 33, they're not from  
16 that -- that date range at all. There are a few that are  
17 from that SD card, but there are some that were extracted  
18 from the phone that are from prior to that and as you can  
19 see they've removed the majority so it appears that they've  
20 taken out -- so there could be other -- and this is one of  
21 the things that I wanted to question Mr. Phipps about  
22 because I was hoping he could explain it a little bit  
23 better than what I could, but essentially that if there are  
24 other -- there could be other photographs that would change  
25 the nature or what these photos here could potentially

1 mean, there could be other things that were taken out.

2 So just for example, a lot of these data files if you  
3 switch over to the timeline view where it should show you  
4 here's the web -- here's when this website was accessed  
5 where this photo came from, that's -- that's not in here,  
6 that's been removed, so then we're just left with just this  
7 picture and no context for where it came from or how it was  
8 put on the phone and so it just -- it appears to me that  
9 they've removed so much information, they've narrowed it  
10 down so much to what they are trying to show, that I think  
11 they're removing what could be exculpatory.

12 **THE COURT:** Well, they have -- they have sworn on a  
13 blood oath before me and God and the court reporter that  
14 they have not removed anything exculpatory from this  
15 record. Now is the idea that this jury is gonna have to  
16 look at five thousand different entries to decide whether  
17 there's exculpatory stuff in there just to show that --  
18 that not all of the pictures show him with a Glock or with  
19 a firearm, not all of his cell phone calls were trying to  
20 get his DNA out of a log? He might have called the church,  
21 he might have called his parents. Is it gonna take all  
22 those things in there to give some balance to this from  
23 your-all's perspective?

24 **MS. GILREATH:** Your Honor, truthfully it's hard to  
25 say. The only thing that they've provided as far as what

1 they have is this report. So to know exactly what could  
2 have been taken out of what spot or what could be  
3 intermingled, it could still narrow it down sufficiently  
4 that there would be context and you would be able to see  
5 kind of the whole picture for that snapshot of time that  
6 they're looking at versus just sort of picking and choosing  
7 without providing a representative here's what the picture  
8 really is as opposed to -- it's almost sort of a rule of  
9 completeness kind of issue because if you're going to show  
10 this thing and this thing and this thing, you need to show  
11 what connected to this explains what it is as opposed to  
12 just providing it in a vacuum and suggesting that it might  
13 be something that it is not.

14 **THE COURT:** All right. How many witnesses do you  
15 intend to offer to prove the things that you were just  
16 talking about, Ms. Gilreath?

17 **MS. GILREATH:** Your Honor, I would say two at most.  
18 It is Mr. Phipps's extraction report and that could clear  
19 up some of it. If that doesn't clear up as much as I'm  
20 hoping it does, then Mr. Watkins on our list could be the  
21 one that would be called solely just for the purposes of  
22 helping to get to the bottom of this report.

23 **THE COURT:** And what were the names of those two  
24 witnesses? Oh, they're on the list? They're probably on  
25 your list that they've given already.

1           **MS. GILREATH:** Your Honor, Mr. Phipps is on the  
2 State's list. Mr. Watkins is on our list.

3           **THE COURT:** Ms. Mayes, when do you intend to offer  
4 the phone records into evidence in your trial -- in your  
5 case?

6           **MS. MAYES:** I would estimate Thursday morning.

7           **THE COURT:** Thursday morning? Okay.

8           All right. Ms. Gilreath, I'm gonna give you this  
9 back. We obviously don't have time to deal with this  
10 today. We may not have time to deal with it tomorrow,  
11 but at least I will be able to -- to program this into the  
12 schedule.

13           Folks, Ms. Mayes has tried a bunch of cases before  
14 me. I don't think I've had the pleasure of trying -- and  
15 Mr. Phillips may have tried cases before me. There's one  
16 thing that I try as hard as I can to avoid and that is  
17 wasting the jury's time. I like to think I've got a fair  
18 amount of patience, but one thing that causes me to lose  
19 my patience is when we waste the jury's time and the way  
20 we waste the jury's time is because I don't plan for it  
21 right.

22           For example, had I known at a quarter till six that  
23 I was looking at two witnesses on very complicated issues,  
24 on motions that I didn't have a copy of, so I couldn't  
25 really evaluate. I appreciate you-all sending me the

1 motions that you did send me late Friday because I was  
2 able to read them last night and it helped today. It  
3 really did. But I didn't have time to plan for this and  
4 so I told the jury to be back at 10:00 tomorrow morning  
5 just so, you know, in a dream world thinking that we could  
6 take care of whatever we had to take care of between 9:30  
7 and 10:00 tomorrow. If it's gonna have to take a half day  
8 to do this, I'm not gonna do it when the jury is the jury  
9 room, I'm gonna do it when the jury's at home, and so if I  
10 have to send them home at 12:00 tomorrow or tell them to  
11 come back at 1:00 on Wednesday, I can program that in.  
12 That means we're gonna have to work late at night to get  
13 this case over by the end of the week, but I don't mind  
14 that as long as we get it done. I just need to know for my  
15 planning how to keep from wasting that jury's time. Do you  
16 see what I'm getting at? That's all in the world that  
17 bothers me. I'll sit here with you-all in this courtroom  
18 all day long arguing about phone messages and all this sort  
19 of stuff as long as we're getting somewhere and as long as  
20 -- as long as it's leading to something that's relevant.  
21 That's -- that's my only concern. I'm not gonna keep the  
22 folks here after 6:00 anymore, certainly not today, and  
23 I'm not gonna waste the jury's time.

24       So let's start this trial tomorrow and I'll still be  
25 here by 9:30 so that we can deal with whatever we --

1 smaller issues we can deal with before 10:00 when the jury  
2 gets here and then as the trial unfolds you and I will put  
3 our heads together during the course of the day tomorrow  
4 and perhaps into Wednesday to see when it's gonna be a  
5 good time given your witnesses and things of that nature  
6 to set aside a couple of hours or however long it takes,  
7 okay?

8 In the meantime, Ms. Gilreath, if you can -- if you  
9 can -- it's probably not fair to you to ask you to be able  
10 to educate me on technology because I don't -- I can't  
11 even get my computer turned on in there, so you'd have an  
12 uphill battle in that regard, but I would like at least to  
13 see at least some of what you-all are talking about when  
14 you talk about pictures. I understand a picture of a  
15 Glock and a picture of whatever else, but it would help  
16 me with my understanding of this if I knew some of what  
17 those images contained. I understand now what the State  
18 intends to prove or will try to prove, I guess, and how  
19 they're gonna go about it and I can appreciate the fact  
20 that you-all think that there might be some other things  
21 that are probative that are being left out. Now if  
22 they're not probative and if they're just -- just fluff,  
23 then don't intend to spend a whole lot of time with it.  
24 If it's probative on some issue, if it's exculpatory, then  
25 we'll take the time and get it done.

1           **MR. McNAIR:** Your Honor, I have a copy of the data  
2 files from our extraction report if you'd like to see that  
3 to take with you.

4           **THE COURT:** I'll be glad to look at them. Before I  
5 came here today, I thought extraction was something that  
6 the dentist did to a wisdom tooth. Obviously it sounds  
7 like it's about the same.

8           **MR. McNAIR:** I can't really explain them, but this is  
9 what they are.

10          **THE COURT:** Okay.

11          **MR. McNAIR:** And Investigator Phipps will be the one  
12 to explain what information you can deduce from those on  
13 the same.

14          **THE COURT:** Okay. You-all can put Mr. Phipps and  
15 Mr. Watkins on notice they've got their work cut out for  
16 them if they can explain this to me.

17          **MR. McNAIR:** Your Honor, and I will say as well that  
18 we did make Investigator Phipps available last week for  
19 their expert to consult with or for them to consult with  
20 concerning any of this stuff.

21          **THE COURT:** Okay.

22          **MR. PHILLIPS:** And just to clarify, Your Honor, Jason  
23 Chehoski and myself will certainly take responsibility.  
24 Jael Gilreath came on this case much later and that's why  
25 she doesn't have a written motion.

1           **THE COURT:** I didn't -- listen. And, Ms. Gilreath,  
2 I don't mean to be jumping on you because I don't  
3 understand this stuff. That's really not your fault,  
4 it's my fault, but I guess if I'd known a little bit more  
5 about it I wouldn't appear quite as dumb as I obviously  
6 appear to be. That's probably my fault, too. No,  
7 Ms. Gilreath, I realize you're the messenger.

8           And so I'll be here at 9:30 tomorrow, folks, and  
9 we'll start at 10:00. If anything else comes up overnight,  
10 you-all can meet with me in chambers at 9:30 tomorrow  
11 morning.

12           **MS. MAYES:** Yes, sir, Your Honor. We'll have that  
13 computer and DVD ready for you at 9:30. It's not to say  
14 you need to watch it at that time, but we'll have that  
15 available for you for whenever you choose to watch it.

16           **THE COURT:** I'll try to watch it during lunch hour  
17 tomorrow, if that's okay?

18           **MS. MAYES:** Yes.

19           **THE COURT:** All right, folks. At 10:00 tomorrow the  
20 jury will come in. I will appoint a foreperson, the jury  
21 will be sworn, I'll make some brief introductory remarks  
22 and then allow you-all opening statements and we'll start  
23 the trial, okay?

24           **MR. PHILLIPS:** Thank you, Your Honor.

25           **MS. MAYES:** Thank you, Judge.

1 (Whereupon, the proceedings were concluded for  
2 April 24, 2017, at 6:00 PM.)

3 (Whereupon, the following proceedings were held on  
4 April 25, 2017, beginning at 9:49 AM.)

5 **BAILIFF:** All rise. Court is now in session.

6 **THE COURT:** Good morning. Folks, I got word  
7 yesterday afternoon before I left for the day that there  
8 was a pending motion I think regarding the testimony of  
9 the victim. I'm not sure. I sent word back that I would  
10 be here at 9:30 to hear the motion to get the jury in by  
11 ten. I got word this morning that subsequent developments  
12 or discussions or something had shortened the time for  
13 that, but nobody came in and told me they were ready to  
14 hear the motion, so instead of waiting on you-all, I was  
15 gonna come out here and make sure that we're on the right  
16 page.

17 Where are we in regard to any motions in that regard?  
18 Mr. Phillips, I guess it's your motion. Or Mr. Chehoski?

19 **MR. PHILLIPS:** Yes, Your Honor. Where we left off  
20 yesterday was the admissibility the cell phone records.

21 **THE COURT:** Right. We left off with the admissibility  
22 of cell phone records and what I think I indicated was  
23 that since they were not gonna be introduced until Thursday  
24 that we would set aside time to do that at some point in  
25 time between now and then, but then I got the impression

1 that there was another motion regarding the testimony of  
2 the victim. Am I wrong about that?

3 **MR. PHILLIPS:** Mr. Chehoski can explain. I think it  
4 was directed to him.

5 **THE COURT:** All right, Mr. Chehoski.

6 **MR. CHEHOSKI:** Your Honor, it's my understanding that  
7 after -- after the pre-trial hearing yesterday in which  
8 Mr. Hunter testified that the victim is now gonna be able  
9 to identify through in-court identification of Mr. Hunter.  
10 Doing some research of the case law, I came across State v.  
11 Lewis, which is 363 South Carolina 37, and also at 609 SC  
12 2nd 515. If I may approach?

13 **THE COURT:** Yes, sir, please.

14 **MR. CHEHOSKI:** Your Honor, on the third page of the  
15 case I handed up to you, the last paragraph, the courts  
16 are holding that a Neil v. Biggers hearing does not apply  
17 to a first time in-court identification.

18 **THE COURT:** Right.

19 **MR. CHEHOSKI:** However, I feel in order to preserve  
20 the record I have to ask for an in-camera hearing to  
21 address the reliability of it. Even though it's a first  
22 time in-court identification, I think that the environment  
23 being that Mr. Hunter is sitting at defense table  
24 surrounded by -- by counsel it is highly suggestive and  
25 would taint the reliability of the in-court identification.

1 And so even though I think the case law is pretty on point  
2 in order to preserve the record, I feel I have to at least  
3 request a hearing on it.

4 **THE COURT:** I understand. Thank you, Mr. Chehoski.  
5 Ms. Mayes?

6 **MS. MAYES:** Yes, sir, Your Honor.

7 Yesterday after the Defendant's testimony in the  
8 Jackson v. Denno, the victim confided in the victim  
9 advocate, who was seated beside her, that this was the  
10 first time she was seeing his face full on and the first  
11 time she was hearing his voice. She disclosed that she  
12 recognized his voice, that she was sure it was the same  
13 voice, that she recognized the eyes of the -- of the  
14 assailant and that she was sure it was him. She had  
15 previously indicated following a hearing about ten to  
16 twelve days ago where she was only seeing him from the  
17 side view as he entered the courtroom and then approached  
18 -- approached towards the bench, that the physical stature  
19 and height was the same or that there was nothing different  
20 with the physical stature or height. This was the first  
21 time she was seeing the full face and hearing the voice.  
22 I believe she indicated the only thing that may be  
23 different is that he may have gained a few pounds since  
24 he's been incarcerated, which has also been confirmed by  
25 Investigator Griffin in terms of appearance. But we did

1 disclose that yesterday following her disclosure to us.

2 In terms of the Neil v. Biggers, Your Honor, it's  
3 definitely not State action in terms of any type of  
4 suggestive lineup or identification procedure initiated  
5 by law enforcement. It's a court proceeding that she has  
6 a constitutional right to attend and take part in. We  
7 leave it in the Court's discretion if you do feel that an  
8 in-camera hearing is needed.

9 **THE COURT:** Let me look at the Lewis case and see  
10 what it says. Mr. Chehoski, you're correct, I think, in  
11 the analysis of the Lewis case. The Court is unequivocal  
12 in its conclusion that Neil versus Biggers does not apply  
13 to in-court identifications and that the remedy for any  
14 alleged suggestings of an in-court identification is  
15 cross-examination and argument. The exclusionary rule has  
16 not been extended to in-court ID procedures that are  
17 suggestive because of a trial setting and the conclusion  
18 was expanded in the paragraph that you referred me to  
19 earlier. Accordingly, we conclude that Neil versus  
20 Biggers, that is a pretrial identification hearing, does  
21 not apply to a first time in-court identification because  
22 the judge is present and can adequately address relevant  
23 problems, the jury is physically present to witness the  
24 identification rather than merely hearing testimony about  
25 it, and cross-examination offers defendants an adequate

1 safeguard or remedy against suggestive examinations,  
2 therefore, the Court of Appeals properly concluded that  
3 this trial court did not err.

4 I see nothing in this particular situation that we're  
5 talking about given the similarity with the facts of the  
6 case in Lewis and what we have here today; that is, the  
7 victim in that particular case had looked at the -- at  
8 the assailants and one of the victims identified the two in  
9 court for the first time, so the record is preserved for  
10 appellate review in that regard, but I can see nothing in  
11 the facts that would cause me to deviate from the Court's  
12 conclusion in the Lewis case.

13 **MR. CHEHOSKI:** Thank you, sir.

14 **THE COURT:** All right. Thank you. All right.

15 **MR. PHILLIPS:** As a secondary issue, her testimony  
16 will naturally elicit the fact that he testified in a  
17 pretrial hearing in which he has a right not to testify  
18 in front of that jury.

19 **THE COURT:** Right.

20 **MR. PHILLIPS:** I guess we can address that issue at  
21 the time, but just in due candor to the Court that will be  
22 an issue that we'll have to address.

23 **THE COURT:** Well, of course, you can. It doesn't --  
24 depending upon how much in detail either side wants to  
25 go in eliciting the information that led to the in-court

1 identification. Of course, Mr. Hunter, as everybody  
2 knows, the jury and everybody else, you've been here all  
3 day yesterday, and for all that the jury knows the victim  
4 could have been sitting back there behind that two-way  
5 window and looking at him or could have observed him in  
6 this courtroom at some -- at any point in time. I don't  
7 think it's necessary to develop the nature of the hearing  
8 or the fact that he was testifying to -- to get before this  
9 jury the fact that she had seen him in court where he has  
10 been the whole time. I'll allow -- you-all can develop  
11 that, but I don't think that necessarily --

12 **MR. PHILLIPS:** So for clarification purposes, would  
13 it be limited to the fact that she is identifying him  
14 based on the eyes and the voice, but not identifying  
15 specifically that he was testifying on the witness stand?

16 **MS. MAYES:** We could certainly work around that,  
17 Your Honor.

18 **THE COURT:** Right.

19 **MS. MAYES:** I think we could -- I could phrase the  
20 question did she -- was she present for court proceedings,  
21 yes, and did those court proceedings involve hearing his  
22 voice, yes.

23 **THE COURT:** Right.

24 **MS. MAYES:** In the context of more than just a word,  
25 but did you hear his speaking voice in the course of

1 conversation, yes.

2           **THE COURT:** All right. That seems to clear it up,  
3 I think. The jury, of course, has no idea about what went  
4 on yesterday and I think that that would be a sufficient  
5 way to sanitize it so it would be the fact that he was on  
6 the stand and testifying does not come before this jury or  
7 at least not through the State's presentation.

8           All right. We still have, as we talked about earlier,  
9 the issue the cell phone records and I think we dealt with  
10 that yesterday. I assume -- Ms. Gilreath, is your expert  
11 still going over those things? Is he still looking at  
12 those records?

13           **MS, GILREATH:** He is, Your Honor, but I think he's  
14 provided enough. I think we can actually simplify this  
15 to some degree and then depending on the Court's ruling  
16 -- I think I was going a real long way around what could  
17 actually be a very simple issue depending on the Court's  
18 ruling on that and then what the State intends to  
19 introduce --

20           **THE COURT:** Okay.

21           **MS. GILREATH:** -- it could bring us back to a little  
22 bit more complicated, but I think we've kind of whittled  
23 it down to a little bit of a simpler issue than what we  
24 originally were looking at.

25           **THE COURT:** Okay. Still though I think probably we

1 should set aside some time to do that during the trial  
2 and not try to do it this morning. Is that fair to say?

3 **MS. GILREATH:** That's fine, Your Honor.

4 **THE COURT:** What, do you-all still want to -- do you  
5 want to put your heads together on that?

6 **MR. PHILLIPS:** The one issue we discussed is at this  
7 point the jury hasn't been sworn. If the necessary -- if  
8 the need becomes available that we have to call our expert  
9 witness to refute it, we could possibly lose last argument,  
10 which is obviously a strategic decision, and -- but now we  
11 don't -- we don't lose that.

12 **MS. GILREATH:** Essentially during a hearing outside  
13 the presence of the jury.

14 **THE COURT:** Right.

15 **MR. PHILLIPS:** So if Your Honor's willing to say that  
16 during an in-camera hearing if our expert testifies that  
17 doesn't waive last argument, then we have no objection to  
18 that.

19 **THE COURT:** You know, that's -- that's a new case  
20 that -- let's don't tell the Beatty folks out there, that  
21 will confuse the issue even more if I put that in, but I  
22 wouldn't think that an in-camera hearing any more than the  
23 Jackson v. Denno issue yesterday would cause you to lose  
24 your last argument.

25 **MR. PHILLIPS:** Thank you, Your Honor.

1           **MS. GILREATH:** Thank you, Your Honor.

2           **THE COURT:** All right.

3           All right, folks. Are we ready for the jury now?

4           **MS. MAYES:** We are, Your Honor. And then our first  
5 witness will involve the playing of the 9-1-1 audiotape  
6 and so it will take a few moments for Investigator Sullivan  
7 to set up -- once it's actually marked in front of the  
8 jury, it will take a few moments to actually set that up.  
9 Or we could pre-mark it if there's no objection?

10           **THE COURT:** Let's go ahead and get those things  
11 pre-marked. I talked about the photographs yesterday to  
12 try to save some time in that regard. If you haven't had  
13 time to do that yet, let's don't forget about that because  
14 this case is gonna last long enough without having each  
15 individual photograph marched across this courtroom three  
16 or four times.

17           **MS. MAYES:** And, Your Honor, that entire box there  
18 with Ms. Grigsby contains photographs that are available  
19 for review and she is just going to keep track of them.  
20 I believe we probably have about ten to fifteen that we  
21 would pre-mark before the victim testifies, but we don't  
22 expect that to happen until closer to lunch.

23           **THE COURT:** Okay. Good.

24           Have you got that 9-1-1- tape marked?

25           **THE COURT REPORTER:** I'm doing it now.

1 (State's Exhibit Number 1 was marked for  
2 identification.)

3 **MS. MAYES:** If there's no objection to this exhibit,  
4 Investigator Sullivan will go ahead and get it set up.

5 **THE COURT:** All right. Any objection?

6 **MR. PHILLIPS:** Is that the 9-1-1 call from  
7 Ms. Green?

8 **MS. MAYES:** Yes.

9 **MR. PHILLIPS:** No objection.

10 **THE COURT:** Thank you.

11 (State's Exhibit Number 1, a 9-1-1 recording, was  
12 admitted into evidence.)

13 **THE COURT:** Who will open for the State?

14 **MS. MAYES:** Mr. McNair.

15 **THE COURT:** And who will open for the defense?

16 **MR. PHILLIPS:** Myself, Your Honor. Dayne Phillips.

17 **THE COURT:** Okay. Thank you.

18 **MR. PHILLIPS:** And, Your Honor, a reminder of the  
19 sequestration order.

20 **THE COURT:** The sequestration order will go into  
21 effect immediately after the conclusion of the opening  
22 statements, okay?

23 **THE COURT:** Okay.

24 **MS. MAYES:** Your Honor, the defense has indicated no  
25 objection to this series of photos, which would be seven

1 in total, that will most likely be offered at least in  
2 part through the next few witnesses.

3 **THE COURT:** Okay. The 9-1-1 is State's 1?

4 **THE COURT REPORTER:** Yes.

5 **THE COURT:** Okay. And the photos will be 2 through 8?

6 **MS. MAYES:** Yes, sir, Your Honor.

7 **MR. PHILLIPS:** And just one clarification.

8 **THE COURT REPORTER:** Hang on. Excuse me.

9 **MR. PHILLIPS:** I'm sorry.

10 (State's Exhibit Number 2 through 8 were marked for  
11 identification.)

12 **THE COURT:** Mr. Phillips?

13 **MR. PHILLIPS:** My apologies, Your Honor. We forgot to  
14 ask who took the photographs. We made the pretrial motion  
15 regarding all evidence related to Charles Bramlett, who has  
16 since deceased, as far as laying the foundation of who took  
17 the photographs and accurately depict. It's my fault for  
18 not asking when I said that we wouldn't object to it, but  
19 we would be waiving that argument if he was the person who  
20 took those photographs.

21 **THE COURT:** I will allow those to come in subject to  
22 your objection to Mr. Bramlett's testimony being offered  
23 or any evidence that results from his testimony? Is that  
24 fair to say?

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

1           **THE COURT:** Okay. I think I've ruled on that already,  
2 so that --

3           **MR. PHILLIPS:** Yes, sir. Thank you, Your Honor.

4           **THE COURT:** All right.

5           **MS. MAYES:** And, Your Honor, we do believe the  
6 photographs can be independently established by other  
7 witnesses as a fair and accurate representation of the  
8 scene.

9           **THE COURT:** And certainly I'm sure you'll do that.  
10           (State's Exhibit Number 2 through 8, photographs, were  
11 admitted into evidence.)

12           **MS. MAYES:** One more matter briefly, Your Honor,  
13 regarding the sequestration order. We have currently  
14 sequestered the evidence custodian, but there is a large  
15 amount of evidence, both physical evidence and forensic  
16 evidence, and it may be beneficial to judicial economy to  
17 have that person in here.

18           **THE COURT:** Yeah, the evidence custodian, of course,  
19 is not the type of witness that we try to hide from the  
20 testimony. In most instances the evidence custodian  
21 testifies about his or her own knowledge of the custody  
22 of the exhibits and things of that nature. I will not  
23 require that the sequestration order apply against the  
24 evidence custodian.

25           **MS. MAYES:** We'll go ahead and bring her in with the

1 evidence and have her seated here on this front row to  
2 make the evidence available to both parties.

3 **THE COURT:** Okay. That will be good.

4 **MR. PHILLIPS:** And we would say that subject to  
5 our objection based on evidence in this case and the  
6 collection of it being an issue that we moved to suppress,  
7 Your Honor.

8 **THE COURT:** I understand. I think there's a  
9 difference between the collection of evidence and the  
10 custodial nature of the evidence, but I will note your  
11 objection in that regard.

12 **MR. PHILLIPS:** Thank you, Your Honor.

13 **THE COURT:** Thank you.

14 **THE COURT:** All right. Can we get -- while the  
15 jury's coming in, can she come in? Is that gonna be a big  
16 issue?

17 **MS. MAYES:** I believe she's just moments away.

18 **THE COURT:** Okay.

19 **MS. MAYES:** Or we can have her wait. Whichever you  
20 prefer.

21 **THE COURT:** If she's here, I'll wait a minute on her,  
22 if she's on the way. I didn't know how much of an exercise  
23 it was gonna be to get all of the evidence in. If it's  
24 real bulky and a whole lot of it, I'd just rather wait and  
25 let the jury come in after she's here.

1           **MS. MAYES:** I believe they're in the process of moving  
2 it over right now.

3           **THE COURT:** Okay.

4           **MS. MAYES:** We'll go ahead and proceed, Your Honor.  
5 We're gonna ask her to wait until the jury's seated.

6           **MR. McNAIR:** She's right here.

7           **THE COURT:** Which is it?

8           **MR. McNAIR:** They're right here.

9           **THE COURT:** All right. Is the State ready to proceed?

10          **MS. MAYES:** Yes, Your Honor.

11          **THE COURT:** Is the defense ready?

12          **MR. PHILLIPS:** Yes, Your Honor.

13          **THE COURT:** Thank you. You may bring in the jury.

14           (Whereupon, the jury enters the courtroom at  
15 10:12 AM.)

16          **THE COURT:** Mr. Warren, if you will sit in that first  
17 seat right here. I'll tell you why in a minute. You've  
18 probably figured it out.

19           Mr. Warren, I've asked you to occupy that chair, sir.  
20 I want you to serve as the foreman of the jury. That means  
21 you will be the jury's spokesperson here in court. When  
22 the trial is over, you will be responsible for writing the  
23 verdict of the jury, but I'll tell you more about that.  
24 You don't have to worry about that now. All you need to  
25 remember is you've got a reserved chair right there. You

1 will occupy that chair throughout the course of the trial.  
2 Ms. Johnson and Mr. Kinder, as alternate jurors, you will  
3 sit in those two chairs throughout the trial of this case  
4 unless at some point I ask you to sit somewhere else. The  
5 rest of you folks you've got general admission tickets.  
6 You've just got to do the best you can when you come in  
7 from time to time. I tell jurors though it's always a good  
8 idea to do what you did this time, move all the way down  
9 and don't leave an open chair behind you. There's not  
10 enough room to do a whole lot of crossing over, so it's  
11 always good to fill in the chairs as you come to them and  
12 not leave an open chair beyond you for somebody to step on  
13 your feet to get to.

14 Ladies and gentlemen, you're gonna be sworn in now as  
15 jurors. I want you to pay particular attention to the oath  
16 you're about to take. It is a time honored and an artfully  
17 worded oath that explains to you very completely, but at  
18 the same time very concisely what your responsibilities are  
19 as jurors in this case. I will be reminding you during  
20 this trial and, indeed, after this trial as to exactly what  
21 you are sworn to do. So please listen to the clerk now as  
22 she administers the oath.

23 Madam Clerk.

24 **THE CLERK:** Please stand and raise your right hand.

25 (Whereupon, the jury was duly sworn by the Clerk of

1 Court.)

2 **THE CLERK:** You may be seated.

3 **THE COURT:** Folks, let me take just a few minutes to  
4 explain to you briefly what the process will be that we  
5 will follow throughout the course of this trial and explain  
6 to you what your responsibilities as jurors will be during  
7 the course of this trial. In just a minute when I finish  
8 talking to you, Mr. McNair, on behalf the State, is going  
9 to stand before you and make a brief opening statement and  
10 in that opening statement he is going to outline for you  
11 in something of a preview fashion what this case is about  
12 from the State's perspective, from the State's point of  
13 view. He may also indicate to you some of what the State  
14 intends to offer by way of proof in support of the  
15 indictments the State has brought in this case that I read  
16 to you yesterday. After Mr. McNair has finished the  
17 opening statement on behalf of the State, the Defendant,  
18 Mr. Hunter, has a right to make an opening statement, but  
19 he is under no obligation to do that, and I'll tell you why  
20 in just a moment.

21 After the opening statements have been made, then you  
22 will begin to see and hear the presentation of evidence.  
23 The State will present its evidence first. Evidence for  
24 the most part will take the form of testimony of witnesses  
25 who will take an oath and sit right here in this chair

1 between you and me and answer questions that the lawyers  
2 from both sides will put to them. Evidence will also take  
3 the form of photographs and diagrams and charts and things  
4 of that nature that will come into evidence in a case of  
5 this nature. As I said, the State will put in its evidence  
6 and testimony first and after the State's put in its  
7 evidence and testimony, Mr. Hunter has a right to offer  
8 evidence and testimony, but he is under no obligation to do  
9 that, and I'll tell you why in just a minute.

10 After all of the evidence and testimony has been  
11 presented to you, then the lawyers will come back before  
12 you and they will make their closing arguments, their final  
13 statements they're sometimes called, and in those closing  
14 arguments they're allowed to summarize the evidence that  
15 you have seen and heard and to submit to you conclusions  
16 that they think you should draw from that evidence and  
17 after that has been done, then I will instruct you or  
18 charge you as to what the law is and then you will be able  
19 to go back in that jury room and start talking about this  
20 case among yourselves, to discuss it, to deliberate and to  
21 reach a verdict.

22 As I told you yesterday, and I'll remind you again  
23 now, and every time before you leave this courtroom I'll  
24 remind you again, that you're not allowed to discuss this  
25 testimony among yourselves during the trial and you

1 certainly can't discuss it with anybody else for reasons  
2 that I made plain to you yesterday and I need not repeat  
3 it to you now. The reason you can't discuss it among  
4 yourselves is this. It might seem logical to you, you  
5 hear some testimony out here that's fresh in your mind  
6 and you go back into the jury room for a break and you've  
7 got questions and you want to ask each other about those  
8 questions and try to get them resolved at that time. You  
9 can't do it then because it might happen, I don't know  
10 whether it will or not, but it might happen that later in  
11 the trial of the case you hear some other evidence that's  
12 different from what you've already heard, different from  
13 what you've started to talk about, different from what  
14 you've started to make up your mind about, but if you  
15 start and discuss that earlier evidence you're not likely  
16 to receive that later evidence with an open mind, and so  
17 we ask you to keep an open mind throughout this entire  
18 process. That's the reason you can't talk about it among  
19 yourselves. When it's over, the trial is over, you can  
20 talk about it as long as you want to, but not until then.

21 Now, ladies and gentlemen, I told you and you just  
22 took an oath to well and truly try this case and decide  
23 it on the basis of the evidence. Let me tell you that  
24 the opening statements that you will hear are not evidence  
25 and the closing statements that you'll hear, they're not

1 evidence and the questions that will be asked, they're  
2 not evidence either. Now all of those things are  
3 important to this process and we would not be able to  
4 have a very orderly trial if we didn't have those things,  
5 but they themselves are not evidence. The evidence is  
6 not the question. The evidence is the answer that comes  
7 from a witness right here who takes an oath to tell the  
8 truth and whose answers are tested by the test of  
9 cross-examination and direct examination, that's the  
10 evidence, along with those items and those documents that  
11 I mentioned to you a moment ago.

12 The reason that it's important that you understand  
13 the distinction between what is evidence and what is not  
14 evidence is this. When it comes to the matter of  
15 evidence, ladies and gentlemen, you actually serve as  
16 judges. Those badges that you wear say juror, but in  
17 truth, as to the matter of evidence, those badges should  
18 say judge because you're the judges of the evidence,  
19 you're the judges of the facts. You have to determine the  
20 facts of the case. I've got the easy job. All I've got  
21 to do is to decide as a matter of law whether you can hear  
22 somebody tell you something from this witness chair or not  
23 or whether you can look at an item of evidence or not, but  
24 once I decide that you can hear the testimony or look at  
25 the evidence from that point on what you do with it is

1 entirely up to you. You've got to believe it -- you've  
2 got the right to believe it or not to believe it. You've  
3 got to the right to decide the weight and value. So you  
4 have to decide the truth, the weight and the value of the  
5 testimony that you will be hearing in this courtroom.  
6 You're capable of doing that.

7 You have probably never served as a juror in your  
8 life before, but the fact that you have gotten to this  
9 point in your life to be whatever age you are, if you've  
10 got a family, if you've got a job, and you've certainly  
11 had experiences in life, all of those things that you have  
12 in your individual lives and in your individual core of  
13 experience, you bring them to bear on what you hear in  
14 this courtroom and when you do that you'll be able to  
15 decide what the facts of this case are. And once you've  
16 decided what the facts of the case are, you will apply the  
17 law that I will give you to those facts and those two  
18 things will come together to result in a verdict which  
19 will speak the truth of this particular case.

20 Now I told you a few moments ago that the Defendant  
21 in this case does not have to offer evidence and testimony,  
22 does not have to make an opening statement, and the reason  
23 for that is this. As I told you yesterday, Mr. Hunter has  
24 pled not guilty to the charges in these indictments and  
25 under our law when somebody pleads not guilty to the

1 charges in criminal indictments that person is presumed  
2 to be not guilty, presumed to be innocent, in fact, under  
3 the law. When we say that somebody is presumed to be  
4 innocent, that means that he does not have to prove his  
5 innocence. He does not have to take this stand and try to  
6 convince you that he did not do the things he's accused of  
7 doing. He doesn't have to bring in a parade of witnesses  
8 to sit in this chair and try to make you believe that he  
9 did not do those things. He is presumed not to have done  
10 those things. He is presumed to be innocent. And so the  
11 burden of proof then rests on the State, not just in this  
12 case but in every case in this court. The burden of proof  
13 is on the State to prove to the satisfaction of each of  
14 you that the Defendant is guilty of these charges beyond a  
15 reasonable doubt. As I say, the Defendant has no  
16 obligation to prove his innocence. The State has the  
17 obligation of proving his guilt beyond a reasonable doubt.

18 Now when the trial is over, I'm gonna tell you in a  
19 little bit greater detail what we mean by proof beyond a  
20 reasonable doubt, but let me tell you right now for our  
21 purposes at this early stage of the proceedings proof  
22 beyond a reasonable doubt is proof that leaves you firmly  
23 convinced of the Defendant's guilt. And so after you have  
24 heard all of the evidence and testimony in this case and  
25 the law that I'll instruct you if you go to that jury room

1 firmly convinced that the Defendant is guilty, the State  
2 has met its burden of proof and would be entitled to a  
3 verdict of guilty at your hands. But on the other hand  
4 after hearing all of the evidence and testimony and the  
5 law that I will instruct you if you go into that jury room  
6 and still find that there's a real possibility that he's  
7 not guilty, the State has not met its burden of proof and  
8 the Defendant in that case would be entitled to a verdict  
9 of not guilty.

10 So you're gonna be listening to the testimony and  
11 looking at the evidence. It's gonna take a couple or  
12 three days to get this case before you, I'll tell you that  
13 right now that, because there's a lot to be shown to you  
14 and lot to testify about and there are several charges, of  
15 course, that the State has to deal with in this particular  
16 case and so it's gonna take a while to get the evidence  
17 and testimony before you. But when it's all in and when  
18 you go back into that jury room and start your  
19 deliberations, you're gonna talk about this case among  
20 yourselves and you're gonna decide whether or not the  
21 State has met its burden of proof and you'll indicate your  
22 opinion as to whether or not the State has met its burden  
23 of proof by writing a verdict that says we find the  
24 Defendant guilty or we find the Defendant not guilty  
25 according to your view of the evidence and the law that I

1 will instruct you on.

2 Thank you, folks, for your attention to these remarks  
3 and please listen to the lawyers as they make their opening  
4 statements.

5 Mr. McNair.

6 **MR. McNAIR:** Thank you, Your Honor. May it please  
7 the Court?

8 **THE COURT:** Yes, sir.

9 **MR. McNAIR:** Ladies and gentlemen, this is a case  
10 about a nightmare come true. On April 13, 2014, Larenda  
11 Simon and her six-year-old daughter, Minor , were asleep  
12 in their own bed around 3 AM in the morning when Larenda  
13 happened to open her eyes and at the foot of her bed was  
14 a man with a mask and a gun. Larenda immediately started  
15 pleading with the man please, we don't have anything, we  
16 don't have anything, it's just me and my daughter. But he  
17 wasn't there to steal their possessions, he was there for  
18 them. He pointed his gun at Larenda, told her to get  
19 undressed. She begged him can my daughter please go into  
20 the other room because she knew what was about to happen.  
21 He ordered her daughter to go into the closet in the  
22 bedroom. As Larenda got undressed, she told him she was on  
23 her menstrual cycle. He didn't believe her at first. When  
24 he realized she was telling the truth, he asked her how old  
25 her daughter was. She said please, she's only a baby. He

1 then did the unimaginable. He made **Minor** come out of the  
2 closet and get undressed.

3 As **Minor** stood there naked, terrified, not even  
4 understanding what was about to happen, what was going on,  
5 he started pulling out his penis getting ready to ravage  
6 her. At that point Larenda Simon made the decision that  
7 she was not gonna let that happen, that she was not gonna  
8 let him do that to her daughter and that she was gonna stop  
9 him, that she was willing to lay down her own life to stop  
10 him.

11 She jumped off the bed, lunged for him, grabbed the  
12 gun. A shot went off in the bedroom going through her  
13 hand. A life and death struggle then ensued. She was  
14 able to force him out of the bedroom, force him into the  
15 bathroom, pin him on the floor. They're still struggling  
16 over the gun. He's popping off shot, after shot, after  
17 shot, after shot. She's shot four times in the bathroom.  
18 As she's full of bullet holes, bleeding, losing strength,  
19 he's able to break free and stand up. She refuses to let  
20 go of him though because she still thinks he's trying to  
21 get to the bedroom to get her daughter.

22 During that struggle she's able to rip off a hoodie  
23 that he was wearing and a stocking cap. He's then able to  
24 get out of the bathroom. He starts heading towards the  
25 unlocked sliding glass door that he came in through.

1 Larenda follows him out and pushes him out the door. She  
2 doesn't have a phone to call 9-1-1 because he had taken  
3 her phone when he first entered the bedroom. She's naked,  
4 she's bleeding. Her daughter's naked. They have to go  
5 outside frantically knocking on neighbors' doors hoping  
6 somebody answers and calls 9-1-1. She finally makes it to  
7 the apartment of Tiffany Green who lets her in and calls  
8 9-1-1. She's transported to Palmetto Health, undergoes  
9 emergency surgery, and she survives. She's here today to  
10 testify.

11 West Columbia Police Department responds. They  
12 collect that hoodie that she ripped off and that stocking  
13 cap in the bathroom. They send it to SLED, SLED takes a  
14 DNA swab of that cap, runs it through their DNA database  
15 and it comes back as a match to Nathaniel Hunter. About  
16 the same time SLED was processing that cap, West Columbia  
17 Police Department receives notification that this guy  
18 named Nathaniel Hunter has been calling SLED and other  
19 state agencies asking how to get his DNA removed from the  
20 database days after this incident. Frantically calling.

21 His DNA had been in that database since October of  
22 2004. All of a sudden, days after this incident, he's  
23 called repeatedly to try to get that DNA removed. Who  
24 else would do that other than a man who knew he left his  
25 DNA at the crime scene?

1           You're also going to hear in this trial from Tanisha  
2 Taylor. She was the Defendant's cousin, roommate, who he  
3 was living with at the time. Tanisha Taylor told the  
4 police that he wasn't home that night, but that he came  
5 in about 4:00 that morning and when he came in the first  
6 thing he did was start doing laundry and go in the  
7 bathroom to wash up. She also said he had cuts on his  
8 head that he didn't have the night prior. She then  
9 overhears him -- her daughter ask the Defendant what  
10 happened. The Defendant tells her daughter some story  
11 about oh, I was play fighting with your momma, but  
12 Tanisha Taylor knows that's not correct, that was a lie.  
13 She also told law enforcement that Mr. Hunter had a 40  
14 caliber Glock that he kept at her place. Well, all of the  
15 shell casings found at the scene, the five shell casings  
16 and a projectile, was from a 40 caliber weapon.

17           Law enforcement eventually obtains his phone, his  
18 cell phone, and they search his phone. And on that phone  
19 are pictures of him holding that 40 caliber Glock. On  
20 that phone are searches that occurred right after this  
21 incident where he's looking --

22           **MR. PHILLIPS:** Your Honor, we have a matter of law.

23           **THE COURT:** Yes, sir. There's still some evidentiary  
24 issues regarding the phone records and I would suggest that  
25 we not go any deeper into those at this point in time.

1 Thank you. I note your objection. Thank you.

2 **MR. McNAIR:** Four days after this incident on the  
3 17th whenever law enforcement locates the Defendant,  
4 attempts to arrest him, he flees from the police. They  
5 have a short vehicle chase and eventually catch him. Law  
6 enforcement notices he has marks on his face at that time  
7 indicative of a struggle. They then take them to the  
8 police department to talk to him. They confront him with  
9 the fact that his DNA is at the crime scene. His excuse  
10 is that he gave his clothes to a crackhead or sold them  
11 to a thrift store. He then tries to start bargaining with  
12 investigators and ask them hey, if you give me a deal,  
13 I'll tell you what happened.

14 But they didn't give him a deal. He's charged with  
15 attempted murder, burglary in the first degree, criminal  
16 sexual conduct with a minor in the third degree,  
17 possession of a weapon during the commission of a violent  
18 crime. We have to prove all of these crimes beyond a  
19 reasonable doubt. That is a burden we welcome and we'll  
20 meet that burden.

21 I want to talk to you now about reasonable doubt.  
22 Everybody's heard that standard, but a lot of people  
23 have misconceptions about what that really means. I  
24 was listening to the radio the other day and I heard a  
25 commentator say the State didn't prove their case beyond

1 a shadow of a doubt. That's not the standard. It doesn't  
2 mean that we have to prove our case beyond all doubt or  
3 any doubt. There are very few things in this world that  
4 we can be certain about beyond -- with absolute certainty  
5 and the law does not require that. The law requires that  
6 after we present evidence to you that you are firmly  
7 convinced of this Defendant's guilt and, if you are,  
8 you've just taken an oath to find him guilty.

9 Ladies and gentlemen, I just ask that you have  
10 realistic expectations during this trial. Somebody that  
11 goes through a traumatic event like Larenda Simon  
12 obviously is probably not gonna remember every single  
13 little detail and certainly don't expect a six-year-old  
14 child who went through this to remember everything.  
15 That's not fair.

16 I'm about to sit down. All I ask is that through  
17 this whole process use your common sense just like you  
18 do in your everyday lives. Use your common sense to  
19 determine what's reasonable and what's not, what's fact  
20 and what's fiction, and determine what the truth is. At  
21 the end of this trial we'll come back before you and  
22 we'll ask you to return a verdict that speaks the truth  
23 and find Mr. Hunter guilty.

24 **THE COURT:** Thank you, Mr. McNair.

25 Mr. Phillips.

1           **MR. PHILLIPS:** Thank you, Your Honor.

2           Good morning. As a husband and the father of a  
3 little girl, there's nothing more terrifying than what's  
4 happened to Ms. Simon and her daughter. Our purpose of  
5 having this trial is in the defense of Nathaniel Hunter.  
6 He has been accused of these horrendous crimes. Now  
7 having said this, the reason we're here is because we are  
8 going to aggressively attack the prosecution's arguments  
9 and the police's testimony and this is not based on  
10 pure conjecture as you will see from the evidence that's  
11 presented on the witness stand.

12           The prosecution always has two options in giving an  
13 opening statement to you. They can either tell you  
14 everything, the good stuff and the bad stuff, or they can  
15 tell you only what they want you to hear. Ladies and  
16 gentlemen, let me be clear. There is a whole lot more to  
17 this case than what's been presented before you and you  
18 will be able to see it. We're not running from it. We  
19 are here. We are the ones who did not plead guilty. We  
20 are the ones who requested a jury trial. We are the ones  
21 who put our faith in each of you.

22           Thankfully in this country we have the right to a  
23 jury trial. We have those constitutional protections.  
24 Nate, if you could please stand up for me. It is his  
25 decision to be here. He has chosen through having faith

1 in this system, having faith that after you've seen all  
2 of the evidence you will come to a different conclusion  
3 than based on the story that you just heard. He has  
4 denied committing this crime from day one and has not  
5 wavered on it. Thank you, Nate.

6 The indictment in this case is the State versus  
7 Nathaniel Hunter. You heard the solicitor read it out  
8 aggressively at him. And you know why it stays the State  
9 versus Nathaniel Hunter? It is because the State is also  
10 on trial. You just heard from the judge that they have  
11 the burden of proof. That when a citizen's accused of a  
12 crime, they have to prove it. They have to do that with  
13 evidence. Not through arguments, but through evidence  
14 that's on the witness stand and that's presented to you.

15 This case is without a doubt an incredibly emotional  
16 one. One that anybody who hears the facts of this case  
17 cannot deny the pure emotions of this trial. The reason  
18 the Government's also on trial, when you read that  
19 indictment, the State versus Nathaniel Hunter, it's for a  
20 good reason. It's to protect us. The Government has all  
21 the power, all the resources, all the money to do what  
22 they did in this case, what they've done in many other  
23 cases. You can be accused of a crime, you can be arrested  
24 and your only constitutional protection to try to clear  
25 your name, to try to protect your freedom, is to request

1 a jury trial, to put your hands in the fate of twelve  
2 strangers. Your hands, ladies and gentlemen.

3 Now when you received the jury summons, odds are you  
4 didn't really want to come to court. That's just the fact  
5 of the matter. Odds are you probably didn't want to serve  
6 on this jury. Given the facts of when you heard what the  
7 allegations were in the jury selection, most likely what  
8 was going through your mind was I sure hope I don't have to  
9 serve on that jury. Well, you are here. You have been  
10 chosen. It wasn't random, it wasn't something that was  
11 happenstance. We chose you for a specific purpose. Based  
12 on the information provided, we believe that each of you  
13 will take this case seriously, will realize that a man's  
14 freedom is on trial. His whole life is on trial before  
15 you and it couldn't be any more serious and obvious based  
16 on the facts of the case. I can see that each one of you  
17 is taking this case seriously. You have paid close  
18 attention to both the prosecutor and myself. With that  
19 being the case, Nathaniel Hunter chose the jury trial and  
20 we chose you, and that is a very important part of the  
21 process of why we are here today.

22 Now we've all watched the news and we've seen someone  
23 who has been arrested of a horrible crime. Pretty much  
24 if you turn on WIS any given night, you're gonna see some  
25 type of crime that's horrible and that someone was

1 arrested for and many of us automatically assume that  
2 person is guilty by hearing a news clip, a ten second  
3 news clip, and that's just a natural reaction. But you  
4 swore today not to do that to Mr. Hunter. You swore  
5 before God an oath not to do that to Mr. Hunter. You  
6 swore to listen to all of the evidence, to not accept  
7 every argument you hear as true, but to be based off what  
8 is presented. I can't stress that enough. It's what's  
9 presented. Arguments and emotions can sway, but the  
10 evidence will lead you to the right conclusion.

11 Now the presumption of innocence, it gets thrown  
12 around a lot and it doesn't have a lot of meaning in and  
13 of itself, but when you listen and you think about what  
14 its purpose is there has been -- it's not just a phrase,  
15 it's not just an idea. Many Americans have fought and  
16 died through blood, sweat and tears to protect these  
17 constitutional freedoms, and that is part of the oath that  
18 you've given today. Simply put, you swore not to make  
19 assumptions. You swore not to take the prosecution's  
20 argument at a face value, that you were gonna hear the  
21 evidence and you are going to ask the questions necessary  
22 and listen to the answers as they are presented in making  
23 the right decision in this case.

24 During this trial there are important questions that  
25 must be answered and they go to three important parts;

1 credibility, responsibility and duty. Going directly to  
2 Tanisha Taylor that the solicitor brought up was going to  
3 confirm that he was washing his clothes -- or that he came  
4 home at 4 AM and that he was washing his clothes. Listen  
5 very carefully to her testimony, all right? Listen very  
6 carefully. Opening statements are not for argument and  
7 what I'm telling you is in these questions that must be  
8 answered, listen to Tanisha Taylor's answers and see what  
9 is the truth and see where she has been inconsistent.  
10 Look as to what her answers are going to be.

11 Why did the police record all the interviews of  
12 every witness in this case, but refused and made a  
13 conscious decision not to record the interview with  
14 Mr. Hunter? You didn't hear about that in the  
15 prosecution's opening statement. All witnesses have an  
16 audio recorded interview except for his. His statements  
17 could all be proven if they were recorded because the  
18 police are gonna get on that witness stand and say that  
19 he made a lot of very damning statements regarding, as the  
20 prosecution put it, deals. That could be unquestionable,  
21 undisputed if it was recorded. Why when they have issued  
22 audio recorders and they recorded every witness would  
23 they not record his statement? And they will admit on  
24 that witness that they made the conscious decision not to  
25 record it.

1           As to the DNA, this is very specific. Where was  
2 Mr. Hunter's DNA found? How was it found? What type of  
3 DNA was it? Was there any other type of DNA that was  
4 found in the place with his? Again, where was his DNA  
5 found? What type of DNA was it? Was there any other DNA  
6 found with it? That's very important.

7           Another important question. Why wasn't Mr. Hunter's  
8 blood, hair or fingerprints found anywhere in that home?  
9 During this trial you will see that they received. They  
10 were able to pull some latent fingerprints. Why wasn't  
11 Ms. Simon's blood or DNA found on anything in Tanisha  
12 Taylor's apartment or his car? Whose DNA is in the hoodie  
13 in this case? You will find that the hoodie found at the  
14 crime scene is very important. Whose DNA is found in that  
15 hoodie? Where was that DNA found? What is logically  
16 wrong with where -- the DNA that they say is Mr. Hunter's,  
17 what is logically wrong with that piece of evidence?  
18 Again, that goes back to the questions of where it was  
19 found, what type of evidence it was, how it was collected.  
20 Why would the Government not search or why would they  
21 limit their search on Mr. Nathaniel Hunter's cell phone  
22 to a very small amount of time? Why wouldn't they open  
23 it up to days, weeks before to see whether he had been by  
24 that area before? You will see in this case that there  
25 presumably is no connection between them. They had never

1 met before. Why would they limit it to just those hours  
2 of that day and not see days or weeks before to see if he  
3 had ever been by that area, that he had cased the joint  
4 so to speak? Why wouldn't they do that? Why would they  
5 make that limitation when they could prove their case?

6 Responsibility. Did the Government or the police  
7 in this matter fulfill their obligation, their duty to  
8 conduct a full investigation? In conducting a full  
9 investigation, the reason this obligation, this oath as  
10 an officer is important, is for two reasons. One, to  
11 make sure you catch the right guy and, two, you bring  
12 justice for the victim.

13 Talking about another nightmare. The Solicitor  
14 referenced nightmares. Another nightmare in this country  
15 is when an innocent person is arrested and convicted and  
16 imprisoned.

17 **MS. MAYES:** Objection, Your Honor, reference to  
18 sentencing.

19 **THE COURT:** I'll sustain that. The matter of  
20 sentencing, ladies and gentlemen, is not the prerogative  
21 of the jury, it's the prerogative of the Court. You're  
22 not concerned with that matter. Thank you.

23 **MR. PHILLIPS:** Knowing that Ms. Simon told the police  
24 that the voice sounded familiar and that she was receiving  
25 services from Sister Care, a place that treats women, why

1 didn't they look for any other suspects that were familiar  
2 to her? Why did they put on the blinders? The old story  
3 of the farm boy asking his dad why does the mule wear the  
4 blinders? Because I only want him to go where I want him  
5 to see. I want him to go in the direction I want him to  
6 see. Don't let the State put those blinders on you and  
7 lead you in the direction that they want. Don't let them  
8 tell you just one side of the story.

9 Why didn't the police check under Ms. Simon's  
10 fingernails? You will hear during her emotional testimony  
11 what a struggle it was. She was heroic. There's no doubt  
12 about it. She was heroic in protecting herself and her  
13 daughter. They didn't check under her fingernails for  
14 DNA. Why? During this struggle, during this scratch that  
15 they're gonna say came during this struggle on Mr. Hunter,  
16 why didn't they check under her fingernails for his DNA?  
17 It goes back to what DNA was found, where was it found,  
18 how was it found, how was it collected, what type, was  
19 there any other types of DNA found.

20 Why didn't the police investigate one of their  
21 initial suspects, Detavian Smith? That was one of the  
22 first names they received. You'll see that there's no  
23 other further investigation in this case regarding  
24 Detavian Smith. That was a name that was given to them by  
25 another police department. Why didn't they investigate

1 this person?

2 Why didn't the police track Ms. Simon's cell phone?  
3 Now there's some dispute I believe that we'll see whether  
4 the phone was lost that night or whether it was taken by  
5 the person that committed the crime. You'll see that the  
6 police never even tried to track her cell phone, never  
7 tried to pull the cell site location data. Let me  
8 rephrase. The police officer tells Ms. Simon at the  
9 hospital that he will track her phone, that they are  
10 tracking her phone. You'll see through testimony that  
11 that's what was said that they will do, but they never  
12 tracked her cell phone, they never pulled her cell site  
13 location data. Why? Why wouldn't they do that?

14 Last, but not least, duty. Have you fulfilled your  
15 sworn duty before this Court? Did you assume guilt after  
16 you heard the prosecution's opening statement? If you  
17 did, please reflect back on the sworn oath that you took  
18 before God and listen to the only evidence in this case.  
19 This is your chance to restart if you did. I know it's  
20 easy to do because it's such an emotional trial and at  
21 the end of it did hold the Government to its burden of  
22 proof beyond a reasonable doubt, firmly convinced based  
23 on the answers to all those questions?

24 This trial is a journey of faith. Nate had faith in  
25 your verdict before you were chosen. He's the one who

1 selected a jury trial. He's the one that didn't plead  
2 guilty. He chose a jury trial. We chose each of you.  
3 We know at the end of this case despite the Government's  
4 request you will choose the right choice by rendering a  
5 verdict of not guilty. Thank you.

6 **THE COURT:** Thank you, Mr. Phillips.

7 Ms. Mayes, you can call your first witness.

8 **MS. MAYES:** Yes, sir, Your Honor. The State calls  
9 officer Shawn Ludwig.

10 **THE COURT:** Come forward please, Officer Ludwig, and  
11 be sworn.

12 **MR. PHILLIPS:** Your Honor?

13 **THE COURT:** Yes, sir.

14 **MR. PHILLIPS:** We need to address a matter of law.

15 **THE COURT:** All right. Let's talk at sidebar.

16 (Proceedings held at the bench; not reported.)

17 **THE COURT:** Folks, excuse me. Sometimes when we talk  
18 about matters of law, I go over and huddle just like I did  
19 a minute ago to keep from having to send you out of the  
20 courtroom, and that's just what did. Our discussion over  
21 there does not involve your role, it does not involve you  
22 at all. That's the reason we didn't involve you in the  
23 discussion. We didn't mean to be rude by that. I always  
24 tell jurors that if you're real curious about what we're  
25 talking about over there behind your back, that if you're

1 real curious about that, when your role as a juror in  
2 this case is over if you'll come to me and ask me what we  
3 were whispering about and if I can remember what we were  
4 whispering about, I'll tell you. Thank you.

5 You can swear the witness.

6 **MR. PHILLIPS:** Your Honor, our sequestration request.

7 **THE COURT:** That's right. Sequestration is -- it  
8 should be reciprocal sequestration now in effect, okay?

9 (Whereupon, Shawn Ludwig was duly sworn by the Clerk  
10 of Court.)

11 **THE CLERK:** Please be seated. State your full name  
12 and spell your last name.

13 **THE WITNESS:** My name is Shawn McGill Ludwig, and the  
14 last name is L-U-D-W-I-G.

15 SHAWN MCGILL LUDWIG,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. All right. Good morning. And could you tell us a  
20 little bit about yourself? Where are you currently  
21 employed and in what capacity?

22 A. I'm currently employed at the Town of Lexington  
23 Police Department as a patrol officer. I started at  
24 West Columbia in 2007 as a dispatcher from 2007 to 2009  
25 and then from 2009 to 2016 I was a patrol officer with the

1 City of West Columbia.

2 Q. All right. And during that period of time from  
3 2009 to 2016 when you were with the City of West Columbia  
4 as a patrol officer, were you still involved in taking  
5 dispatch-type calls?

6 A. Yes, ma'am. At times our dispatchers would take  
7 breaks and the patrol officers who were NCIC-certified  
8 and dispatch-certified would go up there and relieve them  
9 for lunch.

10 Q. All right. And when you were at the City of West  
11 Columbia, and specifically I want to take you back to the  
12 timeframe of the early morning hours of April 13, 2014,  
13 can you tell us whether or not you would have been working  
14 in the capacity as a dispatcher in that timeframe?

15 A. Yes, ma'am.

16 Q. And do you have with you any records or call sheets  
17 relating to that date?

18 A. Yes, ma'am. I've got the CAD sheet from where I  
19 covered shift that night on dispatch.

20 Q. All right. So let's talk a little bit about the  
21 system that West Columbia had in place. If a 9-1-1 call  
22 is made, tell us a little bit about how that 9-1-1 call is  
23 preserved, specifically how the date and time of a 9-1-1  
24 call is preserved.

25 A. As the 9-1-1 call comes in, as soon as the call comes

1 in it immediately starts recording as the call comes in.  
2 Once I answer it, it generates a date and time of the  
3 time that I answered the phone. It is then preserved on  
4 a hard drive through the City of West Columbia, which at  
5 that time a -- there were specifically individuals,  
6 whether it be the major or the individual over the  
7 dispatch center at the West Columbia Police Department  
8 would be the only ones who could retrieve that file. Once  
9 we answer the phone, the recordings cannot be altered in  
10 any way, shape or form either by the call-taker or by the  
11 individuals in charge of retrieving that -- the audio from  
12 that 9-1-1.

13 Q. All right. And can you tell us whether or not there  
14 was a call during the early morning hours of April 13,  
15 2014, to respond to a location at [REDACTED] ?

16 A. Yes, ma'am, there was.

17 Q. And who was the dispatcher who took that call?

18 A. It was me.

19 Q. And just to clarify, that address of [REDACTED]  
20 [REDACTED], what type of residence or residential complex is  
21 that?

22 A. It's an apartment complex.

23 Q. Okay. And do you know the common name of that  
24 apartment complex?

25 **MR. CHEHOSKI:** Your Honor, I have an objection.

1           **THE COURT:** All right, sir. What's the objection?

2           **MR. CHEHOSKI:** Your Honor, we're objecting to the use  
3 of the easel by Ms. Mayes. We believe that is an improper  
4 creation of evidence.

5           **THE COURT:** The objection's overruled. Thank you.

6           **MR. CHEHOSKI:** Thank you, Your Honor.

7           A. The name of the complex would be [REDACTED]  
8 Apartments.

9           Q. All right. And specifically what time is noted for  
10 the call having been received?

11           A. The call was received on 9-1-1 through -- at 3:08 AM,  
12 the call card states 3:11, and the difference -- the  
13 discrepancy in the two of those is the fact that whenever  
14 we receive a phone call through 9-1-1 it generates a time;  
15 however, whenever we put the call itself into the CAD  
16 system or the call card, it will generate the time that I  
17 enter that call into the system, which I generated the call  
18 into the system at 3:11, so that's the difference in the  
19 times.

20           Q. All right. So this is going to be the early morning  
21 hours of April 13, 2014, and you said the call was actually  
22 received at 3:08 AM and then you entered it into the system  
23 at 3:11?

24           A. Correct.

25           Q. What were you actually doing at 3:08 up until 3:11?

1 A. I was dispatching units to the area of the incident  
2 location at [REDACTED], giving them as much  
3 information as I received from 9-1-1 and making phone calls  
4 to the fire department as well to get the first responders  
5 en route at the time.

6 Q. All right. So in addition to actually taking the  
7 call, whose responsibility is it to then send out units  
8 such as EMS and fire and other additional law enforcement?

9 A. It would have been my job to dispatch fire department  
10 and the police department would have then notified the EMS  
11 personnel to respond.

12 Q. All right. And have you had the opportunity, Officer  
13 Ludwig, to review the actual recording of the 9-1-1 call  
14 that occurred at 3:08 AM on the -- in the early morning  
15 hours of April 13, 2014?

16 A. Yes, ma'am.

17 Q. Specifically as to the apartment complex at [REDACTED]  
18 [REDACTED]?

19 A. Yes, ma'am.

20 Q. And having listened to that recording, can you tell  
21 us whether or not it's a fair and accurate representation  
22 of the call?

23 A. It is.

24 **MS. MAYES:** Your Honor, I believe this item is  
25 previously marked as State's Exhibit 1 in evidence. We

1 would request permission to publish.

2 **THE COURT:** You can publish it.. It is in evidence  
3 without objection.

4 BY MS. MAYES:

5 Q. Now there is a male voice on this recording, who is  
6 the male voice?

7 A. It is myself.

8 Q. And do you know -- or do the records indicate who the  
9 female voice is?

10 A. It would. I don't believe I got -- I believe it was  
11 a Tiffany. I don't -- I didn't get the --

12 Q. That would be the 9-1-1 caller, correct?

13 A. Yes, ma'am.

14 Q. And she was requesting that units or EMS respond to  
15 what location at apartment -- at the [REDACTED] Apartments?

16 A. At Apartment [REDACTED]-11. That would be [REDACTED] 11.

17 Q. Okay.

18 **MR. CHEHOSKI:** Your Honor?

19 **THE COURT:** Yes, sir.

20 **MR. CHEHOSKI:** I'd renew our objection and ask for a  
21 matter of law, please.

22 **THE COURT:** Ladies and gentlemen, let me send you to  
23 the jury room for just a moment, please. I've got a matter  
24 of law that I need to take up outside of your presence.

25 Please do not discuss this case among yourselves while

1 you're in the jury room. Thank you.

2 (Whereupon, the jury retires to the jury room at  
3 11:00 AM.)

4 **THE COURT:** Mr. Chehoski, what's the matter of law we  
5 need to deal with?

6 **MR. CHEHOSKI:** Yes, Your Honor. I apologize for  
7 having to disrupt the flow of the case to the jury, but I  
8 feel that it's important that the -- again, this is an  
9 artificial creation of evidence. It is -- out of judicial  
10 economy, it's actually gonna drag the trial out.

11 **THE COURT:** No, what's dragging it out is arguing at  
12 this point in time when I've told you at sidebar we would  
13 take up this argument in full out of the presence of the  
14 jury. This is not the creation of evidence. This is a  
15 demonstrative exhibit that is not gonna go to the jury.  
16 It is offered there -- as we all know, charts and diagrams  
17 are routinely put up there. It is a result of the  
18 witness's testimony being preserved in an orderly fashion  
19 for their understanding. It is not an exhibit that is  
20 created by -- or that comes out of the State's exhibit box  
21 or anything of that nature. It is not going to go to the  
22 jury. It is demonstrative evidence at the very most.

23 **MR. CHEHOSKI:** Yes.

24 **THE COURT:** Is there any reason why -- is that in  
25 dispute? Is that an issue that's in dispute?

1           **MR. CHEHOSKI:** Your Honor, what it does though is  
2 highlights the cumulative nature of the evidence and  
3 enhances the prejudicial effect to Mr. Hunter. It also  
4 is -- it also misleads the jury. It is incomplete. It's  
5 what the -- between what the officer is testifying to  
6 versus what's going on the board is much edited and,  
7 therefore, misleading.

8           **THE COURT:** Of course, it's not -- it's not a  
9 stenographic indication of everything that he's saying  
10 and certainly there are things that he's saying that don't  
11 show up on the exhibit, but tell me something, if you will.  
12 Tell me anything that is on the board that is inconsistent  
13 with his testimony.

14           **MR. CHEHOSKI:** Your Honor, it's really more for the  
15 argument of completeness.

16           **THE COURT:** You're saying that in order for this to  
17 be a legitimate item for this Court's consideration that  
18 Ms. Mayes has to write down everything that he says in  
19 order to satisfy the rule of completeness?

20           **MR. CHEHOSKI:** Your Honor, that's my argument, yes.

21           **THE COURT:** Have you ever in your life in all of your  
22 practice ever seen a judge require a document of that  
23 nature to be stenographic report of everything that the  
24 witness was saying?

25           **MR. CHEHOSKI:** Your Honor --

1           **THE COURT:** Any -- just -- well, I don't want to cut  
2 you off. I'm asking you is this something -- a novel  
3 thing that you're asking me to do for the first time in  
4 all of your practice or have you seen other judges who've  
5 granted that request?

6           **MR. CHEHOSKI:** Your Honor, this is the first time  
7 that I've asked it, but it's also one of the first times  
8 I've seen it be challenged as well.

9           **THE COURT:** Well, quite frankly, it's the first time  
10 I've ever seen it challenged as well. In the twenty-five  
11 years as a trial judge and nineteen years as a trial  
12 lawyer, I have never seen anyone request of a judge that  
13 a document of this nature cannot be used unless it's a  
14 stenographic report of everything that's said. And I  
15 appreciate the record preservation that we're avowed in  
16 this case and I understand that some cases are tried  
17 before a jury, some cases are tried for the appellate  
18 court, most cases are tried for both, but I want -- I  
19 want to set the ground rules right this minute. I don't  
20 send the jury out every time there's an objection to deal  
21 with it and I'm not gonna do it in this case because we  
22 obviously would never be able to finish it. I do just  
23 what I did a minute ago. I tell you at sidebar that I  
24 note your objection. I've got my notes down here. I've  
25 got them highlighted to deal with it out of the presence

1 of the jury so that we won't have to have this sort of  
2 interruption. If it's something that is so dramatic that  
3 it's gonna lead to a mistrial or something of that nature,  
4 I may decide to send them out, but if we're talking about  
5 evidentiary objections, which are rudimentary, something  
6 as basic as a demonstrative piece of evidence that is used  
7 in every trial of this nature in the world, I'm not gonna  
8 try to rewrite Whitmore's evidence rules before this jury  
9 or out of the presence of this jury to get this thing done.  
10 So that's the way we're gonna handle this and the record  
11 will be preserved at the end of the day. If I'm wrong on  
12 an issue like this, certainly the court can -- upstairs  
13 can deal with it. And as I said, if it is something so  
14 critical, so prejudicial that it is impairing your client's  
15 constitutional rights of some nature and should lead to a  
16 mistrial or a dismissal of these charges, I'll take that on  
17 the record, but not in this way.

18 Bring us the jury.

19 **MR. CHEHOSKI:** Thank you, Your Honor.

20 **THE COURT:** You're welcome.

21 See if the jury is ready to come back in, please.

22 (Pause in proceedings.)

23 **THE COURT:** I just got a request wanting to know if  
24 the jury could take notes. If the jury is gonna take  
25 notes, I normally instruct them at the outset as to the

1 restrictions and limitations and they take notes only  
2 during the testimony of the -- of the witnesses, not  
3 during opening and closing statements. The testimony has  
4 begun and I'm not inclined at this point in time to grant  
5 that unless both sides will agree they can take notes. If  
6 both sides agree, I'll let them take notes.

7 What says the State?

8 **MS. MAYES:** We leave that in the Court's discretion,  
9 Your Honor.

10 **THE COURT:** What says the defense?

11 **MR. PHILLIPS:** I say we leave it in the Court's  
12 discretion as well. Whatever the judge feels is fair.

13 **THE COURT:** Okay. In that case, I don't mind them  
14 taking notes. Frankly, you know, if they ask to take  
15 notes, I'll let them do it unless you-all have some  
16 objection. If you say no, I'm no gonna let them do it.

17 **MR. CHEHOSKI:** Your Honor, as we've already argued,  
18 it's in the Court's discretion and I'm sure it's the  
19 Court's policy that they're not able to take those notes  
20 anywhere outside of the courtroom or anything like that.

21 **THE COURT:** That's right. And certainly I'll do all  
22 of that, Mr. Chehoski. And, once again, Mr. Chehoski, I  
23 want to make sure that I'm not telling you that you can't  
24 object.

25 **MR. CHEHOSKI:** Yes, sir.

1           **THE COURT:** I'm just saying that I'm not gonna send  
2 the jury out to deal with every objection.

3           **MR. CHEHOSKI:** Understood, Your Honor.

4           **THE COURT:** All right. Thank you.

5           Bobby -- well, that's okay. I'll tell them when  
6 they get in. I'll give them instructions. They can take  
7 notes. The lawyers have left it up to me and have no  
8 objection.

9           (Whereupon, the jury returns to the courtroom at  
10 11:07 AM.)

11           **THE COURT:** Thank you, folks. During the break a  
12 housekeeping matter arose that I should have taken care  
13 of earlier this morning and that's whether or not you-all  
14 would be allowed to take notes. If juries request to  
15 take notes, and sometimes they do and they have the pads  
16 here in this particular case, I normally give a limiting  
17 instruction during my opening remarks, so let me take this  
18 time unfortunately to interrupt the testimony of this  
19 witness because you might want to take some notes from  
20 this point on.

21           You're allowed to take notes, but there are certain  
22 restrictions that apply to those notes. First of all,  
23 remember that the notes are to be taken of the evidence  
24 in the case, that is the testimony. Not the question, but  
25 the answer itself. And don't paraphrase. Write down as

1 closely as you can what the witness is saying. Not your  
2 impression of how you would say it, but how the witness  
3 is saying it. You will leave the notes with you -- in  
4 the courtroom when you go back, you won't have those back  
5 there at least during the trial. As to whether you take  
6 them back there after the fact, we'll deal with that in  
7 closing remarks, but they are simply to serve as an aid to  
8 your memory. They don't take the place of a court record  
9 or anything like that, but to help you keep up with the  
10 testimony as it unfolds and so you have a right like you  
11 do in school to take notes. That's fine. You can do  
12 that. Just be accurate in what you're doing and limit the  
13 note-taking to the evidence itself. That is, not the  
14 remarks of counsel, not necessarily the question, but the  
15 answers to those questions, the evidence itself. That's  
16 what the notes are -- they're designed to preserve, and  
17 that is your understanding and memory in regard to the  
18 evidence. And as I've said, those will be left here in  
19 the courtroom when you go out from time to time. Just  
20 leave them in the chairs or leave them at the rail and  
21 they'll take them up, okay? Thank you.

22 **MS. MAYES:** Your Honor, may it please the Court,  
23 State's Exhibit 1 is -- being the 9-1-1 call is currently  
24 in evidence and the State requests permission to publish.

25 **THE COURT:** You can publish. Thank you.

1 (Whereupon, State's Exhibit Number 1, a 9-1-1 call,  
2 was played in open court.)

3 **MS. MAYES:** Thank you. Nothing further of the witness  
4 at this time, Your Honor.

5 **THE COURT:** Thank you. Ms. Chehoski, cross-examine?

6 **MR. CHEHOSKI:** Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. CHEHOSKI:

9 Q. Officer Ludwig, you gave two addresses in that call;  
10 is that correct?

11 A. Yes, sir.

12 Q. Is that because there's two [REDACTED] Apartments?

13 A. [REDACTED] Apartments is -- it's two separate  
14 locations. One of them is [REDACTED] and the other

15 one is on [REDACTED].

16 Q. And, again, the only reason for the difference of the  
17 time between the 3:08 call and the 3:11 entry into the CAD  
18 was you were having to dispatch vehicles?

19 A. Yes, sir.

20 Q. Making sure everybody got there?

21 A. Yes, sir.

22 Q. And then, of course, taking the call?

23 A. Yes, sir.

24 Q. And then after that you entered it into the record?

25 A. Putting everything in the CAD system, yes, sir.



- 1 Q. How are you doing today, Ms. Green?
- 2 A. Good.
- 3 Q. Ms. Green, will you tell the jury where you lived back  
4 on April 13, 2014.
- 5 A. [REDACTED]
- 6 Q. What unit?
- 7 A. [REDACTED]
- 8 Q. Okay. Who lived there with you at that time?
- 9 A. Me and my two children.
- 10 Q. Did you know Larenda Simon at that time?
- 11 A. No.
- 12 Q. Did you know of her?
- 13 A. I know her from the bus stop, but I didn't know her  
14 name or anything.
- 15 Q. All right. Did you know any of her children?
- 16 A. Yes, **Minor**
- 17 Q. And how did you know **Minor** ?
- 18 A. Her and my little girl rode the bus together.
- 19 Q. Okay. From time to time would they play together?
- 20 A. Correct.
- 21 Q. Had **Minor** been to your apartment before?
- 22 A. Yes.
- 23 Q. Are you aware of where she lived?
- 24 A. Yes.
- 25 Q. Where was that?

1 A. Like three or four doors down.

2 Q. Does [REDACTED] sound correct?

3 A. Correct.

4 Q. Okay. Three or four doors down from you?

5 A. Yes.

6 Q. Let's talk about the early morning hours of April 13,  
7 2014. What were you doing that morning?

8 A. Getting ready for work.

9 Q. What time did you wake up?

10 A. 3 AM.

11 Q. What happened after you woke up?

12 A. I went down the hallway towards the kitchen to get  
13 something to drink and I heard someone banging on my screen  
14 door.

15 Q. Did you recognize the person at your door?

16 A. No.

17 Q. What was that person doing?

18 A. Banging at the door, saying open the door.

19 Q. Could you tell whether they were clothed or not?

20 A. No, it was dark.

21 Q. How did the person appear to be standing at your door?

22 A. Terrified.

23 Q. All right. Did they say anything?

24 A. She said open the door. This is Minor 's mom --

25 **MR. CHEHOSKI:** Objection. Hearsay, Your Honor.

1           **THE COURT:** I think the res gestae for this -- it's  
2 not offered for the truth of the matter asserted, I don't  
3 think. It just shows what her response was gonna be.

4           **MR. CHEHOSKI:** Thank you, Your Honor.

5 BY MR. McNAIR:

6 Q. You testified that she appeared to be terrified?

7 A. Correct.

8 Q. Did she appear to be still under the stress of  
9 whatever had just happened?

10 A. Right.

11 Q. What's her tone of voice?

12 A. Screaming.

13 Q. Screaming. And what does she say?

14 A. Open the door. Somebody tried to rape me and my  
15 daughter.

16 Q. What did you do at that point?

17 A. Called 9-1-1.

18 Q. Did you end up letting that individual in your house?

19 A. After I got 9-1-1 on the phone.

20 Q. All right. What door did you let her in?

21 A. The main entrance into my home.

22 Q. Okay. And who was it? Did you identify who it was  
23 at that point?

24 A. She came in first and then **Minor** came in behind her.

25 Q. And when you say "she", you are now referring to

1 Larenda Simon?

2 A. Correct.

3 Q.. And what was Ms. Simon wearing?

4 A. Nothing but a shirt.

5 Q. What about **Minor** ?

6 A. She didn't have anything on.

7 Q. She was totally naked?

8 A. Correct.

9 Q. What did you do once they got inside your apartment?

10 A. I gave **Minor** a robe and I put her in the back room  
11 with my children and Larenda just collapsed on the floor.

12 Q. Okay.

13 A. I got her some water and I got a towel and started  
14 applying pressure to her thigh.

15 Q. Okay. And why did you -- why did you take **Minor**  
16 back to the room where your kids were?

17 A. I didn't want her to see her mother.

18 Q. In that condition?

19 A. In that condition and the state she was.

20 Q. When Ms. Simon got into your apartment, you testified  
21 she just collapsed?

22 A. Correct.

23 Q. What did her -- did you notice anything about her  
24 condition or her injuries?

25 A. When she was on the floor, she was bleeding, but I

1 couldn't tell exactly where she was bleeding from other  
2 than her thigh.

3 Q. I'm gonna show you what's been premarked as State's  
4 Exhibit 6 and State's Exhibit 8. Will you look at those  
5 and tell me -- can you identify those pictures?

6 A. That's my apartment.

7 Q. Okay. Is that the way your apartment looked on the  
8 day that Ms. Simon arrived on April 13, 2014?

9 A. Correct.

10 **MR. McNAIR:** Your Honor, we'd move to enter State's 6  
11 and State's 8.

12 **THE COURT:** Without objection I understand?

13 **MR. CHEHOSKI:** Your Honor, subject to our pre-trial  
14 motions.

15 **THE COURT:** Exactly. You're exactly right. Thank  
16 you. Subject to objections dealt with in pre-trial, 6 and  
17 8 are in evidence.

18 (State's Exhibit Number 6 and State's Exhibit  
19 Number 8, photographs, were admitted into evidence.)

20 BY MR. McNAIR:

21 Q. All right. Ms. Green, this is your living room; is  
22 that correct?

23 A. Yes.

24 Q. And the door -- do you see the door you testified to  
25 where you first saw Ms. Simon banging on?

1           **BAILIFF:** The easel is in the jury's way, please.

2           **MR. McNAIR:** I'm sorry. I apologize.

3           **THE COURT:** Thank you.

4 BY MR. McNAIR:

5 Q. Is this the sliding glass door that you were  
6 testifying to earlier?

7 A. Yes.

8 Q. And that's where Ms. Simon was when you first saw her?

9 A. Yes.

10 Q. All right. When she came into your house, where did  
11 she collapse?

12 A. On the back of the couch right there.

13 Q. All right. Where this black piece of clothing is?

14 A. Correct.

15 Q. Whose clothing is that?

16 A. Hers.

17 Q. All right. State's 8 again. This is a picture of  
18 your living room and where is your -- do you see where your  
19 front door is on this photo?

20 A. Yes.

21 Q. Is it right here in this left-hand corner?

22 A. Yes.

23 Q. All right. And that's the door that Ms. Simon and  
24 **Minor** ended up coming in?

25 A. Yes.

1           **MR. McNAIR:** Your Honor, permission for the evidence  
2 custodian to unseal this?

3           **THE COURT:** All right. Go ahead. You can open it.

4           (State's Exhibit Number 9 was marked for  
5 identification.)

6 BY MR. McNAIR:

7 Q. I'm gonna show you what's been marked as State's 9.  
8 Do you recognize this item?

9 A. Yes.

10 Q. What is this item?

11 A. My little girl's robe that I put on Minor when she  
12 came into the house.

13           **MR. McNAIR:** All right. Your Honor, the State moves  
14 State's 9 into evidence.

15           **THE COURT:** Any objection?

16           **MR. CHEHOSKI:** Your Honor, just, again, subject to our  
17 prior objection in pretrial.

18           **THE COURT:** All right. Subject to prior objection  
19 only. Thank you. It's in.

20           (State's Exhibit Number 9, bag containing robe, is  
21 admitted into evidence.)

22 BY MR. McNAIR:

23 Q. This is the robe that you gave Minor when she came  
24 to your house naked?

25 A. Correct.

1 Q. Did you notice anything in particular about Minor ?

2 Did you notice any blood on Minor ?

3 A. No, not at -- not at that moment.

4 Q. Okay.

5 A. It was still dark outside and I was just trying to  
6 get her away from her mother, so I really wasn't observing  
7 her, but I did know she was unclothed and I didn't want  
8 her, you know, naked around my children.

9 Q. All right. And once the police and EMS and all those  
10 folks arrived at your apartment after you called 9-1-1 --

11 A. Yes.

12 Q. -- where did you go at that point?

13 A. I stood outside.

14 **MR. McNAIR:** Okay. I have no further questions.

15 Please answer any questions the defense team may have.

16 **THE COURT:** Mr. Chehoski, you can cross-examine.

17 **MR. CHEHOSKI:** Your Honor, we have no questions of  
18 this witness.

19 **THE COURT:** Okay. Thank you. Ms. Green, you can step  
20 down. Thank you, ma'am. Can she be excused?

21 **MR. CHEHOSKI:** No objection, Your Honor.

22 **THE COURT:** She can be excused without objection.

23 Thank you.

24 (Witness excused.)

25 **MR. McNAIR:** Your Honor, the State calls Chris Hall.



1 I do. ■-11.

2 Q. ■-11. Okay. Was anybody else on the truck with you  
3 that night?

4 A. Yes, sir.

5 Q. Who was that?

6 A. My partner, Chris Bernard.

7 Q. All right. And what was that call in reference to  
8 that y'all responded to?

9 A. We responded to a possible gunshot wound.

10 Q. What time did you get on the scene?

11 A. We received the call at 3:11 in the morning. We  
12 arrived on-scene at 3:22 in the morning.

13 Q. All right. And did you make contact with the victim,  
14 Ms. Simon, there?

15 A. Yes, ma'am -- I mean, yes, sir.

16 Q. And where was she when you first made contact with  
17 her?

18 A. She was in the living room of the apartment laying  
19 down. Well, she was slightly leaning back against a couch  
20 kind of like on her right side --

21 (Telephonic interruption.)

22 **THE COURT:** I hope that's not a real emergency.

23 **THE WITNESS:** No.

24 **THE COURT:** Good. We want you to stay with us until  
25 you finish testifying.

1 BY MR. McNAIR:

2 Q. All right. On State's Exhibit 6, is this the couch  
3 you were referring to?

4 A. Yes, sir.

5 Q. All right. And where did that article of clothing  
6 come from that's on the floor?

7 A. To my understanding, it came from the patient because  
8 the patient was already -- her shirt; I'm guessing that's  
9 what that is, was already cut off of her.

10 Q. Okay. And that's where she was laying?

11 A. Yes, sir.

12 Q. Okay. Now what condition was she in when you first  
13 got there?

14 A. Breathing heavily, excited, speaking to my captain,  
15 who was on-scene prior to me and Chris Bernard arriving  
16 on-scene, and also talking to the officers. There were  
17 quite a few questions going back and forth to the patient  
18 from my captain and from the officers.

19 Q. She was alert?

20 A. Yes, sir.

21 Q. She was conscious?

22 A. Yes, sir.

23 Q. Able to communicate?

24 A. Yes, sir.

25 Q. What did her emotional condition appear to be at that

1 time?

2 A. Very excited, very afraid and --

3 Q. Afraid of what?

4 A. The situation, of being wounded, and as anyone would  
5 be scared of the possible future of, you know, what's gonna  
6 happen next.

7 Q. Death?

8 A. Obviously anyone in that situation would probably even  
9 think of that, yes, sir.

10 Q. Now how were her vital signs?

11 A. Well, right then we started looking for wounds and so  
12 doing a cursory check for vital signs we checked her pulse  
13 and it was -- obviously would be racing. It was quite  
14 fast.

15 Q. Tell me this.

16 A. We didn't get a blood pressure at that time.

17 Q. Well, in dealing with her, what was your main  
18 concern?

19 A. Stopping any bleeding that we were -- that we  
20 witnessed.

21 Q. All right. Were you aware whether or not there was  
22 any internal bleeding at that point?

23 A. No, sir.

24 Q. All right. Is that a concern?

25 A. It is a concern, but it is not something that we can

1 actively deal with because we're not trained in that  
2 capacity, sir.

3 Q. That's something for the ER to deal with, correct?

4 A. Yes, sir.

5 Q. All right. Now did you document any injuries you saw  
6 on Ms. Simon?

7 A. My partner did all the documentation. He took the  
8 lead on this call--

9 Q. Okay. All right.

10 A. -- but we did notice quite a few wounds on the  
11 patient.

12 Q. But you're not the one who documented where those  
13 wounds were?

14 A. No, sir, I was not.

15 Q. Okay. Now while y'all were treating her at [REDACTED] 11, was  
16 anything found on or around her body that you were aware  
17 of?

18 A. Referring to personal items or are you referring to  
19 anything else?

20 Q. Anything.

21 A. Okay. While we were rolling the patient around,  
22 lifting limbs to see where wounds were, my captain made a  
23 comment that he saw something fall to the ground.

24 **MS. GILREATH:** Objection, Your Honor. It's hearsay.

25 **THE WITNESS:** Hearsay. Okay.

1           **THE COURT:** It is hearsay, but, once again, it's not  
2 offered for truth of the matter, it's simply a statement  
3 indicating why somebody else did the next thing, in other  
4 words, to show the witness's response rather than the truth  
5 of the matter, so I'll let it in. It's not hearsay. Go  
6 ahead.

7 BY MR. McNAIR:

8 Q. Well --

9 A. When that statement was made, I did look down and I  
10 did see a -- what you would call a spent round, a slug.  
11 I don't know what you would --

12 Q. A projectile?

13 A. A projectile on the floor near the patient.

14 Q. And do you know where that projectile came from or  
15 where it fell out of?

16 A. At the time we were lifting up the patient's left  
17 breast and that's when it was noticed.

18 Q. Okay. And did -- and that projectile fell on the  
19 floor?

20 A. Yes, sir.

21 Q. Was that projectile marked while you were there?

22 A. No, sir. As far as I know, it wasn't.

23 Q. Okay. Did you move it at all?

24 A. No, sir.

25 Q. Y'all just left it right there on the floor?

1 A. Where it fell, yes, sir.

2 Q. All right. That was right where the victim had been  
3 laying?

4 A. Yes, sir.

5 Q. So I guess after leaving [REDACTED] 11, did y'all transport  
6 her to the ER?

7 A. Yes, sir.

8 Q. Where did you transport her to?

9 A. We transported her to Richland County -- I mean,  
10 Richland Memorial Hospital.

11 Q. Were you riding in the back of the ambulance with  
12 her?

13 A. Yes, sir.

14 Q. What was her emotional condition at that point?

15 A. She was still excited, still very scared, but we were  
16 able to slowly calm her down to reassure her that we were  
17 doing all we could and we'd be getting to the hospital very  
18 soon. During that time even though she was upset she was  
19 calming down enough that we could get a clearer picture of  
20 what went on.

21 Q. All right. And after you transported her to the  
22 hospital, did you have any other dealings with her?

23 A. After dropping her off at the hospital, no, sir.

24 **MR. McNAIR:** Okay. No further questions. Please  
25 answer any questions the defense may have.

1           **THE COURT:** All right. Ms. Gilreath, cross-examine?

2           **MS. GILREATH:** Your Honor, we have no questions for  
3 this witness.

4           **THE COURT:** Thank you. Mr. Hall, you can step down.  
5 Thank you, sir. Can Mr. Hall be excused?

6           **MS. GILREATH:** We have no objection to that, Your  
7 Honor.

8           **THE COURT:** Thank you. Without objection Mr. Hall is  
9 excused.

10           (Witness excused.)

11           **MS. MAYES:** The State calls Chris Yarborough.

12           **THE COURT:** Mr. Yarborough, come forward, please, and  
13 be sworn.

14           (Whereupon, Chris Yarborough was duly sworn by the  
15 Clerk of Court.)

16           **THE CLERK:** Please be seated. State your full name  
17 and spell your last name.

18           **THE WITNESS:** Good morning, Your Honor. Thank you.  
19 My full name is Christopher Wayne Yarborough. The spelling  
20 of my last name, Y-A-R-B-O-R-O-U-G-H.

21                           CHRISTOPHER WAYNE YARBOROUGH,  
22           having been duly sworn, testified as follows:

23                           DIRECT EXAMINATION

24           BY MS. MAYES:

25           Q. All right. And, Officer Yarborough, tell us a little

1 bit about yourself. Where are you currently employed?

2 A. I'm currently employed at West Columbia Police  
3 Department.

4 Q. And in what capacity?

5 A. I'm a police officer.

6 Q. And how long have you been with the West Columbia  
7 Police Department?

8 A. Come July it will be ten years.

9 Q. All right. Can you tell us whether or not you had  
10 the opportunity to respond to the scene of a shooting on  
11 April 13, 2014, at [REDACTED] Apartments?

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

13 Q. All right. Tell us what you recall -- what you recall  
14 about that event from the time you arrived and then what  
15 your responsibilities were there at the scene.

16 A. I received a 9-1-1 call in reference to a shooting.  
17 At the time I was training an individual, a police officer.  
18 Upon arrival I remember a set of apartments at [REDACTED],  
19 going inside and seeing a bunch of blood and a victim  
20 laying on the -- on the ground. Caution tape, roping off  
21 the crime scene, as well as maintaining the crime scene  
22 log.

23 Q. All right. So let me take you back a little bit.  
24 What was the actual apartment number that you responded to  
25 where you were able to visually observe the victim, Larenda

1 Simon?

2 A. If I can look back and --

3 Q. Sure. Absolutely.

4 A. She was [REDACTED] 11. Apartment [REDACTED] 11.

5 Q. All right. So first you go to Apartment [REDACTED] 11 and  
6 check on the victim; is that correct?

7 A. That is correct. Yes, ma'am.

8 Q. And can you tell us whether you arrived before EMS or  
9 was EMS already there working on her?

10 A. I believe I was there before EMS, yes, ma'am.

11 Q. All right. And then do you recall EMS arriving and  
12 tendering aid to her?

13 A. Yes, ma'am.

14 Q. All right. And ultimately departing the scene with  
15 her?

16 A. That is correct.

17 Q. All right. I'm gonna show you some photographs and  
18 ask you whether or not you recognize them. This would be  
19 State's 6 and 8 already in evidence and then I'm gonna ask  
20 you about State's Exhibit Number 5.

21 A. Yes, ma'am. I remember these.

22 Q. All right. I'm also gonna ask you to take a look at  
23 State's Exhibit 5 and first I'm gonna ask you whether or  
24 not you recognize what is depicted in that photograph?

25 A. I do recognize it. Yes, ma'am.

1 Q. All right. Can you tell us whether or not that's a  
2 fair and accurate representation of the Apartment 11 as  
3 you recall it after the victim had been transported away  
4 by EMS?

5 A. Yes, ma'am, it's accurate.

6 **MS. MAYES:** Your Honor, this would be State's  
7 Exhibit 5 for evidence as well.

8 **THE COURT:** Subject to prior objections?

9 **MR. CHEHOSKI:** Correct, Your Honor.

10 **THE COURT:** In evidence.

11 (State's Exhibit Number 5, a photograph, was admitted  
12 into evidence.)

13 BY MS. MAYES:

14 Q. I'm gonna ask you specifically about that photograph.  
15 What, if anything, do you recognize in that photograph that  
16 you created yourself?

17 A. I do recognize a piece of notebook -- a small piece of  
18 notebook paper with the number one written on it.

19 Q. All right. And so that's sort of a makeshift placard?

20 A. Correct.

21 Q. All right. And what were you noting there at that  
22 location?

23 A. There was a round, a bullet, that was actually there  
24 and to preserve evidence I just decided to mark it before  
25 it went missing.

1 Q. Okay. So here we're gonna look at State's Exhibit 8  
2 and shown here is the placard that you're referring to?

3 A. Yes, ma'am.

4 Q. And then, again, in State's Exhibit 5, can you tell us  
5 -- in this a closer up view, tell us what we're looking at  
6 here and then also here?

7 A. The white piece of paper is the makeshift placard  
8 marking evidence.

9 Q. All right. And, again, that placard is noting what  
10 you described as a round?

11 A. That is correct. Yes, ma'am.

12 Q. And what had actually been physically at that location  
13 just prior to your placing the placard there?

14 A. That was -- that was the victim that was there.

15 Q. All right. So that had been the actual location where  
16 the victim was laying?

17 A. That is correct. Yes, ma'am.

18 Q. Now after your contact with [REDACTED] 11, what action did you  
19 take next there at the apartment complex at [REDACTED] ?

20 A. Roped off so to speak with caution crime scene tape.

21 Q. All right. And, again, how many officers if you had  
22 to estimate were at this crime scene in the early morning  
23 hours?

24 A. Initially that was probably four.

25 Q. All right. And why is it necessary to, as you note,

1 mark off a crime scene and secure that location?

2 A. Assuring the fact that nobody else came into the  
3 crime scene that had no business being there that's not  
4 in the capacity of law enforcement or medical.

5 Q. So that's routine procedure?

6 A. That is correct. Yes, ma'am.

7 Q. I'm gonna show you a photograph and ask you whether  
8 or not you recognize it?

9 A. I do recognize it. Yes, ma'am.

10 Q. Is that a fair and accurate representation of the  
11 exterior crime scene as you noted?

12 A. That is correct. Yes, ma'am.

13 Q. And the crime scene tape?

14 A. Yes, ma'am.

15 Q. And who actually put that crime scene tape up?

16 A. I did.

17 **MS. MAYES:** Your Honor, this would be State's  
18 Exhibit 10 evidence and I believe there's no objection.

19 **MR. CHEHOSKI:** Subject to prior objections, Your  
20 Honor.

21 **THE COURT:** Subject to prior objections, that will be  
22 Number 10 in evidence.

23 (State's Exhibit Number 10, a photograph, was marked  
24 and admitted into evidence.)

25 BY MS. MAYES:

1 Q. Okay. Now in a situation like this where a shooting  
2 occurs in the early morning hours, can you tell us whether  
3 or not the police presence remains on until daylight hours  
4 in order to investigate?

5 A. Yes, ma'am.

6 Q. Can you tell us whether or not that was done in this  
7 case?

8 A. It was. Yes, ma'am.

9 Q. So the photo that we're looking at is a daytime photo?

10 A. Yes, ma'am.

11 Q. Why is it that the crime scene tape remains up that  
12 long?

13 A. Still ensuring that nobody other than law enforcement  
14 or medical capacity entered the crime scene.

15 Q. All right. And who does have access to enter the  
16 crime scene, collect evidence and things of that nature?

17 A. Police officers and responding investigators.

18 Q. Was there any indication, Officer Yarborough, at any  
19 point throughout your maintaining of that crime scene that  
20 the scene had been tampered with in any way?

21 A. No, ma'am.

22 Q. Was there any indication that anyone had accessed  
23 evidence or disturbed evidence in any way?

24 A. No, ma'am.

25 Q. Were crime scene -- was a crime scene investigative

1 unit actually at the location?

2 A. Yes, ma'am.

3 Q. And who was that CSI officer?

4 A. There was more than one, I believe. I don't remember  
5 exactly the responding initial investigating officer there.

6 Q. All right. There was an investigative unit there?

7 A. Correct.

8 **MS. MAYES:** Nothing further of this witness, Your  
9 Honor.

10 **THE COURT:** Thank you. Mr. Chehoski, cross-examine?

11 **MR. CHEHOSKI:** No questions of this witness, Your  
12 Honor.

13 **THE COURT:** Thank you. Mr. Yarborough, you can step  
14 down. Thank you.

15 **THE WITNESS:** Thank you, Your Honor.

16 (Witness excused.)

17 **MR. McNAIR:** Your Honor, the State calls Chris  
18 Bernard.

19 **THE COURT:** Mr. Bernard, come forward, please, and  
20 be sworn.

21 (Whereupon, Christopher T. Bernard was duly sworn by  
22 the Clerk of Court.)

23 **THE CLERK:** Please be seated. State your full name  
24 and spell your last name.

25 **THE WITNESS:** My name is Christopher T. Bernard,

1 B-E-R-N-A-R-D.

2 CHRISTOPHER T. BERNARD,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MCNAIR:

6 Q. Mr. Bernard, where do you work?

7 A. Lexington EMS.

8 Q. What is your title there?

9 A. Crew chief. Sergeant.

10 Q. All right. Are you a paramedic?

11 A. Yes, sir.

12 Q. How long have you been a paramedic?

13 A. I've been a paramedic for thirty-two years.

14 Q. Do you have any other prior experience in the field?

15 A. Twenty-six years with an EMS department in New York.

16 Q. All right. Any military experience in addition to  
17 that?

18 A. About twenty years of military experience. Most of  
19 that as a medical technician.

20 Q. All right. Now on April 13, 2014, did you respond to  
21 [REDACTED] Apartments?

22 A. Yes, sir.

23 Q. All right. Were you on the truck with Mr. Hall that  
24 night?

25 A. Mr. Hall was my partner, yes.

1 Q. All right. What unit did y'all respond to?

2 A. Unit 7. Oh, the unit? The house number? I'll have  
3 to refer to my notes. ■ 11.

4 Q. All right. Did you make contact with the victim  
5 there, Ms. Simon?

6 A. Yes, sir.

7 Q. Was what was going on with Ms. Simon when you first  
8 got there?

9 A. Ms. Simon was already being treated by my supervisor,  
10 Captain Craig Davis. Captain Davis had already exposed  
11 the victim, whom he told me had sustained gunshot wounds,  
12 so I evaluated to make sure that the patient was breathing  
13 and not bleeding profusely and made an initial assessment  
14 and we were on-scene about ten minutes before we started  
15 heading to the hospital.

16 Q. All right. Did you evaluate Ms. Simon's injuries?

17 A. I did. She had penetrating wounds to four parts of  
18 the chest and upper extremities.

19 Q. All right. Did you document where those injuries  
20 were generally?

21 A. The injuries were -- we had a penetrating wound to  
22 the upper right chest, two to the left chest, one to mid  
23 axillary, which would be on the side, upper left quadrant  
24 abdominal, and two to the arm, one in the upper arm and  
25 one to the hand, so a total of seven penetrating wounds.

1 Q. Okay. Now was she alert and conscious?

2 A. She was the whole time when I saw her and when we  
3 left.

4 Q. Was she in pain?

5 A. Obviously in pain and, you know, upset and very  
6 concerned with -- actually she told me she thought she was  
7 going to die.

8 **MR. PHILLIPS:** Objection. I need to approach, Your  
9 Honor.

10 **THE COURT:** He is laying the foundation. She was  
11 upset and that's been consistent with the testimony  
12 throughout.

13 **MR. McNAIR:** I'll lay more of a foundation, Your  
14 Honor. And Chris Hall already testified to her mental  
15 state as well.

16 **THE COURT:** That's right. As a matter of fact,  
17 everybody who's observed her has testified as to that. I  
18 will let it in under 803.2.

19 BY MR. McNAIR:

20 Q. All right. When you first see Ms. Simon, she has --  
21 she had seven gunshot wounds, correct?

22 A. Later we found out that it was gunshot wounds. I  
23 don't know initially -- they were definitely penetration  
24 wounds. It could be from a knife or a gunshot, but, yes,  
25 penetration.

1 Q. Was she actively bleeding?

2 A. Actively bleeding minimally. There was not a lot of  
3 blood on the ground, which indicates that there's possibly  
4 internal bleeding.

5 Q. Is that a concern of yours?

6 A. Absolutely. That's a life-threatening concern.

7 Q. Is that something you can treat at the scene?

8 A. I can start treatment, but that requires emergency  
9 surgery at the hospital.

10 Q. Okay. Now when you -- you spoke with Ms. Simon, you  
11 testified she was in fear that she may die; is that  
12 correct?

13 A. Yes, sir. She indicated that she thought she would  
14 die and she asked me to say good-bye to her children.

15 Q. All right. Now did you ask her at the scene anything  
16 about what had happened?

17 A. It's -- during the course of an initial investigation  
18 or medical investigation, I have to find out the mechanism  
19 of injury, so I'll ask the patient what happened.

20 Q. Is that important for you to know what happened in  
21 order to know how to treat her and diagnose her injuries?

22 A. It's important to know the mechanism of injury  
23 because each mechanism has different treatment modalities.  
24 Penetrating injuries with suspected internal injuries  
25 require emergency surgery, but rapid infusion of fluid.

1 If somebody is hit with a bludgeon or a club, you know,  
2 there may be damage to internal organs, usually solid  
3 organs like the liver or the lungs.

4 Q. All right. And during this whole time you're talking  
5 to her, does she still appear to be terrified?

6 A. The whole time that we were with her she appeared to  
7 be terrified and we tried -- my partner, Chris Hall, and  
8 I tried to calm her saying she wasn't gonna die with us,  
9 you know.

10 Q. But she feared impending death, correct?

11 A. She did.

12 Q. All right. And did she appear this whole time to  
13 still be under the stress of whatever just happened?

14 A. Yes, she appeared to be under stress.

15 Q. Did she ever make any comment to you about what had  
16 happened?

17 A. She told me --

18 **MR. PHILLIPS:** Subject to our prior objections, Your  
19 Honor.

20 **THE COURT:** I understand. I think this comes under  
21 -- I think this is a follow-up on the question about  
22 the mechanism of the injury. Is that it essentially,  
23 Mr. Bernard? Is that what you were getting at or is that  
24 what --

25 **THE WITNESS:** Yes, Your Honor.

1           **THE COURT:** If that's the question, then the answer  
2 is allowable under 803.4.

3           **MR. PHILLIPS:** May we approach, Your Honor?

4           **THE COURT:** Sure.

5           (Proceedings held at the bench; not reported.)

6           **THE COURT:** You can go ahead and answer the question,  
7 Mr. Bernard.

8 BY MR. McNAIR:

9 Q. During the time you were with her as you testified  
10 while she was terrified, did she ever make any comments  
11 about who had done this or provide any description of that  
12 person?

13 A. Yes, sir. I asked how did this happen and she said --

14           **MR. PHILLIPS:** Subject to prior objection.

15           **THE COURT:** Certainly. Go ahead.

16 A. She said that a little guy had tried to rape her and  
17 that then gunshots started happening and she started -- and  
18 was shot.

19 Q. Okay. Did you ultimately transport Ms. Simon to the  
20 hospital?

21 A. Yes, sir. We went to Richland for the trauma center.

22 Q. All right. Did you have any further dealings with her  
23 after that?

24 A. No. No, sir.

25           **MR. McNAIR:** No further questions. Please answer any

1 questions Mr. Phillips has.

2 **THE COURT:** Mr. Phillips, you may cross-examine.

3 **MR. PHILLIPS:** Thank you, Your Honor.

4 **THE COURT:** Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. PHILLIPS:

7 Q. Good morning.

8 A. Good morning.

9 Q. Could you go over your training again?

10 A. I've been a paramedic since 1985 after years as  
11 an emergency medical technician, also training in the  
12 military from 1994, and I just changed to a safety  
13 position two years ago.

14 Q. And you have to write reports on a daily basis?

15 A. Yes, sir.

16 Q. And you were trained to write reports?

17 A. That is part of the training, yes.

18 Q. When they train you to write reports, they tell you  
19 to do it as detailed as possible?

20 A. Yes.

21 Q. How many reports do you think you've written since  
22 this happened?

23 A. I would just be estimating. Maybe four hundred.

24 Q. Maybe even more? A thousand?

25 A. Yes, a lot of reports. Actually it could be a

1 thousand.

2 Q. And you're trained to write those reports because  
3 when you have a thousand more reports three years later  
4 your memory might not be as good as it was three years  
5 ago; is that right? Is that fair to say?

6 A. It could suffer, but I have a pretty good memory.

7 Q. But you wrote a report in this case?

8 A. I did. Yes, sir.

9 Q. And you did not include her identifying description  
10 of the man?

11 A. Not in my report.

12 Q. Did you tell -- when did you meet with the solicitor's  
13 office?

14 A. I believe the initial meeting was about three weeks  
15 ago. I don't remember the exact date.

16 Q. Okay. How many times have you met with them since  
17 three weeks ago?

18 A. Just one time prior to today.

19 Q. Okay. And you went over statements made during that?

20 A. I did go over the statements that were made, yes.

21 Q. All right. And did you tell them little and unknown  
22 small man as the description?

23 A. I did use the word little because I remembered --

24 Q. I'm sorry. Let me rephrase it. Did you say unknown  
25 small guy? That was my fault. Did you tell them it was

1 an unknown small guy, quote unquote?

2 A. I don't think -- I'm not sure if that was the exact  
3 phraseology I used, but I definitely am sure that I said  
4 little because that's what I remember the victim saying.

5 Q. Okay. So if the solicitor's office said three years  
6 later something that's not in your report and your quote  
7 to them was unknown small guy, that wouldn't be -- it  
8 would be a little different than that?

9 A. I was asked if I remembered anything and I did recall  
10 with a hundred percent remembrance of this. This is a  
11 special case. It's not every day that I have a multiple  
12 gunshot victim, so I paid a lot of attention and luckily I  
13 was able to remember everything.

14 Q. And you didn't include that in your report --

15 A. No, sir.

16 Q. -- something that --

17 A. No, sir. I'm a paramedic and I believe that type  
18 of information is important, but more for, you know,  
19 investigation. I try to keep my reports germane to medical  
20 assessments.

21 Q. In your training, do they address the fact when people  
22 make those statements they be included in the reports for  
23 law enforcement?

24 A. The judgment is up to me what information that I  
25 feel is important to include and I try to keep the

1 information I include in my report germane to medical  
2 treatment and not to assist or -- in an investigation,  
3 a police investigation. I know that if I'm asked and I  
4 can recall with, you know, a certainty, that I can say so.

5 Q. And the quote I had was unknown small guy. Did you  
6 tell the solicitor's office that --

7 **MR. McNAIR:** Asked and answered, Your Honor.

8 **THE COURT:** Well, wait a minute. I haven't heard the  
9 question yet.

10 BY MR. PHILLIPS:

11 Q. -- that she also told you he tried to rape her?

12 A. The victim told me that the person that did this tried  
13 to rape her.

14 Q. Right. When you met with the solicitor's office, did  
15 you include the phrase "tried to rape her"?

16 A. I believe I did, sir.

17 Q. All right. And if that was the case, they wouldn't  
18 have taken notes of it?

19 A. I can't --

20 **MR. McNAIR:** Objection.

21 **THE COURT:** I sustain the objection as to what the  
22 solicitor's office may have done, yes, sir. Thank you.

23 BY MR. PHILLIPS:

24 Q. So to be fair, the first time you remember at least  
25 to put it down in writing to either law enforcement or the

1 solicitor's office -- sorry to kind of belabor the point --  
2 was three years later at the solicitor's office that the  
3 description was an un -- or a little guy who tried to rape  
4 her? That phrase, the first time it was given to any law  
5 enforcement or prosecutor, was three weeks ago three years  
6 after it happened?

7 A. That's correct. I did not indicate that phrase in my  
8 medical report.

9 **MR. PHILLIPS:** Thank you, Your Honor. No further  
10 questions.

11 **THE COURT:** Mr. McNair, redirect?

12 **REDIRECT EXAMINATION**

13 **BY MR. McNAIR:**

14 Q. Mr. Bernard, when you're dealing with a patient  
15 with multiple gunshot wounds, is your primary concern  
16 documenting what that witness may say -- that person may  
17 say?

18 A. It is a concern, but I wouldn't say it's a primary  
19 concern. My primary concern is to save life and limb  
20 and I have quite a bit of experience recognizing when  
21 someone is heading towards danger, danger of losing their  
22 life. In this case, I was very concerned and I remember  
23 listening to the victim's lung fields multiple times  
24 because in short order they can develop a pneumothorax or  
25 a hemothorax and they can die from lack of oxygen. So

1 that's -- my primary is life and limb. Documentation is  
2 pretty much secondary.

3 Q. I got you. And after you transported Ms. Simon to  
4 the hospital, did you ever have the opportunity to meet  
5 with law enforcement after that?

6 A. I was available to answer questions if need be. I  
7 don't believe I was --

8 Q. But you were never asked about this case until we met  
9 with you three weeks ago, correct?

10 A. No, sir. That's correct.

11 Q. And is there a reason that this case stands out in  
12 your mind maybe more than others?

13 A. Yes, there is a reason. It's not a common occurrence  
14 to have a multiple gunshot victim and I tend to remember  
15 calls that I would assume would -- would end up in court,  
16 you know, so I pay much more attention, kind of burn them  
17 in my memory a little bit more. I've taken care of  
18 thousands of people in my career and luckily I'm able to  
19 remember a lot of them because I care about them.

20 Q. So out of the thousands of calls you've responded to,  
21 this one stood out to you?

22 A. It was in the top 10 percent of the calls that I knew  
23 were important and I know when I save lives and deliver  
24 babies, things like that, so those ones stick out.

25 **MR. McNAIR:** Thank you, sir.



1 speak to any detectives or any officers after that call.

2 Q. Until three weeks ago with the solicitor's office?

3 A. That's correct.

4 **MR. PHILLIPS:** Thank you.

5 **THE COURT:** Mr. McNair?

6 **MR. McNAIR:** Nothing further, Your Honor.

7 **THE COURT:** Thank you, Officer Bernard. You can step  
8 down.

9 (Witness excused.)

10 **MS. MAYES:** Your Honor, may we approach?

11 **THE COURT:** Yes.

12 (Proceedings held at the bench; not reported.)

13 **THE COURT:** I can tell you what we were whispering  
14 about then. We were planning your immediate future. The  
15 next witness is gonna be -- will take some time and we have  
16 to get prepared for that and so rather than send you out  
17 for a late morning break and get you back in, I think the  
18 best use of your time and ours is to let you take an early  
19 lunch right this minute and we can do those -- we can do  
20 those things during your lunch hour. We'll have to take  
21 some lunch hour beyond that, too. I'm gonna ask you to be  
22 back in the jury room at 1:30. That's a little bit longer  
23 than I normally give you, but that's to give us time to do  
24 the things that we need to do and some of us might have to  
25 eat as well. But if you will leave those notepads and be

1 back at the jury room at 1:30 we'll continue the trial at  
2 that time. Thanks. Don't discuss this case with anybody  
3 or among yourselves. Remember that.

4 (Whereupon, the jury was excused for lunch at  
5 12:00 PM.)

6 **THE COURT:** Folks, a couple of things. First of all,  
7 while we're -- while the jury is out during opening  
8 statements Mr. McNair made reference to telephone records  
9 and to photographs that were gleaned as a result of those  
10 records. He referred specifically to a photograph of the  
11 Defendant in possession of what appeared to be a Glock  
12 pistol and was going on further to talk about photographs.  
13 At that point in time Mr. Phillips objected and I made a  
14 notation to -- to deal with this out of the presence of  
15 the jury. At a sidebar I indicated that there had been a  
16 reference at some point in time -- as I understood it,  
17 someone had indicated that there was going to be testimony  
18 of a -- of a witness who was gonna testify about his  
19 possession of a gun. I, therefore, thought that would be  
20 cumulative in any event.

21 And the matter of the phone records, of course, is  
22 still an evidentiary issue that has not been completely  
23 resolved. But in any event, I overruled the objection and,  
24 Mr. Phillips, I'll be glad for you to expand on that record  
25 if you'd like.

1           **MR. PHILLIPS:** Yes, Your Honor. First, we'd make a  
2 motion for a mistrial based on the fact that we knew that  
3 this evidence was being challenged and it was presented  
4 during opening statement. At that point it had not been  
5 ruled on in its admissibility. We were arguing on multiple  
6 reasons. One would be relevance, Rule 401.

7           **THE COURT:** Right.

8           **MR. PHILLIPS:** Rule 403, that it was -- the probative  
9 value of those pictures because they weren't related in  
10 date or time would be substantially -- the probative value  
11 would be substantially outweighed by its prejudicial  
12 effect. It would also mislead and confuse the issues to  
13 the jury by showing them pictures of guns from a prior  
14 date and they said it's from a SD card from another phone.  
15 So relevance under 401, prejudice and confusion of the  
16 issues and misleading the jury under 403.

17           Also with the motion for a mistrial that those  
18 statements in the opening when we hadn't addressed it  
19 denied his right to a fair trial under the Fifth and  
20 Fourteenth amendments to the United States Constitution  
21 and Article 1, Sections 3 and 14 of the South Carolina  
22 Constitution.

23           With that being said, Your Honor -- and part of that,  
24 Your Honor, what -- the argument will be presented later  
25 when Your Honor said we would take up the issue that those

1 photographs were generated from a report that we argue is  
2 also considered hearsay and would not be admissible based  
3 on that ground as well. With that effect, knowing error  
4 preservation with the motion for a mistrial Your Honor  
5 would have to either give a curative or not and if Your  
6 Honor does wish to give a curative we have to object to it  
7 and if Your Honor does give the curative, then we can't not  
8 allow you to give curative, we have to continue to object  
9 to it. In other words, you can't un-ring the bell.

10 **THE COURT:** Right. And I'm not sure at this juncture,  
11 of course, depending upon a subsequent ruling as to whether  
12 a curative instruction is going to be necessary, but I  
13 note that those are things that we'll have to take up if  
14 the need should arise. I do not find that the mention of  
15 the Defendant being in possession of a weapon at whatever  
16 time it was has so irretrievably tainted these proceedings  
17 as to deny Mr. Hunter's right to a fair and impartial  
18 trial, so the motion for mistrial is respectfully denied.

19 I think I -- I made another notation here to deal  
20 with the issue of the easel, but then after that was done  
21 then Mr. Chehoski and I have had discussion on the record  
22 about the easel, so I don't think I need to do anything  
23 further in that regard. And the only other thing that's  
24 been fleshed out as well was the -- Mr. Bernard's reference  
25 to the statement made by the victim at the time, an unknown

1 little guy tried to rape me, the late disclosure of that,  
2 of course, he's testified and he's been cross-examined on  
3 that particular point. I find that there was obviously  
4 no intentional hiding of that or concealing of that  
5 statement. As soon as the State knew about it or  
6 immediately thereafter, they related that. The fact that  
7 there was an unknown little guy, of course, does not point  
8 so directly to the Defendant to the exclusion of whole lot  
9 of other folks as to, once again, taint his right to a  
10 fair and impartial trial.

11 Now before Ms. Simon takes the stand, which she's to  
12 do after lunch, there are some issues of photographs and  
13 I had -- I had asked y'all to -- to go over and have those  
14 marked -- the ones that you can agree, to have them marked  
15 for evidence, the ones that you cannot agree to but the  
16 State insists on offering, put those for identification,  
17 and then let me just deal with those issues that are in  
18 dispute; that is the proposed evidence marked for  
19 identification only. That will save a whole lot of time  
20 and certainly a whole lot of time before this jury as well.

21 So what I propose is we stop now and give you a chance  
22 to do all that and then get back at 1:00 to go over those  
23 issues. Can we do that?

24 **MS. MAYES:** Yes, sir, Your Honor.

25 **MR. PHILLIPS:** Yes, Your Honor. We can absolutely

1 go through the photographs. And to make sure the record  
2 is clear, our objection was also under Bernard the hearsay  
3 objection that, you know, it wasn't proper -- as a hearsay  
4 objection, it wasn't properly -- the foundation wasn't  
5 properly laid. And then as to the ruling of the Court, he  
6 testified that he had provided the information three weeks  
7 earlier. We did receive that in an e-mail at 4:44, I  
8 believe, this past Friday on the eve of court.

9 **THE COURT:** Right. That's right. He provided it to  
10 -- I guess to police officers?

11 **MR. PHILLIPS:** To the prosecutor's office.

12 **THE COURT:** Okay. All right. I understand that.

13 Now as to the hearsay objection, she had seven wounds  
14 and she thought she was gonna die, I think that satisfies  
15 the excited utterance, okay?

16 **MR. PHILLIPS:** Thank you, Your Honor.

17 **MR. McNAIR:** Judge, may I clarify one thing?

18 **THE COURT:** Yes, sir.

19 **MR. McNAIR:** The photo of the Glock that he is  
20 referencing came pursuant to the first extraction of the  
21 Defendant's phone back in 2014. At that time they couldn't  
22 get to the whole phone because of the pass code. It came  
23 from the SD card on the phone.

24 **THE COURT:** Right.

25 **MR. McNAIR:** So that photo has been in existence since

1 2014. It's not a product of the most recent extraction  
2 where the investigator had new software to actually crack  
3 the pass code.

4 **THE COURT:** Okay.

5 All right, folks. Let's stand in recess until 1:00.  
6 We'll resume at 1:00 and deal with these evidentiary  
7 issues. The jury will be back at 1:30, okay? Thank you.

8 (Whereupon, a luncheon recess taken.)

9 (State's Exhibit Numbers 11 through 58 were marked for  
10 identification.)

11 **BAILIFF:** All rise.

12 **THE COURT:** Good afternoon, folks. As a matter of  
13 information, I have been able to complete the review of  
14 the forensic -- or the investigative interview, excuse me,  
15 during the lunch hour, so that's the reason it took me a  
16 little longer to get back out here than I had planned.

17 I understand that the number of objections have been  
18 narrowed down somewhat to the photographs and I'll be glad  
19 if someone will hand up the ones that are objectionable  
20 and we can deal with those right now before the jury comes  
21 in.

22 **MS. MAYES:** Yes, sir, Your Honor. The State would  
23 be offering four photographs from the victim's treatment  
24 at the Palmetto Health Richland Emergency Room. There  
25 are four photographs that we are offering. They object

1 to all four. They have been redacted in terms of nudity.

2 **THE COURT:** All right.

3 **MS. MAYES:** And the photos are necessary and  
4 probative because they corroborate the victim's injuries.  
5 They would also, Your Honor, be necessary to corroborate  
6 the testimony not only of the EMS workers who have  
7 previously testified, but also the anticipated testimony  
8 of a triage nurse there at the trauma unit. There is  
9 certainly case law in support of photographs that may be  
10 graphic in nature, although the State contends these aren't  
11 nearly as graphic as many that we often see, but they're  
12 necessary to show the extent and number of injuries that  
13 the victim had sustained and this is an attempted murder  
14 case.

15 **THE COURT:** All right. Mr. Phillips.

16 **MR. PHILLIPS:** Thank you, Your Honor. Just -- I know  
17 some judges don't want attorneys who are not questioning  
18 witnesses to make the arguments, but I'll be glad to make  
19 the argument.

20 **THE COURT:** I'll listen to anybody's argument.

21 **MR. PHILLIPS:** I appreciate that.

22 **THE COURT:** But just one. All right. Go ahead.

23 **MR. PHILLIPS:** So we would object to those photographs  
24 under Rule 403 that the probative value is substantially  
25 outweighed by the prejudicial effect and specifically that

1 those photographs are cumulative to the testimony that's  
2 been provided. I know Your Honor's always looking at that  
3 cumulative nature. We argue that in this case the  
4 cumulative nature enhances the prejudice of the Rule 403.  
5 Obviously the State's contention is that they need to be  
6 able to prove that she was shot multiple times. We heard  
7 from EMS Bernard very, very detailed as to each individual  
8 gunshot. They've walked through their -- the State has  
9 walked through that timeline of her injuries with both EMS  
10 persons that were with on the scene.

11 **THE COURT:** Right.

12 **MR. PHILLIPS:** They seek to admit photographs of the  
13 crime scene where there's blood everywhere. She will  
14 testify specifically as to being shot. I mean, there was  
15 testimony from EMS Bernard that she thought she was gonna  
16 die and that it was clear and obvious as Your Honor ruled  
17 that at this point to admit those photographs, specifically  
18 with the redacted black squares where her breasts are  
19 exposed, even -- I think the redactions also -- just  
20 overall, Your Honor, as a whole you have a photograph of  
21 her laying obviously with the bullet wounds and she's  
22 exposed. Based on that and Rule 403, it's just cumulative  
23 to the testimony and based on that the probative value is  
24 substantially outweighed by the prejudicial effect that  
25 they would have. It's purely to make the jury to have an

1 emotional reaction and not to actually further prove the  
2 element of the crime charged and for that reason we would  
3 ask that they be excluded.

4 **THE COURT:** All right. Thank you.

5 (Pause in proceedings.)

6 **THE COURT:** I apologize for this delay. I was hoping  
7 I could find in my notebook here the case law that I was  
8 looking for, but I can't. Specifically, the case law that  
9 I was looking for has to do with one of the elements of  
10 the crime in this particular case. Granted there has been  
11 testimony about the location of the wounds by one of the  
12 officers, the description at least of the locations. He  
13 said he could not -- he could just tell that they were  
14 penetrating wounds, he couldn't tell anything else about  
15 them. The testimony of several witnesses will be  
16 corroborated by these photographs. I note that they have  
17 been cleaned up as you said in so far as the nudity has  
18 been done, and that's just out of respect for common  
19 decency for the victim in this particular case.

20 One of the elements of the crime of attempted murder,  
21 of course, is the existence of malice. The photographs do  
22 in my view have relevance in regard to that particular --  
23 to that particular element. I think they depict and have  
24 probative value on that more than the sterile testimony  
25 would have or even the emotional testimony of the victim

1 in this particular case. I find that each of these  
2 photographs depicts a different area -- a different area  
3 of the wounds which shows, of course, the repeated nature  
4 of the firing and certainly all of that is an element --  
5 or, excuse me, is evidence of the element -- of the  
6 element of malice. For that reason and the reasons of  
7 corroboration that Ms. Mayes has already talked about,  
8 I'll overrule the objection and allow these exhibits,  
9 which are unnumbered as yet, to come into evidence over  
10 objection of defense counsel.

11 All right. Now what other -- what other objectionable  
12 ones do we have?

13 **MS. MAYES:** Your Honor, there is a diagram of the  
14 inside of the apartment that is currently marked as  
15 State's Exhibit 53.

16 **MR. PHILLIPS:** And that is subject to our pre-trial  
17 motion. We received that in an e-mail Sunday night --

18 **THE COURT:** Right.

19 **MR. PHILLIPS:** -- and we made the motion on several  
20 grounds as to the admissibility. We'd renew that motion  
21 as to the photograph.

22 **THE COURT:** Okay. All right. I understand that the  
23 diagram itself indicates the statement that it's not to  
24 scale; is that right?

25 **MS. MAYES:** It does, Your Honor, and if we could use

1 this for demonstrative purposes only by having the victim  
2 and potentially other witnesses use it for demonstrative  
3 purposes without actually offering it as an exhibit in  
4 evidence.

5       **THE COURT:** And for demonstrative purposes is -- of  
6 course, the purpose obviously is to enable the jury to  
7 better understand the scene, the scene of the crime, and  
8 the testimony that has already been offered. As a  
9 demonstrative exhibit, it will be marked for either  
10 identification only or a Court's exhibit, it will not go  
11 to the jury. And certainly it does in my view assist the  
12 jury in their understanding of the dynamics of what was  
13 going on that night. The photographs, of course, show  
14 -- each individual photograph shows in an isolated area  
15 what the photograph depicts, but in order to understand  
16 everything that was going on, perhaps the closet where the  
17 statement was that the daughter was put, the location of  
18 the bedroom, the door that -- that the perpetrator was  
19 pushed out of and things of that nature, all of those are  
20 better understood in the context of an exhibit of this  
21 nature which takes in the whole scenario. I will allow it  
22 to be used as a demonstrative exhibit only over objection  
23 of defense counsel.

24       Okay. What else do we have?

25       **MS. MAYES:** Your Honor, there was a commentary in

1 opening argument by defense counsel that the victim is a  
2 Sister Care or was in the past a Sister Care client, which  
3 was alluding to third-party guilt, that this could be  
4 someone perhaps from her past that has committed the  
5 crime. The State would move to exclude that because  
6 there has not been and there is not a sufficient basis  
7 under third-party guilt case law to pursue that. The  
8 victim was in an abusive relationship previously. As a  
9 result, Sister Care put her in this particular location,  
10 which is also confidential. My understanding is that  
11 they don't -- it is not common knowledge this apartment  
12 complex was a Sister Care placement, not only for her  
13 sake, but for the sake of other women who have been placed  
14 there. But with that aside, all we really know about it  
15 is that she knew that person, he is the father of Minor ,  
16 and she would certainly recognize his voice and his  
17 physical stature as opposed to this intruder whom she  
18 always has maintained is unknown.

19 **THE COURT:** How far do you intend to go with the  
20 Sister Care issue, whoever, Mr. Phillips? Mr. Chehoski?

21 **MR. CHEHOSKI:** Your Honor, at this point I don't  
22 think I have any intention to -- to delve into any mention  
23 of Sister Care.

24 **THE COURT:** Okay.

25 **MR. CHEHOSKI:** I think there was --

1           **MR. PHILLIPS:** And the basis for it, Your Honor, is  
2 in the Dickerson Center interview there is the note that  
3 she is receiving services from Sister Care and she's not  
4 having any contact with the boyfriend because of that.

5           **THE COURT:** Right.

6           **MR. PHILLIPS:** So it's that State document that we  
7 are basing that on and to my knowledge Mr. Chehoski does  
8 not intend to ask any questions of Ms. Simon regarding  
9 Sister Care.

10          **THE COURT:** And, of course, the issue is whether the  
11 reference to her placement with Sister Care is gonna be  
12 used as an argument to suggest that somebody else did  
13 this. Of course, as we know, third-party guilt cases are  
14 pretty consistent in that the testimony of third-party  
15 guilt must do more than just raise a mere suspicion of  
16 someone else other than the defendant himself or herself  
17 and, furthermore, must be inconsistent with the guilt of  
18 the accused. So I will deal with the testimony if it  
19 seems to be going down that road in the face of the  
20 well-established third-party guilt law that we're all  
21 aware of and trust that won't become an issue, but I'll be  
22 mindful if it does and I'm sure somebody will let me know  
23 if it does as well.

24          **MR. PHILLIPS:** Yes, Your Honor. And the statement  
25 was made in regards to attacking the thoroughness of the

1 police investigation, kind of as a corresponding issue.  
2 Let's say a Kyles v. Whitley.

3 **THE COURT:** Once again, it's sort of a side door  
4 third-party guilt really, so.

5 All right. Ms. Mayes, what else?

6 **MS. MAYES:** Yes, sir, Your Honor. In terms of  
7 scheduling, I know that Your Honor mentioned you had  
8 viewed the forensic interview. We have the investigative  
9 interviewer here. She'll be here this afternoon if there  
10 is time to take up at least an in-camera presentation of  
11 her qualifications, which I believe we'd have to do under  
12 the statute.

13 **THE COURT:** Right.

14 **MS. MAYES:** And then we also have Detective Mike  
15 Phipps available. I believe he is here this afternoon  
16 and available. He is the investigator that did the cell  
17 phone extraction in case that needs to be dealt with once  
18 and for all because it does seem to be a reappearing issue.

19 **THE COURT:** And who is the investigative interviewer?

20 **MS. MAYES:** Laurie Caldwell.

21 **THE COURT:** Is she the lady on the screen?

22 **MS. MAYES:** Yes, sir, Your Honor.

23 **THE COURT:** All right. Let's see after we deal with  
24 what we have how much time we've got left. If we can work  
25 something in this afternoon, certainly I'll try to do that.

1           **MS. MAYES:** All right. That would be good.

2           **THE COURT:** Okay. Is everybody now ready for the  
3 jury?

4           **MS. MAYES:** Yes, sir, Your Honor. We're gonna go  
5 ahead and mark as 59 through 62 the additional emergency  
6 room photos.

7           **MS. GILREATH:** Judge, may I make a quick request?

8           **THE COURT:** 59 through 63?

9           **MS. MAYES:** 62.

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

11          **MS. GILREATH:** You had -- she mentioned having  
12 Mr. Phipps here to deal with the phone records?

13          **THE COURT:** Right.

14          **MS. GILREATH:** It was our impression from what was  
15 said earlier that this would be dealt with on a later date  
16 and we just sent our expert away just in the interest of  
17 the State not having to pay him just to be sitting here.  
18 Nothing that's being testified to is relevant to our use  
19 of him, so we're just wanting to make sure if we need to  
20 have him come back or if we don't believe we will get to  
21 that, then we won't have him come back.

22          **THE COURT:** Okay. Will Mr. Phipps be available  
23 tomorrow?

24          **MS. MAYES:** He will, Your Honor. He'll be available  
25 whenever he's needed.

1           **THE COURT:** Okay. And did I -- Ms. Gilreath, did I  
2 understand you to say that your investigator would not be  
3 here today or you could get him if you wanted him? You  
4 tell me because I wasn't sure about that.

5           **MS. GILREATH:** I can have him come back. He was here  
6 earlier and from what was talked about earlier we were  
7 under the impression it was gonna be done on a later day.

8           **THE COURT:** Right. And I thought that -- that was  
9 sort of my plan. I just didn't know when we would have  
10 time for it, but if he's gone and if Mr. Phipps will be  
11 ready tomorrow, unless we have some time to kill this  
12 afternoon that we can work that in and your person's  
13 available, we can get him back, but other than that let's  
14 tender to plan on doing the telephone stuff tomorrow  
15 sometime, okay?

16           **MS. GILREATH:** Okay. Thank you, Your Honor.

17           **THE COURT:** All right. We will try to do Ms. Caldwell  
18 today though.

19 All right. Is the defense ready for the jury as well?

20           **MR. PHILLIPS:** Yes, Your Honor.

21           (State's Exhibit Number 59 through 62 were marked for  
22 identification.)

23           (Whereupon, the jury returns to the courtroom at  
24 1:41 PM.)

25           **THE COURT:** Good afternoon, folks, and thank you for

1 your prompt return. We will continue with the presentation  
2 of evidence and testimony in this case as the State  
3 continues to offer evidence in support of the charges that  
4 its brought.

5 Ms. Mayes.

6 **MS. MAYES:** The State calls Larenda Simon.

7 **THE COURT:** Ms. Simon, come forward, please, ma'am,  
8 and be sworn.

9 (Whereupon, Larenda Simon was duly sworn by the Clerk  
10 of Court.)

11 **THE CLERK:** Please be seated. State your full name  
12 and spell your last name.

13 **THE WITNESS:** My name is Larenda Simon. Simon,  
14 S-I-M-O-N.

15 LARENDA SIMON,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. And, Ms. Simon, I'm gonna start by asking how old are  
20 you?

21 A. I'm thirty-one.

22 Q. Okay. And where were you living in 2014?

23 A. [REDACTED] Apartments. [REDACTED],  
24 Apartment [REDACTED].

25 Q. And who did you live at that apartment with?

1 A. Me and my daughter.

2 Q. And what's your daughter's name?

3 A. Minor

4 Q. What is Minor's date of birth?

5 A. [REDACTED]-07.

6 Q. So how old is Minor today?

7 A. She's nine.

8 Q. All right. Now I want to start by asking you a  
9 little bit about yourself. I'm not gonna ask you any  
10 information about where you currently live, but you were  
11 living in [REDACTED] Apartments back in 2014?

12 A. Yes, I was.

13 Q. And I'm gonna take you specifically to the week of  
14 April, 2014. Tell us a little bit about what your plans  
15 were in terms of work and school and things of that nature.

16 A. Well, it was the beginning of Minor's spring break  
17 week. Well, it was that weekend and following -- that  
18 week following she would have been on spring break. I  
19 just gained employment to -- at the local hospital. I was  
20 supposed to start that employment that Monday morning, so  
21 -- but during the weekend we was just gonna hang out and  
22 be home.

23 Q. All right. Now is Minor your only child?

24 A. Yes.

25 Q. Did anyone else live with you at [REDACTED] Apartments

1 other than **Minor** ?

2 A. No.

3 Q. Approximately how long had you been living there at  
4 [REDACTED] Apartments?

5 A. During that time probably like two years.

6 Q. Okay. Back in April of 2014, how old was **Minor** ?

7 A. Six.

8 Q. I want to take you to a specific weekend. Looking  
9 here at a calendar for 2014 --

10 A. Uh-huh.

11 Q. -- I'm gonna take you specifically to this weekend  
12 that would begin on Friday, the 11th, Saturday, the 12th,  
13 and Sunday, the 13th.

14 A. Uh-huh..

15 Q. Do you recall that weekend?

16 A. Yes.

17 Q. And you mentioned that you were to start employment  
18 at the hospital. What day were you to begin work?

19 A. April 14th.

20 Q. So this Monday, April 14th?

21 A. Yeah, I would have started my orientation.

22 Q. Now as for Saturday, April 12th, where were you and  
23 **Minor** that day?

24 A. We were home.

25 Q. Okay. Tell us a little bit about the day and some of

1 the things that you recall y'all doing and what's just a  
2 ordinary day.

3 A. Well, ordinarily **Minor** would want to go outside,  
4 so my apartment had a sliding door and I would leave the  
5 sliding door open and she would just be right there in the  
6 grass area playing with her ball or she had skates and  
7 different stuff like that, so she'd be playing in the  
8 grass area and I'd just be on the couch on my phone.

9 Q. All right. And as to this particular Saturday,  
10 April 12th, do you know whether or not **Minor** went  
11 outside and played that day?

12 A. She did.

13 Q. And you just mentioned the patio area by the sliding  
14 glass door?

15 A. Right.

16 Q. Can you tell us whether or not that's the area that  
17 she used to go outside?

18 A. Yeah, that's the area.

19 Q. Do you know whether or not the door was locked after  
20 she came back in?

21 A. Normally I would lock it. That particular night I  
22 had got a phone call from a friend, a home girl, and so I  
23 was on the phone. So when **Minor** came in she normally  
24 don't lock it because all she can do is slide it, I  
25 normally lock it behind her. When she came in, I'm

1 assuming she'd slide it. It slipped my mind to lock the  
2 actual door because I was on the phone, so the door wasn't  
3 locked.

4 Q. All right. What else did y'all do that night leading  
5 up into the early morning hours, which would be Saturday  
6 night on the 12th on into Sunday morning, the 13th.

7 A. Well, usually to get **Minor** to go to sleep, I  
8 usually have to lay down with her for like ten minutes  
9 until she falls asleep, so we -- about 9:00 we went to  
10 bed. I usually listen to music until she falls asleep.  
11 I put my headphones on and we both just laid in the bed --

12 Q. All right.

13 A. -- but I dozed off along with her.

14 Q. Now when you talk about this particular apartment,  
15 how many bedrooms did it have?

16 A. It was two bedrooms, but I was falling on financial  
17 hardships, so I only had one bed in my house.

18 Q. All right. And who normally slept in that bed?

19 A. The both of us.

20 Q. You and **Minor** ?

21 A. Right.

22 Q. Was that the case on the night of April 12th?

23 A. Right. Yes.

24 Q. You mentioned that you recall falling asleep on the  
25 bed, **Minor** beside you.

1 A. Right. Yes.

2 Q. What's the next thing you remember that night?

3 A. I don't know exactly what woke me up. I was laying  
4 on my back and when I -- I still had my music playing.  
5 When I opened my eyes, there was a man standing over me  
6 with a gun.

7 Q. All right. What happened next?

8 A. I immediately jumped up. I took the ear plugs out  
9 of my ears. I told him I don't have anything, I'm broke,  
10 you know, I don't -- I don't have anything. Then he --  
11 he just kept saying I'm not gonna hurt you, I'm not gonna  
12 hurt you, and when I said I don't have anything, he  
13 repeated -- he's like you don't have anything, I was like  
14 I don't have anything. So at this point I believe **Minor**  
15 was still asleep because I hadn't -- I didn't scream out,  
16 I just was trying to ensure him that I didn't have  
17 anything.

18 Q. All right. How was he dressed?

19 A. He seemed prepared for whatever he was about to do.  
20 He had on a hoodie, he had on a ski mask that covered his  
21 whole face.

22 Q. What color was his clothing?

23 A. I don't recall the exact colors. I remember seeing  
24 some blue, some black, and I definitely seen a gun. I  
25 noticed when I looked down at his feet he had on boots.

1 Q. All right.

2 A. It just seemed like he was prepared for -- for  
3 whatever he was about to do.

4 Q. All right. I'm gonna ask you about what you call the  
5 ski mask. Where did the ski mask go to on his face? Can  
6 you describe it? Is it one of those ski masks that covers  
7 the whole face or part of the face? If you could describe  
8 it further.

9 A. It was one of the ones that covered just the bottom  
10 of the face. It seemed like it was one that was probably  
11 Velcro in the back and it was like covering his whole  
12 face, but I couldn't see his forehead not only because he  
13 had on the hoodie, he had the hoodie pulled -- it was all  
14 the way down and you could tell he had the strings tight.

15 Q. Okay. So if I understand correctly, the hoodie is  
16 down to approximately what part of the forehead?

17 A. Over the eyebrows.

18 Q. Okay. And then the ski mask comes up to approximately  
19 what part of the face?

20 A. Over his nose.

21 Q. You're in the bedroom, you told him that you don't  
22 have anything. What, if anything, did he say next?

23 A. He then took my phone. He told me that he wanted my  
24 phone.

25 Q. And you say your phone, where was the phone at the

1 time that he took it from you?

2 A. It was laying on the bed because once I jumped up and  
3 took the ear plugs out, you know, it was on the bed. For  
4 some apparent reason I unplugged the headphones and handed  
5 him the phone.

6 Q. All right. Okay. So he had your phone?

7 A. (Nods head.)

8 Q. What happened next?

9 A. His next question was -- his next demand was for me  
10 to take my panties off and during that time all I had on  
11 was a T-shirt and some panties and when he told me to  
12 take my panties off, I already knew, you know, what his  
13 intentions was, so I just asked him would my baby be --  
14 excuse me. I asked would she be able to go in the living  
15 room to -- so she wouldn't witness what was about to  
16 happen. I was hoping she would know if she did make it  
17 into the living room to run out of the door, but I don't  
18 -- I think he caught onto that, so he instructed her -- by  
19 this point she was -- she had woken up and was kind of  
20 crying and he instructed her to go into the closet of the  
21 bedroom.

22 Q. All right. Did you remove your underwear?

23 A. Yes, I did.

24 Q. Did you tell him anything about yourself when you  
25 removed your underwear?

1 A. I told him I was on my menstrual period.

2 Q. What did he say after that?

3 A. When I told him that -- well, the initial time I  
4 told him my panties was on, then when I took them off he  
5 witnessed for his self that I was, indeed, on my period.  
6 That's when he paused and looked over to the closet and  
7 asked how old was my daughter.

8 Q. What did you say?

9 A. I lied. I tried to lie and say she was only five I  
10 believe was the age I said just to help -- hopefully he  
11 would have not done it, you know, if I had said a younger  
12 age. I was like she's only five, she's only a baby, please  
13 don't do that to her.

14 Q. What happened next?

15 A. He still instructed **Minor** to come out of the closet.  
16 She -- she came out and she was crying and shaking. She  
17 didn't know what was about to happen. As she was walking  
18 towards the bed, he told her to take her clothes off. She  
19 didn't have much clothes on. I think she had on a -- a  
20 skirt and some panties and she -- she took those off.  
21 While he was instructing her to take her clothes off, he  
22 kept saying to me I'm not gonna hurt her. He instructed  
23 me to turn around and lay flat. I didn't fall -- follow  
24 all the instructions. I only laid flat. I didn't turn  
25 around.

1 Q. And this was on what type of furniture?

2 A. It was on the bed.

3 Q. All right. So you're on the bed. Minor is  
4 standing up?

5 A. She's on her way towards the bed, the side of the  
6 bed.

7 Q. And the person that you're describing that came into  
8 your home, where is he? What is he doing?

9 A. He's standing in the -- more in the doorway beside  
10 the bed like at the foot of the bed.

11 Q. What happened next?

12 A. I just knew in my mind that I couldn't let him do  
13 what he had planned to do. I could see just evaluating  
14 -- I was laying down and I could see that just by his  
15 stature that maybe I could take him on, so --

16 Q. What, if anything, did you see him do to himself?

17 A. As I was evaluating him, I could see he was also  
18 fidgeting. He was kind of turning back and forth towards  
19 me and her making sure we were doing what we were told  
20 and he was also at that time trying to take out his penis,  
21 so I just took advantage of the opportunity to give him a  
22 fight since he was trying to dictate the room, but he  
23 couldn't -- he couldn't keep control of everything that  
24 was going on.

25 Q. All right. So as he starts to expose himself, what

1 do you do?

2 A. I jumped for the gun. I remember putting -- taking  
3 my right hand and covering the -- I guess what's called  
4 the rim of the gun. I covered it with my hand and we were  
5 struggling for the gun. I remember hearing the shot.

6 Well, before the shot he was like get off me, I'm gonna  
7 kill you, and I was like you can't do this to her, and  
8 then that's when I heard the shot and I just decided to  
9 take all of my weight and put it on him.

10 Q. Okay. And where did that carry him to when you  
11 lunged at him?

12 A. We ended up going diagonal. My bathroom door was --  
13 we ended up going into the hallway and into my bathroom.

14 Q. All right. So from the outside of your bedroom into  
15 -- diagonally into the bathroom area. Would that be  
16 correct?

17 A. Yes.

18 Q. Once in the bathroom, where was **Minor** ?

19 A. She was still in the bedroom crying.

20 Q. And you and he are in the bathroom. What happens  
21 next?

22 A. I just remember trying to take the gun. I was just  
23 trying to get the gun from him or at least turn the gun  
24 onto him, so we -- we were struggling for the gun.

25 Q. All right. And during this time do you know whether

1 or not the gun fired?

2 A. Yeah, it fired several times.

3 Q. Who was firing the gun?

4 A. The -- the Defendant.

5 Q. Okay. And as the gun is firing, what are you doing?

6 A. I'm still fighting. I'm still holding onto him.

7 I'm still trying to get the gun.

8 Q. What was he trying to do with the gun?

9 A. He was trying to kill me.

10 Q. And what is it that he was doing that allowed you to  
11 know that?

12 A. When we were struggling for the gun, somehow or  
13 another it was -- we had it both -- we both had it -- our  
14 hands on it and it was up here to me and it was pointed  
15 at me and I was trying to turn it onto him. Like I can  
16 remember seeing numbers on the gun, it was that close to  
17 my face, and I tried to turn it onto him, but, you know,  
18 I didn't get to do that. But by that time I was already  
19 shot several times. I don't know if he had any more shots  
20 left, but I was already shot several times.

21 Q. All right. And what was he saying to you during this  
22 time?

23 A. He was telling me to get off of him, he's gonna kill  
24 me.

25 Q. And after you've been shot and as you've indicated

1 you're still struggling with him, are you standing up in  
2 the bathroom or are you --

3 A. At one point we were both on the floor in the  
4 bathroom.

5 Q. Okay.

6 A. And then at another point he had gained footing and  
7 that's where we were still trying to -- trying to --  
8 struggling over the gun. I assume -- I assume he -- once  
9 he got his footing I didn't know exactly what he was gonna  
10 do, if he already knew that I was shot and not able to do  
11 much, if he was gonna go in the bedroom and finish what he  
12 was doing or shoot my daughter, I didn't know, so whatever  
13 fight I had left in me I continued to hold on to his -- I  
14 don't know if I had a piece of his arm or his leg, but I  
15 had a piece of his body and when he got his footing and  
16 left the bathroom he -- instead of turning to the bedroom,  
17 we both went towards the front door or -- well, the sliding  
18 door.

19 Q. Okay. So as you're holding onto him and he regains  
20 his footing, he flees out of the bathroom?

21 A. Yeah, he was fleeing and I also was pushing him out.

22 Q. Okay. And he ends up going out what door?

23 A. The sliding door. I opened -- personally I opened  
24 the door for him and it seems like I pushed him out and  
25 when I did that I shut the door and pushed the lock up.

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

2 A. Being that he took my phone, I knew I had a secondary  
3 phone in the house, so I tried to search for my other  
4 phone, but when I went to turn on the lights none of the  
5 lights was working.

6 Q. And when you say none of the lights were working, had  
7 the lights been working up until the shots were fired?

8 A. Yes, they were.

9 Q. Okay. And ultimately did you discover whether or not  
10 one of the gunshots had hit the breaker box?

11 A. Yes, it did.

12 Q. And when it hit the breaker box, what happened to your  
13 lights in your apartment?

14 A. They shut out.

15 Q. So at the point that he gains footing and flees out  
16 the door, were you able to -- did you have lighting in the  
17 apartment at that point?

18 A. No, I did not.

19 Q. Did you have lighting -- or some lighting in the  
20 apartment up to the point that the breaker box was hit?

21 A. I believe -- normally before we go to bed I would turn  
22 most of the lights off and leave the hallway light on, but  
23 I believe at his point of entry he must have turned that  
24 light off, but I'm not certain if the light was on or not.

25 Q. All right. You mentioned that you tried to find your

1 phone?

2 A. Right.

3 Q. You were unable to find your second phone and he had  
4 taken your first phone?

5 A. Right.

6 Q. So what did you do to get help?

7 A. I knew we had to go outside to get help. At that  
8 time I had just gotten new neighbors, upstairs neighbors,  
9 so I went to knock on their door with **Minor** behind me.  
10 So we went out my front door to go to my upstairs  
11 neighbors.

12 Q. Okay. Were the upstairs neighbors at home?

13 A. No, they was not.

14 Q. Okay. Where did you go next?

15 A. I remember **Minor** playing with Tiffany's little girl,  
16 so I figured, you know, we should go there.

17 Q. When you say Tiffany, are you referring to Tiffany  
18 Green who testified earlier today?

19 A. Yes, ma'am.

20 Q. And you knew her because your daughter **Minor** --

21 A. And her daughter played together and rode the school  
22 bus together.

23 Q. Okay. So when you thought of going to her place,  
24 what did you do?

25 A. I didn't -- when we got to her place, I didn't know

1 -- being that it was so early, I didn't even know she  
2 would be up, but it just so happened that she was in her  
3 kitchen preparing what I -- preparing bottles I think is  
4 what she was doing, it seemed like she was preparing for  
5 work because she had on her work uniform. I stood by her  
6 glass door and knocked on it so she could at least see me  
7 before I knocked on the main door and I said this is  
8 **Minor** 's mom, I need your help.

9 Q. And was **Minor** with you at that point?

10 A. She was behind me.

11 Q. What clothing did **Minor** have on at that point?

12 A. She -- she was naked.

13 Q. What clothing did you have on at that point?

14 A. I had on no panties, but I had on my -- the shirt I  
15 had on, a black silk shirt, but it was -- I guess because  
16 I got shot so much the shirt was barely on my body. It was  
17 just -- it was ripped up.

18 Q. All right. And do you know whether or not someone  
19 called 9-1-1 from that location?

20 A. Yeah, Tiffany called 9-1-1.

21 Q. And from there you went where?

22 A. I remember the police officer came in, then I remember  
23 EMS coming in and I had asked what -- during that time I  
24 didn't know -- being that my phone was taken, I don't know  
25 if I remembered any numbers of family members and I didn't

1 know what my fate was gonna be, so I wanted to get my  
2 daughter to -- at least to a family member, so I was  
3 yelling out numbers to the EMS crew, to whoever could  
4 write down some kind of contact number for my family. I  
5 remember EMS asking me what happened.

6 Q. Were you able to give them a description of the  
7 intruder?

8 A. Yes, I was. I remember telling them he was a small  
9 stature guy. He was wearing -- he had on a disguise and  
10 all I could see was his eyes.

11 Q. And when you arrived at the hospital, do you remember  
12 whether or not you had surgery that night?

13 A. When I arrived, they had to take -- they had to take  
14 certain -- not x-rays, but they had to give me an MRI to  
15 see exactly what was, you know, going on. I remember  
16 just -- when I first arrived, I remember just nurses and  
17 doctors and I remember Mr. Griffin being in the room at  
18 the time to take my statement.

19 Q. All right. So let me stop you right there.  
20 Ultimately did they operate on you that night?

21 A. Yeah, they did.

22 Q. Okay. But before you went into surgery, do you  
23 recall whether or not you spoke with this investigator,  
24 Thomas Griffin, of the West Columbia Police Department?

25 A. Yes, I did.

1 Q. When you spoke with Investigator Griffin, were you  
2 able to give him a description of the intruder?

3 A. Yes, I was.

4 Q. Were you able to estimate a height of the intruder?

5 A. Yes, I did.

6 Q. What was that?

7 A. He was about four -- 5-4 to 5-6 foot tall.

8 Q. All right.

9 A. Like I said, with my weight I knew he was smaller  
10 than me as far as weight goes. I just evaluated him and  
11 I just thought I could take him on.

12 Q. All right. And 5-4 to 5-6 was your estimate to  
13 Investigator Griffin?

14 A. Yes, ma'am.

15 Q. And is that still your estimate today?

16 A. Yes.

17 Q. Now when we talk about how he's dressed, is it  
18 possible that he had on gloves?

19 A. It's possible, yes.

20 Q. Did you ever actually see his hands?

21 A. No, I did not.

22 Q. What was it that you saw and remember seeing?

23 A. His eyes.

24 Q. And what else?

25 A. The gun.

1 Q. When you had that struggle with him in the bathroom,  
2 did you learn later whether any item was left behind by  
3 the intruder?

4 A. Some detectives had come to me in the hospital  
5 and said that during our struggle I took an article of  
6 clothing off.

7 Q. You've had a chance to review photographs in this  
8 case, correct?

9 A. Yes.

10 Q. Okay. I'm gonna ask you a few questions about some  
11 of those photos, Ms. Simon. I'm gonna ask you to take a  
12 look at these photos and ask you whether or not you  
13 recognize them. This would be State's Exhibit 13 through  
14 28.

15 Can you tell us whether or not that's a fair and  
16 accurate representation of how you recall your bedroom on  
17 that night?

18 A. Yes, it is.

19 Q. All right. I'm gonna also show you these photographs  
20 of the bathroom. That would be State's 29 through 32.  
21 Are these also a fair and accurate representation of how  
22 you recall your apartment that night?

23 A. Yes, ma'am.

24 Q. And then these would be State's Exhibit 39 and 40.  
25 Is that a fair and accurate representation of the upstairs

1 area of the apartment complex?

2 A. Yes, ma'am.

3 Q. I'm gonna show you State's Exhibit Number 11. Is  
4 that a fair and accurate representation of the exterior of  
5 the residence?

6 A. Yes, ma'am.

7 Q. State's Exhibit 35 through 38. Do you recognize  
8 what's depicted in these photographs?

9 A. Yes.

10 Q. Is that a fair and accurate representation of the  
11 scene?

12 A. Yes.

13 Q. Then you mentioned the sliding glass door. I'm gonna  
14 show you State's Exhibit 41, 42 and 43. Is that a fair  
15 and accurate representation of that area?

16 A. Yes.

17 Q. And finally State's Exhibit 46 through 51, the  
18 hallway area, is that a fair and accurate representation  
19 of your home?

20 A. Yes. Yeah.

21 Q. As it was left that night?

22 A. Yes..

23 **MS. MAYES:** At this time, Your Honor, the State would  
24 offer all of these items as evidence. I believe that's  
25 gonna run from Exhibit 13 to 51.

1           **THE COURT:** And 11 as well, I believe.

2           **MR. CHEHOSKI:** Your Honor, may we approach real  
3 quick?

4           **THE COURT:** Okay.

5           (Proceedings held at the bench; not reported.)

6           **THE COURT:** 13 through 51 then in evidence.

7           **MR. CHEHOSKI:** Your Honor, that would be subject to  
8 prior objections.

9           **THE COURT:** Over prior objection. I understand.

10          (State's Exhibit Number 13 through 51, photographs,  
11 were admitted into evidence.)

12          **THE COURT:** Number 11 -- I think you'd offered  
13 Number 11 in there, too; is that right? Was that already  
14 in evidence? That was the exterior.

15          **MS. MAYES:** Yes, sir, Your Honor.

16          **THE COURT:** All right. 11 is also in evidence. Also  
17 over the same objection.

18          **MR. CHEHOSKI:** Thank you, Your Honor.

19          **THE COURT:** Okay.

20          (State's Exhibit Number 11, a photograph, was admitted  
21 into evidence.)

22          **MS. MAYES:** Your Honor, the State would request  
23 permission at this time to publish.

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

25          BY MS. MAYES:

1 Q. I want to start, Ms. Simon, by asking you about  
2 photos in the bedroom. This would be the area that you  
3 testified you first made contact with him?

4 A. Right.

5 Q. This is State's Exhibit 13. Can you tell us what we  
6 are looking at in this photo starting here?

7 A. The bed.

8 Q. Okay. So would this be the entryway here?

9 A. Yes.

10 Q. All right. And then the bed that you indicated that  
11 you and **Minor** was on, is that the same bed?

12 A. Yes.

13 Q. State's Exhibit 14, there is blood here on the door.  
14 Do you know whose blood that is?

15 A. That's my blood.

16 **THE COURT:** Which door is that? Where does the door  
17 lead to?

18 **MS. MAYES:** Yes, sir, Your Honor. I'll clarify that.

19 BY MS. MAYES:

20 Q. Can you tell us, Ms. Simon, looking at this  
21 photograph which door this would be?

22 A. That's the door to my bedroom.

23 Q. Now you also indicated that the first shot was fired  
24 in that bedroom when you lunged for the gun. I'm gonna  
25 show you this photograph of the bed and ask you was there

1 a hole there in that bedroom wall prior to this night?

2 A. No, ma'am, there wasn't.

3 Q. And was the drywall scattered across the bed like  
4 this prior to going to bed that night?

5 A. No, ma'am, it wasn't.

6 Q. And taking a look at 16, was that drywall there  
7 previously?

8 A. No, ma'am.

9 Q. And you indicated that at some point after you were  
10 instructed to remove your underwear you did so?

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

12 Q. And that once you did so what, if anything -- what,  
13 if anything, was his reaction?

14 A. He -- well, he found out I was telling the truth that  
15 I was on my menstrual period and --

16 Q. I'm gonna show you what is State's Exhibit 18 and ask  
17 you if you recognize what's in this photograph?

18 A. Those are my panties.

19 Q. And were those the underwear that you removed after  
20 he directed you to?

21 A. Yes.

22 (State's Exhibit 19 was marked for identification.)

23 Q. The pink clothing here and here and the skirt, are  
24 those your clothing items or do they belong to someone  
25 else?

1 A. Those are Minor 's clothes.

2 Q. And you indicated that the struggle went from your  
3 bedroom into the bathroom?

4 A. Right.

5 Q. I'll stop momentarily to show you this one diagram.

6 **MS. MAYES:** This would be State's Exhibit 53.

7 **THE COURT:** For identification and subject to  
8 objection.

9 **MS. MAYES:** Your Honor, if the witness may have  
10 permission to step down.

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

12 Ms. Simon, you can step down and I ask you to  
13 please stand on the other side of the photograph and face  
14 in this direction so you can be facing the court reporter,  
15 okay?

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

18 **MS. MAYES:** And I will need you to keep your voice  
19 up.

20 **THE COURT:** On the other side of the photograph,  
21 please, ma'am.

22 **THE WITNESS:** This way?

23 **THE COURT:** That's right. Facing the direction of  
24 the court reporter. She needs to hear what you're saying.  
25 Thank you.

1 BY MS. MAYES:

2 Q. Ms. Simon, looking here at this diagram, does it  
3 appear to be a fair and accurate layout of the interior  
4 of [REDACTED], the apartment you lived in at the time?

5 A. Yes, ma'am.

6 Q. I'll scoot it just a little forward this way so that  
7 every juror can see. What would this area here be?

8 A. That's the patio area where the sliding door is.

9 Q. Okay. So the sliding glass door here and this would  
10 be the patio?

11 A. Right.

12 Q. This would be what area?

13 A. The living room slash dining room.

14 Q. Okay. And then the bedroom that you and Minor were  
15 in is located where?

16 A. Here.

17 Q. All right. So right here. And then the bathroom is  
18 located where?

19 A. Here.

20 Q. All right. So once you went for the gun and the gun  
21 goes off and you make physical contact with him, where do  
22 the two of you end up?

23 A. We started out here. This is where I was laying,  
24 that's where he was standing and I got out to one side,  
25 jumped for the gun. Of course, I got up and put all my

1 weight on him and we ended up here in the bathroom.

2 Q. Okay. This area here. And did the struggle  
3 continue?

4 A. Yeah, it continued. I'm not sure if he -- I believe  
5 he shot me several times there and I continued to put up  
6 a fight. We somehow ended up here in between the toilet  
7 and the wall. That's where I had him pinned down for a  
8 little while and, like I said, he gained footing and then  
9 we just went -- we were still -- I still had a part of  
10 his body and when he gained his footing I wasn't sure if  
11 he was gonna go back to the bedroom or flee out the door,  
12 so I still had a part of his body and that's when he --  
13 when he exited the bathroom, he turned that way and he  
14 just was walking into the living room towards the sliding  
15 door.

16 Q. Okay. Towards this area here?

17 A. Yes.

18 Q. Okay. And you indicated before that you sort of  
19 pushed him out. What area would that be where you pushed  
20 him out?

21 A. When we exited the bathroom, we walked towards this  
22 way and I told him you've got to leave, so I opened the  
23 sliding door, pushed him out and then I shut it and locked  
24 it.

25 Q. Okay.

1           **MS. MAYES:** You may return to your seat.

2           (Whereupon, the witness returns to the witness stand.)

3 BY MS. MAYES:

4 Q. State's Exhibit 31, what are we looking at here?

5 A. That's my bathroom.

6 Q. All right. And specifically as to what's on the floor  
7 of that bathroom, did that belong to you?

8 A. No, it did not.

9 Q. Okay. And had you ever seen it there before in your  
10 bathroom prior to having that struggle with him and him  
11 fleeing the residence?

12 A. No, I didn't.

13 Q. State's Exhibit 32, shell casings in your bathroom.  
14 Were there shell casings in your bathroom prior to that  
15 night?

16 A. No, there was not.

17 Q. And what are we looking at here, State's Exhibit 47?

18 A. I believe that's where I -- after I got him out of  
19 the house, I was attempting to turn on the hallway light  
20 so I could find my second phone.

21 Q. Okay. And you were unable to turn on the lights?

22 A. Yes, I wasn't able to turn them on.

23 Q. And what are we looking at here, State's Exhibit 42?

24 A. That's the sliding glass door. That's where I pushed  
25 him out of the door.

1 Q. And State's Exhibit 43, the same sliding glass door?

2 A. Yes, it is.

3 Q. Now you testified that when you left the home you  
4 went up the stairwell?

5 A. Yes, I did.

6 Q. And what door did you go out of to get to the  
7 stairwell?

8 A. My front door.

9 Q. I'm gonna ask you what we're looking at here, State's  
10 Exhibit 37?

11 A. That's my front door.

12 Q. Okay. Then I'm gonna show you State's Exhibit 46 --  
13 36. I'm sorry.

14 A. That's the entry to my front door.

15 Q. All right. And what room would that be that we're  
16 looking into right there?

17 A. The living room.

18 Q. In that living room there are two black articles of  
19 clothing. Who did those belong to?

20 A. I believe those were mine.

21 Q. Okay. And State's Exhibit 38?

22 A. I believe that's my front door.

23 Q. The interior of the front door?

24 A. Yes. That's where I was trying to unlock it to get  
25 out.

1 Q. When you went to bed that night, what, if anything,  
2 did you have around your hair or is there anything that  
3 you ordinarily wear around your hair at night?

4 A. I usually wear a -- like a nylon silk hair wrap, a  
5 black one.

6 Q. Okay. And did you have one on that night?

7 A. Yes, I did.

8 Q. All right. And do you know whether or not that came  
9 off at some point as you went for help?

10 A. Yes.

11 Q. I'm gonna show you what is State's Exhibit 11 and ask  
12 you whether or not you recognize that item?

13 A. Yes, I do.

14 Q. What is that item?

15 A. That's my hair wrap.

16 Q. And you testified that you went to -- upstairs to a  
17 neighbor's house?

18 A. Yes, I did.

19 Q. I'm gonna show you what is State's Exhibit 40 and ask  
20 you what is depicted in that photo?

21 A. That's my upstairs neighbor's door where I was banging  
22 on the door.

23 Q. All right. And do you know whose blood that is on  
24 the exterior of the door?

25 A. That is my blood.

1 Q. And, again, the blood trail here on the cement outside  
2 that door?

3 A. That's my blood.

4 Q. Going back to your bedroom for a moment, what are we  
5 looking at here in State's Exhibit 21?

6 A. That's the closet of the bedroom that we were in.

7 Q. And then also State's Exhibit 19. After **Minor** was  
8 instructed to remove her clothes, what room was she in when  
9 her clothing was removed?

10 A. She was in that room.

11 Q. This bedroom?

12 A. Yes.

13 Q. Now during the course of the investigation, did you  
14 become familiar with the name of the Defendant in this  
15 case, Nathaniel Hunter?

16 A. Yes, I did.

17 Q. Did you have ever have any previous knowledge of  
18 Nathaniel Hunter?

19 A. No, I never met him.

20 Q. No relationship with him?

21 A. (Shakes head.)

22 Q. No former acquaintance with him?

23 A. No.

24 Q. He was a stranger to you?

25 A. Yes, he was.

1 Q. And what about to **Minor** ? Is there any relationship  
2 that Nathaniel Hunter would have had to **Minor** ?

3 A. No, ma'am.

4 Q. And leading up to the trial of this case, you did you  
5 have the opportunity to be present for court proceedings  
6 this week?

7 A. Yes, this week.

8 Q. Okay. And in the context of court proceedings this  
9 week, have you had the opportunity to hear Nathaniel Hunter  
10 speak in conversation?

11 A. Yes, I have.

12 Q. Have you had the opportunity to see him --

13 A. Yes.

14 Q. -- in terms of his full face?

15 A. Yes.

16 Q. Including his eyes?

17 A. Yes.

18 Q. Ms. Simon, can you tell us whether or not the voice  
19 of Nathaniel -- what can you tell us about the voice of  
20 Nathaniel Hunter?

21 **MR. CHEHOSKI:** Objection, Your Honor.

22 **THE COURT:** I'll overrule the objection pursuant to  
23 State versus Lewis, L-E-W-I-S. I note the objection.

24 **MR. CHEHOSKI:** Thank you. Your Honor.

25 A. During the time of the incident, I just remember the

1 voice. I remember the -- I remember the way he instructed  
2 me and **Minor** to do things. When I heard him speak in  
3 court this week, it's the same voice to me.

4 Q. And that night how close were you to his eyes, your  
5 eyes to his eyes, during that struggle?

6 A. I looked him -- I looked him dead in the eyes because  
7 his eyes was all that I could see. I looked him in the  
8 eye.

9 Q. And having observed him in court this week, what, if  
10 anything, can you tell us about the eyes of Nathaniel  
11 Hunter?

12 A. It's the same person. It's the same eyes.

13 **MS. MAYES:** I beg the Court's indulgence.

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

15 BY MS. MAYES:

16 Q. In addition to that information you've given about his  
17 voice and his eyes, you had previously given a description  
18 of the intruder as between 5-4 and 5-6. Have you had the  
19 opportunity to see Nathaniel Hunter stand up in court?

20 A. Yes, I have.

21 Q. Can you tell us whether or not the height --

22 A. The height -- the height is the same. I believe he  
23 gained a little weight, but the height is still the same.

24 Q. And that night prior to going into surgery, what  
25 arrangements did you make for **Minor** ?

1 A. Like I said, I was calling out -- being that my phone  
2 was taken, I wasn't sure if I had the right numbers. I  
3 don't remember numbers other than having it on speed dial  
4 on my phone. So I was just calling out numbers of family  
5 members to see if I could remember anybody's number to  
6 hope that someone would get a call to get the custody of  
7 her because I didn't think I was gonna make it.

8 Q. And going back to that struggle that you had in the  
9 bathroom, during that struggle did you ever see the  
10 intruder touch your towel rack?

11 A. No.

12 Q. Did you ever see lean against -- or touch the surface  
13 of your counter?

14 A. No.

15 Q. Where was he for most of that struggle in the  
16 bathroom?

17 A. For most -- most of the part we were on the floor  
18 and, like I said, once he gained his footing we were  
19 standing in the bathroom. I would say his hands remained  
20 on the gun for most part of the time because it was a  
21 struggle for the gun.

22 Q. If he had ever taken his hand off that gun, what  
23 would you have done?

24 A. I would have shot him.

25 Q. If he had even taken one hand off of that gun, what

1 would you have done?

2 A. I would have shot him.

3 **MS. MAYES:** Nothing further.

4 **THE COURT:** Mr. Chehoski, you can cross-examine.

5 **MR. CHEHOSKI:** Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. CHEHOSKI:

8 Q. Ms. Simon, good afternoon.

9 A. Good afternoon.

10 Q. You testified that your normal routine at night was  
11 to shut off the bedroom lights?

12 A. No, my normal routine is to -- yes, shut off the  
13 lights, but keep the hallway light on.

14 Q. Keep the hallway light on?

15 A. Yes, sir.

16 Q. But the bedroom lights are off?

17 A. Well, to be honest, there aren't any lights in the  
18 bedroom. You have to use lamps.

19 Q. Okay. Thank you. And you said that the intruder  
20 was wearing a mask that covered his nose?

21 A. Yes, he was.

22 Q. And he was wearing a hoodie that was below his  
23 eyebrows?

24 A. Yes, he was.

25 Q. All right. And during that -- that occasion you were

1 focussed on the gun, correct?

2 A. I was focussing on the gun, but I also, like I said,  
3 examined his demeanor and his height and everything to see  
4 if I could take him on.

5 Q. All right. And you were trying to keep him away from  
6 your daughter?

7 A. Right.

8 Q. You had the opportunity to speak to Investigator  
9 Griffin that night, correct?

10 A. Yes, I did.

11 Q. You also had the opportunity to speak to Investigator  
12 Neel a couple of weeks later?

13 A. Yeah.

14 Q. All right. At no point during either of those times  
15 you got to speak to Investigator Griffin or Investigator  
16 Neel did you say the intruder had dreadlocks; is that  
17 right?

18 A. Like I said, he had the hoodie over his head and the  
19 string tied tight, so if he had dreads I wouldn't have  
20 been able to see them. The only thing I saw was his eyes.

21 Q. And you don't remember taking off any clothes from  
22 the intruder?

23 A. Like I said, I had him very tight. I would not let  
24 him go.

25 Q. Right. You would not let him go until he was out of

1 your house?

2 A. Right.

3 Q. You also in your statement to Investigator Griffin  
4 said that you thought the voice sounded familiar; is that  
5 right?

6 A. Prior to this incident I drove cabs for a while. I  
7 didn't know if it was someone that I had maybe picked up.  
8 The voice seemed familiar, but that was just something I  
9 said to -- hopefully to help the investigation because I  
10 didn't know if I would survive.

11 Q. I understand. Just a few more questions. Also you  
12 asked the police if they could track your phone?

13 A. No, I never asked them about my phone.

14 Q. Oh. And you never got your phone back?

15 A. I never got my phone back.

16 Q. All right. And I just wanted to ask just a few more  
17 questions, okay? When you had the opportunity to -- let  
18 me make sure I say this right -- to see Mr. Hunter, you  
19 were -- you were pointing him out as he's sitting right  
20 now?

21 A. Right.

22 Q. Okay. At defense table?

23 A. You mean at the point of me seeing him, he was --

24 Q. No, as in right now.

25 A. As of right now, yes.

1 Q. And he's surrounded by defense attorneys?

2 A. Right.

3 Q. I've got just a couple -- just one more thing about  
4 -- about your phone. I understand that this was -- that  
5 you were at the hospital, this was right before that you  
6 were being wheeled in into surgery --

7 A. Yes, sir.

8 Q. -- but did the police tell you that they were going  
9 to try and track down your phone?

10 A. Yeah, they said they would try.

11 Q. And they never got it back to you?

12 A. I never seen the phone again.

13 Q. All right. And you gave them the phone number to the  
14 phones?

15 A. I don't remember giving them the phone number. Like  
16 I said, I was calling out numbers of family members to  
17 gain custody of my daughter. I don't remember giving them  
18 my number.

19 Q. Not to -- so they can locate your phone? You don't  
20 remember that?

21 A. I don't remember giving them my number.

22 Q. But is it possible that you did give them the  
23 numbers?

24 A. It's possible.

25 **MR. CHEHOSKI:** One moment, please, Your Honor.



1 externally here in the parking lot area?

2 A. Yes, there are.

3 Q. All right. And can you tell us whether those lights  
4 aid in your bedroom area?

5 A. Yes, it does.

6 Q. Okay. In other words, in your bed -- can you tell  
7 us whether the lighting is better in your bedroom area  
8 versus the bathroom?

9 A. Yeah, it's better in the bedroom.

10 Q. All right. And why is that?

11 A. There's -- at the back of my apartment there's -- I  
12 believe there's a streetlight somewhere back there.

13 Q. All right. So into your bedroom window do you have  
14 exterior lighting --

15 A. Yes.

16 Q. -- that comes into the window?

17 A. Yes.

18 Q. And can you tell us prior to your breaker box being  
19 shot out were you able to see better before your breaker  
20 box got shot out or after?

21 A. I'm -- I'm not understanding your question.

22 Q. Okay. All right. I'm sorry. After your breaker box  
23 got shot out and y'all were in the bathroom, were you able  
24 to see his -- his type of hairstyle and things of that  
25 nature at that point?

1 A. I didn't see any hair period, but --

2 Q. Explain what you mean.

3 A. I'm sorry?

4 Q. Explain what you mean.

5 A. Like I said, he had on a hoodie and it was tied. It  
6 was tight.

7 Q. Okay. And then after he fled out the door, were you  
8 able to see whether his hair was outside of his clothing  
9 or inside of his clothing or anything like that?

10 A. Once I got him out, I didn't look -- look out the  
11 window.

12 Q. And to follow up with Mr. Chehoski's questions to  
13 you about the fact that he is accompanied by attorneys  
14 in the court, can you tell us whether or not that affects  
15 your ability to recognize his voice?

16 A. No, it's not.

17 Q. How sure are you that it's the same voice?

18 A. I'm pretty sure it's the same voice.

19 Q. And can you tell us whether or not that affects your  
20 ability to identify his eyes?

21 A. No, it does not.

22 Q. Can you tell us whether or not you have any doubt  
23 it's the same eyes?

24 A. I have no doubt it's the same eyes.

25 **MS. MAYES:** Nothing further.



1           **THE COURT:** Ms. Mayes, who do you anticipate calling  
2 next?

3           **MS. MAYES:** Your Honor, we have Colleen Belk. She  
4 was one of the advocates that -- or law enforcement  
5 victim advocate that responded to the scene and then we  
6 also have Ms. Caldwell. Since we're on the record at  
7 this time, I'll go ahead and state the -- the State's  
8 position is that if there's a challenge to the inability  
9 to question the child about the content of the forensic  
10 interview it may make more sense in our presentation to  
11 call the forensic interviewer, publish the video  
12 potentially and then the child would be subject to  
13 cross-examination about the video, as well as any other  
14 matters which would resolve that issue. We can assure  
15 the Court the child will testify.

16           **THE COURT:** All right. Of course, I need to --

17           **MS. MAYES:** And we would proffer Ms. Caldwell's  
18 testimony at a time Your Honor deems appropriate.

19           **THE COURT:** Okay. And certainly out of the presence  
20 of the jury I have to make certain determinations  
21 regarding her qualifications or training I should say.  
22 Do you intend to offer that in the presence or out of the  
23 presence of the jury first?

24           **MS. MAYES:** In-camera, Your Honor.

25           **THE COURT:** Okay. Good. That's what I thought.

1 All right. Do we have time to do that during this  
2 break? Probably not. Probably not cross-examination,  
3 too.

4 **MR. PHILLIPS:** And, Your Honor, with addressing the  
5 admission of the out-of-court statement whenever we would  
6 be getting to that, we would definitely need to have the  
7 competency hearing prior to that because that's step one  
8 of the analysis.

9 **THE COURT:** That should not be a problem either.

10 **MS. MAYES:** Correct, Your Honor. And I believe  
11 Ms. Caldwell would need to be heard on that matter, too,  
12 because she would like to clarify something in the report  
13 regarding that.

14 **THE COURT:** Okay.

15 All right. Let's stand in recess until ten after the  
16 hour and we'll take the next witness or so and then we'll  
17 have to declare another break before we deal with these  
18 issues.

19 **MR. PHILLIPS:** Thank you, Your Honor.

20 **MS. MAYES:** Thank you, Your Honor.

21 (Recess taken.)

22 **BAILIFF:** All rise. Court's now is session.

23 **THE COURT:** Thank you, folks. You-all can be seated.  
24 Are both sides ready for the jury?

25 **MR. McNAIR:** Ms. Mayes stepped out for one second.

1 She'll be back shortly.

2 **THE COURT:** Okay. You can have the next witness  
3 already in court if she's not already here.

4 **MS. MAYES:** She is.

5 **THE COURT:** Okay. Are both sides now ready for the  
6 jury?

7 **MS. MAYES:** Yes, sir, Your Honor.

8 **MR. PHILLIPS:** Yes, Your Honor.

9 **THE COURT:** Thank you.

10 (Whereupon, the jury returns to the courtroom at  
11 3:15 PM.)

12 **THE COURT:** Folks, we'll continue now with the  
13 State's presentation of evidence and testimony.

14 Ms. Mayes.

15 **MS. MAYES:** The State calls Colleen Belk.

16 **THE COURT:** Ms. Belk, come forward, please, and be  
17 sworn.

18 (Whereupon, Colleen Belk was duly sworn by the Clerk  
19 of Court.)

20 **THE CLERK:** Please be seated. State your full name.

21 **THE WITNESS:** Colleen Belk, B-E-L-K.

22 COLLEEN BELK,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. MAYES:

1 Q. Good afternoon, Ms. Belk. Can you tell us a little  
2 bit of information about yourself? What type of career  
3 have you had in law enforcement?

4 A. Yes, ma'am. I started in law enforcement in 1992.  
5 I was a communications officer for eight years before I  
6 went to the criminal justice academy and became a Class 1  
7 certified officer.

8 Q. All right. And can you tell us what capacity you  
9 were working in back in 2014?

10 A. I was a law enforcement victim advocate.

11 Q. And for what agency?

12 A. West Columbia Police Department.

13 Q. During the course of your employment as a victim  
14 advocate, were you also still a law enforcement officer?

15 A. I was.

16 Q. And if a crime happened in the middle of the night,  
17 for example, what's the protocol or process for you to  
18 respond?

19 A. If something happens during the night that requires  
20 a victim advocate to come out either for -- whatever type  
21 of call it may be, then I would respond. I was on call  
22 twenty-four hours a day, seven days a week.

23 Q. I'm gonna refer you back to the early morning hours  
24 of April 13th. of 2014.

25 A. Okay.

1 Q. Were you called out in response to a crime that had  
2 occurred in the middle of the night?

3 A. I was.

4 Q. And where did you go?

5 A. I came to West Columbia, I responded from my home,  
6 and it was -- the address was [REDACTED],  
7 Apartment [REDACTED].

8 Q. All right. And what do you recall about your initial  
9 arrival there at the scene?

10 A. The dispatcher had briefed me a little bit about what  
11 had happened, but when I responded to the scene the officer  
12 that was there on the scene directed me to the location of  
13 a child that was involved and so I went directly to make  
14 contact with the child.

15 Q. Now at this point in time where was the child's  
16 parent, her mother?

17 A. Her mother was -- had been transported to the  
18 hospital.

19 Q. All right. And in this situation was there any  
20 other immediate relative or a guardian on-site for Minor  
21 ?

22 A. No, there was not. Unh-unh.

23 Q. And is that routine for you to get involved to assist  
24 children who have witnessed a crime?

25 A. Very routine. That's -- I would say that was one of

1 my primary duties with children or the elderly or any  
2 other type of victim of a crime.

3 Q. What can you tell us about **Minor** 's demeanor when  
4 you went to her aid?

5 A. Her demeanor, she was shaken. You could tell she had  
6 been crying and she still -- her eyes were full of tears.  
7 She was nervous, scared.

8 Q. And did you observe anything about her physically?

9 A. Physically, I did. Do you want me to elaborate?

10 Q. Yes, please.

11 A. When I first got to the apartment, they directed me  
12 over there and when I went to the apartment where she was  
13 I noticed that she was completely nude other than a very  
14 small bathrobe that was several sizes too small for her  
15 and I found out immediately after I got there that when  
16 she had gone to the neighbor's house the neighbor gave  
17 her a bathrobe to wear that was one of the neighbor's  
18 children's, so she just gave her whatever she had at that  
19 point to try and help her cover her body.

20 Q. All right. And you were able to see the bathrobe and  
21 underneath the bathroom?

22 A. Oh, it was very obvious. The bathrobe was very small  
23 and it was very obvious that she was nude.

24 Q. Okay. I'm gonna show you what's in evidence, State's  
25 Exhibit 9, and ask you whether or not you recognize this

1 item?

2 A. I do.

3 Q. How so?

4 A. That was the bathrobe that she had on the night that  
5 I responded.

6 Q. And ultimately were you also present when it was  
7 collected as evidence by your CSI officer, Crime Scene  
8 Investigator Charles Bramlett?

9 A. Yes. Yes, I was. Uh-huh.

10 Q. Speaking of which, in 2014 who was your primary  
11 investigator for West Columbia Police Department?

12 A. Officer Chuck Bramlett.

13 Q. And can you tell us what occurred with Sergeant  
14 Bramlett?

15 A. In 2015, Chuck suffered a massive heart attack and  
16 he was without oxygen to his brain for a while, so he  
17 passed away several days after that.

18 Q. All right. You had the opportunity to work side by  
19 side with Chuck for approximately how long?

20 A. Well, I was friends with Chuck. My husband and  
21 Chuck were friends for many years, since high school, and  
22 I worked with Chuck from 1994 until his death.

23 Q. You were familiar with his collection procedures as  
24 it concerned crime scene evidence?

25 A. Very much. Chuck was very meticulous about

1 everything, so, yes.

2 Q. Did you also have the opportunity to go to the  
3 hospital where Larenda Simon, the victim in this case,  
4 was treated following surgery for gunshot wounds?

5 A. Yes. Actually I was at the hospital several different  
6 times. I went initially before she had surgery just to  
7 make -- make some contact with her and then I did see her  
8 every day while she was in the hospital.

9 Q. Okay.

10 A. Yes.

11 Q. And I want to refer you specifically to the date of  
12 April 15th of 2014. Do you recall whether or not you were  
13 present along with Sergeant Chuck Bramlett --

14 A. I was.

15 Q. -- for the collection of any evidence from Larenda  
16 Simon there at the hospital?

17 A. Yes, I was.

18 Q. Let me show you an item and ask you whether or not  
19 you recognize it. During the course of your career in  
20 law enforcement, have you had the opportunity to witness  
21 what's called buccal swab standards being collected?

22 A. Several times, yes.

23 Q. All right. And they are collected from what part of  
24 the body?

25 A. The mouth.

1 Q. Okay.

2 A. Inside the mouth I should say.

3 Q. Let me show you these items and ask you whether or  
4 not they are consistent with buccal swab collection  
5 packaging?

6 A. That's Chuck handwriting right there. Chuck Bramlett,  
7 that's his handwriting.

8 Q. All right.

9 A. Cotton swabs of right and left cheek, 4-15-14 is when  
10 he collected them.

11 Q. All right.

12 A. That's his handwriting as well on the actual swab  
13 casing. Larenda Simon, C. Bramlett, 4-15-14, oral swab.

14 Q. And do you recall being present when those swabs were  
15 collected from Ms. Simon?

16 A. I was there. Uh-huh.

17 Q. And once they were collected, where did Sergeant  
18 Bramlett actually package them?

19 A. Sergeant Bramlett normally packaged everything at the  
20 time of collection as to not contaminate anything when he  
21 was leaving. He wouldn't take it back to his car and  
22 package it, he would package it right there and have  
23 everything sealed and he would write -- take his time and  
24 write everything up. He was, like I said, very meticulous,  
25 very detail-oriented.

1 Q. Can you tell us whether or not that was the case with  
2 the collection of the buccal swabs there in the hospital  
3 by Sergeant Bramlett of the victim in this case, Larenda  
4 Simon?

5 A. It was. Do you want me to elaborate on how I remember  
6 that? The reason I know that, we kept -- the hospital and  
7 I, the social workers, we kept her in a secure location in  
8 the hospital. She wasn't in the public registry and so I  
9 was privy to her hospital room number, so when Investigator  
10 Bramlett went there I went with him.

11 Q. All right. To the private or secure room of Larenda  
12 Simon?

13 A. Correct. Yes.

14 **MS. MAYES:** Your Honor, at this time we would mark  
15 this item for identification.

16 **THE COURT:** All right. State's next for  
17 identification.

18 (State's Exhibit Number 63 was marked for  
19 identification.)

20 **THE COURT:** That number?

21 **THE COURT REPORTER:** 63.

22 **THE COURT:** 63. Thank you.

23 BY MS. MAYES:

24 Q. Now as to **Minor** that night, is there anything that  
25 you recall about seeing her physically that you made a

1 request for Sergeant Bramlett to document?

2 A. Yes, Sergeant Bramlett when he came back to the  
3 office I had called him to let him know that I had seen  
4 some blood evidence on her and he was -- he came into --

5 **MR. PHILLIPS:** I object. We're starting to go into  
6 hearsay testimony, Your Honor.

7 **MS. MAYES:** I can rephrase that.

8 **THE COURT:** If you can.

9 BY MS. MAYES:

10 Q. And this is premarked as State's Exhibit 12.

11 A. Yes, I recognize that.

12 Q. All right. Do you know where that photograph was  
13 taken?

14 A. It was taken in my office at the West Columbia Police  
15 Department.

16 Q. Okay. And it was taken by Sergeant Bramlett at whose  
17 request?

18 A. At my request.

19 Q. All right. And who is the person depicted in the  
20 photograph?

21 A. **Minor**

22 Q. And can you tell us whether or not that's a fair and  
23 accurate representation as you remember **Minor** that  
24 night in your office?

25 A. Yes, it is. Yes, uh-huh.

1 Q. And this is while her mother was being treated at the  
2 hospital?

3 A. Yes. I believe they were prepping her mother for  
4 surgery at that time.

5 **MR. PHILLIPS:** Your Honor?

6 **THE COURT:** Yes, sir.

7 **MS. MAYES:** We move this in evidence without  
8 objection.

9 **MR. PHILLIPS:** Subject to the prior objection, Your  
10 Honor.

11 **THE COURT:** All right. Subject to prior objection,  
12 12 is in evidence.

13 (State's Exhibit Number 12, a photograph, was admitted  
14 into evidence.)

15 BY MS. MAYES:

16 Q. What are we looking at? What does that appear to be?

17 A. It appears to me to be blood.

18 Q. All right. Now when you have a child witness, what  
19 steps do you take as a law enforcement officer and as the  
20 victim advocate to follow up in terms of an investigation?

21 A. Initially my job would be to make sure the child was  
22 safe and secure and to -- if need be, arrange for a  
23 follow-up -- for an interview, a professional interview.

24 Q. Okay. And when you say a follow-up with a  
25 professional interview, did you set up an interview with a

1 trained interviewer?

2 A. Yes, we did.

3 Q. All right. And do you know where you referred the  
4 child for that interview to be done?

5 A. I do.

6 Q. Okay. What is the name of that location?

7 A. The Dickerson children.

8 Q. Okay. For children?

9 A. It's a child advocacy center, yes.

10 Q. Can you tell us whether or not that's normal protocol?

11 A. That is our normal protocol, yes.

12 **MS. MAYES:** Nothing further of Ms. Belk at this time,  
13 Your Honor.

14 **THE COURT:** Mr. Phillips, cross-examine?

15 **MR. PHILLIPS:** Thank you, Your Honor.

16 **THE COURT:** Uh-huh.

17 **MR. PHILLIPS:** We have no further questions of this  
18 witness.

19 **THE COURT:** Thank you. Ms. Belk, you can step down.  
20 Thank you, ma'am.

21 **THE WITNESS:** Thank you, Your Honor.

22 (Witness excused.)

23 **THE COURT:** Can we talk about a scheduling matter  
24 over at the sidebar at this time?

25 **MS. MAYES:** Yes, Your Honor.

1 (Proceedings held at the bench; not reported.)

2 **THE COURT:** The testimony of the last witness was  
3 preliminary testimony that had to be offered before some  
4 other additional witnesses are gonna be offered under our  
5 rules and I also have to deal with some matters of law  
6 regarding those additional witnesses before they're gonna  
7 be allowed to testify and so that's the reason we had to  
8 get her out to establish this and now I've got to send you  
9 out again while I take care of those other matters. That  
10 way we can keep things in their proper sequence and to make  
11 sure that the building blocks are in place to allow this  
12 matter to proceed.

13 And what that means is I'm not gonna send you back  
14 into the jury room, I'm gonna send you home, and I  
15 apologize for sending you home with an hour and a half of  
16 regular court time left in the day. It's gonna take a  
17 good bit of that court time for us to do what we have to  
18 do before the additional testimony can be offered. And so  
19 we might be able to squeeze in another thirty minutes of  
20 court time today, but with the expense of you waiting for  
21 an hour back in the jury room. I don't want to do that.  
22 One of my pet peeves is having jurors wait in the jury room  
23 while we're doing stuff out here and I try to guard against  
24 that every way I can. The only way I can guard against it  
25 today is to send you home, so I'm sorry about that. Now if

1 you want to hang around, you can, but we aren't gonna be  
2 able to use your efforts any more here today in the  
3 courtroom.

4 So we're on good time in this case. It's not gonna  
5 be a problem with us running out of time before we run  
6 out of case in this particular case. We're okay in that  
7 regard. And I apologize for this. I wish there was some  
8 other way that we could just stack things up and let  
9 things go smoothly like an assembly line, but there's a  
10 matter of the Constitution. Golly, bum, it just gets in  
11 the way sometimes, but it's what -- it's what greases the  
12 wheels that we operate under and that's what we do and so  
13 it takes a while to meet the demands of our law and the  
14 Constitution, but we don't apologize for that. All of us  
15 are protected by it, so that's what we have to do.

16 That's a long way of saying I'm gonna let you go now.  
17 You're beating the traffic, if that's any consolation.  
18 I need you back at 9:30 again in the morning. I remind  
19 you, as always, to please not to discuss the case among  
20 yourselves or with anybody else and I'll see you back at  
21 9:30 tomorrow. Thank you.

22 (Whereupon, the jury was excused for the day at  
23 3:34 PM.)

24 **THE COURT:** All right, folks. We've just had a break,  
25 so let's keep going.



1 A. Yes, that's my CV.

2 Q. All right. And did you bring this with you today for  
3 purposes of court?

4 A. Yes.

5 Q. And establishing any background, education and  
6 training that you have?

7 A. Yes.

8 Q. All right.

9 **MS. MAYES:** And, Your Honor, we'd ask this could be  
10 marked as a Court's exhibit. We have provided a copy to  
11 defense counsel.

12 **THE COURT:** Thank you.

13 (Court's Exhibit Number 6 was marked for  
14 identification.)

15 BY MS. MAYES:

16 Q. Now you mentioned that you're currently an agent  
17 with the State Law Enforcement Division. What years were  
18 you previously employed as an agent with the State Law  
19 Enforcement Division prior to now?

20 A. 2000 -- excuse me, 1986, and I retired in  
21 February 2011.

22 Q. So approximately twenty-five years at the State Law  
23 Enforcement Division?

24 A. Yes.

25 Q. And during that time that you were an agent, what

1 type of criminal investigations did you focus on primarily?

2 A. Primarily I investigated crimes against children and  
3 then eventually also exploitation of vulnerable adults,  
4 but the vast majority children.

5 Q. And during that twenty-five years of experience as  
6 a SLED agent, did you have the opportunity to conduct  
7 interviews with children yourself?

8 A. Yes.

9 Q. As well as regular training in the field of  
10 interviewing children?

11 A. Yes.

12 Q. Did that include children who were witnesses to crimes  
13 or victims of crimes?

14 A. Yes.

15 Q. Following your retirement from the State Law  
16 Enforcement Division in 2011, where did you go to work and  
17 in what capacity?

18 A. I began employment about three weeks after I retired  
19 at the Dickerson Child Advocacy Center. When I was there,  
20 it was called the Dickerson Center for Children. There I  
21 was the -- what we referred to as forensic coordinator.  
22 I was the chief investigative interviewer of children and  
23 I supervised the other employees there that conducted  
24 interviews with children and I also coordinated and  
25 facilitated the Lexington County Multidisciplinary Team,

1 as well as the advocacy program at the Dickerson Center.

2 Q. All right. During that three years as an interviewer  
3 at the Child Advocacy Center here in Lexington County --  
4 let me clarify that. The Dickerson Center primarily serves  
5 what counties?

6 A. Primarily serves Lexington County.

7 Q. Is it possible for you to estimate how many children  
8 you would have conducted forensic interviews with?

9 A. In my -- in my career, well over 2,000.

10 Q. And specifically in terms of what may be called a  
11 forensic interview or an investigative interview that's  
12 done pursuant to specific non-leading questions, is it  
13 possible to estimate how many?

14 A. Well over 2,000.

15 Q. And that was your approach or protocol throughout your  
16 career?

17 A. Absolutely, yes.

18 Q. Now what type of specific training have you received  
19 leading up to your role at the time termed forensic  
20 interviewer with the Dickerson Childrens Center that --  
21 that allowed you to keep up with current techniques and  
22 training in regards to investigative interviews of  
23 children?

24 A. It started as early as 1987 at the South Carolina  
25 Criminal Justice Academy, their child abuse investigative

1 school. I attended multiple seminars; Medical Aspects of  
2 Child Abuse, Abuse and Exploitation -- excuse me. That  
3 has nothing to do with children. I attended the Division  
4 of Public Safety's Innovative Concepts of Investigations  
5 of Child-Related Crimes, I've attended training through  
6 the National Center for Missing and Exploited Children,  
7 training through the Federal Law Enforcement Training  
8 Center.

9 Q. All right. So let me stop you right there. What is  
10 meant by the Child First Training Program?

11 A. That the child's wellbeing is the utmost first in  
12 investigation.

13 Q. All right. And what about the Finding Words Training  
14 Program?

15 A. That was the forensic interview model -- or the  
16 investigative child interview model where it is designed  
17 to meet a child on their level but to create an environment  
18 to solicit information from the children in a non-leading,  
19 non-suggestive environment.

20 Q. So the Finding Words Program, if I understand  
21 correctly, can you tell us whether that focuses  
22 specifically on how you approach interviewing children?

23 A. Yes.

24 Q. Including non-leading interviews of children?

25 A. Correct.

1 Q. Take a look, if you will, and review your CV and tell  
2 us during what year you received training specifically in  
3 that Finding Words Program which deals with interviewing  
4 techniques for children.

5 A. I attended it in 2001.

6 Q. And what about an advanced course for Finding Words?

7 A. 2001, 2003, 2004, 2006.

8 Q. Okay. And which of those would have been the Finding  
9 Words advanced courses?

10 A. The advanced course would have been 2003, 2004, 2006.  
11 I also attended in 2010 When Words Matter. That was also  
12 an advanced course in the Finding Words model.

13 Q. All right. Then I want to ask you about training in  
14 2013 regarding Extended Forensic Interviewing of Children.

15 A. Yes, I attended that at the National Childrens  
16 Advocacy Center in St. Louis, Missouri.

17 Q. And was that -- can you tell us whether or not that  
18 was within the period of time that you were a forensic  
19 interviewer at the Dickerson Center for Children?

20 A. Yes, it was.

21 Q. Throughout that time can you tell us whether or not  
22 as Director of Forensic Services you maintained your  
23 training that is followed by peers in the field?

24 A. Yes, I did. Yes.

25 Q. And can you tell us whether or not you followed

1 that training regarding techniques and protocols for  
2 interviewing children?

3 A. Yes, I did.

4 Q. Can you tell us whether or not that was the same  
5 type of approach you had for the interview with Minor  
6 on April 15th of 2014?

7 A. Yes, it was.

8 Q. Have you had the opportunity to review the actual  
9 recording of Minor 's forensic interview?

10 A. Yes, I have.

11 Q. And have you had an opportunity to review the  
12 document which is a summary of the forensic interview?

13 A. Yes, I have.

14 Q. Who actually prepared this document?

15 A. The summary, I prepared it.

16 Q. All right. Can you tell us whether or not during the  
17 course of Minor 's interview -- how old was she?

18 A. Six and a half at the time.

19 Q. All right. With her being six or six and a half,  
20 can you tell us whether or not it's standard to have the  
21 child agree to certain rules to follow in the interview?

22 A. Yes, it is.

23 Q. And why is that?

24 A. I want to establish the expectation that we're gonna  
25 talk about things that are real and true.

1 Q. All right. And can you tell us whether or not --  
2 how you instruct children regarding guessing or if they're  
3 not sure of an answer?

4 A. Well, I make sure I give them permission that it's  
5 okay to say I don't know and I want to, you know, make  
6 sure that they don't guess and so I kind of test that a  
7 little bit just with just some fun questions. Like in  
8 this particular case, I said do you know my last name and  
9 she said I don't know and I praised that, right, you do  
10 not know. And in reviewing the DVD, I was reminded that  
11 I asked her how many horses do I have in my backyard and  
12 she said I don't know and I said you're right, you don't  
13 know, and so encouraging and praising that answer if that  
14 is real and true.

15 Q. All right. And do those factors also come into play  
16 in assessing a child's competency, their ability to  
17 understand your questions and then communicate a response?

18 A. Yes.

19 Q. Based on all of that, did **Minor** appear to be  
20 competent?

21 A. Yes, she understood that -- the expectation that  
22 we're only gonna talk about things that are real and true  
23 and things that she had seen, heard or felt.

24 Q. All right. And did she agree -- not only in what you  
25 observed with her answering your questions, but did she

1 agree to follow those rules during the interview?

2 A. Yes, she did.

3 Q. I'm gonna refer you to Page -- I believe it's gonna  
4 be 2, Page 2 of your report or your summary. Do you have a  
5 section where you discuss a child's ability to understand  
6 the interview rules and agree to follow the interview  
7 rules?

8 A. Yes, I do.

9 Q. All right. And can you tell us -- what, if anything,  
10 can you tell us about this document and how you prepared  
11 it?

12 A. It was probably the very last report, number one, that  
13 I prepared as I was leaving the Dickerson Center returning  
14 to SLED, but I used a template and in this particular case  
15 I made a mistake on it because I did not notice that I had  
16 checked "no" instead of "yes" on this particular report.

17 Q. All right. So when it says rules, no guessing,  
18 correct the interviewer, only talk about things that are  
19 real and true, did you discuss that with **Minor** ?

20 A. Yes, I did.

21 Q. Was she able to give you accurate answers and  
22 responses to those rules?

23 A. Yes.

24 Q. In fact, to actually correct you and say I don't know  
25 how many horses are in your yard?

1 A. Correct.

2 Q. So what would -- based upon your memory of the  
3 interview and your observations, did she understand the  
4 interview rules?

5 A. Yes, she did.

6 Q. And did **Minor** agree to follow the interview  
7 rules?

8 A. Yes.

9 Q. All right. So your notation here is inaccurate?

10 A. It's inaccurate on the report, yes.

11 Q. What, if anything, can you tell us about the format  
12 for filling this out that may have allowed for that error?

13 A. I may have, in thinking back, have cut and pasted a  
14 little bit and just did not take a formal report to save  
15 time because of the amount of work volume that was coming  
16 in.

17 Q. Is this a template software program?

18 A. It's a template, yes.

19 Q. So is there any doubt that was an error on your part?

20 A. No, no doubt that was definitely an error on my part.

21 Q. All right. If you can just account for the additional  
22 pages of training; Page 2, Page 3, Page 4 and Page 5, 6  
23 and 7 that are part of your curriculum. If you could tell  
24 us roughly how many or what percentage of these courses  
25 that deal with children would have involved interviewing

1 techniques.

2 A. The majority of it. The majority of it would involve  
3 interviewing children.

4 Q. Now I also want to ask you, you're not being offered  
5 as an expert witness in this case, but have you previously  
6 been offered and qualified as an expert in courts of this  
7 state?

8 A. Yes.

9 Q. And specifically in the field of child sexual abuse  
10 and related dynamics?

11 A. Yes.

12 Q. Have you testified previously in court regarding  
13 forensic interviews?

14 A. Yes.

15 Q. Is it possible to estimate how many times you've  
16 testified in general sessions and family court on forensic  
17 interviews that you have conducted?

18 A. I'm not even sure how to estimate that. I'm sorry.  
19 I'm afraid it would --

20 Q. More than one or more than a few?

21 A. Yes, more than a few.

22 Q. Okay. Going back to that interview that was conducted  
23 with **Minor**, have you had a chance to review it  
24 again in anticipation of this trial?

25 A. Yes.

1 Q. Can you tell us whether or not you followed your  
2 procedure of non-leading questions?

3 A. Yes, I did.

4 Q. Does your protocol and training allow you to ask more  
5 specific questions at any point during an interview?

6 A. Yes.

7 Q. Explain that please.

8 A. We are allowed to ask specific questions, but we  
9 always try to return to the open-ended questions.

10 Q. Can you ask more specific questions in follow-up to  
11 something that the child has stated?

12 A. Yes. As follow-up, yes.

13 Q. Can you tell us whether or not you are trained in  
14 conducting investigative interviews of children?

15 A. Yes, I am trained.

16 Q. All right. Can you tell us whether or not Minor 's  
17 account contained details of the crime?

18 A. Yes, it did.

19 Q. Was she able to describe the person that came into the  
20 home?

21 A. Yes.

22 Q. Was she able to describe what he was wearing?

23 A. Yes.

24 Q. And what portions of his face were covered?

25 A. Yes.

1 Q. Was she able to describe whether or not he was armed  
2 with a weapon?

3 A. Yes.

4 Q. Was she able to describe whether or not he spoke to  
5 her and her mother?

6 A. Yes.

7 Q. Was she able to describe who was in the room with her?

8 A. Yes.

9 Q. Was she able to describe whether or not she heard the  
10 weapon fired?

11 A. Yes.

12 Q. Was she able to describe whether or not her mother was  
13 injured?

14 A. Yes.

15 **MS. MAYES:** Your Honor, that's all we have from  
16 Ms. Caldwell at this time.

17 **THE COURT:** All right.

18 **MR. PHILLIPS:** Just a second. I'm sorry, Your Honor.

19 **THE COURT:** That's okay. I was just looking to who  
20 was gonna do the cross-examination.

21 **MR. PHILLIPS:** I will, Your Honor.

22 CROSS-EXAMINATION (In-Camera)

23 BY MR. PHILLIPS:

24 Q. Hi, Ms. Caldwell.

25 A. Hi.

1 Q. How are you?

2 A. Good. Thank you.

3 Q. In reviewing the report -- when was the most recent  
4 time that you reviewed the report?

5 A. I believe I can tell you it was faxed to me on  
6 March the 2nd, 2017.

7 Q. And with that fax did you have any conversations or  
8 -- with the solicitor's office regarding that report?

9 A. Not until yesterday. And I'm incorrect. It was  
10 faxed on April the 6th 2017. I think this March 2nd is  
11 between somebody else. I must have gotten a fax of a fax.

12 Q. Okay. Did you have any e-mails or phone calls?

13 A. Just e-mails from the solicitor's investigator,  
14 Investigator Sullivan, and it was just in preparation, I  
15 want to drop this CD off -- or, excuse me, DVD, but other  
16 than any specific conversations not until yesterday  
17 afternoon.

18 Q. So just to make sure, there was no faxes, e-mails or  
19 any other type of phone calls that had anything to do with  
20 that report other than sending you the report itself?

21 A. Correct. And then they wanted to make sure I saw the  
22 DVD.

23 Q. And the DVD. So yesterday you had the phone call with  
24 the solicitor?

25 A. Yes.

1 Q. And -- and was it you after reviewing the report who  
2 noticed the error or the solicitor?

3 A. I noticed the error, yeah.

4 Q. Okay. So you were the first one to bring it up to the  
5 solicitor?

6 A. I believe so because, see, I watched the DVD and then  
7 when I was reviewing my report, I was like whoa, I made a  
8 mistake.

9 Q. With those reports having the errors, you said it's a  
10 copy and paste. Is it a program where you actually click  
11 "X", you know, to check boxes?

12 A. Yes.

13 Q. So you can copy and paste a program you can click?

14 A. What I can do, and now I'm not saying I did that with  
15 this report because that was a long time ago, is I can take  
16 an existing report sometimes and like if I already had one  
17 with West Columbia and the same investigators, I can use  
18 that and then change the pertinent information.

19 Q. Okay. In making this mistake, how often do you make  
20 mistakes in creating reports?

21 A. I wish I knew.

22 Q. Thousands of times?

23 A. No, I would not think so. I don't think SLED would  
24 have hired me back if that were the case.

25 Q. But you wouldn't have known that you made an error in

1 those reports, the thousands of reports you made, had you  
2 not received a phone call and a fax from the solicitor's  
3 office; is that right?

4 A. In this case, I would not have known had I not been  
5 preparing to testify.

6 **MR. PHILLIPS:** No further questions. Just a motion,  
7 Your Honor.

8 **THE COURT:** Thank you. Redirect, Ms. Mayes?

9 **MS. MAYES:** Just briefly, Your Honor.

10 REDIRECT EXAMINATION (In-Camera)

11 BY MS. MAYES:

12 Q. Does -- do you also review the actual physical DVD?

13 A. Yes.

14 Q. You re-watch the video?

15 A. Correct.

16 Q. Having re-watched the video, is there any doubt  
17 whatsoever that she understood the interview rules?

18 A. There's no doubt in my mind she understood the  
19 interview rules and what to expect.

20 Q. And followed them?

21 A. Yes.

22 **MS. MAYES:** Nothing further.

23 **THE COURT:** All right. Is now an appropriate time  
24 for me to hear arguments in connection with compliance  
25 with Section 17-23-175?

1           **MS. MAYES:** It is for the State, Your Honor.

2           **THE COURT:** All right. Let's go ahead.

3           **MS. MAYES:** Your Honor, pursuant to 17-23-175, the  
4 first fact that we would offer would be that the statement  
5 was given in response to an investigative interview.  
6 Secondly, that it was audio and visually recorded. And  
7 then, third, that the child is expected to testify at  
8 trial and be subject to cross-examination on the elements  
9 of the offense and the statements that were made on the  
10 video.

11           Your Honor, the State can -- I can state with  
12 certainty that we will comply with element three and that  
13 elements one and two have already been met in terms of  
14 this being an investigative interview pursuant to the  
15 statute and that it was recorded properly.

16           Moving on now to the guarantees of trustworthiness,  
17 Your Honor, the statement was elicited -- all of the  
18 statements basically during the course of the interview  
19 were elicited by non-leading questions. The interviewer  
20 was very careful to ask the child what she saw, what she  
21 heard, what she experienced without pursuing anything  
22 further beyond what **Minor** was actually able to tell her.  
23 At one point in time the child is describing the gun and  
24 it's very clear that the gun is black and then wants to  
25 draw the gun which the interviewer allows her to do and

1 the child states "but you don't have a black marker", and  
2 so the child definitely seemed to be aware of her  
3 surroundings and being able to express what she had  
4 observed.

5 Secondly, Ms. Caldwell does have experience conducting  
6 these interviews and has for years and has testified  
7 previously in court regarding investigative interviews.

8 Third, whether the statement contains a detailed  
9 account of the offense, again, Your Honor, this would be  
10 from the eyes of a six-year old, so everything that she  
11 was able to give an account for was what she actually from  
12 a developmental level was able to observe and explain, and  
13 at age six she's really not gonna have a firm understanding  
14 of everything that's happening beyond what she was able to  
15 express, that he had a gun, that she called him a burglar,  
16 that he was dressed in black, that his face was at least  
17 partially covered and that she heard the gun pop and that  
18 her mom was shot and then she's able to describe the gun  
19 and also that he wanted her to do what he made her mom do.  
20 I can be more specific on that, but "he wanted me to do  
21 what mom did". The Court's indulgence on that.

22 **THE COURT:** Okay.

23 **MS. MAYES:** This happened in her mother's bedroom at  
24 night and she states "he tried to kill my momma". And  
25 then as she's questioned further, the interviewer says,

1 "What did momma say, what was momma saying?", and the  
2 child's response is, "She said don't let her do that" and  
3 then the interviewer said, "Don't let her do what?", the  
4 child states "Do what?", and the interviewer says, "I'm  
5 confused. Your mom said don't let her do this, what was  
6 she talking about?", and the child states, "Do the same  
7 thing exactly -- do the same thing as my momma's doing."  
8 And so, Your Honor, that is the six-year-old's account of  
9 what he's instructing her to do there in the bedroom and  
10 that would, again, be something the child would only know  
11 because she had experienced it.

12 As to element four, whether the statute -- whether  
13 the statement has internal coherence in compliance with  
14 the statute, again, from the eyes of a six-year-old she's  
15 actually very detailed and very descriptive about what she  
16 saw, how he was dressed, the circumstances of that night  
17 and the things she heard him saying and what she perceived.

18 And, finally, sworn testimony of any other participant  
19 which may be determined as necessary by the Court, we have  
20 already heard the testimony of other people in this case  
21 that do corroborate the child's account. There's no doubt  
22 that her mother was shot that night, there's no doubt that  
23 she was shot in the bedroom because of the physical and  
24 forensic evidence that supports that, there's no doubt that  
25 she was shot multiple times as the child described, and we

1 have a black item of clothing that was left behind by the  
2 burglar as the child described. So certainly, Your Honor,  
3 there are other participants who have already given  
4 testimony that corroborate the child's account as given  
5 in this forensic interview and for these reasons, Your  
6 Honor, the State's position is that we have complied with  
7 the requirements of 17-23-175 and ask for permission to  
8 publish that forensic interview.

9 Now as for the statement that we're talking about  
10 things that are real and true, there's been no request  
11 from the defense to do any redactions, but we do have  
12 a redacted version of this forensic interview or  
13 investigative interview if necessary that would take out  
14 the word "truth" and would take out -- I believe there's  
15 another reference somewhere along the way to "we have to  
16 tell the truth" and we could remove that as well for full  
17 compliance with Kromah.

18 **THE COURT:** Thank you, Ms. Mayes.

19 Mr. Phillips.

20 **MR. PHILLIPS:** Thank you, Your Honor.

21 **THE COURT:** Ms. Caldwell, you can step down during all  
22 this while we're talking about you and we'll get you back  
23 on the stand if we need you. Thank you, ma'am.

24 (Whereupon, the witness steps down from the witness  
25 stand.)

1 (Witness excused.)

2 **MR. PHILLIPS:** First, in determining that first prong  
3 with the admission under this statute, we believe that --  
4 the whole -- the reason why I had the order of my motions,  
5 I think the competency hearing needs to come first --

6 **THE COURT:** Right.

7 **MR. PHILLIPS:** -- in order to satisfy that prong and  
8 to do that we would have to have the testimony of **Minor**

9  
10 **THE COURT:** Can we -- can we go forward -- if she's  
11 not competent, of course, we'll deal with it. If we can  
12 assume that she is -- if she's here and we can determine  
13 competency, and it shouldn't take too long to do it, but  
14 -- and Agent Caldwell didn't specifically use the word --  
15 might not have used the word "competent", but clearly  
16 that was the implication of everything that she said in  
17 response to the interview itself and the child's  
18 understanding. I think the -- you made the statement the  
19 child understood the rules and followed them, which, I  
20 think, is the essence of competency, and if all of these  
21 other things are in place, like the coherence of the  
22 statement and things of that nature. But just -- just  
23 for purposes of argument, suppose we bring the child up  
24 right this minute and determine that competency exists,  
25 then where would that lead you? What would you proceed

1 to then?

2 **MR. PHILLIPS:** Once Your Honor was satisfied with the  
3 first prong, I could just start going through the video and  
4 we'll reserve -- I just -- for error preservation purposes,  
5 as Your Honor said, we'll just reserve the right to have  
6 that testimony.

7 **THE COURT:** Let's -- let's do that rather than the  
8 break the flow of this and --

9 **MR. PHILLIPS:** Well, I guess the thing is would the  
10 video be admitted without her testifying? Because then I  
11 -- I would waive the issue. I've got to have her testimony  
12 in-camera for the competency part prior to the admission  
13 of the video if my motion is denied.

14 **THE COURT:** Well, of course, the statute requires,  
15 as I understand it, that in order for the -- these other  
16 things to fall in place she's gonna have to testify in  
17 court. That's prong number three -- (A) (3).

18 **MR. PHILLIPS:** So she would -- if Your Honor says --  
19 denies the motion and the video's admitted, she will  
20 testify before the video is shown? Because I know that  
21 issue comes up in CSC cases quite often.

22 **MS. MAYES:** We can do that.

23 **THE COURT:** Right. I'm trying to decide the -- what  
24 the order of it all is and the statute doesn't say that  
25 specifically, but it would imply that the child testifies

1 and is subject to cross-examination and then the -- the  
2 video is shown. That would seem to be the order of things  
3 under the statute.

4 **MS. MAYES:** We can go either way, Your Honor.  
5 Whatever Your Honor deems appropriate.

6 **THE COURT:** Well, rather than -- is Minor here?

7 **MS. MAYES:** She is, Your Honor. We can proffer her  
8 testimony limited to the issue of competency.

9 **THE COURT:** Why don't we do that right this minute?

10 **MR. PHILLIPS:** That would be perfect. That -- that  
11 clears up everything.

12 **THE COURT:** It will. It will be easier to do that  
13 than argue about it.

14 **MR. PHILLIPS:** Thank you.

15 **THE COURT:** Okay.

16 **MS. MAYES:** The State calls Minor .

17 **THE COURT:** Minor , if you'll come forward, please,  
18 ma'am, and be sworn.

19 (Whereupon, Minor was duly sworn by the Clerk  
20 of Court.)

21 **THE CLERK:** Be seated. State your full name.

22 **THE WITNESS:** I'm Minor . Minor .

23 Minor .

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION (In-Camera)

1 BY MS. MAYES:

2 Q. Okay. And, **Minor**, I'm gonna get you a little  
3 situated, okay? And we're just gonna go real slow and  
4 just kind of ask some easy questions, if that's okay?

5 A. Yes, ma'am.

6 Q. What grade are you in right now?

7 A. Fourth.

8 Q. And what's the name of the school that you go to?

9 A. Saluda River Academy for the Arts.

10 Q. Saluda River Academy for the Arts. And how long have  
11 you gone to that school?

12 A. Since kindergarten.

13 Q. Okay. Were you going there when you were six years  
14 old?

15 A. Uh-huh.

16 Q. And one thing I want to ask you about is whether you  
17 can give an actual answer like "yes" or "no" so that when  
18 this lady is a making a note of everything that you say  
19 she'll get it right.

20 A. Yes, ma'am.

21 Q. Okay. Were you going there in first grade?

22 A. Uh-huh. Yes, ma'am.

23 Q. Okay. And when this happened, when someone came into  
24 your house, were you also in -- at Saluda River Academy  
25 then?

1 A. Yes, ma'am.

2 Q. And are you someone who when you go to school you are  
3 able to follow the rules that the teacher gives you?

4 A. Yes, ma'am.

5 Q. Okay. And what about when you're at home with your  
6 mom?

7 A. Yes, ma'am.

8 Q. And what happens if you, let's say, don't follow a  
9 rule?

10 A. Can you repeat the question?

11 Q. Yes. If you -- let's say you went to school and you  
12 didn't follow the rules that the teacher gave you and you  
13 didn't follow the rules that the principal gave you and  
14 you did something wrong, what kind of punishment might you  
15 get?

16 A. I might get -- hum.

17 Q. Have you ever seen anyone else at school get in  
18 trouble?

19 A. Uh-huh.

20 Q. What happens to someone at your school if they get in  
21 trouble?

22 A. Mostly get a denote.

23 Q. What does that mean?

24 A. It means like you get like a bad note and the bad note  
25 is like if you did something wrong the teacher will sign

1 you up and write it down on a piece of paper and give it --  
2 give it to the principal and then give it to your parents  
3 and then let them sign it.

4 Q. Okay. So a bad note might get sent home with a child  
5 that does something wrong in school?

6 A. Yes, ma'am.

7 Q. All right. And what about if you are at home and you  
8 didn't follow a rule that your mom had set and let's say  
9 that you were supposed to stay inside from the time it was  
10 dark on but you wanted to play and so you went out and  
11 played against the rules, what might happen to you?

12 A. I might --

13 Q. Have you ever gotten in trouble at home before?

14 A. Uh-huh.

15 Q. Okay. And what kind of things would your mom do if  
16 you did something wrong at home?

17 A. She might take away my phone for like a day or two.

18 Q. Okay. So that's how you could get in trouble if you  
19 did something wrong at home?

20 A. Uh-huh.

21 Q. Okay. And remember about --

22 A. Yes, ma'am.

23 Q. Okay. So in court, which is where we are now, have  
24 you ever seen court before on TV?

25 A. Yes, ma'am.

1 Q. Okay. Do you know what the person who's wearing the  
2 black robe right there, do you know what that person's  
3 called?

4 A. Yes, ma'am.

5 Q. What's that person called?

6 A. A judge.

7 Q. Okay. And who has control of the courtroom and makes  
8 sure that all the rules are followed?

9 A. The judge.

10 Q. Okay. Now if somebody does something wrong in court,  
11 what might happen?

12 A. I don't know.

13 Q. Okay. So let me ask you this. Is it good or bad to  
14 tell the truth?

15 A. It's good.

16 Q. Is it good or bad to tell a lie?

17 A. Bad.

18 Q. Okay. If someone were to tell a lie in court, who  
19 would be the person who would make a decision about what  
20 should happen?

21 A. I don't understand that.

22 Q. Okay. So let me ask it -- if someone tells a lie in  
23 court, is that good or bad?

24 A. Bad.

25 Q. Okay. And what might happen?

1 A. They might like get arrested.

2 Q. Okay. In court when you walked up here, you put your  
3 hand on that Bible.

4 A. Yes, ma'am.

5 Q. And what did you promise to do?

6 A. To tell the truth.

7 Q. Okay. And is that something that you can do in court  
8 just like when you're in school and you have to follow  
9 rules?

10 A. Yes, ma'am.

11 Q. What about when you're at home and you have to follow  
12 rules, is that something that you can do here in the  
13 courtroom?

14 A. Yes, ma'am.

15 Q. What's the biggest rule for a witness in court?  
16 What's the most important job for a witness?

17 A. To tell the truth.

18 Q. Okay.

19 A. Nothing -- and nothing but the truth.

20 Q. Okay. And so when you did put your hand on the Bible  
21 and now you're sitting in the chair and that makes you a  
22 witness, can you tell the truth?

23 A. Yes, ma'am.

24 Q. And if you didn't tell the truth, would that be good  
25 or bad?

1 A. Bad.

2 Q. And if you didn't tell the truth, what might happen?

3 A. I don't -- I don't know.

4 Q. Would that -- okay. If you didn't tell the truth,  
5 would that be good or bad?

6 A. Bad.

7 Q. Okay. Who might be bad or upset about that if you  
8 didn't tell the truth?

9 A. My parents and the judge.

10 Q. Okay.

11 A. And the judicial.

12 Q. Okay. If the judge was mad because someone didn't  
13 tell truth, who would decide the punishment for that  
14 person?

15 A. The judge.

16 Q. Okay.

17 A. Or the judicial.

18 Q. Okay. So when you say the judge would decide, what  
19 would happen if the judge instructs you to tell the truth,  
20 can you do that?

21 A. Yes, ma'am.

22 Q. And have you done that when you put your hand on the  
23 Bible?

24 A. Yes, ma'am.

25 Q. Okay. Have you -- leading -- leading up to this, had

1 you ever studied about court in school before?

2 A. No, ma'am.

3 Q. Okay. So when you talk about a judge and judicial,  
4 is that something that you'd ever had any experience with  
5 in your own life?

6 A. No, ma'am.

7 Q. Or in school?

8 A. No, ma'am.

9 Q. But you've been able to sit in court today?

10 A. Uh-huh. I mean, yes, ma'am.

11 Q. Okay. And the people who are sitting in the chair  
12 right there, what are they called?

13 A. The witness.

14 Q. Okay. The witness. And I'm just gonna ask you this  
15 one last time. If a witness's job is to tell the truth,  
16 is it good or bad if they don't tell the truth?

17 A. Bad.

18 Q. Okay. And who would decide what should happen to  
19 them?

20 A. The judge.

21 Q. Okay.

22 **MS. MAYES:** Nothing further, Your Honor.

23 **THE COURT:** Thank you. Mr. Phillips, any examination  
24 on that limited addition?

25 **MR. PHILLIPS:** Very brief.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CROSS-EXAMINATION (In-Camera)

BY MR. PHILLIPS:

Q. Hey, Minor . How are you?

A. Good.

Q. You did a great job answering the questions.

A. Thank you.

Q. Just two quick ones, okay? If I said the sky was blue, is that true?

A. Yes.

Q. And if I said grass, is it normally purple, is that true?

A. No.

Q. What color is grass?

A. Green.

Q. And that would be a lie?

A. Yes, sir.

**MR. PHILLIPS:** No further questions, Your Honor.

**THE COURT:** Thank you.

All right. Minor , you can step down. Thank you very much.

(Witness excused.)

**THE COURT:** Understanding the presumption of competency that our rules of evidence apply and the examination further of Minor , Mr. Phillips, do you have any questions or arguments in regard to the issue of

1 competency?

2 **MR. PHILLIPS:** She -- we have no motion regarding her  
3 ability to be competent to testify today.

4 **THE COURT:** Okay.

5 **MR. PHILLIPS:** So as to the issue of competency for  
6 her testimony today, we have no issue with it and no  
7 objection.

8 **THE COURT:** All right.

9 **MR. PHILLIPS:** Of course, again, we would leave it in  
10 the Court's discretion based on our motion. We would make  
11 the argument that competency today would be different than  
12 competency at the time of the Dickerson Center video, which  
13 is at the heart of the issue of 17-23-175.

14 **THE COURT:** Right.

15 **MR. PHILLIPS:** And we would reserve that argument  
16 based on our motion that was listed as Exhibit Number 7  
17 that was before the Court based on the evaluation at the  
18 time or the summary report provided by Ms. Caldwell at the  
19 time that the interview was conducted.

20 **THE COURT:** And that was on the sole issue of the --  
21 the ability to follow rules; is that it?

22 **MR. PHILLIPS:** Yes, Your Honor. Essentially that it  
23 said she did not appear to understand the interview rules  
24 and did not agree to the interview rules and they had the  
25 rules listed as no guessing, correct the interviewer and

1 only talk about things that are real and true.

2       **THE COURT:** Okay. Other than that, what Agent  
3 Caldwell just testified to as a scrivener's error, I  
4 suppose, an error, is there any other evidence that  
5 **Minor** was incompetent at the time the interview was  
6 given?

7       **MR. PHILLIPS:** None at all, Your Honor.

8       **THE COURT:** All right. Thank you.

9 All right. I've had a chance to, of course, look  
10 at the interview and Ms. Mayes has summarized it very  
11 completely. I watched it, I saw Agent Caldwell pose the  
12 questions in the way that she did and the business of  
13 following rules and -- and telling the truth and things of  
14 that nature was a preliminary part of everything that went  
15 on. And Agent Caldwell did, as we all know because we've  
16 all seen the interview, as to those -- those trick  
17 questions about how many horses she's got, although if  
18 **Minor** had known that she lives on Househeaven Lane over  
19 in Wedgefield she might have wanted to guess at one or two  
20 anyway, but, nonetheless, she -- she didn't fall for that.

21 I find that the interview was properly conducted in  
22 that regard, of course, by someone who's trained to do it  
23 and extensively trained to do it, as a matter of fact,  
24 and that the elements of 17-23-175 have been complied  
25 with, including the fact that she's competent today

1 without objection, and that she was competent at the time  
2 of the interview on the date in question. Rule 601(b) --  
3 Rule 601(b) talks about being disqualified and Rule  
4 601(a) talks about being qualified and competent in that  
5 regard.

6 State versus Needs, 1998, in order to be competent and  
7 testify, the witness has to have the ability to perceive  
8 the event with a substantial degree of accuracy, and  
9 certainly the interview tape would reveal that certainly  
10 from the perspective of a six-year-old; to remember it, and  
11 that the time, of course, was shortly after the event  
12 happened itself. As Agent Caldwell said, I believe her  
13 mother was in the hospital at the time; to communicate  
14 about it intelligibly, as she did; and be mindful of the  
15 duty to tell the truth under oath. She was mindful of the  
16 duty to tell the truth at that particular time and that  
17 was developed.

18 So I find that the issue of competency has been  
19 established in so far as the current date today or  
20 tomorrow when she testifies or whenever during the course  
21 of this trial and as of the date of the interview as well.  
22 The provisions of 17-23-175 having been complied with, the  
23 jury is entitled to look at the taped interview and, of  
24 course, she'll testify in court as well.

25 Does that cover all the bases, folks?

1           **MR. PHILLIPS:** For the competency. We still have to  
2 walk through the objections first.

3           **THE COURT:** That's right. Okay. Take us through  
4 those then, Mr. Phillips.

5           **MR. PHILLIPS:** Thank you, Your Honor. Specifically  
6 for the Defendant's objection to the State's motion for  
7 admission of the out-of-court recorded interview of the  
8 child witness. Section 17-23-175 violates the Defendant's  
9 right to a fair trial, right to contemporaneous corrob --  
10 confrontation -- sorry, Your Honor, it's late in the day  
11 -- and cumulative and improperly bolsters the child  
12 witness's testimony. Specifically, the main issue that's  
13 before the Court and our primary argument is one that has  
14 not been in my mind or at least not in the cases that  
15 I've found ruled on by the appellate court is the  
16 contemporaneous cross-examination. Some of those arguments  
17 are arguments that are against precedent under procedural  
18 due process, improper bolstering, ex post facto. I've  
19 listed those cases in that motion. It's Defense Exhibit  
20 Number 8 that was given to Your Honor. So I've listed  
21 the areas that are against precedent, but one that has  
22 not been addressed by our state appellate courts is the  
23 contemporaneous cross-examination issue. Specifically in  
24 violating those rights, it would be the Fifth, Sixth and  
25 Fourteenth amendments to the United States Constitution,

1 and Article 1, Sections 3 and 14 of the South Carolina  
2 Constitution. The specific case would be Maryland v.  
3 Craig. That's 497 U.S. 836, a 1990 case of the United  
4 States Supreme Court, finding that the child witness must  
5 be competent to testify and must testify under oath. The  
6 defendant retains full opportunity for a contemporaneous  
7 cross-examination, and that's the direct quote taken from  
8 that case. Specifically noting, Your Honor, that although  
9 Craig came before Crawford v. Washington, there's no  
10 indication that Crawford v. Washington has abrogated or  
11 somehow overruled Maryland v. Craig and essentially in  
12 quoting the Craig court as listed in my motion that the  
13 confrontation clause doesn't prohibit the use of a  
14 procedure that despite the absence of the face-to-face  
15 confrontation as to the live video feed, Your Honor, in  
16 the case, ensures the reliability of evidence by subjecting  
17 it to rigorous adversarial testing thereby preserves the  
18 essence of effective cross-examination. And in the motion  
19 we emphasize that because this issue of admitting the  
20 out-of-court statement takes away that very -- the holdings  
21 set forth in Craig, that very -- the whole meaning of  
22 preserving the essence of effective cross-examination, that  
23 in the moment you're submitting you made this special  
24 exception that directly contradicts our Sixth Amendment  
25 right to confront your accuser. With that it's also not

1 under oath. So when we're looking at the Sixth Amendment  
2 right for the opportunity of effective cross-examination  
3 as envisioned by our Constitution, it is statements that  
4 were made under oath and are contemporaneous, and I walked  
5 through that fairly detailed in the motion, Your Honor. I  
6 know obviously I don't want to go read through all of it if  
7 Your Honor certainly doesn't want me to, but one of the  
8 things that the Craig court notes in that case where they  
9 have the live feed issue is if the State makes an adequate  
10 showing of necessity, so my argument would be the State  
11 hasn't made this adequate showing of necessity that the  
12 child doesn't perceive the same events that she perceived  
13 back at the time the video was taken and that the testimony  
14 would merely be cumulative, that she could testify today to  
15 everything she said in that video if her memory's the same  
16 and it would still be the exact same testimony without  
17 having her testimony plus the video, having that cumulative  
18 hearsay.

19 In objecting to the video, it's also important to  
20 note that we would argue -- the Defendant argues that it's  
21 inadmissible hearsay and it is unduly prejudicial in having  
22 that cumulative effect of the same testimony. Obviously  
23 one of the things we noted in the motion is that if the  
24 interview is admitted over the Defendant's objection, it  
25 must be redacted to comply with the South Carolina Rules

1 of Evidence. That was in the motion that was provided  
2 pretrial, Your Honor, and a copy was provided to the  
3 State --

4 **THE COURT:** Right.

5 **MR. PHILLIPS:** -- when I came in a little after 8:30  
6 or whenever and put it on the table.

7 With that, Your Honor, one of the things we did  
8 include in the motion, and I think Your Honor said he  
9 reads the statute to comply this way, but I knew the  
10 issue comes up in CSC cases, that I reserve the right  
11 or at least I made the request that we move to reserve  
12 cross-examination after the child witness and, you know,  
13 the evidence comes in. So if Your Honor denies our  
14 motion, we still reserve the motion, but if that's the  
15 case we want to reserve cross-examination until after  
16 both things have taken place strategically. Your Honor  
17 knows where I am going with it. Prosecutors have used it  
18 to essentially where I can't cross-examine on it because  
19 it comes later.

20 **THE COURT:** Right. I understand. And I take it if  
21 the tape is played first and if she testifies later, then  
22 your cross-examination right would have some more efficacy  
23 then. Is that fair to say?

24 **MR. PHILLIPS:** Yes, Your Honor. And that's been the  
25 argument of defense attorneys for quite some time with

1 this -- this statute, but I would say using the rationale  
2 set forth in Craig when you're looking at -- when it says  
3 essentially if the State makes an adequate showing of  
4 necessity, I think you take that same rationale in Craig  
5 about contemporaneous cross-examination and you apply it  
6 to our statute, the State has to show that the child  
7 somehow doesn't have same memory at the time because she  
8 was young or old. I think that's where I'm making the due  
9 process -- a separate due process right to a fair trial  
10 that's not what was argued. And the recent case of State  
11 v. Legg, this due process right to a fair trial would be  
12 much different if they used the arbitrary standard that  
13 was argued, you know, in the Holmes versus South Carolina  
14 that went to the Supreme Court. I think that was the  
15 argument that was framed in that case. This argument  
16 would be entirely different; that without the showing of  
17 that necessity by the State that that process is what  
18 denies the Defendant of his right to a fair trial and,  
19 of course, the other rights that we have listed, Your  
20 Honor; that that necessity must be made before the video  
21 is admitted.

22 **THE COURT:** The cumulative argument has been  
23 addressed by our courts, I believe, already --

24 **MR. PHILLIPS:** That's correct, Your Honor.

25 **THE COURT:** -- in dealing with the statute itself

1 and conceded that except for the statute it would be  
2 cumulative, it would be hearsay except for the statute.

3 **MR. PHILLIPS:** That's correct.

4 **THE COURT:** But, Ms. Mayes, I'll be glad for you to  
5 respond to Mr. Phillips's concerns in that regard.

6 **MS. MAYES:** Yes, sir, Your Honor. We can comply by  
7 making the child available for cross-examination before  
8 the video or after the video. We can be flexible in that  
9 regard. If it's a situation where the child has to be  
10 questioned about the content of the video, either way the  
11 jury's gonna see it in close context to the child's  
12 testimony whether before or after. Our plan is to call  
13 them consecutively --

14 **THE COURT:** Okay.

15 **MS. MAYES:** -- and then publish the video to the jury  
16 thereafter, so we can certainly comply with that however  
17 the Court deems appropriate.

18 **THE COURT:** It would appear that Mr. Phillips's  
19 concerns about contemporaneous cross-examination would  
20 have more -- more efficacy, as I've said, if the live  
21 testimony were given following the playing of the tape.

22 Is that your view of it as well, Mr. Phillips?

23 **MR. PHILLIPS:** Yes. I mean, certainly not to waive  
24 my objection.

25 **THE COURT:** I understand. I'm not trying to trap you.

1           **MR. PHILLIPS:** Certainly I agree with that. If the  
2 State would address the issue of the necessity, whether  
3 they can meet that need or whether Your Honor wanted to  
4 make a ruling on that.

5           **THE COURT:** I'm not sure that the statute itself --

6           **MS. MAYES:** And that would be -- Your Honor, I don't  
7 mean to interrupt, but that would be the State's position,  
8 is that the statute, the legislative intent was -- took  
9 into account many different things when the statute was  
10 passed and a showing of necessity independent of the  
11 statute is certainly not something that's been required  
12 thereafter. With that said, given the age of the child I  
13 certainly think that it's probative to have the video  
14 account for what the child at age six was able to describe  
15 in conjunction with her testimony in front of the jury.

16           **THE COURT:** Right. And that's -- well, that was the  
17 point I was getting to. The statute doesn't have a  
18 requirement other than necessity involved in it, so I note  
19 your objection and you -- and maybe this is gonna be the  
20 case and that's finally gonna be addressed, Mr. Phillips.  
21 I'm not sure if the need will arise, but we will see.

22           **MR. PHILLIPS:** I think it will take a Federal court.

23           **THE COURT:** You're probably right about that. But at  
24 least I don't have to address it here. Having found that  
25 the statute has been complied with, I need not go any

1 further.

2 **MR. PHILLIPS:** Thank you, Your Honor.

3 A few other follow-ups based on the hearing, not on  
4 the admissibility. I know we've already argued that.

5 **THE COURT:** Right.

6 **MR. PHILLIPS:** The follow-ups would be the redactions  
7 that were requested in the motion.

8 **THE COURT:** Right.

9 **MR. PHILLIPS:** The solicitor has agreed to redact  
10 language regarding the truth also noted in the motion  
11 essentially under Rule 401 and, of course, won't go into  
12 the hearsay. You've already ruled on that.

13 **THE COURT:** Right.

14 **MR. PHILLIPS:** And the 403 argument would be -- as  
15 noted in the motion, I think it's Argument 3, we ask for  
16 redactions regarding -- to comply with the South Carolina  
17 Rules of Evidence under 401 and 403, relevance and then,  
18 of course, unduly prejudicial, with that being the child  
19 witness, I believe, towards the beginning of the video  
20 starts explaining that she's afraid of the dark, the child  
21 witness describes that she and her mother had been playing  
22 dress-up that day, the interviewer leaves the room for a  
23 while, she asks **Minor** to draw a picture, so there is some  
24 downtime where **Minor** is drawing a picture. **Minor** also  
25 at the end of the interview is drawing a picture for quite

1 a while with no questions being asked of the interviewer.  
2 Under rules 401 and 403 we don't believe those portions,  
3 in agreement with also the addition that the -- what the  
4 State presented, are not in compliance with the South  
5 Carolina Rules of Evidence under those two rules, not  
6 being relevant, and, of course, that the probative value  
7 of those parts of the video are substantially outweighed  
8 by their prejudicial effect. And what I noted in the  
9 motion is that this argument doesn't waive our prior  
10 objection to it, we're just saying that if it is admitted  
11 over the objection we would request that it comply with  
12 the South Carolina Rules of Evidence. And then I have a  
13 few more if you want me to kind of go through.

14 **THE COURT:** Are you asking for further reaction  
15 regarding the --

16 **MR. PHILLIPS:** No, no further reaction. That would be  
17 it on the redaction issue. We've already addressed that.

18 **THE COURT:** Okay. Ms. Mayes has agreed to redact the  
19 business about truth and things of that nature in other  
20 places. Are you asking for further redaction, is my  
21 question, in regard to the drawing of the pictures and  
22 things of those nature?

23 **MR. PHILLIPS:** Yes, Your Honor. And that was  
24 included in the motion I handed to the Court on Monday.

25 **THE COURT:** All right. You know, of course, she was

1 drawing the picture to -- apparently to give to her mother  
2 or show to her mother. State -- State versus -- what was  
3 the case -- Russell, the Russell case, in the Russell case  
4 the -- Mr. Russell raised on -- somewhat too late the fact  
5 that the part of the video that showed the child drawing a  
6 picture to give to its parent, the mother as a matter of  
7 fact, was prejudicial because it was stirring the emotions  
8 of the jury. The court of appeals does, as it sometimes  
9 does and has a right to do as you well know, if -- that  
10 they dodged that issue because it wasn't preserved on  
11 appeal, but it did not necessarily say that if it had been  
12 preserved on appeal that they would rule differently, but  
13 I will -- I'll let Ms. Mayes cogitate on that overnight to  
14 see if that last part of the -- well, just in between --  
15 it's after Agent Caldwell left the room or before she left  
16 the room there was a drawing going on, then she left the  
17 room and then came back, so --

18 **MS. MAYES:** Certainly, Your Honor, if it's just the  
19 child sitting there drawing without any statement, that's  
20 not something that would be probative.

21 **THE COURT:** It doesn't have any probative value. I  
22 agree. Now the drawing of the gun is another matter  
23 entirely, but this part in which I think Agent Caldwell  
24 did, you know, trying to -- knowing that the mother was in  
25 the hospital and in right rough condition that a drawing

1 from her daughter that she had not been able to see and  
2 the daughter had not been able to see her might cheer her  
3 up. It really doesn't have any probative value on the  
4 issues in this case. I agree with Mr. Phillips on that,  
5 okay?

6 **MR. PHILLIPS:** As far as -- I'm sorry, Your Honor, to  
7 belabor this point. I had several things listed. So, one,  
8 where she's at the beginning explaining that she's afraid  
9 of the dark, would Your Honor say that that's admitted in  
10 the video? Would that relevant or prejudicial?

11 **THE COURT:** I don't think it has a whole lot of  
12 relevance unless it's just something to establish the  
13 interplay between the interviewer and the child herself.  
14 I'll let -- I'll let Ms. Caldwell and Ms. Mayes discuss  
15 that before we show the tape to see if it has some -- some  
16 inherent intrinsic value in the context of the interview  
17 itself. From my perspective, it doesn't have any relevance  
18 on the issue of whether or not the child understands what  
19 she's doing and telling the truth, so. Ms. Mayes might  
20 already know the answer to that question. If not, I'll let  
21 her talk with Agent Caldwell to see if that's -- if that's  
22 a part of the training, the protocol. I don't know that it  
23 is and if it's not, then it doesn't have any place in there  
24 quite frankly.

25 **MR. PHILLIPS:** And the next would be -- and this might

1 be, I guess, the same answer from the Court. The child  
2 witness describing what her and her mother did that day,  
3 they're talking about playing dress-up.

4 **MS. MAYES:** I certainly think that has relevance,  
5 Your Honor, to show that the child recalls the details of  
6 that day and the ordinary events of that day leading up to  
7 the night's events, so it goes to the child's recollection.

8 **THE COURT:** That's a good point. I think that's  
9 right. I agree with that. Okay.

10 **MR. PHILLIPS:** So the two parts would be where the  
11 interviewer leaves the room, drawing the picture, possibly  
12 the afraid of the dark interplay and then at the end where  
13 she's drawing -- kind of the end of the interview, there's  
14 no questions, they're just drawing and --

15 **THE COURT:** That's right.

16 **MR. PHILLIPS:** Okay. That's it on -- and, of course,  
17 Your Honor pointed out that Russell was -- that issue was  
18 not preserved.

19 **THE COURT:** That's right.

20 **MR. PHILLIPS:** So that's it on that.

21 **THE COURT:** Okay.

22 All right. Yes, sir.. What else do we have before we  
23 offer the testimony of Agent Caldwell and Minor in the  
24 presence of the jury?

25 **MR. PHILLIPS:** I'm sorry, Your Honor. I've got a few

1 more. During the testimony of Ms. Caldwell, she made the  
2 -- she did use the word "competency". We would ask that  
3 the Court prohibit her from making that determination on  
4 the record. I know Your Honor went back and forth and  
5 wasn't sure whether she actually used those words, but with  
6 the competency that's beyond the scope of a lay witness.  
7 She's not being admitted as an expert witness in this case,  
8 so for her to make the competency determination --

9 **MS. MAYES:** I can take care of that right now. The  
10 only reason she was addressing competency was because it  
11 was a pretrial hearing on that matter.

12 **THE COURT:** That's right. And that is a part --  
13 obviously is a part of the in-camera protocol that has to  
14 be dealt with, so that's fine.

15 **MR. PHILLIPS:** The next part was my pretrial motion  
16 to prohibit use of the word "forensic" with the interview  
17 and interviewer. It was used two or three times from both  
18 Ms. Caldwell and Ms. Mayes.

19 **THE COURT:** That was because during the time that she  
20 was taking some of those courses they were called -- that's  
21 what it was called during that time. I think we've --  
22 unless it's necessary to establish her credentials and I  
23 think that probably is no longer necessary, I've made that  
24 finding.

25 Ms. Mayes, do we have to use word "forensic"?

1           **MS. MAYES:** That is correct. That was done for the  
2 purpose of establishing her credentials and that was the  
3 name of the courses in her training at that point in time.

4           **THE COURT:** Exactly. Thank you.

5           **MR. PHILLIPS:** And I would just renew my pretrial  
6 motion where our Supreme Court said that the use of words  
7 "forensic interviewer" is a misnomer --

8           **THE COURT:** It is.

9           **MR. PHILLIPS:** -- and that any use of that word would  
10 cause a misleading -- it would give value where there's no  
11 value needed.

12           **THE COURT:** I think that the Court said it's patently  
13 wrong; used the word "patently wrong", or something like  
14 that which meant as **Minor** would testify don't do it.

15           **MR. PHILLIPS:** Exactly.

16           **THE COURT:** They will take away my phone.

17           **MR. PHILLIPS:** I'm in complete agreement, Your Honor.

18           **THE COURT:** Okay.

19           **MR. PHILLIPS:** And the last one, Your Honor.

20           **THE COURT:** That's all right. We've still got time.

21           **MR. PHILLIPS:** One of the issues would be that when  
22 **Minor** came to testify the victim's advocate came with  
23 her and sat beside her. We would argue under Rule 403  
24 that -- or I don't even know if -- that's technically,  
25 I guess, not an evidentiary rule, that would be the

1 Fifth and Fourteenth Amendments to the United States  
2 Constitution and Article 1, Section 3 of the South  
3 Carolina Constitution. That it would violate his right  
4 to due process to have the victim's advocate escort the  
5 child to the witness stand and sit beside the child while  
6 she testified similar to having a therapy dog on the  
7 witness stand or any other type of aid which is generally  
8 -- I think the courts make the note that those need to be  
9 hidden and out of view, so if there is a therapy dog they  
10 can't be in view of the jury during the testimony as it  
11 aids, again, the emotional decision-making.

12 **THE COURT:** I'm gonna leave that up to Minor . If  
13 she wants the victim's advocate to come with her, she's  
14 coming. If she doesn't, she doesn't have to.

15 **MR. PHILLIPS:** Thank you, Your Honor.

16 **MS. MAYES:** And for the record, Your Honor, I just  
17 want to be clear as to the portion we have redacted in  
18 addition to the redactions that are going to be made,  
19 during the course of the interview when they're going over  
20 the rules Ms. Caldwell states "because we're only going to  
21 talk about things that are real, things that really  
22 happened" and then she follows up with, "Um, when someone  
23 doesn't tell the truth, what do you call it?" "If somebody  
24 doesn't tell the truth, what are they doing?" So that  
25 whole reference there to "Um, when somebody doesn't tell

1 the truth, what do you call it? If somebody doesn't tell  
2 the truth, what are they doing", would be redacted. And  
3 then **Minor** says "lying" and then the therapist -- or,  
4 I'm sorry, the interviewer says, "Right, so we're just  
5 going to talk about things that are really -- yes, that  
6 you've seen, heard, tasted or felt anywhere on your body  
7 and, you know what, you can ask me questions and I have to  
8 tell the truth, too, is that cool, can we agree, awesome",  
9 so that entire portion there would also be redacted.

10 **THE COURT:** Right. Okay.

11 **MR. PHILLIPS:** And then, of course, in addition to  
12 what we've requested.

13 **THE COURT:** Sure. All right.

14 **MR. PHILLIPS:** Thank you, Your Honor.

15 **THE COURT:** Thank you, Mr. Phillips.

16 All right. Now are the decks cleared for the  
17 testimony of Agent Caldwell and **Minor** tomorrow?

18 **MS. MAYES:** Absolutely, Your Honor.

19 **THE COURT:** Subject to all that stuff being cleaned  
20 up.

21 **MS. MAYES:** Yes, sir, Your Honor. And based on this  
22 hearing it appears we would go with Agent Caldwell and then  
23 with **Minor**.

24 **THE COURT:** Okay.

25 All right. That's where we'll start in the morning

1 at 9:30. I'll be here by -- I might not be here by nine.  
2 I'll be here a little bit before 9:30 tomorrow in case  
3 something has come up at the last minute.

4 All right. Thank you, folks. We'll stand in recess  
5 -- I appreciate your -- I think we obviously made the best  
6 use of the afternoon in the absence of the jury. This was  
7 a good thing to do.

8 **MR. PHILLIPS:** Absolutely.

9 **THE COURT:** We'll start back at 9:30 in the morning.

10 **MR. PHILLIPS:** Thank you, Your Honor.

11 (Whereupon, the proceedings were concluded for  
12 April 25, 2017, at 4:43 PM.)

13 (Whereupon, the following proceedings were held  
14 April 25, 2017, beginning at 9:39 AM.)

15 **BAILIFF:** All rise. Court's now in session. The  
16 Honorable Thomas Cooper presiding.

17 **THE COURT:** Please be seated. Thank you, ladies and  
18 gentlemen. Good morning.

19 Is the State ready for the jury?

20 **MS. MAYES:** One matter, Your Honor, and it's the  
21 on-going matter of a third-party guilt.

22 **THE COURT:** Right.

23 **MS. MAYES:** As the State indicated at the outset of  
24 the trial, there were two other people who were listed in  
25 the notes and in the investigative materials that were

1 provided as persons of interest and we provided a document  
2 previously at the request of the defense that wanted to  
3 know why those people were persons of interest and Scott  
4 Neel provided a summary. He's one of the investigators  
5 in the case. He provided a summary that it was because  
6 they had -- their names had been given by law enforcement  
7 along the way as people who had committed a similar offense  
8 or suspects in similar offenses. As we indicated, the  
9 suspect Michael Thomas was later determined to have been  
10 incarcerated during the time period of this offense. The  
11 other person is Detavian Jones Smith. Your Honor, he was  
12 -- we turned over materials on him, including his DMV  
13 record. He's actually six-foot-one, another reason he's  
14 ruled out as a possible suspect.

15       Investigator Griffin in this case did last week in  
16 response to the inquiry by the defense look on a system  
17 called SCIEEx to see what, if any, information he could  
18 find on Detavian Smith. Detavian Smith was a suspect in a  
19 Richland County CSC burglary case; however, it appears that  
20 there was no arrest from this case, but as we indicated  
21 he's six-foot-one and there's no link to him whatsoever in  
22 this case. As the investigation revealed, the victim does  
23 not know him and there's no physical evidence whatsoever  
24 to link him to the residence. Investigator Griffin has  
25 supplied us with this document. I will provide it to the

1 defense. The State's position, however, is that under the  
2 case law, Your Honor, there would not be any -- any grounds  
3 to pursue him as a possible suspect for third-party guilt.

4 Now in terms of his name being mentioned in the --  
5 in the case file or investigative file, certainly, I mean,  
6 I think that's fair game. He is mentioned there as a  
7 possible person of interest, but beyond that there's just  
8 nothing to link him to the case.

9 **THE COURT:** All right. As you say, it might be a  
10 proper area of inquiry just in connection with the  
11 investigation.

12 **MS. MAYES:** Yes, sir, Your Honor.

13 **THE COURT:** It would not be a proper matter for  
14 argument, at least as to those two individuals, given that  
15 -- that investigation as you revealed it, but I'll be glad  
16 to hear further, Mr. Phillips.

17 **MR. PHILLIPS:** Thank you, Your Honor. First,  
18 obviously just receiving this report from the State  
19 regarding Detavian Smith for the first time in court this  
20 morning and this report was generated --

21 **MS. MAYES:** My understanding is that in response to  
22 your e-mail last Wednesday and the information provided  
23 by Investigator Neel last Wednesday, at some point  
24 Investigator Griffin did check the SCIEEx system to see  
25 what were the similar incidents that were being referred

1 to that made him a potential person of interest and he  
2 generated the report. We didn't get it until after five  
3 yesterday, but we're turning it over now in follow-up to  
4 Investigator Neel's summary that he prepared for you.

5 **THE COURT:** All right.

6 **MR. PHILLIPS:** And we would include that in our  
7 pretrial motion, Your Honor, for the continuance.

8 **THE COURT:** All right.

9 **MR. PHILLIPS:** With that, as to -- just to clarify,  
10 so I would be able to cross-examine on the thoroughness  
11 of the investigation as to the Detavian Smith, we just  
12 wouldn't be able to make the argument at closing as to  
13 third-party guilt based on that; is that correct?

14 **THE COURT:** That's correct.

15 **MR. PHILLIPS:** Okay. I just want to clarify that.

16 I would make an additional argument as to third-party  
17 guilt. The case law shows you've got to have that  
18 "reasonable inference" is the buzzwords. Going to the  
19 issue of Sister Care and the thoroughness of the  
20 investigation, the Dickerson Center report shows that  
21 Ms. Simon was receiving services from Sister Care and that  
22 she was living in the apartment or living apart from that  
23 person and that was the reason why she was receiving  
24 services from Sister Care. She told Investigator Griffin  
25 while she was in the hospital right after the incident that

1 the voice sounded familiar. It is Defendant's argument  
2 that that is the reasonable inference that would be the  
3 logical connection; that in attacking the thoroughness of  
4 the investigation that would be proper for argument because  
5 there is a reasonable inference when you have someone who  
6 is apart from an individual that we don't know the full  
7 reason why because there's been no investigation and the  
8 voice sounding familiar. That's the reasonable inference  
9 that is directly related to the third-party guilt case law  
10 and that not being able to argue that in closing would deny  
11 his opportunity to present a full and complete defense  
12 citing State v. Mays and, of course, that would deny his  
13 right to a fair trial, right to present a complete defense  
14 under Article -- or we'll just start at the top.

15 **THE COURT:** Right. Okay.

16 **MR. PHILLIPS:** The Fifth, Sixth and Fourteenth  
17 amendments to the United States Constitution and Article 1,  
18 Section 3 and 14 of the South Carolina Constitution.

19 **THE COURT:** All right. Ms. Mayes, do you want to be  
20 heard on that?

21 **MS. MAYES:** Yes, sir, Your Honor. And if need be we  
22 can proffer additional testimony from Larenda Simon on that  
23 matter because she was not cross-examined even in-camera on  
24 that. She can state with certainty that her ex-partner,  
25 who is the father of Minor , had no role in this

1    whatsoever, that she would identify him by voice.  He's  
2    also very large by physical stature, not only in height  
3    but in body size.  She knows with certainty that he was  
4    not the intruder and so if we need to offer testimony on  
5    that, we can.

6           **THE COURT:**  All right.  I still think it's fair ground  
7    for him to explore that and then I'll allow you to recall  
8    Ms. Simon if you need to to clear up that point.  Fair  
9    game.  That's right.  The jury will make out of it what it  
10   will.

11           **MR. PHILLIPS:**  Thank you, Your Honor.

12           **THE COURT:**  All right.  Anything else?

13           Mr. Phillips, is the defense ready for the jury?

14           **MR. PHILLIPS:**  Yes, Your Honor.

15           **THE COURT:**  All right.  Good.  You can bring us the  
16   jury.

17           (Whereupon, the jury enter the courtroom at 9:49 AM.)

18           **THE COURT:**  Good morning, ladies and gentlemen.  Thank  
19   you for your prompt return this morning.  We're ready now  
20   to continue the trial as the State continues to offer  
21   evidence and testimony in this case.

22           Ms. Mayes.

23           **MS. MAYES:**  The State calls Larenda Simon.

24           **THE COURT:**  Ms. Simon, come forward, please, and  
25   resume the stand.  You're still under oath.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

LARENDA SIMON,

having been previously sworn, testified as follows:

FURTHER REDIRECT EXAMINATION

BY MS. MAYES:

Q. And briefly, Ms. Simon, one thing I neglected to ask you yesterday --

A. Yes, ma'am.

Q. -- is prior to living in [REDACTED] Apartments, had you ever received assistance from an organization known as Sister Care?

A. Yeah, probably the summer of 2012 I received assistance from Sister Care. I was placed in their shelter for a while and then I was placed in my own apartment thereafter.

Q. All right. And just to clarify, Sister Care is when there has been an abusive relationship in the past?

A. Right. Yes, ma'am.

Q. And who was the perpetrator in the abusive relationship you had?

A. His name was Calvin Green. We was in -- we was in a relationship for two years prior to the incident happening.

Q. Okay. And just to clarify, you know that individual well because you were in a relationship with him?

A. Yes, ma'am.

Q. And approximately how tall is he?

1 A. He's around 6-1 to 6-2.

2 Q. And his general weight or physical stature?

3 A. He's a big guy. He's about three hundred pounds.

4 Q. All right. Was there any indication that he was the  
5 intruder?

6 A. No. I would know him right off the bat. I wouldn't  
7 -- there wouldn't be a doubt that if it was him that  
8 entered my apartment that night that I would know it  
9 automatically.

10 Q. All right. By height and physical stature?

11 A. And voice.

12 **MS. MAYES:** Nothing further.

13 **THE COURT:** Thank you. Mr. Phillips. Excuse me,  
14 Ms. Chehoski. I'm sorry.

15 FURTHER RECROSS EXAMINATION

16 BY MR. CHEHOSKI:

17 Q. Ms. Simon, did the police ever ask you about this at  
18 all?

19 A. At the time the Sister Care situation, I think, was  
20 confidential. No, they never asked about it.

21 Q. Okay. They never asked you?

22 A. No.

23 **MR. CHEHOSKI:** Thank you.

24 **THE COURT:** Any redirect on that?

25 **MS. MAYES:** No, sir, Your Honor.

1           **THE COURT:** Thank you, Ms. Simon. You can step down.

2           **THE WITNESS:** Thank you.

3           (Witness excused.)

4           **MS. MAYES:** The State calls Laurie Caldwell.

5           **THE COURT:** Ms. Caldwell, come forward, please, ma'am,  
6 and be sworn. Come forward, please, ma'am, and be sworn.

7           (Whereupon, Laurie Caldwell was duly sworn by the  
8 Clerk of Court.)

9           **THE CLERK:** Have a seat, please, ma'am. Once you're  
10 seated, state your full name, spelling your last, please.

11           **THE WITNESS:** My name's Laurie Caldwell,  
12 C-A-L-D-W-E-L-L.

13   LAURIE CALDWELL,

14   having been duly sworn, testified as follows:

15   DIRECT EXAMINATION

16 BY MS. MAYES:

17 Q. All right. And can you give us some information about  
18 yourself, Ms. Caldwell? Where are you currently employed?

19 A. I'm employed with the State Law Enforcement Division,  
20 better known as SLED.

21 Q. You mentioned you are an agent with the State Law  
22 Enforcement Division?

23 A. Yes, I am.

24 Q. How long have you been with SLED?

25 A. The first employment with SLED, I was with them as an

1 agent for twenty-five years. I retired in February of 2011  
2 and then returned to SLED in April of 2014 as an agent.

3 Q. All right. And what type of cases have you generally  
4 worked throughout your career with the State Law  
5 Enforcement Division?

6 A. The first twenty-five years I worked primarily crimes  
7 against children.

8 Q. All right. And what about after -- there was a period  
9 of time I believe where you were -- you had retired from  
10 the State Law Enforcement Division after twenty-five years?

11 A. Yes, I sought employment at -- or accepted a position  
12 at a child advocacy center here in West Columbia. It is --  
13 when I was there, it was called the Dickerson Center for  
14 Children. It's now called the Dickerson Child Advocacy  
15 Center.

16 Q. All right. And so after that twenty-five year period  
17 at SLED working in cases involving crimes against children,  
18 what type of work did you do with the Dickerson Center for  
19 Children?

20 A. I was what they referred to as the forensic  
21 coordinator and what that means is I was the --

22 **MR. PHILLIPS:** Renew the prior objection, Your Honor.

23 **THE COURT:** I'll note that. I think she's just  
24 referring to a title that she held at that particular time.  
25 And, Ms. Caldwell, if you'd just focus on what you did

1 rather than your title, please, ma'am.

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Thank you.

4 A. I was the chief -- or the lead child investigative  
5 interviewer, but I also supervised some of the other social  
6 workers there that conducted investigative interviews and  
7 I also coordinated and facilitated the Lexington County  
8 Multidisciplinary Team, which is -- it's a team devised of  
9 the staff at the Dickerson Center, law enforcement, social  
10 services, mental health, pediatricians and victim  
11 advocates.

12 Q. All right. Now you mentioned that there at the  
13 Dickerson Center for Children investigative interviews were  
14 conducted. What is the general purpose of an investigative  
15 interview for a child?

16 A. It's to create an environment for a child that is  
17 comfortable and meets them on their level to -- to obtain  
18 information from them on alleged -- if they're an alleged  
19 victim or a possible witness to a crime that is not  
20 suggestive or leading.

21 Q. All right. And what -- what can you tell us involving  
22 **Minor** ? Can you tell us whether or not you had the  
23 opportunity to conduct an investigative interview with a  
24 child by that name?

25 A. Yes, I did.

1 Q. And what was the date of that interview?

2 A. I interviewed her on April the 15th, 2014.

3 Q. All right. And who made that recommendation to the  
4 Dickerson Center for Children for that child to receive an  
5 investigative interview?

6 A. Detective Scott Neel with the West Columbia Police  
7 Department.

8 Q. All right. Now is it possible for you to estimate how  
9 many children you've conducted investigative interviews  
10 with during that time there at the Dickerson Center for  
11 Children?

12 A. While I was at the Dickerson Center for Children in  
13 that three years -- it was three years and two months,  
14 well over five hundred.

15 Q. All right. And you mentioned the type of format  
16 involved with the interview. Did you follow those  
17 guidelines or that protocol with your interview with  
18 **Minor** ?

19 A. Yes, I did.

20 Q. And prior to going into the interview, did **Minor**  
21 appear to understand what -- appear to understand the  
22 nature of the interview?

23 A. Yes.

24 Q. All right. Have you had an opportunity to review that  
25 interview, Ms. Caldwell?

1 A. Yes, I have.

2 Q. Is the interview that you have reviewed, does it  
3 appear to be a fair and accurate representation of your  
4 investigative interview with Minor on April 15th?

5 A. Yes, it is.

6 Q. Okay. And in this particular case, the offense or  
7 crime date is April 13th, so your interview would have been  
8 conducted approximately two days later?

9 A. That's correct.

10 Q. And how old was Minor at the time of this interview?

11 A. Minor was six and a half at the time.

12 Q. Okay. Now do you necessarily expect to get all  
13 details from a six-year-old?

14 A. No.

15 **MS. MAYES:** Your Honor, at this time we'd have this  
16 marked as State's Exhibit --

17 **THE COURT REPORTER:** 64.

18 **MS. MAYES:** -- 64.

19 **THE COURT:** Subject to the objection previously made  
20 and argued, State's 64 in evidence subject to objection.

21 (State's Exhibit Number 64, Redacted Interview, was  
22 marked and admitted into evidence.)

23 **MS. MAYES:** Your Honor, at this time the State would  
24 request permission to publish.

25 **THE COURT:** Permission is granted.

1 (Whereupon, State's Exhibit 64, the investigative  
2 interview, was played in open court.)

3 **MR. PHILLIPS:** Your Honor, may we approach?

4 **THE COURT:** Yes, sir.

5 (Proceedings held at the bench; not reported.)

6 **THE COURT:** Ms. Mayes.

7 **MS. MAYES:** Yes, sir, Your Honor.

8 BY MS. MAYES:

9 Q. Now just in follow-up, Ms. Caldwell, just a few  
10 questions. Is anyone else allowed in the interview room?

11 A. No.

12 Q. And is that just in **Minor** 's case or is that routine  
13 in all of the investigative interviews that are conducted  
14 there at the Childrens Advocacy Center?

15 A. That is routine in all cases unless an interpreter is  
16 needed.

17 Q. All right. And you mentioned that Ms. Colleen was  
18 there and at one point you stepped out to speak to  
19 Ms. Colleen. Who were you referring to?

20 A. Colleen Belk. She was the victim advocate with the  
21 West Columbia Police Department at the time.

22 Q. And you mentioned at some point that she can see us.  
23 Describe the room setup and what you were referring to when  
24 you made that reference.

25 A. At that time the Dickerson Center was located in an

1 old two-story house and the interview room was upstairs and  
2 right below that room was a conference room where we could  
3 -- where we'd meet to initiate the information on the case  
4 and there's a TV set up there where the officer and the  
5 victim advocate can actually watch the interview live  
6 through the TV.

7 Q. All right. And so someone can actually view the  
8 interview from law enforcement or a similar agency?

9 A. Correct.

10 Q. All right. But can you see those people?

11 A. No, I can't see them.

12 Q. All right. I want to ask you a little bit about

13 **Minor** 's demeanor. What did you observe as the  
14 interviewer about **Minor** 's demeanor when she was  
15 disclosing actual details of the events that occurred in  
16 the bedroom with whom she called the burglar?

17 A. A little hesitancy to talk based -- my professional  
18 opinion would be that -- the trauma of having watched her  
19 mother be shot and a little bit sadness and the fear that  
20 she might not see her again and just the level of trauma.

21 **MR. PHILLIPS:** Your Honor, may we approach?

22 **THE COURT:** Yes. How -- the jury was able to see  
23 the demeanor and you understand that there's no point in  
24 pushing this to the edge, quite frankly. I'll note your  
25 objection and we'll deal with it out of the presence of the

1 jury.

2 **MR. PHILLIPS:** Thank you, Your Honor.

3 **THE COURT:** Thank you.

4 BY MS. MAYES:

5 Q. And why is the easel or for art to be used?

6 A. Just to help the child relax and instead of them just  
7 staring at me while we're talking about these serious  
8 issues, it directs their attention and helps relax them  
9 during that process.

10 Q. All right.

11 **MS. MAYES:** Nothing further.

12 **THE COURT:** Thank you. Cross-examination,  
13 Mr. Phillips?

14 **MR. PHILLIPS:** Yes, Your Honor. Thank you.

15 CROSS-EXAMINATION

16 BY MR. PHILLIPS:

17 Q. Good morning, Ms. Caldwell. How are you?

18 A. Good.

19 Q. In these interviews you draft a report afterwards?

20 A. Yes.

21 Q. And in drafting that report, you note that you spoke  
22 with several people?

23 A. Right.

24 Q. And part of that is kind of a pre-interview to get all  
25 of the information together?

1 A. Correct.

2 Q. And in your report you put in there that Ms. Simon  
3 told law enforcement that the voice sounded familiar?

4 A. I'm going to refer to my report real quick.

5 Q. It's in the brief psychosocial history section, the  
6 last sentence.

7 A. Yes, that was the information I was given.

8 Q. That the voice -- that Ms. Simon told law enforcement,  
9 and this is literally -- you're getting the information  
10 within a day or so?

11 A. Yes.

12 Q. That the voice sounded familiar?

13 A. Correct.

14 **MR. PHILLIPS:** Thank you. No further questions.

15 **THE COURT:** Thank you. Redirect?

16 **MS. MAYES:** Yes, sir, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. And did you question **Minor** specifically about  
20 that --

21 A. Yes.

22 Q. -- as to whether the voice sounded familiar?

23 A. I did.

24 Q. Or whether she recognized the voice?

25 A. Yes, I did.

1 Q. And what was her response?

2 A. She did not recognize the voice.

3 **MS. MAYES:** Nothing further.

4 **THE COURT:** I think it's -- there are two Ms. Simons  
5 obviously, **Minor** and her mother. In the note when  
6 Ms. Simon said the voice sounded familiar, who was that  
7 note referring to? Can you tell me?

8 **THE WITNESS:** It was referring to Larenda Simon.

9 **THE COURT:** All right. Thank you.

10 **MR. PHILLIPS:** Thank you, Your Honor. That was my  
11 follow-up.

12 **THE COURT:** All right. Thank you very much.

13 Ms. Caldwell, you can step down. Thank you, ma'am.

14 (Witness excused.)

15 **MS. MAYES:** The State calls **Minor**.

16 **THE COURT:** **Minor**, come forward, please, and be  
17 sworn.

18 (Whereupon, **Minor** was duly sworn by the Clerk  
19 of Court.)

20 **THE CLERK:** Once you're seated, state your full name,  
21 spelling your last.

22 **THE WITNESS:** **Minor** **Minor**

23 **Minor**,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. MAYES:

2 Q. All right. And, **Minor** , I'm gonna scoot this just a  
3 little closer to you.

4 A. Thank you.

5 Q. Can you tell us a little bit about yourself?

6 A. I'm nine years old. I -- I'm in the fourth -- I am in  
7 the fourth grade. I go to Saluda River Academy for the  
8 Arts.

9 Q. Okay.

10 A. My teacher's name is Crystal Mills.

11 Q. Okay. And is -- how long have you been going to that  
12 school, Saluda River for the Arts?

13 A. Since kindergarten.

14 Q. Okay. And were you also going there in first grade  
15 when you were six years old?

16 A. Yes, ma'am.

17 Q. Now what's your favorite subject in school?

18 A. Science.

19 Q. And what, if anything, do you like to do for fun when  
20 you're not in school?

21 A. Can you repeat the question?

22 Q. Yes. What do you like to do for fun when you're not  
23 in school?

24 A. Go outside.

25 Q. Okay. And what about this past spring break, what did

1 you do for spring break?

2 A. Me and my mom went to Dave and Buster's and go to the  
3 arcades.

4 Q. Okay. And did you get to go on a trip anywhere?

5 A. No, ma'am.

6 Q. Okay. Let me ask you a little bit about when you  
7 lived in another apartment when you were six years old.

8 A. Yes, ma'am.

9 Q. Do you remember the old apartment that you used to  
10 live in?

11 A. Yes, ma'am.

12 Q. What was the number or the address for that apartment?

13 A. [REDACTED], Apartment [REDACTED].

14 Q. Okay. Who all lived in that apartment?

15 A. Me and my mom, Larenda Simon.

16 Q. Okay. And did anybody else actually live there other  
17 than the two of you?

18 A. No, ma'am.

19 Q. And **Minor**, how many bedrooms were in that apartment?

20 A. Two.

21 Q. And how many bathrooms were in that apartment?

22 A. One.

23 Q. And where did you normally sleep?

24 A. In my mom's room.

25 Q. Okay. And, **Minor**, do you remember a time when you

1 were sleeping in the room with your mom and anything  
2 happened that was unusual?

3 A. Yes, ma'am.

4 Q. Okay. Was it usual or unusual what happened?

5 A. Unusual.

6 Q. What do you remember about that?

7 A. A burglar came in and shot my mom like multiple times  
8 and there was a lot of drama and chaos.

9 Q. Okay. Had you ever seen that kind of, as you put it,  
10 drama and chaos in your house before?

11 A. No, ma'am.

12 Q. And when you say drama and chaos, can you tell us what  
13 you mean by that?

14 A. I mean, like -- like it never been happened to me. I  
15 never seen like an adult never been hurt before.

16 Q. Okay. Had you ever seen anyone come in your house  
17 with a mask on before?

18 A. No, ma'am.

19 Q. What do you remember about the person that came in?  
20 How were they dressed?

21 A. All black.

22 Q. Can you describe whether or not you were able to see  
23 the mouth and the nose?

24 A. No.

25 Q. Why?

1 A. Because it was like a mask. It was like -- it was  
2 like -- it was like a hoodie. He -- like it covers like  
3 right here to his little head and there's something like  
4 right here.

5 Q. Okay.

6 A. And then it looks like -- it looked like there was  
7 nothing between the eyes and the eyebrows.

8 Q. Okay. So something's to here --

9 A. Uh-huh. I mean, yes, ma'am.

10 Q. -- the nose? Okay. And then you said like hoodie?

11 A. Yes, ma'am.

12 Q. The hoodie came here?

13 A. Yes, ma'am.

14 Q. And could you see the eyes?

15 A. Yes, ma'am.

16 Q. And was this a man or a woman?

17 A. A man.

18 Q. All right. And for a man, can you tell us was the  
19 person tall or not tall?

20 A. Tall. He was like medium size. Like short and tall,  
21 like in the middle.

22 Q. Okay. And at the time you were six years old?

23 A. Uh-huh. Yes, ma'am.

24 Q. And then what else can you tell us about this person?

25 Did he have anything with him?

1 A. Yes, ma'am.

2 Q. What was that?

3 A. A gun.

4 Q. Okay. Did you actually see the gun?

5 A. No, ma'am.

6 Q. Well, let me ask you this. Did you ever actually see

7 what color he had in his hand?

8 A. Yes, ma'am.

9 Q. What was that?

10 A. Black.

11 Q. And did you also hear anything?

12 A. Yes, ma'am.

13 Q. What did you hear?

14 A. The gun and a lot of toppling and stomping and  
15 groaning and stuff.

16 Q. Did you hear the gun one time or more than one time?

17 A. Multiple times.

18 Q. Okay. You said -- you said that you first saw the  
19 person in what room?

20 A. In -- in the room we was sleeping in.

21 Q. Okay. So that would be the bedroom?

22 A. Yes, ma'am.

23 Q. And what do you remember about anything he said or  
24 wanted y'all to do?

25 A. I remember that he wants me and my mom to take off

1 the clothes we were wearing and -- and her -- and said  
2 while my mom was trying to take away the gun from him, he  
3 -- he said I'm gonna kill you to my mom.

4 Q. Okay. You said when she was trying to take the gun  
5 from him?

6 A. Yes.

7 Q. And where did you see -- where did you see him go and  
8 your mom go after she tried to take the gun from him?

9 A. Like they went into the hallway and then to the  
10 bathroom.

11 Q. Okay. And where were you at?

12 A. Still in the bed.

13 Q. Okay. And were you able to see anything?

14 A. Like -- not like most of the time, but like sometime.

15 Q. Okay. And were you able to hear anything at that  
16 point?

17 A. Yes, ma'am.

18 Q. Okay. What could you hear at that point?

19 A. I heard a lot of groaning, shouting and tumbling and  
20 -- and that's it.

21 Q. Okay. All right. Now you said that one thing that  
22 he wanted you to do and your mom to do was take off your  
23 clothes?

24 A. Yes, ma'am.

25 Q. Did that happen?

1 A. Yes, ma'am.

2 Q. And you remember that -- I believe you said a few  
3 moments ago you remember that your mom tried to take the  
4 gun away?

5 A. Uh-huh.

6 Q. When she tried to take the gun away, was she ever able  
7 to get it?

8 A. No, ma'am.

9 Q. Okay. In the video that we just watched, you drew a  
10 picture of the gun?

11 A. Yes, ma'am.

12 Q. What color did you want in order to draw the gun?

13 A. Black.

14 Q. And why did you want black?

15 A. Because I just wanted like to be -- like I don't know  
16 the word. Like -- like I forgot the word.

17 Q. Okay. What color do you remember the gun being?

18 A. Black.

19 Q. Okay. And, **Minor**, you said that it was a hoodie  
20 that he had on. How do you know that it was a hoodie?  
21 What was it that let you know it was a hoodie?

22 A. Because like when -- like when -- when my momma pushed  
23 out the door and she said come on and let's go, I looked  
24 into the bathroom and like I just -- I just saw like -- I  
25 just saw like a thing that covered up the -- the -- the

1 nose down.

2 Q. Okay. All right. And so what do you mean by that  
3 when you heard your mom say go and you looked in the  
4 bathroom and you just saw that, what -- what was missing?

5 A. Can -- can you repeat the question?

6 Q. Yes. When you heard your mom say go and you said you  
7 looked in the bathroom and you just saw that --

8 A. Uh-huh.

9 Q. -- what was missing from the person?

10 A. The -- the mask.

11 Q. Okay. What part?

12 A. The nose down. It was like on the bottom.

13 Q. Okay. All right. And what about the hoodie, what  
14 happened to the hoodie?

15 A. I don't know.

16 Q. Okay. I'm gonna show you what is State's Exhibit 55.

17 **MS. MAYES:** I believe there's no objection.

18 **THE COURT:** It's in evidence as I recall.

19 **THE COURT REPORTER:** I didn't have it.

20 **THE COURT:** You didn't have it? All right.

21 **MR. PHILLIPS:** Subject to the prior motion.

22 **THE COURT:** That's right. There were objections  
23 previously lodged. You're right. I have through 51  
24 and then the diagram as 53. I don't have a 55. You're  
25 right.

1           **MS. MAYES:** All right. I beg the Court's indulgence.

2           **THE COURT:** 55 subject to prior objection.

3           (State's Exhibit Number 55, a photo blow-up, was  
4 admitted into evidence.)

5 BY MS. MAYES:

6 Q. 30, I believe, and 31 are in evidence. I'm gonna show  
7 you these two pictures, Minor --

8 A. Okay.

9 Q. -- 30 and 31.

10 A. Okay.

11 Q. All right. Do you recognize the place that's shown in  
12 this photo?

13 A. The restroom.

14 Q. Okay. I'm gonna ask you to speak up just a little bit  
15 more. Do you recognize that place?

16 A. Yes, ma'am. It's the restroom.

17 Q. Okay. The restroom. And how many restrooms or  
18 bathrooms were in that house?

19 A. One.

20 Q. Okay. Before you went to bed that night, was there  
21 blood on the floor?

22 A. No, ma'am.

23 Q. And before you went to bed that night, was there a  
24 hoodie on the floor?

25 A. No, ma'am.

1 Q. All right.

2 **MS. MAYES:** Nothing further.

3 **THE COURT:** Mr. Phillips, cross-examine?

4 **MR. PHILLIPS:** Thank you, Your Honor.

5 **THE COURT:** Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. PHILLIPS:

8 Q. Good morning, Minor .

9 A. Good morning.

10 Q. I just have a couple of quick questions for you. When  
11 you met with Ms. Laurie and we watched the video --

12 A. Uh-huh.

13 Q. -- she asked you about the skin color. You said the  
14 skin color was lighter than your momma's?

15 A. A little bit, yes.

16 Q. A little bit. And in the video, you say that you  
17 didn't see his hair?

18 A. No, sir.

19 Q. Okay. You were asked about the hoodie being taken off  
20 in the bathroom?

21 A. Yes, sir.

22 Q. And at that part were you in the bedroom or were you  
23 out of the bedroom at that time?

24 A. I was in the -- I was in the bathroom -- I mean, the  
25 bedroom.

1 Q. The bedroom? So you could hear everything?

2 A. Yes, sir.

3 Q. But you couldn't see what was going on?

4 A. Yes, sir.

5 Q. And when all of that was going on and you -- so you  
6 weren't seeing where -- anything about the hoodie being on  
7 the floor?

8 A. No, sir.

9 **MR. PHILLIPS:** Thank you.

10 **THE WITNESS:** You're welcome.

11 **THE COURT:** Ms. Mayes?

12 **MS. MAYES:** Yes, sir, Your Honor.

13 **REDIRECT EXAMINATION**

14 **BY MS. MAYES:**

15 Q. Other than the eyes, could you see any other part of  
16 his face?

17 A. No, ma'am.

18 **MS. MAYES:** Nothing further.

19 **THE COURT:** Mr. Phillips, any follow-up on that  
20 point?

21 **MR. PHILLIPS:** Just one.

22 **RECCROSS EXAMINATION**

23 **BY MR. PHILLIPS:**

24 Q. Earlier you were asked that the mask had come all the  
25 way down. Did that -- was his mask at one point down at

1 his chin?

2 A. Yes.

3 Q. It was?

4 A. Yes, it was.

5 Q. And you were able to see him?

6 A. Yes. Yes, sir.

7 **MR. PHILLIPS:** Thank you.

8 **THE COURT:** Ms. Mayes, you've got the last word.

9 **MS. MAYES:** All right.

10 FURTHER REDIRECT EXAMINATION

11 BY MS. MAYES:

12 Q. What do you remember seeing about him?

13 A. Can you repeat the question?

14 Q. Yes. He was just asking you what you remember about  
15 his face.

16 A. I remember he have like brown eyes and -- and that's  
17 all I can remember.

18 Q. Was it a person that you've ever seen before?

19 A. No, ma'am.

20 Q. Okay. Was it a person that you would know if you ever  
21 saw again?

22 A. No, ma'am.

23 Q. Okay.

24 **THE COURT:** All right. Minor , you can step down.

25 Thank you.

1 (Witness excused.)

2 **THE COURT:** How long will your next witness take,  
3 Ms. Mayes?

4 **MS. MAYES:** Less than thirty minutes.

5 **THE COURT:** Okay. We'll get the next witness in and  
6 then we'll take a break and deal with the motions.

7 **MR. PHILLIPS:** Thank you, Your Honor.

8 **MR. McNAIR:** Your Honor, the State calls Jill Sparks.

9 **THE COURT:** Ms. Sparks, come forward, please, ma'am,  
10 and be sworn.

11 (Whereupon, Jill Sparks was duly sworn by the Clerk of  
12 Court.)

13 **THE CLERK:** Have a seat right up there. Once you're  
14 seated, state your full name, spelling your last, please,  
15 ma'am.

16 **THE WITNESS:** Good morning. I'm Jill Sparks with  
17 Sprint.

18 JILL SPARKS,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. McNAIR:

22 Q. Good morning, Ms. Sparks. You are employed with  
23 Sprint in what capacity?

24 A. I am a custodian of records for Sprint.

25 Q. As part of your job, do you regularly travel around

1 and appear in court as the custodian of records for Sprint?

2 A. Yes.

3 Q. And were you subpoenaed to bring certain Sprint  
4 documents with you here today?

5 A. Yes.

6 Q. What documents were you asked to bring?

7 A. Subscriber information, as well as call detail  
8 information, including cell sites.

9 Q. All right. And does that include any cell tower  
10 information for phone number [REDACTED]-4550 on the date of  
11 April 13th of 2014, between 1 AM and 5 AM?

12 A. There were no records found on April the 13th, 2014,  
13 between 1 AM and 5 AM.

14 Q. And do you have a document from Sprint that indicates  
15 that?

16 A. I do.

17 Q. Do you have that with you now?

18 A. I do.

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

20 (State's Exhibit Number 65 was marked for  
21 identification.)

22 BY MR. McNAIR:

23 Q. All right. I'm gonna show you what's been marked as  
24 State's Exhibit 65 and this is the official Sprint document  
25 you were just referencing?

1 A. Yes.

2 Q. All right. And is that document made and prepared as  
3 a part of the ordinary course of Sprint's business?

4 A. Yes.

5 Q. All right. As custodian of records, do you have  
6 access to that document?

7 A. Yes.

8 **MR. McNAIR:** Your Honor, we'd offer State's 65 into  
9 evidence at this point.

10 **THE COURT:** Any objection?

11 **MS. GILREATH:** No objection.

12 **THE COURT:** Thank you. 65 in evidence.

13 (State's Exhibit Number 65, Sprint records, was  
14 admitted into evidence.)

15 BY MR. McNAIR:

16 Q. As you mentioned, there was no activity, no cell  
17 tower activity, on that phone on April 13, 2014, between  
18 1 AM and 5 AM; is that correct?

19 A. Correct.

20 Q. And would that be consistent with there not being any  
21 activity on that phone during that time period?

22 A. Correct.

23 **MR. McNAIR:** No further questions.

24 **THE COURT:** Thank you. Ms. Gilreath.

25 **MS. GILREATH:** Thank you, Your Honor.

CROSS-EXAMINATION

1  
2 BY MS. GILREATH:

3 Q. Ms. Sparks, these documents that you provided were in  
4 response to a search warrant, correct?

5 A. Yes.

6 Q. And that search warrant was sent to Sprint in order to  
7 obtain these records?

8 A. Yes.

9 Q. And whenever you're compiling these records to send  
10 in response to a subpoena, essentially you go by exactly  
11 what is requested through that -- with a search warrant or  
12 subpoena, you go by exactly what is requested in that  
13 search warrant?

14 A. Yes.

15 Q. And in this case do you have a copy of the search  
16 warrant here?

17 A. Not in front of me, no.

18 Q. But the letter that you have -- that you do have in  
19 front you there.

20 A. I don't have it anymore in front of me, but, yes.

21 **MS. GILREATH:** May I approach the witness, Your Honor?

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

23 BY MS. GILREATH:

24 Q. Ms. Sparks, I'm handing you State's 65 and you  
25 indicated that this is the letter that was sent from Sprint

1 in response to the search warrant?

2 A. Yes.

3 Q. So everything that was requested by the search warrant  
4 is actually listed in this letter, correct?

5 A. Correct.

6 Q. If I could direct your attention to Page 2, could you  
7 tell us what the -- the first thing there, the request  
8 type, CDR, could you tell us what that means?

9 A. CDR stands for call detail records.

10 Q. And what does that mean? What does that show?

11 A. Call detail records reflect inbound and outbound call  
12 detail records. It shows the calling number and the called  
13 number and the date and time.

14 Q. So that's phone calls that are being made by this  
15 phone?

16 A. Yes.

17 Q. So it doesn't show content or anything like that.

18 It's just the number that was called from, the number that  
19 was called to?

20 A. It reflects the number that was called, the number  
21 that it called, and -- reflects the calling number, called  
22 number and the date and time.

23 Q. And the second piece of information there for the  
24 request type it says switch slash cell site historic. What  
25 does that mean?

1 A. The switch is responsible for routing call detail --  
2 traffic on the Sprint network. The cell site is asking for  
3 the specific cell site location of the tower that would be  
4 utilized in the call.

5 Q. And this information is picked up when, for example,  
6 a phone call is made?

7 A. Correct.

8 Q. And that's because when a phone call is made, the  
9 phone is essentially interacting with the tower in order  
10 to make the call?

11 A. Yes.

12 Q. That's how the phone accesses the network in order for  
13 the data or the call to go through to the other phone?

14 A. Right. Whenever you place a phone call your cell  
15 phone emits a radio signal that will connect you to the  
16 strongest cell tower and the cell tower is responsible for  
17 both receiving and transmitting call detail records.

18 Q. So as soon as that phone call is made, that phone is  
19 automatically interacting with the tower because otherwise  
20 it wouldn't be able to make the call?

21 A. That is correct.

22 Q. So if the call was made during the time period that  
23 you were looking at as far as the cell site data there, if  
24 a call is made or something is done on that network that  
25 would show up in that report, correct?

1 A. We would have a record of that transaction, yes.

2 Q. So everything that's -- that would be included in this  
3 -- I believe it was 1 AM to 5 AM is the time range for  
4 which the cell site data was being looked at?

5 A. That would be correct.

6 Q. That would include everything that is using the  
7 network?

8 A. The specific cell site would be encompassing the first  
9 and last cell of the call -- that the call was placed on  
10 and the call was terminated on.

11 Q. Correct. Now what that doesn't include is anything  
12 that would happen over a wi-fi connection, correct?

13 A. Correct. Wi-fi does not utilize cell towers.

14 Q. So if a phone is not making a phone call but is  
15 surfing the Internet or watching videos or anything that's  
16 using a wi-fi connection, that's not going to show up in  
17 this report?

18 A. Not in this report, no.

19 Q. So what this report shows is just simply whether the  
20 phone was interacting with the network in order to  
21 communicate with another phone, another device?

22 A. Yes.

23 Q. It doesn't show whether there was any wi-fi Internet  
24 activity going on during that time?

25 A. It does not. These particular records are not broken

1 down by if it was a wi-fi call or anything like that, so I  
2 wouldn't -- it wouldn't reflect that, no.

3 Q. So during this time from 1 AM to 5 AM we can't  
4 necessarily say that a phone was off, we can only say it  
5 was not communicating on the network, correct?

6 A. Correct.

7 Q. Because it could be on a wi-fi signal doing something,  
8 anything, on the Internet?

9 A. It could be.

10 Q. And that's not reflected here?

11 A. It is not.

12 Q. And the only time range that was requested here was  
13 1 AM to 5 AM. There was no request for cell site data  
14 outside of that specific time range of 1 AM to 5 AM?

15 A. No.

16 **MS. GILREATH:** I beg the Court's indulgence.

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

18 BY MS. GILREATH:

19 Q. Now we mentioned that the range requested here, just  
20 for the cell site data, that's 1 AM to 5 AM, correct?

21 A. Yes.

22 Q. The CDR, however, was a broader range, correct, from  
23 the 12th through the 17th?

24 A. Correct.

25 Q. So if -- just, for example, if the search warrant

1 had expanded to include any calls or any interactions with  
2 the network or data sent over the network between that  
3 beginning time on the 12th and ending time on the 17th, it  
4 would have shown cell site data for phone calls that were  
5 made?

6 A. If it was requested and if it was there, we would have  
7 provided it, yes.

8 Q. Correct, but that wasn't requested here?

9 A. It was not.

10 **MS. GILREATH:** Thank you. No further questions,  
11 Your Honor.

12 **THE COURT:** Thank you. Redirect, Mr. McNair?

13 **MR. McNAIR:** Yes, sir, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. McNAIR:

16 Q. All right. Based on the cell tower information,  
17 obviously you cannot testify as to whether or not he was  
18 accessing wi-fi during that time, you can only testify as  
19 to whether or not he was on the cellular network, correct?

20 A. Correct.

21 Q. So for number [REDACTED]-4550 on April 13, 2014, there is  
22 no cellular activity between 1 AM to 5 AM, correct?

23 A. Correct.

24 Q. All right. And that would -- so if he had called  
25 anybody or texted anybody, that would be reflected in the

1 cell tower information, correct?

2 A. Cell towers are not reflected for text messages, but  
3 it would reflect if there was any actual calls that  
4 required a cell tower.

5 Q. All right. Ms. Gilreath also mentioned call detail  
6 records and what do those records reflect?

7 A. Call detail records reflect the calling number, which  
8 is the number placing the call, it reflects the number  
9 dialed, it reflects the date and time the call was made, it  
10 reflects the duration, which is in seconds, and -- yeah,  
11 the start date, end date and the time.

12 Q. Okay.

13 **MR. McNAIR:** If you could mark this, please.

14 (State's Exhibit Number 66 was marked for  
15 identification.)

16 BY MR. McNAIR:

17 Q. I'm gonna show you State's Exhibit 66. Are those call  
18 detail records that you previously provided for this phone  
19 number?

20 A. Yes.

21 Q. All right. And what is the date range on those call  
22 detail records?

23 A. The start date is 4-12-2014 and the last called is  
24 4-17-2014.

25 Q. All right. And these are also official Spirit

1 documents that are kept in the regular course of Sprint's  
2 business?

3 A. Yes.

4 **MR. McNAIR:** Your Honor, we'd offer State's Exhibit 66  
5 in evidence at this time.

6 **THE COURT:** Ms. Gilreath?

7 **MS. GILREATH:** Your Honor, if I could just look at it  
8 one more time. I just looked at the first page.

9 **MR. McNAIR:** (Handing.)

10 **MS. GILREATH:** No objection, Your Honor.

11 **THE COURT:** All right. Thank you.

12 (State's Exhibit Number 66, call detail records, were  
13 admitted into evidence.)

14 BY MR. McNAIR:

15 Q. Do you have a copy of this up there with you?

16 A. I do not.

17 Q. (Handing.) Now is there any cell tower information  
18 indicated on these call detail records?

19 A. No.

20 Q. All right. And why is that? Is that outside the  
21 timeframe -- does that include calls outside the timeframe  
22 of what Sprint was asked to produce?

23 A. Correct.

24 Q. Okay.

25 A. We only provide cell tower information for the

1 specific date and time requested.

2 Q. All right. But that does reflect all outgoing and  
3 incoming calls made from the 12th to the 17th?

4 A. It does.

5 Q. All right. But there's no cell tower information  
6 because there was none during that time period on  
7 April 13th between 1 AM and 5 AM?

8 A. Correct.

9 Q. But based on these call detail records, when was the  
10 last activity on April 13, 2014?

11 A. The last transaction was April 13, 2014, at 23:27:42  
12 which is 11:27 PM and --

13 Q. And what kind of transaction was that?

14 A. That was an outbound call.

15 Q. Okay. And when is the next activity after that?

16 A. It ended on 4-13-2014 at 23:28:15.

17 Q. All right.

18 **THE COURT:** That last timeframe that you mentioned,  
19 I didn't get the time. It was military time. Would you  
20 tell me what that was again?

21 **THE WITNESS:** Sure. 11:28. 11 PM. 11:28 PM.

22 **THE COURT:** 11:28. I had the last call at 11:27,  
23 right?

24 **THE WITNESS:** The call started at 11:27 and 42  
25 seconds, PM, and ended at 11:28 and 15 seconds.

1           **THE COURT:** Okay. Thank you, ma'am.

2 BY MR. McNAIR:

3 Q. And the next call made after that date was?

4 A. 4-14-2014.

5 Q. At what time?

6 A. 7:19 AM.

7 Q. Okay. All right. And let's talk about when was the  
8 last call made on April 12, 2014.

9 A. The last call that was placed on April the 12th of  
10 2014 was an inbound call that started at 20:48 or 10:48 PM  
11 and it ended at 20:48, which it started and began both at  
12 10:48 PM.

13 Q. All right. And when was the next call made after  
14 that?

15 A. The next call was on 4-13-2014. It was an inbound  
16 call that started at 11:59 AM and ended on April 13, 2014,  
17 and ended at 12 noon.

18 Q. All right. And no other calls made between those two  
19 times?

20 A. That is correct.

21 **MR. McNAIR:** All right. I beg the Court's indulgence.

22 **THE COURT:** Okay.

23 **MR. McNAIR:** No other questions, Ms. Sparks. Thank  
24 you.

25 **THE COURT:** Thank you. Ms. Gilreath, any follow-up on

1 those points?

2 **MS. GILREATH:** Yes, Your Honor.

3 **THE COURT:** Thank you.

4 **RE CROSS EXAMINATION**

5 **BY MS. GILREATH:**

6 Q. Ms. Sparks, were those records that we were looking at  
7 here, I believe it's marked as State's 66, for the time  
8 range requested -- and, Your Honor, may I approach the  
9 witness?

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

11 **BY MS. GILREATH:**

12 Q. Could you tell me what is the time range that was  
13 requested for the call logs?

14 A. The timeframe that was requested was April 12, 2014,  
15 through 4-17-2014.

16 Q. And this shows all of the calls that were made or  
17 received during that timeframe for that phone?

18 A. Yes.

19 Q. And if the search warrant that was received had  
20 expanded the cell site -- the cell tower data that was  
21 requested to include all of that range, it would have  
22 included the cell tower records for those calls?

23 A. If it was available, yes.

24 Q. So -- but it wasn't requested?

25 A. It was not requested outside that specific timeframe

1 of 1 AM to 5 AM on 4-13-2014.

2 Q. And just to make sure I'm clear here, even though the  
3 last call -- it appears you said that the last call that  
4 was made on I believe it was the 12th was an inbound call  
5 at 10:48 PM?

6 A. It was.

7 Q. And so this only reflects the phone calls that could  
8 have been made by the phone? During that time period that  
9 would have only reflected phone calls, it wouldn't have  
10 reflected -- this doesn't reflect text messages --

11 A. It does.

12 Q. -- or Internet search history or anything like that?

13 A. It reflects text messages.

14 Q. Okay. So this does reflect text messages?

15 A. Not the content, but it does show, yes. It shows the  
16 number that was -- sent and received the text, correct.

17 Q. Okay. And this is for that expanded range?

18 A. What was for the expanded range?

19 Q. Meaning it expanded beyond that 1 AM to 5 AM. It  
20 shows from the 12th through the 17th --

21 A. Correct.

22 Q. -- both calls and text messages, the numbers?

23 A. It does.

24 Q. Do you still have the original -- the letter that was  
25 -- we were looking at earlier. I believe it's State's 65.

1 A. Yes.

2 Q. Could I bring your attention to Page 3?

3 A. Yes.

4 Q. There's a section on here that says features. Do you  
5 see that?

6 A. I do.

7 Q. And that reflects features that the phone has, things  
8 that the phone can do?

9 A. Correct.

10 Q. And that doesn't just include -- it's not a phone that  
11 only makes phone calls, correct?

12 A. It also has data, uh-huh, and pictures, so you can  
13 take pictures on it. It has video services, data services,  
14 text services, so it's not just -- you can do other things  
15 than just make or receive calls, yes.

16 Q. And the records that -- that you brought does not  
17 reflect whether that phone was on wi-fi doing any of these  
18 other things. This would not reflect if it were connected  
19 to wi-fi?

20 A. This does not reflect if it was connected to wi-fi,  
21 no.

22 Q. So you mentioned that for that expanded range if the  
23 cell tower data had been requested over that range that  
24 would have been provided for where it was available?

25 A. Correct.

1 Q. And when it is available, that comes in a format where  
2 you can essentially see tower by tower, time by time, for  
3 every time it was available, correct?

4 A. It will reflect the first and last cell of the call.  
5 It would show the first cell site that the call was started  
6 on and it will also reflect the last cell tower which the  
7 call was terminated on.

8 Q. And depending on where the call was made from, that  
9 would show which tower it was communicating with?

10 A. Yes.

11 Q. Because it's gonna communicate with the tower that  
12 is most near or most available to it based on the Sprint  
13 network, correct?

14 A. It will connect to the strongest tower, the tower that  
15 has the strongest signal.

16 Q. So if a phone makes a call in one location and  
17 connects to the tower with the strongest signal to it at  
18 that location, that might be different from if the phone  
19 then travelled fifty, a hundred, however many miles away  
20 and made another phone call, that could be a different  
21 tower?

22 A. Yes, it would be a different tower.

23 Q. So looking at these records just based on the phone  
24 calls and the cell tower data that's available, you could  
25 potentially get sort of an idea of general locations that

1 this phone could be --

2 A. Yes.

3 Q. -- based on the towers that it's communicating with?

4 A. Yes.

5 Q. And if that had been requested for this time range,  
6 we could have potentially seen the general areas on a map  
7 that this phone would have been in, correct?

8 A. It wouldn't be -- we don't put it on a map, but it  
9 would show a location provided by latitude and longitude of  
10 the tower that the call was placed on and the call that it  
11 was terminated on.

12 Q. Sure. I just mean that with the tower information we  
13 would be able to determine based on that latitude and  
14 longitude where that tower is physically, geographically,  
15 for each call that was made which tower it was  
16 communicating with?

17 A. Correct.

18 Q. If the search warrant had requested for a particular  
19 phone call, you would be able to determine what tower it  
20 was communicating with?

21 **THE COURT:** I think she's answered that.

22 **MS. GILREATH:** I'm just -- let me rephrase my  
23 question. I'm just trying to go a little bit more narrow.

24 BY MS. GILREATH:

25 Q. If they were requesting for a specific phone call made

1 from a specific location, it would show -- I mean, you  
2 don't have to just do a range, you could determine for a  
3 specific phone call that was made what tower and what  
4 location?

5 A. Can you rephrase that? I'm not -- I don't know that  
6 I'm --

7 **MR. McNAIR:** She's already answered that, Your Honor.

8 **THE COURT:** I think she has. Let me just add another  
9 layer of confusion. I think you've mentioned this,  
10 Ms. Sparks, but you haven't had a specific question  
11 directed at this, but you've answered -- you've been  
12 implicit in your answer. It's possible for one tower to  
13 be the tower of origination, but if the call lasts long  
14 enough it could switch to another tower; is that what you  
15 said?

16 **THE WITNESS:** Yes.

17 **THE COURT:** Okay. So a single call could occupy more  
18 than one tower --

19 **THE WITNESS:** Yes.

20 **THE COURT:** -- if you're travelling along?

21 Okay. Now since I've added more confusion,  
22 Ms. Gilreath, I'll let you try to clear that up.

23 BY MS. GILREATH:

24 Q. Just one additional question. If the search warrant  
25 had expanded to include a broader date range outside of

1 the 12th through the 17th, any phone calls made from -- if  
2 a phone call was made from this courthouse or from an  
3 apartment complex in West Columbia, it would have reflected  
4 what cell tower was -- the phone was communicating with in  
5 order to make that call, even if it was outside the search  
6 warrant range, if that had been requested, that would have  
7 been reflected here?

8 A. Correct.

9 **MS. GILREATH:** No further questions, Your Honor.

10 **THE COURT:** Thank you. Mr. McNair?

11 **MR. McNAIR:** Nothing further, Your Honor.

12 **THE COURT:** Thank you. Ms. Sparks, you can step down.  
13 Without objection can she be excused?

14 **MS. MAYES:** Yes, sir, Your Honor.

15 **THE COURT:** Ms. Gilreath?

16 **MS. GILREATH:** No objection, Your Honor.

17 **THE COURT:** Okay. You can be excused, Ms. Sparks.

18 Thank you for coming.

19 (Witness excused.)

20 **THE COURT:** All right. Folks, this is a good time for  
21 us to take the morning recess. We've got some matters of  
22 law that we need to deal with outside of your presence, so  
23 we'll take about twenty minutes. We'll start back at  
24 twenty minutes of the hour. 11:40 we'll be back. We'll  
25 try to get you back in at that time. Remember, as always,

1 not to discuss this case among yourselves while you're in  
2 the jury room. Thank you.

3 (Whereupon, the jury retires to the jury room at  
4 11:21 AM.)

5 **THE COURT:** Madam Reporter, at sidebar during the --  
6 or following the playing of the video, a timely objection  
7 was made regarding the redactions to the video that was  
8 played. As a precatory matter, Madam Solicitor, it's  
9 probably already in the record, but I want an un-redacted  
10 copy of that DVD to be a Court's exhibit, as well as the  
11 redacted copy, which is in evidence, so the appellate  
12 court can review the extent of the redactions that were,  
13 in fact, made.

14 **MS. MAYES:** (Nods head.)

15 **THE COURT:** I think the main part of the objections  
16 had to do with the reference to the drawing and perhaps  
17 others. Mr. Phillips, I'll allow you to put that on the  
18 record now.

19 **MR. PHILLIPS:** Thank you, Your Honor. That will be  
20 Court's 7.

21 (Court's Exhibit Number 7 was marked for  
22 identification.)

23 **MR. PHILLIPS:** Thank you, Your Honor.

24 **THE COURT:** Yes, sir.

25 **MR. PHILLIPS:** In detailing what we discussed at

1 sidebar and, of course, yesterday when we were addressing  
2 the redactions, one of the recommendations was the afraid  
3 of the dark. I believe the dark part was taken -- was  
4 redacted, but the afraid part was still included in the  
5 video. There was discussion of princess and frog games  
6 and playing dress-up. Now I know Your Honor had said that  
7 you made the ruling specifically that that was allowed,  
8 so that was my confusion that that was supposed to be  
9 redacted as well.

10 **THE COURT:** Of course, the record should reflect that  
11 -- my notes from yesterday, which obviously are not  
12 official, had to do with redactions regarding truth and  
13 drawings and then there was an objection to dress-up. At  
14 that point in time Ms. Mayes specifically said that those  
15 were relevant to her recollection of the events of the day  
16 and I allowed those to go into the record. The record will  
17 reflect that, but nonetheless that was my recollection from  
18 yesterday.

19 **MR. PHILLIPS:** In the video that was shown today, the  
20 redacted video, there was still draw your momma a picture,  
21 showed and discussing her drawing the picture at the  
22 different times before Ms. Caldwell left the interview and  
23 when she came back in, the references to pictures for your  
24 mom, draw fishes on your picture, all of this was still  
25 included in the redacted video. We would renew our

1 objection and motion to suppress from yesterday.

2           **THE COURT:** All right. Thank you. The purpose of  
3 getting the un-redacted video in the record was to show  
4 that there's a great deal more regarding that drawing that  
5 was on the video and that has been redacted. In this  
6 particular instance, **Minor** was being asked questions  
7 while she was drawing. As a matter of fact, Ms. Caldwell  
8 specifically asked her if she could talk and draw at the  
9 same time and so there were a series of questions on-going  
10 while she was drawing and, of course, those questions were  
11 -- obviously were relevant and had to be included.

12           I find that the minor reference to the drawing and  
13 what was going on to set a context for what she was doing  
14 at the time she was being asked questions was not so  
15 prejudicial as to render the process unfair. And quoting,  
16 again, from the Russell case, as we did yesterday, Russell  
17 did not necessarily say that the -- that the drawing in  
18 that particular case, which was much more extensive than  
19 this one, would have been error if it had been preserved.  
20 It just simply said it was not preserved and so we can only  
21 imagine what would happen.

22           But in any event, notwithstanding Russell, I don't  
23 find that there was anything in the process as it was  
24 actually conducted and after the redactions were made that  
25 renders this unfair and deprives Mr. Hunter of his right to

1 a fair trial.

2 Also during Ms. Caldwell's testimony she was asked  
3 questions about the demeanor of Minor during the --  
4 during the examination and she responded that she showed a  
5 hesitancy to talk which was consistent with -- with trauma.  
6 At that point in time, of course, you asked that a matter  
7 of law be noted and I did and I stopped the questioning  
8 at that point from going any further. Now according to  
9 Kromah, observations that are made -- personal observations  
10 regarding a child's behavior or demeanor are not rendered  
11 reversible and, as a matter fact, are -- I think are even  
12 sanctioned as being within the proper area of testimony.  
13 The problem is when the statement goes so far as to even  
14 indirectly vouch for the child's believability, then Kromah  
15 says that absolutely off basis.

16 Madam Reporter, the Kromah we're talking about is  
17 K-R-O-M-A-H. There's several "Kromah's", as a matter of  
18 fact, dealing with child abuse cases. But, nonetheless,  
19 I'll be glad for you to develop that more completely,  
20 Mr. Phillips, but that was the -- I think that was the  
21 essence of your objection that was being raised.

22 **MR. PHILLIPS:** That's correct, Your Honor. And Kromah  
23 and the following case, Chavis, is cited in our pretrial  
24 motion --

25 **THE COURT:** Right.

1           **MR. PHILLIPS:** -- so we did directly -- we knew the  
2 issue could come up with the witness and it was one that  
3 was directly addressed in our motion to prohibit exactly  
4 what happened. I think, quote unquote, Ms. Caldwell said  
5 in her professional opinion. She wasn't qualified as an  
6 expert as Kromah and Chavis show that they're not allowed  
7 to be qualified as experts. But, again, going to my motion  
8 to prohibit the use of the word "forensic", it has that  
9 misleading basis.

10           Also it's -- it started to go down the road of the  
11 Douglas and Jennings case. I don't know whether it was  
12 improper vouching or bolstering. When you look at both  
13 Kromah, Chavis and then the improper vouching or bolstering  
14 of Douglas and Jennings, that would be the crux of our  
15 arguments that are before the Court that were addressed  
16 with the very nature of having the admission of that  
17 videotape, as well as having the interviewer testify as  
18 to her interview. With that, in giving her professional  
19 opinion when she had not been qualified as an expert  
20 witness under 702, in addition to all of the arguments  
21 made before Your Honor, we would certainly make the motion  
22 for a mistrial at this time.

23           **THE COURT:** All right. I note that. You're right.  
24 She was not qualified as an expert for obvious reasons,  
25 but she was not called a forensic interviewer either. The

1 only reference to forensic was made to her background when  
2 that was what -- that was the term that was used at the  
3 time when she was involved in the -- in the center. And  
4 so the -- the lone statement that I recall her having made  
5 on her examination regarding the -- **Minor** herself was  
6 the statement that I just cited and, of course, the record  
7 will reflect my incompleteness. The question was asked  
8 specifically about her demeanor and she answered as I  
9 said. That was her observation, of course, as a trained  
10 interviewer, but beyond that I don't think it went any  
11 further.

12 Ms. Mayes, I'll be glad for you to put something on  
13 the record. You or somebody on your behalf is gonna have  
14 to argue this before the Supreme Court if necessary at  
15 some point in time, so I want you to put whatever you  
16 need to on the record.

17 **MS. MAYES:** Yes, sir, Your Honor. Pursuant to  
18 Kromah, it's the personal observations regarding the  
19 child's behavior or demeanor that is sanctioned. And in  
20 this particular case, it would be subjective in nature.  
21 I realize she did use the word "opinion", but it's an  
22 observation; therefore, it would be subjective in nature.  
23 She described the child as hesitant during the discussion  
24 about the events in the bedroom as opposed to some of the  
25 other events that the child discussed more freely and that

1 is generally the observation that concerns the demeanor  
2 that was to be elicited; that the discussion of the actual  
3 details of the event were somewhat more hesitant. She  
4 also did address that the child was discussing her mother's  
5 hospitalization. That conversation is included in the  
6 course of the interview that the jury saw. I believe at  
7 one point the child stops talking and she questions her  
8 further about being sad about her mom's hospitalization  
9 and then they talk about that. So it's generally limited  
10 to what she observed about the child's demeanor or changes  
11 in demeanor when they're discussing various different  
12 topics along the way and during the course of the  
13 interview.

14 **THE COURT:** All right. Thank you.

15 **MR. PHILLIPS:** And, Your Honor, just to clarify, so  
16 we would need two rulings. I believe one on the issue  
17 that Your Honor directly brought up was regarding -- just  
18 to make sure I say this artfully, one would be on the  
19 expert -- Rule 702 making -- a lay witness making -- using  
20 the phrase "in my professional opinion". So beyond the  
21 scope of a lay witness essentially providing testimony of  
22 an expert witness, improperly providing testimony, in  
23 violation of Rule 702. And then with the direct issue --  
24 primary issue of whether she violated Kromah and Chavis.

25 **THE COURT:** I think I've already ruled that she did

1 not violate Kromah in the statement -- or Chavis in the --  
2 in the context of the document or what she said.

3 **MR. PHILLIPS:** I apologize, Your Honor. I think just  
4 -- from the defense standpoint it just highlights the  
5 dangerous nature of having that interviewer's testimony and  
6 the admissibility -- you know, the admissibility of that  
7 interview videotape before the jury.

8 **THE COURT:** Is there any reason why she could not  
9 testify as she did testify without being qualified as an  
10 expert under Rule 701? The witness is not testifying as  
11 an expert and the witness's testimony in the form of  
12 opinions or inferences is limited to those opinions which  
13 are rationally based on her perception of the witness,  
14 helpful of a clear understanding of the witness's  
15 testimony, et cetera, don't require necessarily skill,  
16 experience and training. She had special skill and  
17 experience and training. She was not qualified, you're  
18 right, so as to whether the jury -- the jury's not gonna  
19 be, at least as to this witness, told that she was  
20 testifying as an expert, so I don't know what else to say  
21 in that regard. To the extent that that -- that that could  
22 be deemed to be expert opinion testimony, although she was  
23 not qualified as an expert, I would suggest at the very  
24 least that it is harmless. The difficulty or the problem,  
25 of course, is in qualifying the interviewer as an expert in

1 child abuse assessment or others is the problem because it  
2 enhances the testimony of the witness in the eyes of the  
3 jury. Although they're told not to, it enhances the  
4 testimony of the -- of the particular witness who was  
5 improperly qualified and, of course, that's the reason as  
6 we know that forensic experts have been disallowed because  
7 of the fact of the peer review and things of that nature  
8 and a whole body of expert qualifications that come to bear  
9 are not met in that particular area of testimony.

10 I don't think that I have to rule any more than I have  
11 in that regard. The record is replete with my ramblings  
12 and the Court of Appeals will make of it what they'll make.

13 **MR. PHILLIPS:** Thank you, Your Honor. And just in the  
14 procedure, since the motion for mistrial is denied, the  
15 Defendant would respectfully request a jury instruction  
16 based on the cumulative effect of all the testimony and the  
17 motion for --

18 **THE COURT:** I'll take that under advisement and we'll  
19 address that issue if I do within my charge to the jury at  
20 the conclusion of the trial and I'll let you know in  
21 advance whether -- what I'm gonna do in that regard. I'll  
22 be glad for you to submit -- if you'd like when you submit  
23 proposed charges a specific charge in that regard for me to  
24 take into account.

25 **MR. PHILLIPS:** Thank you, Your Honor.

1           **THE COURT:** All right, folks. Let's take about ten  
2 more minutes and we'll start back at a quarter of the hour.

3           (Recess taken.)

4           **BAILIFF:** All rise. Court is now in session.

5           **THE COURT:** Thank you, folks. You-all can be seated.  
6 Are both sides ready?

7           **MR. McNAIR:** I'll check on Ms. Mayes, Your Honor.

8           **THE COURT:** Okay.

9           (Pause in proceedings.)

10          **THE COURT:** All right, folks. Are both sides ready  
11 for the jury?

12          **MR. PHILLIPS:** The defense is ready, Your Honor.

13          **THE COURT:** Thank you. Ms. Mayes, is your next  
14 witness already in the courtroom?

15          **MS. MAYES:** Yes, he is, Your Honor.

16          **THE COURT:** All right. Good. Bring us the jury,  
17 please.

18          (Whereupon, the jury returns to the courtroom at  
19 11:52 AM.)

20          **THE COURT:** Ms. Mayes, you can call your next witness.

21          **MS. MAYES:** The State calls Investigator Thomas  
22 Griffin.

23          **THE COURT:** Investigator Griffin come forward, please,  
24 and be sworn.

25          (Whereupon, Thomas Griffin was duly sworn by the Clerk

1 of Court.)

2 **THE CLERK:** Once you're seated, state your full name,  
3 spelling your last, please.

4 **THE WITNESS:** Yes. My name is Thomas Griffin,  
5 G-R-I-F-F-I-N.

6 THOMAS GRIFFIN,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. MAYES:

10 Q. All right. And, Investigator Griffin, where are you  
11 currently employed and in what capacity?

12 A. I'm currently employed with the City of West Columbia  
13 Police Department and my current role is I'm a criminal  
14 investigator.

15 Q. And how long have you been with the West Columbia  
16 Police Department?

17 A. I've been with the police department approximately  
18 nine years as of February.

19 Q. All right. And how much of that time has involved  
20 work as an actual criminal -- major crimes unit  
21 investigator?

22 A. I've been doing major crimes and criminal  
23 investigation for four years now, yes, ma'am.

24 Q. All right. Can you tell us whether or not that  
25 includes training in the field of crime scene?

1 A. Yes, ma'am, it does include training in the field of  
2 crime scene, as well as I've worked multiple cases  
3 involving homicides, attempted murders, burglaries, armed  
4 robberies, any violent crime of those natures.

5 Q. And can you tell us whether or not you were working in  
6 that capacity in April of 2014?

7 A. Yes, ma'am, I was.

8 Q. What role, if any, did you have in the investigation  
9 regarding the burglary, home invasion, attempted criminal  
10 sexual conduct case involving a victim by the name of  
11 Larenda Simon?

12 A. I was notified by my captain Bruce Wade of the actual  
13 incident. My first initial duties were to go to the  
14 hospital and make contact with Ms. Simon, which I did.

15 Q. All right. And I want to take you back to that point  
16 in time. You mentioned that you were notified by your  
17 captain to go to the hospital. At that point in time where  
18 was Larenda Simon being treated?

19 A. Larenda Simon was being treated at Palmetto Health  
20 Richland in Columbia in their trauma unit.

21 Q. All right. Take us through what actually -- what you  
22 actually observed once you arrived at the emergency room  
23 there at Palmetto Health Richland.

24 A. Yes, ma'am. Once I arrived on-scene, I went directly  
25 to the location where Ms. Simon was at, which was in the

1 trauma room in the ER. I observed Ms. Simon laying on a  
2 stretcher or a gurney. She did have a few doctors and  
3 nurses around her. I believe she was completely nude. If  
4 not completely nude, I know it was from the chest down.  
5 She had multiple gunshot wounds about her chest and body.  
6 She was bleeding profusely, she was in pain, very terrified  
7 and scared at that time.

8 Q. All right. And while you were at the hospital, what  
9 role was taking place back at the actual crime scene?

10 A. While I was at the hospital -- typically when we have  
11 -- the crime scene, it becomes more than just one crime  
12 scene where it actually occurred. You have multiple crime  
13 scenes. One where it occurred. Obviously Ms. Simon went  
14 to another location, which creates another crime scene,  
15 anything that would have been lost in that transfer. Her  
16 being transported to the hospital, that, again, becomes  
17 another crime scene, so at the time we had other  
18 investigators and officers at the initial crime scene.

19 Q. All right. And who was -- what officer or officers  
20 were taking a part in the actual collection of evidence  
21 back at the crime scene?

22 A. That would have been Investigator Scott Neel and  
23 Investigator Chuck Bramlett.

24 Q. All right. So moving forward to your conversation  
25 with Ms. Simon in the emergency room, you've described her

1 demeanor. At this point in time were there doctors around  
2 tending to her?

3 A. There was. Yes, ma'am.

4 Q. All right. And how active, if at all, were they in  
5 the course of your interview with her?

6 A. It was -- it was an active emergency room. I was  
7 trying to speak with Ms. Simon while they were prepping her  
8 for surgery and treating to her wounds and counting the  
9 bullet holes in her just so they could get an idea prior to  
10 her surgery.

11 Q. All right. I'm gonna show you some photographs and  
12 ask you whether or not you recognize them. It's going to  
13 be State's Exhibit 62, 61, 60, 59.

14 A. Yes, ma'am, I do recognize these photos. They were  
15 taken by myself and they were taken of Ms. Simon as she  
16 laid in the hospital room.

17 Q. All right. Is that a fair and accurate representation  
18 of how you recall her as she's in the hospital being  
19 treated by hospital staff?

20 A. Yes, ma'am.

21 Q. All right.

22 **MS. MAYES:** Your Honor, this will be 59, 60, 61 and 62  
23 for evidence.

24 **THE COURT:** Over objection of defense counsel.

25 **MR. PHILLIPS:** Thank you, Your Honor.

1           **THE COURT:** In evidence. Thank you.

2           (State's Exhibit Numbers 59, 60, 61 and 62,  
3 photographs, were admitted into evidence.)

4 BY MS. MAYES:

5 Q. Now as you're having this conversation with Ms. Simon,  
6 can you give us an overall picture of what you're trying  
7 to get at in terms of the investigation while you're  
8 interviewing a patient who's being prepped for surgery?

9 A. Yes, ma'am. Given the seriousness of Ms. Simon's  
10 injuries, as well as we're talking about multiple gunshot  
11 wounds, she's in the ER trauma, she's in intense pain, I'm  
12 unsure as to whether or not we're gonna be able to speak to  
13 her again because I know that she will be going to surgery  
14 here shortly, so my main concern, first and foremost, is to  
15 get a description of the suspect due to because I may not  
16 be able to -- she may not be able to answer that again.

17           When I first asked her about the description of the  
18 suspect, she gave me the height of 5-4 to 5-6.

19 Q. All right.

20 A. He was 150 pounds approximately. He was small, black,  
21 and was wearing a ski mask.

22 Q. Can you slow down just a little bit more.

23 A. I'm sorry. Yes, ma'am.

24 Q. 5-4 to?

25 A. 5-4 to 5-6, approximately 150 pounds. She stated that

1 he was small, black and that he was wearing a ski mask,  
2 which was covering his nose and his mouth.

3 Q. All right. And are you actually making notes  
4 contemporaneously as you're interviewing her?

5 A. I am making notes as I'm speaking to her. As she says  
6 it, I'm writing it down. Yes, ma'am.

7 Q. All right. And do you have those notes with you  
8 today?

9 A. Yes, ma'am.

10 Q. Is that what you're actually reading from?

11 A. That's what I'm referring to. Yes, ma'am.

12 Q. All right. So those were made in the emergency room  
13 on April 13, 2014?

14 A. They were. Yes, ma'am.

15 Q. What happened next?

16 A. What happened next? Given that I was able to get the  
17 initial information, I began -- I knew with her going into  
18 surgery that any statement that we could get from her would  
19 be beneficial at that point. I had an audio recorder with  
20 me. Typically we like to take either a recorded statement  
21 or a written statement when they're giving a statement of  
22 the events that actually happened. Due to her going into  
23 surgery and such, I did not know when, I know the nurses  
24 were prepping her for it, I went ahead and advised her  
25 that I was gonna start the recording and I recorded a

1 conversation -- or a statement from her about the incident.

2 Q. All right. We'll look at State's Exhibit 59. Again,  
3 who took these photos?

4 A. I did.

5 Q. State's Exhibit 60?

6 A. I took those photos as well.

7 Q. 61?

8 A. Yes, ma'am.

9 Q. And 62?

10 A. Yes, ma'am.

11 Q. All right. And throughout the course of your  
12 interview as we see healthcare workers here tending to  
13 her pre-surgery, were they with you and giving her care  
14 throughout that time?

15 A. They were in the room the entire time. Even  
16 throughout the recording of the statement of Ms. Simon we  
17 have to pause. The recording continues, but doctors are  
18 just prepping her, telling her what she's going to incur  
19 once she undergoes surgery.

20 Q. All right. Moving forward, what did you do once you  
21 received this information?

22 A. From Ms. Simon, once I received that information, it  
23 was relayed to the investigators on the scene.

24 Q. All right. And how long did you stay there at the  
25 hospital?

1 A. Looking at my notes, it -- I don't think I stayed  
2 there more than an hour. It would have been forty-five  
3 minutes to an hour that I would have been there.

4 **MS. MAYES:** Your Honor, may we approach?

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

6 (Proceedings held at the bench; not reported.)

7 **THE COURT:** Madam Reporter, if you will note our  
8 sidebar conference we'll memorialize that out of the  
9 presence of the jury.

10 **MS. MAYES:** I beg the Court's indulgence.

11 BY MS. MAYES:

12 Q. Now I want to ask you, Investigator Griffin, a little  
13 bit more about the interview that was conducted with  
14 Ms. Simon there at the hospital prior to entering surgery.

15 A. Yes, ma'am.

16 Q. Again, if you could give us any information concerning  
17 her emotional condition, what you observed about her at  
18 that point in time. We've seen the photographs.

19 A. Yes, ma'am. The photographs, I think, do show a good  
20 bit as far as the trauma that she was undergoing at the  
21 moment, given that she was in intense pain, she was  
22 groaning and moaning during the time I was speaking to her.  
23 She was extremely terrified and scared, especially for the  
24 well-being of her daughters.

25 Q. All right. And did you note the actual time at the

1     outset of the interview?

2     A.     The recorded interview that I did once after initially  
3     speaking to her, I did set the date and time for that.

4     Q.     Okay.  And so the very first information that you got  
5     even before the recorder was cut on was about what?

6     A.     His description.  His physical -- his description.

7     Q.     All right.  And why was this the first thing that you  
8     wanted even before the interview began?

9     A.     Because had she been sent to surgery right after I got  
10    that information, I at least have a suspect to go off of, I  
11    at least have some identifying marks to go with.

12    Q.     Okay.  And why was it important to preserve the  
13    remainder of the interview by a recording?

14    A.     Just given the -- the amount of time that we were  
15    there, I did not know if she was gonna be sent off to  
16    surgery at any moment.  Also when it comes to very detailed  
17    events such as this or very traumatic events, there's a lot  
18    of things that go on, I can only write so fast.  And given  
19    the limited amount of time we had, that's the reason I went  
20    to the recorded statement.

21    Q.     All right.  And you've had an opportunity to listen to  
22    the recorded audio in this case?

23    A.     I have.  Yes, ma'am.

24    Q.     And can you tell us whether or not it's a fair and  
25    accurate representation of your additional conversation

1 with Ms. Simon there in the emergency room at Palmetto  
2 Health Richland?

3 A. It is. Yes, ma'am.

4 **MS. MAYES:** And this would be State's Exhibit, I  
5 believe, 63 for evidence.

6 **THE COURT:** 63?

7 **THE COURT REPORTER:** Hold on. No. It hasn't been  
8 marked yet. It will be 67.

9 **THE COURT:** What's the number?

10 **MS. MAYES:** 67, Your Honor.

11 **THE COURT:** Over objection of defense counsel.

12 **MR. PHILLIPS:** Thank you, Your Honor.

13 **THE COURT:** Yes, sir.

14 (State's Exhibit Number 67, a recorded statement of  
15 Larenda Simon, was marked and admitted into evidence.)

16 BY MS. MAYES:

17 Q. And just to clarify, Investigator Griffin, throughout  
18 your interview with her, was there some conversation taking  
19 place with medical staff as well?

20 A. There was. Yes, ma'am.

21 (Whereupon, State's Exhibit Number 67 was played in  
22 open court.)

23 **MR. PHILLIPS:** Your Honor, may we approach?

24 **THE COURT:** Yes, sir. Can you put a stop on it?

25 (Proceedings held at the bench; not reported.)

1           **THE COURT:** All right. You can continue.

2           (Whereupon, State's Exhibit Number 67 continued  
3 playing in open court.)

4 BY MS. MAYES:

5 Q. All right. So, Investigator Griffin, regarding the  
6 final series of questions, you were asking whether or not  
7 the person may have been in the area?

8 A. Yes, sir.

9 Q. Was the person known to her?

10 A. At that time I had no knowledge one way or the other.  
11 I don't believe so. I don't know that she -- I was able  
12 to really clarify as far as -- she was just saying that  
13 she was unsure if he lived in the area, it seemed like she  
14 heard his voice before, but she didn't know for sure.

15 Q. All right. And at this point in time you had no  
16 suspect name or lead; is that correct?

17 A. We had no leads at that time at all. No, ma'am.

18 Q. What's the next step in the investigation?

19 A. The next step in the investigation would have been  
20 the investigators and officers that were at the crime  
21 scene. I know you heard me on the tape. That was me  
22 actually speaking to the other investigator who was in the  
23 process of typing a search warrant for the residence at  
24 that time, so they would have been going into that  
25 residence to process it.

1 Q. And take us to the next day. We're moving forward  
2 now to the next day in the investigation. What actions  
3 were taken by your department, not just yourself but your  
4 department as a whole, to follow up with trying to identify  
5 a suspect?

6 A. In an effort to identify a suspect, when we have home  
7 invasions and possible sexual assaults happening, it's not  
8 an every day occurrence. It is typically one person who  
9 does these often, so we were reaching out to other  
10 departments, being Richland County, Lexington County and  
11 the City of Columbia. I believe they informed us of two  
12 people that they had that were doing similar type  
13 incidents. We did look into those two as well. We also  
14 canvassed the area where the incident occurred to make  
15 contact with any witnesses. It's in an apartment complex,  
16 so everyone's fairly close, so I know I personally made  
17 contact with each individual at that apartment just trying  
18 to find out if anyone had seen anything or heard anything  
19 prior to the incident or after.

20 Q. All right. And were there any known eyewitnesses to  
21 this event?

22 A. To this event, the only witnesses we had at the time  
23 were Ms. Simon and her daughter, **Minor**.

24 Q. All right. And what efforts were made to locate  
25 videotapes, things of that nature from surrounding

1 businesses?

2 A. We have a series of twenty-four hour businesses within  
3 the city. There's not many, but there are all sorts of  
4 businesses located close to where this happened that do  
5 have surveillance. We did go and obtain those videos. One  
6 was at 1190 Sunset, which was a gas station approximately  
7 a mile down the road, a half of a mile, and I believe the  
8 church was to provide us some videos, which is located near  
9 the apartment as well, but I don't believe we ever see  
10 those videos because they were unable to figure out how to  
11 burn them.

12 Q. All right. And, again, with this event having  
13 occurred during the nighttime, were you ever able to make  
14 out a suspect vehicle or anything of that nature coming or  
15 going from the crime scene?

16 A. No, ma'am, we were never able to determine whether or  
17 not he was on foot or in a vehicle and whether or not he  
18 left or came beforehand.

19 Q. Now moving forward several days, there's been  
20 discussion in this case about a hoodie and you're familiar  
21 with that item?

22 A. Yes, ma'am, I am.

23 Q. Let me show you specifically State's 29.

24 A. Yes, ma'am. I'm familiar with that photo.

25 Q. 30 and 31?

1 A. Yes.

2 Q. All right. Now you talked before about persons who  
3 were working at the crime scene. Can you tell us whether  
4 or not that hoodie was collected as evidence in this case?

5 A. It was collected as evidence by Investigator Bramlett  
6 and Investigator Neel.

7 Q. Once an item such as that is collected as evidence,  
8 what's the next step in terms of having that evidence  
9 essentially analyzed?

10 A. Any items that we take from a crime scene that may  
11 contain DNA, blood, anything of that nature, we typically  
12 don't process that in-house. All of our -- all of our  
13 stuff when it comes to being processed is sent to SLED,  
14 the State Law Enforcement Division, for criminal analysis.

15 Q. All right. And once it's sent to the State Law  
16 Enforcement Division, do they maintain contact with your  
17 department regarding any leads that are developed?

18 A. They do. Any results that they would have gotten from  
19 the items that we submitted to them would have been relayed  
20 to us as they were discovered.

21 Q. All right. And ultimately who obtained an arrest  
22 warrant in this case?

23 A. Myself. I obtained the arrest warrants for  
24 Mr. Hunter.

25 Q. Okay. And on what date did you obtain the arrest

1 warrant for Nathaniel Hunter?

2 A. That was on the 17th of April, 2014.

3 Q. All right. And can you tell us whether or not you  
4 had received any type of communication from the State Law  
5 Enforcement Division prior to that arrest warrant?

6 A. Yes, ma'am. We were notified by SLED that in them  
7 processing the hoodie --

8 Q. All right. Let me stop you right there.

9 A. Yes, ma'am.

10 Q. Does SLED have a database?

11 A. They do have a database. It's a DNA database where a  
12 series of DNA are collected. Yes, ma'am.

13 Q. All right. And let me stop you right there. So there  
14 is a DNA database at SLED?

15 A. Correct.

16 Q. And do you know whether or not you received  
17 notification from the State Law Enforcement Division with  
18 the name of -- with what's termed a notification letter  
19 regarding a DNA match?

20 A. I did, yes, ma'am, and it came back to that of  
21 Nathaniel Hunter.

22 Q. Nathaniel Hunter?

23 A. Yes, ma'am.

24 Q. Okay. And that was regarding what particular item  
25 of evidence that had been submitted to the State Law

1 Enforcement Division?

2 **MR. PHILLIPS:** Subject to prior objection, Your Honor.

3 **THE COURT:** I'll note the objection. Subject to  
4 objection. Thank you.

5 A. That was the hoodie that was located --

6 **MR. PHILLIPS:** And the item referred to is not in  
7 evidence.

8 **THE COURT:** Sir?

9 **MR. PHILLIPS:** The item referred to is not in  
10 evidence.

11 **THE COURT:** It's not in evidence and obviously he's  
12 making a reference to it and I assume that eventually if  
13 it doesn't come into evidence, then you've got an another  
14 motion to make and so -- but I'll note that. I'll allow  
15 him now to go forward just to keep the context going, but  
16 blanks are gonna have to be filled in there. Thank you  
17 for that, Mr. Phillips.

18 **MR. PHILLIPS:** Thank you.

19 BY MS. MAYES:

20 Q. And so to proceed with that, Investigator Griffin,  
21 what item of evidence was submitted to SLED that resulted  
22 in the notification letter you received?

23 A. It was the hoodie that was located in the bathroom  
24 and located inside of the hoodie was a nylon cap and that's  
25 where SLED was able to --

1           **THE COURT:** I'm gonna -- hold on a second.

2           **THE WITNESS:** I apologize.

3           **THE COURT:** Let's don't go any deeper into that with  
4 this witness. Somebody else is gonna testify about this,  
5 I assume?

6           **MS. MAYES:** Yes, sir.

7           **THE COURT:** You made the connection that you needed  
8 to for him to testify about the arrest warrant. We can  
9 move on from there.

10          **MR. PHILLIPS:** And we would certainly at the  
11 appropriate time renew the objection and a new motion.

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

13 BY MS. MAYES:

14 Q.       And having obtained that arrest warrant, what action  
15 was taken to actually locate Nathaniel Hunter? You had a  
16 name, you had obtained a warrant. How did you go about  
17 finding him?

18 A.       Yes, ma'am. When an arrest warrant of those -- of  
19 that seriousness of an offense, being that of attempted  
20 murder and burglary, it's not just a -- it's not just where  
21 a patrol officer will go up and knock on a door. A weapon  
22 was used, so it is inherently dangerous for officers. At  
23 that point, we reached out to the State Law Enforcement  
24 Division again. They have a fugitive task force that helps  
25 in the apprehension of violent criminals, so we did reach

1 out of them. Prior to -- actually I believe it was on the  
2 same day, the 17th of April, when we were notified from  
3 SLED about match in the database to Mr. Hunter. We  
4 received a call from a Crystal Owens with Probation and  
5 Parole. She informed --

6 **MR. PHILLIPS:** (Standing.)

7 **THE COURT:** I'll sustain the objection, thank you, as  
8 to what --

9 **THE WITNESS:** Yes, she --

10 **THE COURT:** No --

11 **THE WITNESS:** I'm sorry, Your Honor.

12 **THE COURT:** -- you've got all the information you  
13 need to go forward with the arrest warrant. That's --  
14 at this point that's all that we need to hear from you.

15 **THE WITNESS:** Yes, sir. I just was testifying as to  
16 how we tracked him.

17 **THE COURT:** Thank you. That's fine.

18 BY MS. MAYES:

19 Q. All right. Let's -- please continue.

20 **MR. PHILLIPS:** We have a matter of law, Your Honor.

21 **THE COURT:** This jury doesn't know who Crystal Owens  
22 is. At some point in time they're gonna hear Crystal Owens  
23 testify. I think she's on the list. The mention of her  
24 name at this juncture is not so fatal to this process to  
25 render this ineffective.

1           **MR. PHILLIPS:** And we do have a motion on that issue.

2           **THE COURT:** I understand and we'll deal with that --  
3 I'm gonna add that to my list right this minute. Let's try  
4 -- let's try to focus on what we're doing right now and get  
5 to the arrest.

6           **MS. MAYES:** Yes, sir, Your Honor.

7           **THE COURT:** Okay. Thank you.

8           **THE WITNESS:** I believe I can simplify that. We --  
9 his number was provided to law enforcement during the same  
10 time of the match of him, of Mr. Hunter. That number was  
11 given to the State Law Enforcement Division fugitive  
12 tracking team. They were able to use that number to  
13 determine the location of Mr. Hunter or the location of  
14 the phone that Mr. Hunter was known to be using.

15 BY MS. MAYES:

16 Q. All right. And with that location, were you present  
17 when he was actually apprehended?

18 A. Yes, ma'am, I was.

19 Q. What went into the apprehension of Mr. Hunter? If  
20 you could take us through to when he was actually spotted  
21 in a vehicle and what type of vehicle that was.

22 A. Yes, ma'am: Agents with SLED had located him at --  
23 I believe it was Bethel Bishop Apartments in Columbia,  
24 located 100 Ripplemeyer Avenue in Columbia. The agents  
25 that were watching him were able to state that he was.

1 driving a white in color Nissan Versa. Myself and another  
2 agent with SLED did observe Mr. Hunter operating --

3 **MR. PHILLIPS:** Objection. Hearsay, Your Honor.

4 **THE COURT:** This is -- I think this goes to the  
5 apprehension. It's not for the truth of the matter. It's  
6 simply to show how he got there and this is allowable  
7 under the rules. Go ahead.

8 A. Myself and another agent with SLED did observe  
9 Mr. Hunter operating a 2013 white in color Nissan Versa.  
10 He was pulling out of Bethel Bishop Apartments. At that  
11 time, the agent that I was with, he notified his units as  
12 well that we observed him, we know where he is. So we're  
13 about to make the stop, but in order to make the stop we  
14 wanted to make sure that we have as many officers with us  
15 as possible given the seriousness of the offense. I  
16 believe -- I know we made it to 277, being the Interstate  
17 leading into Columbia, from -- from the Bethel Bishop  
18 Apartments. Once they were entering onto 277 heading  
19 towards Columbia, Keith Thrower, which is the agent I was  
20 with, he attempted to perform a traffic stop on the  
21 suspect's vehicle. His lights and sirens were activated,  
22 as well as lights and sirens activated by multiple other  
23 agencies including Richland County, who had officers  
24 on-scene as well as other SLED agents. As soon as the  
25 lights and sirens were activated, Mr. Hunter began to flee

1 from officers. He began to increase his speed. We went  
2 -- we made it into Columbia. We chased Mr. Hunter for  
3 approximately three miles. He disregarded traffic control  
4 devices, as well as disregarding the speed limits at that  
5 time. Mr. Hunter did come to a stop at 2548 North Main  
6 Street, which is located in Columbia. Once he was stopped,  
7 he was apprehended.

8 Q. All right. How far would you estimate you travelled  
9 behind him along with Agent Thrower before he actually  
10 pulled over in response to the activated blue lights?

11 A. Approximately three miles.

12 Q. And were the blue lights visible to an observer?

13 A. They were. Yes, ma'am.

14 Q. Now what happened once he was actually pulled over?

15 A. Once he was pulled over, again, given the seriousness  
16 of the offense multiple officers surrounded the car. I  
17 believe with a K-9 as well. Mr. Hunter was removed from  
18 the vehicle and he was detained. He was placed in  
19 handcuffs. Upon a search incident to arrest of Mr. Hunter,  
20 we did remove a cell phone and a black nylon cap that was  
21 in his pocket.

22 **MS. MAYES:** I beg the Court's indulgence.

23 **THE COURT:** Okay.

24 BY MS. MAYES:

25 Q. I'm gonna show you some photos and ask you whether or

1 not you recognize them?

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

3 Q. How so?

4 A. That's the vehicle that Mr. Hunter was operating that  
5 day.

6 Q. Okay. The white Versa that you referred to?

7 A. Yes, ma'am.

8 Q. And what location is this?

9 A. That's the 2548 North Main Street in Columbia.

10 Q. All right. That was the location of the actual  
11 arrest?

12 A. Yes, ma'am. That's where he stopped his vehicle.

13 **MS. MAYES:** These will be offered for evidence at  
14 this time, Your Honor. I believe 68 and 69.

15 **MR. PHILLIPS:** No objection, Your Honor.

16 **THE COURT:** Thank you. Without objection State's 68  
17 and 69.

18 (State's Exhibit Numbers 68 and 69, photographs, were  
19 marked and admitted into evidence.)

20 **MS. MAYES:** In evidence?

21 **THE COURT:** Without objection 68 and 69.

22 BY MS MAYES:

23 Q. So this occurred during daylight hours?

24 A. Yes, ma'am, it did. It was approximately 5:00 PM that  
25 evening.

1 Q. You mentioned during your testimony that pursuant to  
2 his arrest he was searched?

3 A. He was.

4 Q. And who did that search?

5 A. Myself along with the agents on the scene.

6 Q. And you mentioned two items that were recovered?

7 A. Yes, ma'am.

8 Q. What were those items?

9 A. It was a cell phone and a -- I believe it was a nylon  
10 cap of some sort.

11 Q. Okay. I'm gonna show you these two items and ask you  
12 -- you can go ahead and break the seal.

13 A. Yes, ma'am.

14 Q. And how do you recognize that item?

15 A. This was taken off of Mr. Hunter at his arrest.

16 Q. All right. And just to clarify, from the car or from  
17 his person?

18 A. From his person. It was taken from his pocket.

19 Q. Okay. I'm gonna show you another item and ask you  
20 whether or not you recognize that? And hold one moment.  
21 Can you unseal that item and tell us whether or not you  
22 recognize it?

23 A. I need something to cut this because it is all  
24 plastic.

25 Q. (Handing.) And do you recognize that item?

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

2 Q. And how so?

3 A. It was removed from Mr. Hunter's pocket.

4 **MS. MAYES:** This would be State's exhibits for  
5 evidence, Your Honor.

6 **THE COURT:** Okay.

7 **MS. MAYES:** 70 and 71.

8 **MR. PHILLIPS:** No objection to the cap. Subject to  
9 prior motions on the cell phone.

10 **THE COURT:** I understand. Thank you.

11 70 in without objection. 71 over objection of defense  
12 counsel.

13 (State's Exhibit Number 70, a cell phone, and State's  
14 Exhibit Number 71, a nylon cap, were marked and admitted  
15 into evidence.)

16 BY MS. MAYES:

17 Q. Please clarify, Investigator Griffin, that the phone  
18 was actually on his person?

19 A. It was. Yes, ma'am.

20 Q. And I'm gonna ask you about this particular item and  
21 ask you whether -- where this came from?

22 A. That was taken from his pocket as well at the time of  
23 his arrest.

24 Q. All right. And have you been able to -- have you been  
25 able to follow up any further with investigators who were

1 at the scene -- let me rephrase that. Have you been able  
2 to determine what, if any, actions were taken during the  
3 course of the investigation to determine whose phone that  
4 was? Did he have a rental car?

5 A. You're talking about the vehicle?

6 Q. Right.

7 A. Yes, ma'am. The vehicle -- he also had paperwork in  
8 his pocket, as well with a rental agreement. He had rented  
9 that vehicle as well.

10 Q. All right. So moving forward, once he was taken into  
11 custody what happened next?

12 A. Once he was taken into custody, he was transported  
13 to the West Columbia Police Department in an effort to  
14 interview him about the incident.

15 Q. All right. And who conducted that interview?

16 **MR. PHILLIPS:** Subject to the prior motion, Your  
17 Honor.

18 **THE COURT:** Yes, sir. Over objection of defense  
19 counsel, go ahead.

20 A. That interview was conducted by myself and Captain  
21 Wade -- Captain Bruce Wade of West Columbia.

22 Q. All right. And tell us a little bit about that. Take  
23 us to the West Columbia Police Department headquarters and  
24 what happened during the course of an investigation or  
25 interview following the arrest.

1 A. Yes, ma'am. Prior to speaking to a suspect who's in  
2 custody, we have to advise them of their Miranda rights so  
3 that they're -- any statements that they may make to us are  
4 freely and voluntary. We do have a department-issued -- a  
5 departmental form, which is a Miranda form. Prior to  
6 speaking to him, we asked him if he would like to speak to  
7 us, he stated that he would, which would have prompted us  
8 to go to this form next.

9 This is what the forms looks like. It's a Miranda  
10 rights warning form. This is actually a copy of the exact  
11 form.

12 Q. All right. I'm gonna stop you right there. The  
13 original Miranda form --

14 A. Yes, ma'am.

15 Q. -- who maintained that -- who maintained that during  
16 the course of this investigation?

17 A. I have.

18 Q. Okay. Do you see with you the original Miranda form?

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

20 Q. Okay. And can you tell us whether or not that's a  
21 true and accurate copy -- or is it a true and accurate  
22 original of the Miranda?

23 A. Yes, ma'am. This is the original.

24 Q. Okay. And who actually read Miranda during the course  
25 of this interview?

1 A. It would have been Captain Wade.

2 Q. Were you present for that?

3 A. I was. Yes, ma'am.

4 Q. And when we talk about Miranda rights, does it bear  
5 any type of signature on the form?

6 A. It does. There's multiple spots on this form where  
7 the Defendant is allowed to fill out their personal  
8 information. There's also one through six that advises  
9 of his rights. They would initial whether or not they  
10 understand it and then they're actually asked do they  
11 understand these rights and they would circle yes or no.  
12 Mr. Hunter indicated that he did and then there's two  
13 separate spots for Mr. Hunter to sign, which he did.

14 Q. And whose signatures do you recognize on that form?

15 A. I recognize my own, as well as Captain Wade's and  
16 Mr. Hunter's.

17 **MS. MAYES:** With that identification, Your Honor,  
18 this would be State's exhibit for evidence. I believe it  
19 would be 72.

20 **THE COURT:** Any objection?

21 **MR. PHILLIPS:** No objection.

22 **THE COURT:** Thank you.

23 (State's Exhibit Number 72, an Advisement of Rights  
24 form, was marked and admitted into evidence.)

25 BY MS. MAYES:

1 Q. Taking a look at State's Exhibit 72, the original  
2 Miranda form, can you state exactly what rights were read  
3 to him and if you could you read it slowly enough that the  
4 court reporter can make notes as you go.

5 A. Yes, ma'am. These would have been read to him  
6 verbatim. It starts, You have the right to remain silent.  
7 Anything you say can and will be used in court as evidence  
8 against you. You're entitled to talk to a lawyer now and  
9 to have him present now or at any time during questioning.  
10 If you cannot afford a lawyer, one will be appointed for  
11 you without cost. Do you understand these rights; yes or  
12 no, and he indicated yes.

13 The next line states, If you decide to answer  
14 questions now without a lawyer present, you will still have  
15 the right to stop answering questions at any time. You  
16 also have the right to stop answering questions at any time  
17 until you talk to a lawyer. He notated that he understood  
18 those by putting his initials through number one through  
19 six and then circling the "yes" and then signing that he  
20 knew that he could not talk -- he didn't have to talk to us  
21 unless a lawyer was present.

22 The next portion is a waiver of Miranda rights. This  
23 was read to him as well. I'm willing to make a statement  
24 and answer questions. I understand and know what I am  
25 doing. No promises or threats have been made to me and no

1 pressure or coercion of any kind has been used, and it was  
2 signed by Mr. Hunter.

3 Q. All right. And at this point in time did he appear to  
4 understand those rights?

5 A. He did. Yes, ma'am.

6 Q. Was he threatened by you or by Captain Wade in order  
7 to waive his Miranda rights?

8 A. No, he was not.

9 Q. Was he promised anything in exchange for waiving his  
10 Miranda rights and participating in an interview?

11 A. No, he was not.

12 Q. Was he coerced in any way?

13 A. He was not.

14 Q. Did he appear to be able to communicate with you and  
15 understand your questions as well as give responses?

16 A. Yes, ma'am, he could.

17 Q. Based upon your observations, did it appear that his  
18 waiver of rights was free and voluntary?

19 A. Yes, it was.

20 Q. And just to clarify as we go, you're referring to each  
21 individual right being here and then on the left-hand side  
22 whose initials are there?

23 A. Yes, ma'am. Those are the rights there, one through  
24 four, and the initials are that of Nathaniel Hunter.

25 Q. All right. And then here looking at the bottom of the

1 form, who acknowledges the rights here and here?

2 A. Mr. Hunter.

3 Q. All right. And whose signature is located here?

4 A. I'm sorry?

5 Q. Whose signature is located here as a witness to the  
6 waiver of those rights?

7 A. If you're pointing to mine, that's me. I can't see on  
8 the video thing. Yes, ma'am, that's me.

9 Q. All right. And this -- date of this particular  
10 interview, if you could state again for the record?

11 A. Yes, ma'am, it was April 17, 2014.

12 Q. All right. And this is following his arrest?

13 A. Correct.

14 Q. And it takes place in what area of the police  
15 department?

16 A. We have an interview room in our police department and  
17 that's where all of our interviews take place.

18 Q. Tell us, first of all, what, if anything, you observed  
19 about Mr. Hunter and his physical appearance as you went  
20 towards the interview.

21 A. Yes, ma'am. I actually observed these things at the  
22 time of his apprehension as well. Mr. Hunter did have a  
23 band-aid on his forehead and there were what appeared to  
24 be scratch marks of some sort, so he had wounds on his  
25 forehead, as well as I believe a cut -- I would have to

1 look in the photos again, but he did have some injuries to  
2 his face.

3 Q. All right.

4 **MS. MAYES:** I beg the Court's indulgence.

5 BY MS. MAYES:

6 Q. I don't want you to comment on these photos. I just  
7 want to ask you to take a look at them. Having seen those  
8 photos, can you tell us whether or not they are a fair and  
9 accurate representation of how Mr. Hunter appeared on  
10 April 17, 2014?

11 A. They are. Yes, ma'am.

12 Q. And, in fact, on what date were those photographs  
13 taken?

14 A. They were taken on April 17, 2014, in my presence.

15 Q. All right. And do you recognize the room that they  
16 were taken in?

17 A. I do. It was taken in our interview room.

18 Q. And the clothing that he's wearing in those  
19 photographs, can you tell us whether or not you recognize  
20 the clothing?

21 A. It's the same clothing that he was apprehended in when  
22 he was apprehended in Columbia.

23 Q. And, again, you do recognize all of these photos?

24 A. Yes, ma'am.

25 **MS. MAYES:** Your Honor, my understanding is to this

1 series of photos, eight photos, there is no objection.

2 **MR. PHILLIPS:** That's right, Your Honor. No objection  
3 to these photographs.

4 **THE COURT:** All right. Thank you.

5 (State's Exhibit Number 73 through 80, photographs,  
6 were marked and admitted into evidence.)

7 BY MS. MAYES:

8 Q. The band-aid that is reflected in State's Exhibit 80,  
9 can you tell us whether or not he had that band-aid when he  
10 was originally apprehended earlier that day?

11 A. He did. Yes, ma'am.

12 Q. At any point in time -- referring, again, to this  
13 band-aid depicted in State's Exhibit 78, at any point in  
14 time was he asked to remove that band-aid?

15 A. He was.

16 Q. And what, if anything, do you recall about this area?

17 A. There's a small injury there where it looks like it's  
18 dried blood possibly. It's hard to see from here.

19 **MR. PHILLIPS:** Objection. Speculation.

20 **THE COURT:** I'll allow him to testify. It's his  
21 impression. He said it appeared to be a small injury of  
22 some sort. I'm not sure what the basis of that was,  
23 referring to a slight discoloration on his chin if the  
24 record does not reflect that information.

25 **MR. PHILLIPS:** Thank you, Judge.

1 BY MS. MAYES:

2 Q. I'm gonna show you these photos again to examine with  
3 the naked eye.

4 A. Yes, ma'am. It appears to be a slight injury.

5 Q. So having seen that one, State's Exhibit 74, I'm gonna  
6 show you this one, State's Exhibit 73. You mentioned that  
7 the band-aid was removed at some point in time?

8 A. Yes, ma'am.

9 Q. Who made the request for the band-aid to be removed?

10 A. It was either myself or Captain Wade.

11 Q. And what was determined to be underneath the band-aid?

12 A. An older-type wound or scratch of some sort.

13 Q. All right. I'm gonna ask you --

14 **THE COURT:** What was that number, please? What number  
15 is that one? Exhibit Number.

16 **MS. MAYES:** I'm sorry, Your Honor. That is 77.

17 **THE COURT:** Thank you.

18 BY MS. MAYES:

19 Q. And then I'm gonna show you 75 and ask you why this  
20 area was photographed?

21 A. Yes, ma'am. It appeared to be a small abrasion to his  
22 left shoulder. The back of his left shoulder.

23 Q. I'm gonna show you one more photograph and ask you  
24 whether or not you recognize it without commenting on it.

25 Is that a fair and accurate representation of what you

1 observed that day?

2 A. Yes.

3 **MS. MAYES:** Your Honor, may we approach?

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

5 (Proceedings held at the bench; not reported.)

6 **MS. MAYES:** For now, Investigator Griffin, having  
7 identified this photograph, we're gonna mark it for  
8 identification purposes.

9 (State's Exhibit Number 81 was marked for  
10 identification.)

11 **THE COURT:** Ms. Mayes, I take it there are others  
12 photographs and, of course, more evidence that you wish to  
13 elicit from the investigator; is that fair to say?

14 **MS. MAYES:** Yes, sir.

15 **THE COURT:** Given the fact that we're either gonna  
16 have to put off lunch for an hour or so or interrupt, is  
17 this as good a time as any to interrupt his testimony?

18 **MS. MAYES:** It is, Your Honor.

19 **THE COURT:** Okay. Ladies and gentlemen, obviously  
20 the investigating officer has more testimony to offer and  
21 additional exhibits. We're on the lunch hour right now,  
22 so we're gonna stop and ask you to be back in the jury room  
23 at 1 -- excuse me, I'm real bad about looking at the time  
24 and say be back right now -- at 2:15. That's an hour and  
25 fifteen minutes. If you'll be back in your jury room at

1 2:15, we'll resume the trial then. Please remember as  
2 always not to discuss the case among yourselves. Thank  
3 you.

4 (Whereupon, the jury was excused at 1:01 PM for  
5 lunch.)

6 **THE COURT:** Investigator Mitchell {sic}, you can step  
7 down. Obviously during the lunch break you're not allowed,  
8 however, to talk about your testimony with anyone. You  
9 can't confer -- Ms. Mayes knows that she can't talk with  
10 you about it and I just want to let you know you can't talk  
11 with her about it or with anyone else. You can look at  
12 whatever you need to, you can examine the evidence, you can  
13 look at your report. All of those things are fair game.  
14 You cannot discuss your testimony, however, with anybody,  
15 okay?

16 **THE WITNESS:** Yes, Your Honor.

17 **THE COURT:** Thank you.

18 **MS. MAYES:** And, Your Honor, with that being said, we  
19 would just ask that -- the jury is outside the courtroom.  
20 We would just ask for an admonition by the Court for all  
21 witnesses to not make any mention of any agency such as  
22 Probation and Parole. Because I can't talk to the witness,  
23 we just want it to be clear.

24 **THE COURT:** I understand. Okay. That's right. The  
25 issue -- and that is the -- the reference to the witness

1 whose name was given in connection with the telephone  
2 number or something like that; is that right?

3 **MS. MAYES:** That is, Your Honor. Ms. Owens is over  
4 the DNA database program and she will explain that when she  
5 testifies.

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

7 All right. Witnesses are cautioned, of course, to  
8 avoid any reference to Probation and Parole or at least  
9 to Mr. Hunter's connection with that office during their  
10 testimony, okay?

11 **MR. PHILLIPS:** And on that issue, Your Honor, it  
12 wasn't -- Ms. Owens was not my witness, but we did have  
13 an issue regarding South Carolina Code Section 24-21-290  
14 that says information received by probation agents are  
15 privileged. Reading the statute, it says all information  
16 and data obtained in the discharge of his official duty  
17 by a probation agent was privileged information, was not  
18 receivable as evidence in court, may not be disclosed  
19 directly or indirectly to anyone other than the judge or  
20 others entitled under this chapter to receive reports  
21 unless ordered by the court or the director.

22 So prior to Ms. Owens's testimony there was going to  
23 be an objection as to the limited nature of the scope, that  
24 she wouldn't have be able to call SLED and inform them of  
25 this confidential privilege, citing State v. Hook, that is

1 356 SC 421, and I do have copies to hand up, Your Honor.

2 **THE COURT:** Okay.

3 **MR. PHILLIPS:** I've provided a copy of State v. Hook  
4 to the solicitor and a copy to, Your Honor.

5 **THE COURT:** Okay.

6 **MS. MAYES:** Your Honor, we are familiar with this  
7 statute. Our understanding, having consulted with Matt  
8 Buchanan at the South Carolina Department of Probation and  
9 Parole Office of General Counsel, he said it applies to  
10 persons who are on probation and Mr. Hunter was not on  
11 probation. She was not his probation agent. There was no  
12 relationship or confidentiality there. As Ms. Owens will  
13 explain and she testified, she's over the DNA program, so  
14 she is the person that he contacted in order to inquire  
15 about having his DNA removed from the DNA database. I  
16 believe her actual title there is community program  
17 coordinator, which includes the DNA registration for the  
18 database, but he had not been under supervision of any  
19 probation agent during the timeframe of this investigation  
20 or those phone calls, he was a private citizen at that  
21 point, so there was no relationship of confidentiality.

22 **THE COURT:** All right. Thank you. I'll look at  
23 State v. Hook again. Obviously when I read it in 2003, I  
24 apparently didn't understand it, I got reversed, so I'll  
25 try to read it a little bit more closely this time and see

1 if that limitation is correct. We will argue that more  
2 completely before Ms. -- Ms. Owens is it?

3 **MS. MAYES:** Yes, Crystal Owens and she is expected to  
4 testify later this afternoon.

5 **THE COURT:** Before she takes the stand. Okay.

6 **MR. PHILLIPS:** All right. So we're deferring that?

7 **THE COURT:** That's right.

8 **MR. PHILLIPS:** Okay. And then our objections as to  
9 the recorded statement of Larenda Simon that was played for  
10 the jury, Your Honor. We had the sidebar conference. Do  
11 you wish to address that issue now?

12 **THE COURT:** That's right. I'm trying to see what  
13 yellow things we've already dealt with and what yellow  
14 things we haven't dealt with. I highlight these things  
15 at my sidebar. I think we're -- I think we're up to the  
16 playing of the tape, State's Exhibit 67. The objection  
17 was made at sidebar that it was hearsay and inadmissible  
18 and, Mr. Phillips, I'll be glad for you to develop that  
19 more completely, if you'd like.

20 **MR. PHILLIPS:** Yes, Your Honor. For the audio  
21 recording of Larenda Simon by Investigator Griffin that  
22 was played in court, the objection that was made at  
23 sidebar at the request of the Court was essentially not  
24 only hearsay, but also under 401 that it was -- that there  
25 were portions that were irrelevant and should have been

1 redacted, there were places that were played before the  
2 jury that had medical personnel speaking. Also under  
3 Rule 403 that any probative value would be substantially  
4 outweighed by the danger of unfair prejudice and confusion  
5 of the issues. I believe Your Honor specifically even  
6 referenced that some parts of that with the medical  
7 personnel would be irrelevant and would be prejudicial.  
8 Your Honor did acknowledge that at sidebar. With that, the  
9 solicitor -- since the interview was not redacted, they  
10 hand-manually on a laptop skipped different parts and as  
11 they were skipping different parts of the interview medical  
12 personnel -- their comments were coming in randomly as it  
13 was skipped. And certainly we have a continued objection  
14 as to the entire tape. I know one of the arguments was  
15 made by the State under the rule of completeness and I  
16 understand Your Honor's argument that we're not trying to  
17 say that it should be played --

18 **THE COURT:** I'm not arguing.

19 **MR. PHILLIPS:** I'm sorry. Let me rephrase, Your  
20 Honor. My apologies.

21 **THE COURT:** I understand. There's enough of that  
22 going on, so it's an easy mistake to make. Go ahead.

23 **MR. PHILLIPS:** Term of art. I'm sorry.

24 So at that point when it was coming in, that they were  
25 not getting the entire audio recorded interview, that we

1 are arguing that is inadmissible, but also that as it came  
2 in it was highlighting this medical personnel being  
3 manually played.

4 I'm just trying to put into words what happened that  
5 only if you were here you'd be able to know. As it was  
6 manually skipped, the audio recording, as I tried to  
7 unartfully explain and probably more confusing for the  
8 record, that as it was skipped throughout the audio  
9 recording, it wasn't purposeful, they were trying their  
10 best I would imagine, but in that process medical personnel  
11 statements were still coming in rapidly because they  
12 weren't going to specific parts. It wasn't redacted to  
13 exclude those specific parts. And, Your Honor, it was  
14 also skipped -- again, like I said before, certain parts  
15 of Ms. Simon's statement that in their argument to play  
16 that under the rule of completeness left out specific  
17 parts that would make other parts more relevant, but then  
18 had also medical personnel testimony or statements that  
19 came in.

20 And, again, I know that was woefully argued, but my  
21 point would still be under hearsay and under rules 401 and  
22 403.

23 **THE COURT:** All right. I get -- I understand the  
24 point and it's well-made. As to the hearsay objection, it  
25 comes in under 803(2), the excited utterance rule, which

1 states, as we all know, but for the purpose of this record  
2 it is a statement relating to a startling event or  
3 condition made while the declarant was under the stress or  
4 the excitement which was caused by the event or condition  
5 here. It was while -- while Ms. Simon was not hysterical,  
6 obviously you could see she caught herself on several  
7 occasions, she was panicked, she was obviously in pain, she  
8 had been shot, what -- she had seven puncture wounds. I'm  
9 not sure whether she was shot seven times or not. She was  
10 getting ready for surgery. The photographs indicate the  
11 physical state that she was in at the time. It would be  
12 difficult to see those photographs and not imagine an  
13 excited emotional condition at the same time. Investigator  
14 Mitchell -- excuse me, Investigator Griffin talked about  
15 that at the time, and so -- and, of course, the excited  
16 utterance rule is -- it's plain on its face. It's there  
17 because statements that are made under those conditions  
18 are -- have a -- have a degree of authenticity about them  
19 because the statements made under those circumstances are  
20 trustworthy because of the fact that there's no reflection,  
21 there's no time to change things or to make up things under  
22 those conditions, and so certainly the spirit of that rule  
23 in my view was met by the circumstances in which Ms. Simon  
24 found herself.

25 As to the fact that some of the things were

1 irrelevant, you're exactly right. The treatment itself  
2 and the conversations going back and forth were irrelevant  
3 to these proceedings and so it was appropriate to try to  
4 cut those things out. To the extent that she could not,  
5 while they're irrelevant, that doesn't necessarily mean  
6 that they're prejudicial.

7 Now as I indicated, I was concerned that if the whole  
8 thing were played that there were things that could have  
9 come in from the medical professionals as they were  
10 discussing her condition itself that might be prejudicial  
11 if they were describing perhaps the threat to her life or  
12 anything of that nature or whether she was expected to  
13 survive all of this. I didn't know what they were gonna  
14 say, but I knew there was a possibility that they could be  
15 prejudicial if everything were played, if the whole thing  
16 were played, and that's the reason I didn't want that in.  
17 As a matter of fact though, none of anything that I heard  
18 was actually prejudicial. While it was irrelevant, it was  
19 not prejudicial. And there was no other way to present  
20 this thing to the jury in a coherent manner because of the  
21 overlay, the questions being interrupted sometimes by  
22 nurses talking or doctors talking with Ms. Simon. It would  
23 have been impossible to present it in any other fashion  
24 under the circumstances, and so I note those objections.  
25 Of course, we talked about them briefly at sidebar, but

1 those are the reasons that I overruled and allowed the  
2 playing of the tape.

3 In the -- during the testimony of the detective even  
4 further, Detective Griffin talked about the -- the hoodie,  
5 I think it's -- I believe that's my next notation, and  
6 mentioned Crystal's name at the same time. Because the  
7 hoodie is not yet in evidence, there are photographs of  
8 it, it is yet to be relevant, of course, and it will not  
9 be relevant unless there's testimony that ties it to the  
10 Defendant, but that doesn't keep them from referring to it  
11 at this particular point at least as an indication of why  
12 they were doing what they were doing, and so that's the  
13 reason that I overruled your objection in that regard and  
14 preserved the record for further elucidation if you want  
15 to because it was simply a way of putting the testimony  
16 forward in a relatively coherent and cohesive way.

17 Rule 611 gives me some latitude in making sure that  
18 the testimony is presented in a manner that is easier for  
19 the jury to understand and, of course, that testimony won't  
20 be prejudicial unless the hoodie doesn't come into evidence  
21 and the DNA evidence doesn't come into evidence and if none  
22 of that comes into evidence, then I'm gonna hear some other  
23 motions from you in that regard that will take us a little  
24 bit more time to talk about. But the Court shall exercise  
25 reasonable control over the mode and order of interrogating

1 witnesses so as to make the interrogation and presentation  
2 effective so far as the ascertainment of the truth is  
3 concerned and to avoid needless consumption of time, and  
4 that's my concern. We interrupt the testimony at this  
5 point, put somebody on the stand to talk about the hoodie,  
6 get it connected and then put him back on or we skip the  
7 basis of the arrest warrant, which doesn't make sense to  
8 me, so I allowed it to go forward in order to keep things  
9 as I saw it in an orderly fashion under Rule 611 and  
10 preserving it as well as I could, eliminating any real  
11 prejudicial evidence that's not likely to be introduced  
12 later.

13 I'll be glad to hear further from you further in that  
14 regard, Mr. Phillips.

15 **MR. PHILLIPS:** Thank you, Your Honor. Specifically,  
16 he also, in addition to the hoodie, referenced the cap.  
17 The cap in this case is the key piece of evidence from  
18 which Defendant's DNA -- that they had the CODIS hit and  
19 then ultimately what the testimony will be is they match,  
20 so making sure the -- to clean up the record, also  
21 referencing the cap with that, he was not the one who  
22 collected the cap or the hoodie. It's in dispute whether  
23 he was even present when it was collected. We have our  
24 pretrial motion regarding Mr. Bramlett, the suppression of  
25 any and all evidence related to it. At the Schmerber

1 hearing, the first Schmerber hearing where I was still  
2 counsel before I left the public defender's office, I  
3 questioned them about the cap and I said -- I said, you  
4 know, who found the cap and he said I believe Investigator  
5 Bramlett, who was also present in the courtroom, was the  
6 one who collected it. I said, and do you know where he  
7 found it and he said I'm uncertain. He said I believe it  
8 was -- and he says, you know, where they found it --

9 **THE COURT:** Right.

10 **MR. PHILLIPS:** -- but he wasn't there, he wasn't the  
11 one. And that's, again, going to the basis of our pretrial  
12 motion and he's already testified under oath that he was  
13 unsure where it was found.

14 In addition to that, referencing the probation agent  
15 is a separate prejudicial issue. The fact that it's now  
16 before the jury, they would be able to know that there is  
17 a high probability -- I'm trying to remember exactly from  
18 the testimony whether he referenced that he was previously  
19 on probation, but certainly that she was a -- works for the  
20 department of probation, that it was unduly prejudicial for  
21 the jury to hear that he was or at least, you know, the  
22 probation part of having that in their minds of a possible  
23 prior record, kind of an implied 404(b) argument, Your  
24 Honor.

25 **THE COURT:** All right. I recall her name and,

1 frankly, as I was writing it down something else may have  
2 come before this jury about her connection with the  
3 probation department. I, frankly -- if it was there,  
4 you-all heard it, so I'll take whatever your memory is on  
5 that. I don't argue with that.

6 **MR. PHILLIPS:** Certainly I don't want speak out of  
7 turn. I don't remember, Your Honor. I don't want to say  
8 something that's not true. I can't remember.

9 **THE COURT:** Right.

10 **MS. MAYES:** She was on the witness list. The jury was  
11 qualified and so her name was on the witness list and I  
12 believe it was stated that she was with Triple P.

13 **THE COURT:** I'm not sure that when I read that witness  
14 list -- I may have. I know read her name obviously.

15 **MS. MAYES:** I'm not sure either, Your Honor, but I  
16 do know she was on the witness list and that was her  
17 affiliation.

18 **THE COURT:** That's right.

19 **MS. MAYES:** We are prepared to offer the testimony of  
20 Sergeant Bramlett following Investigator Griffin, Your  
21 Honor. I guess our inquiry would be how we want to present  
22 that. We can have someone at your choosing or we can call  
23 someone to read it into the record.

24 **THE COURT:** Really, did Sergeant Bramlett -- he  
25 collected the hoodie and the cap from what I understand?

1           **MS. MAYES:** Yes, sir, Your Honor. And there will be  
2 testimony from Scott Neel who will be after we read  
3 Bramlett's testimony into evidence, that he observed the  
4 collection.

5           **THE COURT:** And that's the point. I thought that  
6 there was going to be some corroboration of everything that  
7 Sergeant Bramlett did, that he was not operating as a lone  
8 wolf in this, there was somebody there observing him and  
9 doing those sorts of things, and so I -- we've already  
10 heard argument about the fact that -- the confrontation  
11 issue and things of that nature and, of course, I let that  
12 -- everything that's been done so far has come in under  
13 Rule 804, as I recall it, that he testified about it in  
14 an earlier hearing, and I'm not sure that we need to go  
15 beyond that if there is other corroborative evidence of  
16 what he did. Of course, that's gonna be subject to  
17 cross-examination obviously and if cross-examination  
18 reveals something as Mr. Phillips has suggested that might  
19 require us to deal with --

20           **MS. MAYES:** I understand. I understand. We can do it  
21 that way as well, Your Honor. We can present the testimony  
22 of Sergeant Neel and then depending on any points raised in  
23 cross we can cross the other bridge.

24           **THE COURT:** Okay. All right. And -- and I'll read --  
25 look again during lunch and be grievously sorry again for

1 my ruling in that case as I was in 2004, but I will try not  
2 to make the same mistake again in any event. I'll hear  
3 further argument on that after I've looked at Hook and  
4 before the agent testifies, okay?

5 **MR. PHILLIPS:** Thank you, Your Honor.

6 **THE COURT:** All right. Ms. Mayes, tell me how we are  
7 on scheduling now. And I'm trying to decide if it looks  
8 like I need for you-all to submit to me proposed charges  
9 this afternoon or whether I won't need them until tomorrow  
10 afternoon. You tell me.

11 **MS. MAYES:** I would say tomorrow, Your Honor. We  
12 have still the testimony of Detective Neel following the  
13 testimony of Investigator Griffin and then from there we'll  
14 determine what needs to be done with Sergeant Bramlett's  
15 previous testimony. We also have a nurse and we have some  
16 chain of custody persons. We have Ms. Owens, who received  
17 the call from Nathaniel Hunter inquiring as to how he can  
18 get his DNA out of the database and requesting that his DNA  
19 be removed from the database, and that call took place, I  
20 believe, two days prior to his arrest and two days after  
21 this incident.

22 **THE COURT:** Right.

23 **MS. MAYES:** And then, in addition to that, we have a  
24 witness from SLED that also received a similar phone call.

25 **THE COURT:** Okay.

1           **MS. MAYES:** And then tomorrow we would have the DNA  
2 analyst and the firearms analyst and Detective Phipps.

3           **THE COURT:** And when's the telephone stuff come in?

4           **MS. MAYES:** That would be Detective Phipps and he is  
5 available in the morning if we need to address that matter  
6 any further.

7           **THE COURT:** All right. What we'll probably do is  
8 we'll start at 9:00 tomorrow, get the jury in at 10:00,  
9 and try to deal with that assuming -- does that still give  
10 us enough time to deal with the phone stuff so far as you  
11 know, Ms. Gilreath?

12           **MS. GILREATH:** I would think an hour would be  
13 sufficient, Your Honor.

14           **THE COURT:** That will be the plan. We'll -- we'll  
15 start -- we'll start at 9:00 and get the jury in at 10:00  
16 and try to accommodate that in the meantime. Does that  
17 sound like something everybody can deal with?

18           **MS. MAYES:** Yes, sir, Your Honor.

19           **THE COURT:** Okay. 2:15, folks. Thank you.

20           (Whereupon, a luncheon recess was taken.)

21           **BAILIFF:** All rise. Court's now in session.

22           **THE COURT:** Thank you, folks. Please be seated.

23           Regarding Ms. Owens's anticipated testimony, I need  
24 to know the answers to two questions at least to help me  
25 in my analysis of this issue. If you know the answer,

1 folks, you can give it to me now. If you don't know it,  
2 then perhaps you can find it out.

3 My understanding of the scenario is that sometime  
4 after the hoodie and the cap were analyzed and the DNA  
5 profile was developed and Mr. Hunter's name came --  
6 surfaced as a result of all of that, that Ms. Owens at the  
7 Department of Probation either volunteered or was asked to  
8 provide information to help locate Mr. Hunter. Am I right  
9 on that so far?

10 **MR. PHILLIPS:** Yes. It's before the CODIS hit.

11 **THE COURT:** Right.

12 **MR. PHILLIPS:** I believe the date was the 16th.

13 **THE COURT:** Excuse me?

14 **MR. PHILLIPS:** I'm sorry. It's definitely before the  
15 CODIS hit. The phone calls in reference are all -- they  
16 all occurred before the CODIS hit.

17 **MR. McNAIR:** It was the 16th, Your Honor. They  
18 occurred on the 16th. I believe the hit was on the 17th.

19 **THE COURT:** Okay. How was his name developed? Before  
20 the DNA results came through, how was Mr. Hunter's name  
21 developed?

22 **MS. MAYES:** How did he come to the attention of  
23 Ms. Owens? How he came to the attention of Ms. Owens?

24 **THE COURT:** Yes.

25 **MS. MAYES:** So he on his own voluntarily -- I believe

1 he was able to do some research or make some calls and find  
2 out that it was Ms. Owens who is the community project  
3 coordinator for the DNA database.

4 **THE COURT:** Right.

5 **MS. MAYES:** And he was put in touch with her and made  
6 a phone call to her. I actually have a statement from her,  
7 Your Honor, if that may aid you in determining her role.  
8 She kind of laid out exactly how she became involved and  
9 about his phone calls to her. He actually said to her that  
10 he wanted his DNA removed from the database.

11 **THE COURT:** Right.

12 **MS. MAYES:** And then it was after that -- I believe  
13 he also said that he was gonna have someone from the State  
14 Law Enforcement Division contact her about having his DNA  
15 removed and that person was Theresa Hines. Theresa Hines  
16 is affiliated with the DNA database that's maintained with  
17 SLED. Both of them received phone calls spontaneously  
18 from Mr. Hunter seeking to have his DNA removed. As  
19 a result, those two did get together, Ms. Hines and  
20 Ms. Owens, in a communication about the situation and  
21 ultimately she makes SLED aware that she had been  
22 contacted by him and SLED then figured out when they got  
23 the DNA notification that this was the same individual  
24 that had contacted Ms. Hines spontaneously and Ms. Owens  
25 spontaneously.

1           **THE COURT:** Okay. And when did they get the  
2 telephone numbers that they provided -- that I take it  
3 led to locating him, at that time during those calls or  
4 did the telephone number come from when he was a probation  
5 -- one of the clients on probation?

6           **MR. MAYES:** I understand, Your Honor. He actually  
7 left that information about his callback number in a phone  
8 call to Ms. Owens on April 17th. She states I received  
9 Hunter's voicemail after having been contacted by the West  
10 Columbia Police Department. They were requesting any  
11 information that she may have on Hunter. She then checked  
12 the message, retrieved the phone number and gave it to the  
13 West Columbia Police Department. She states that Hunter  
14 then called her again at approximately 1:30 PM that same  
15 day on the 17th stating he wanted a follow-up on his call  
16 from the day before. He asked if she had gotten a call  
17 from SLED about his DNA. She states I told him that I  
18 could call the lab and then call him back. He provided  
19 contact number. He, again, gave me the number  
20 [REDACTED]-4550, and that's the same number he had given her  
21 the day before on April 16th when he made a call to her at  
22 12:30 PM about this issue with the DNA.

23           **THE COURT:** Okay. And at that time, as I understand  
24 it, Mr. Hunter was not under supervision?

25           **MS. MAYES:** That is correct, Your Honor.

1           **THE COURT:** And that Ms. Owens would not have been his  
2 agent in any event; is that right?

3           **MS. MAYES:** That is correct, Your Honor. Her only  
4 role is that as the community project coordinator, that's  
5 her title, that that includes supervision of the  
6 collections process for the people in the DNA database.  
7 Now my guess is that he either did some research online and  
8 got her name or he may have called a general phone number  
9 at Probation and Parole and they transferred him to her or  
10 provided her name and number. Because she oversees that  
11 program, she would have been the person to reach out to.  
12 And, again, both of those calls were made spontaneously by  
13 him without any previous knowledge by her that he even --  
14 as far as I'm aware of she had no previous contact with  
15 him.

16           **THE COURT:** Okay. And the name of the other  
17 individual who was also called by Hunter about the same  
18 time?

19           **MS. MAYES:** That is going to be Theresa Hines. She is  
20 with the -- it's CODIS, but for purposes of this trial, it  
21 would be she is overseeing the DNA database at the State  
22 Law Enforcement Division.

23           **THE COURT:** Okay. All right. Thank you.

24           **MR. PHILLIPS:** Your Honor, not to -- I apologize for  
25 interrupting.

1           **THE COURT:** Well, you didn't interrupt. She's  
2 through.

3           **MR. PHILLIPS:** So to clean up the record and for the  
4 Court's review, we would request that Ms. Owens's letter  
5 be marked as a Court's exhibit and the SLED Lab Number  
6 L14-04723 narrative. We were provided a SLED narrative  
7 that walks through the timeline that SLED provided those  
8 phone calls also for the Court's review and we would  
9 request that SLED Lab Number L14-04723 be marked as a  
10 Court's exhibit as well to clarify -- whereas Ms. Owens's  
11 letter is a summary, and certainly we'd have that marked  
12 as a Court's exhibit, but we would also request that the  
13 SLED narrative that was provided that walks through this  
14 timeline of events be provided to the Court.

15           **THE COURT:** Are those timelines in those letters  
16 consistent with what Ms. Mayes has revealed to me?

17           **MR. PHILLIPS:** Yes, but it's fairly convoluted when  
18 you read the SLED timeline. It's not as clean as the  
19 letter, which is why I would request it be made a Court's  
20 exhibit.

21           **THE COURT:** All right. I don't have a problem with  
22 that being made a Court's exhibit if that's -- if you-all  
23 can do that or reproduce it. It would appear under that  
24 scenario then, Mr. Phillips, that this was not information  
25 that was received by a probation agent in her official

1 capacity and would, therefore, not be privileged under the  
2 statute and under the Hook case and, therefore, she would  
3 be entitled to testify about it. Of course, we still have  
4 to do with the probative versus prejudicial impact of  
5 having somebody with -- or explaining how it got into the  
6 database and all that sort of thing, but at least insofar  
7 as the privilege is concerned it would not appear to apply  
8 in this particular case, so.

9 **MR. PHILLIPS:** And as the -- just as the case law  
10 says about statutory interpretation, the cardinal rule was  
11 that the plain language control. There's nothing within  
12 24-21-290 that says that the person needs to be under  
13 active supervision.

14 **THE COURT:** Official capacity and probation agent I  
15 think are -- also have to be taken -- in this particular  
16 case, the information received was certainly not by an  
17 agent so far in that regard. It was certainly not an agent  
18 of this -- of this Defendant and would not be -- he would  
19 not be entitled to the protection given by the privilege in  
20 any event. And whether this is the type of information  
21 that she normally receives doing what she's doing, it might  
22 have been her official capacity that causes her to have  
23 that information and even to be contacted by people who  
24 want to get their DNA out of the system. Frankly, I didn't  
25 know you could do that that, but then I've never had the

1 occasion to have to try. But clearly she was not a  
2 probation agent receiving this information as his agent  
3 certainly in that -- in that official capacity, in the  
4 capacity of his probation agent. I think we understand the  
5 intent of the statute obviously. It -- under the case,  
6 information given by a probationer to his probation agent,  
7 inadmissible. He was not a probationer, she was not his  
8 agent, so the case law doesn't seem to apply in that case.

9 **MS. MAYES:** Your Honor, we have a clean copy of the  
10 Crystal Owens statement I'll go ahead and mark.

11 **THE COURT:** Okay.

12 **MS. MAYES:** And then at the same time we have the  
13 un-redacted -- the full un-redacted version of the  
14 interview that Your Honor watched earlier. We'll mark it  
15 also as a court's exhibit.

16 **THE COURT:** Okay.

17 **THE COURT REPORTER:** The interview is 7 and the  
18 statement will be 8.

19 (Court's Exhibit Number 8 was marked for  
20 identification.)

21 **MR. PHILLIPS:** Is the SLED narrative gonna be marked  
22 as a Court's as well?

23 **MS. MAYES:** I don't have that in front of me.

24 **MR. PHILLIPS:** Our copy is marked up.

25 **THE COURT:** Okay. You-all can get one produced or

1 reproduced or whatever, made clean, and make it an exhibit.

2 **MR. PHILLIPS:** Thank you, Your Honor.

3 **THE COURT:** Remember to do that now because I might  
4 forget.

5 All right. Bring us the jury, please.

6 Mr. Griffin, you can resume the stand. You're still  
7 under oath.

8 (Whereupon, the witness returns to the witness stand.)

9 (Court's Exhibit Number 9 was marked for  
10 identification.)

11 (Whereupon, the jury returns to the courtroom at  
12 2:36 PM.)

13 **THE COURT:** Ladies and gentlemen, we'll continue now  
14 with the examination of Investigator Griffin by Ms. Mayes.  
15 Ms. Mayes.

16 **MS. MAYES:** Yes, sir, Your Honor.

17 THOMAS GRIFFIN,

18 having been previously sworn, testified as follows:

19 CONTINUED DIRECT EXAMINATION

20 BY MS. MAYES:

21 Q. Now, Investigator Griffin, when we last broke we had  
22 discussed the waiver of the Miranda rights that occurred  
23 with Nathaniel Hunter.

24 A. Yes, ma'am.

25 Q. We also discussed the various photographs that were

1 taken there in the interview room.

2 A. Correct.

3 Q. And once he agreed to speak with you and Captain  
4 Wade, did you make notes or do you have notes with you that  
5 are contemporaneous to reflect what statements, if any, he  
6 made?

7 A. Yes, ma'am, I did, and I do.

8 Q. I'm gonna start at the beginning and ask you  
9 specifically after he waived his Miranda rights did he  
10 agree to speak with you and how did you go about  
11 approaching the interview?

12 A. He did agree to speak with us after Miranda rights.  
13 In a crime such as this, especially the evidence that we  
14 had at the time, being the DNA match to Mr. Hunter, we --  
15 we went directly from there and that would have been  
16 confronting Mr. Hunter with his DNA.

17 Q. All right. And once you confronted him with the DNA  
18 match, what, if anything, did he state to you?

19 A. He stated -- when we confronted him with finding his  
20 DNA at the scene, he stated that he had given away some  
21 clothes recently to a thrift store or a crackhead. He  
22 stated that he had given away jeans, hoodies and shirts.

23 Q. So his statement to you was that he had given away  
24 clothing to a thrift store and what else?

25 A. A crackhead.

1 Q. All right. And then what, if anything, did you ask  
2 him about regarding State's Exhibit 78 as we see here?

3 A. Yes, ma'am. Of course, with obvious wounds to his  
4 head, we asked him about those scratches to his head and  
5 how he received them. He stated that he received those  
6 cuts from a cousin of his by the name of Tanisha Taylor.  
7 He stated that him and Tanisha were play fighting and she  
8 ended up scratching him and she's the one that caused those  
9 cuts.

10 Q. All right. And just to clarify, these were the cuts  
11 specifically that you were asking him about, the cuts to  
12 the forehead, and then after you had him remove the  
13 bandage?

14 A. Yes, ma'am, and those were the ones he was referring  
15 to.

16 Q. All right. And he states they were caused by his  
17 cousin Tanisha Taylor when they were play fighting?

18 A. Correct.

19 Q. All right. Now moving forward from this interview  
20 with Mr. Hunter, can you tell us whether or not you had the  
21 opportunity to interview Tanisha Taylor? You can't tell us  
22 what she said, but did you have an opportunity to interview  
23 her?

24 A. We were able to ultimately interview Ms. Taylor.

25 Q. And what is the address that Ms. Taylor resided at or

1 the name of the apartment complex, if you know?

2 A. I believe it's Twin Eagle Apartment Complex in  
3 Columbia.

4 Q. All right. Twin Eagle. And that's located in what  
5 county?

6 A. Richland County.

7 Q. All right. And just for clarification, this  
8 particular crime that occurred at [REDACTED] Apartments,  
9 what is the jurisdiction of the county that this crime  
10 occurred at?

11 A. This crime occurred in Lexington County at [REDACTED]  
12 Apartments.

13 Q. All right. And then based upon the investigation and  
14 information that you obtained throughout, what is your  
15 understanding of where Mr. Hunter was residing at the  
16 timeframe of this offense, which would have been April of  
17 2014?

18 A. He was residing with his cousin, Ms. Taylor, and that  
19 address is actually [REDACTED] Twin Eagle Drive in Columbia.

20 Q. All right. So you mentioned that Tanisha Taylor was  
21 his cousin, but based upon the investigation she was also  
22 his roommate?

23 A. That's correct.

24 Q. And then do you know whether or not based upon the  
25 investigation Mr. Hunter had any vehicles of his own?

1 A. He did. Yes, ma'am.

2 Q. All right. What type of vehicle did he have?

3 A. I believe it was a Buick Skylark.

4 Q. All right. If you want to take your time and clarify  
5 that.

6 A. Yes, ma'am. Yes, ma'am, it was a 1968 Buick Skylark.

7 Q. And you mentioned that on the date of his arrest he  
8 was driving a white Versa?

9 A. Yes, ma'am, a rental car.

10 Q. All right. And the date of his arrest is, again,  
11 April 17, 2014?

12 A. That's correct.

13 Q. Did you confirm whether he owns that rental car or  
14 whether it belongs to someone else?

15 A. The rental car belonged to a rental company.

16 Q. All right. That's the same rental car that we saw in  
17 some photos just moments ago?

18 A. Yes, ma'am. Actually it belonged to Carolina  
19 Rent-A-Car out of Columbia.

20 Q. Now moving on from this interview that you conducted  
21 with Mr. Hunter on the date of his arrest, which was  
22 April 17, 2014, did you have the opportunity to interview  
23 him a second time?

24 A. We did. Yes, ma'am.

25 Q. And that particular interview was conducted on what

1 date?

2 A. It was conducted on April 21, 2014. And it was,  
3 again, conducted at the West Columbia Police Department in  
4 our interview room.

5 Q. All right. Prior to this interview, can you tell us  
6 whether or not Mr. Hunter was, again, advised of his  
7 Miranda warnings or Miranda rights?

8 A. We went over the exact same paperwork again.  
9 Mr. Hunter completed and signed it accordingly.

10 Q. All right. I'm gonna show you this document and ask  
11 you whether or not you recognize it?

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

13 Q. Can you tell us whether or not that is the original?

14 A. This is the original that was completed by Mr. Hunter.

15 Q. Were you present for the waiver of those Miranda  
16 rights?

17 A. I was present for the waiver, yes, ma'am.

18 **MS. MAYES:** Your Honor, at this time we would have  
19 this document marked as State's Exhibit -- I believe it's  
20 gonna be 93.

21 **THE COURT REPORTER:** No, 82.

22 **MR. PHILLIPS:** No objection, Your Honor.

23 **THE COURT:** Thank you.

24 (State's Exhibit Number 82, 4-21-14 Advisement of  
25 Rights, was marked and admitted into evidence.)

1 BY MS. MAYES:

2 Q. So, again, Investigator Griffin, looking at these  
3 notes -- your notes and looking at this particular  
4 document, being the original, can you tell us whether or  
5 not Mr. Hunter appeared to understand the Miranda rights  
6 that were read to him?

7 A. He did, yes.

8 Q. All right. And who was the person actually reading  
9 the rights during the course of this interview?

10 A. Investigator Scott Neel.

11 Q. All right. And Investigator Neel is with what agency?

12 A. He was with the West Columbia Police Department at the  
13 time. He's currently with the Aiken County Sheriff's  
14 Department.

15 Q. All right. And whose initials are here to the left  
16 of each one of the rights? You have the right to remain  
17 silent?

18 A. That would be Mr. Hunter's.

19 Q. Anything you say can be used against you in court?

20 A. Mr. Hunter's.

21 Q. You're entitled to talk to a lawyer now or have an  
22 attorney present?

23 A. That's Mr. Hunter's.

24 Q. All right. And throughout each of these rights,  
25 including if you decide to answer any questions now without