

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Thomas W. Cooper, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NATHANIEL ANTRON HUNTER,

APPELLANT

APPELLATE CASE NO 2017-001125

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 67 (RECORDED STATEMENT)

STATE'S EXHIBIT NO. 112 (PHOTOGRAPH)

1 a lawyer present, you still have the right to stop
2 answering questions at any time?

3 A. That was signed and initialled by Mr. Hunter.

4 Q. And also this down here stating that no promises or
5 pressure or coercion were used?

6 A. That's correct, and he signed that stating that he
7 agreed to speak to us.

8 Q. Okay. And, again, the date is going to be April 21st?

9 A. Yes, ma'am.

10 Q. Four days after the first interview?

11 A. Correct.

12 Q. On this date, Investigator Griffin, do you also have
13 -- or does your department have notes that reflect that
14 interview?

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

16 Q. All right. I'm gonna ask you to refer directly to
17 that document..

18 A. Yes, ma'am.

19 Q. After he waived his Miranda rights, did he agree to
20 speak with you?

21 A. He did.

22 Q. What, if anything, did he state regarding his charges?

23 A. During the course of that interview, Mr. Hunter began
24 to bargain with investigators about possibly making some
25 sort of deal where charges would be dropped.

1 Q. All right. And what, if anything, did he state when
2 he was, again, confronted with the State Law Enforcement
3 Division confirmation of DNA?

4 A. He stated since he was -- I'm sorry, could you
5 rephrase that question?

6 Q. Yes. If you could refer directly to the document.

7 A. Yes, ma'am.

8 Q. Can you tell us whether or not, again, law
9 enforcement, being yourself and Investigator Neel, showed
10 him the SLED confirmation sheet regarding the DNA?

11 A. Yes, ma'am. He stated that there was no reason for
12 him to confess with the DNA document.

13 Q. And anything --

14 A. And that it would not help him if he told the truth.
15 We continued to tell him that it would be better for him to
16 take responsibility and tell the truth. He continued to
17 bargain and asked for charges to be dropped and he began to
18 ask about a deal that was cut in unrelated murder case in
19 Richland County.

20 Q. All right.

21 **MR. PHILLIPS:** Your Honor?

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

23 **MR. PHILLIPS:** May we approach?

24 **THE COURT:** Let's make sure that that unrelated murder
25 case has nothing to do with Mr. Hunter...

1 **THE WITNESS:** Correct. It was a completely unrelated
2 murder case not connected to Mr. Hunter at all.

3 BY MS. MAYES:

4 Q. All right. And so just to clarify, who is the person
5 that brought up a deal such as the unrelated Richland
6 County murder case?

7 A. That was Mr. Hunter who brought up that.

8 Q. Okay. But, again, that particular case did not
9 involve him in any way?

10 A. No, ma'am.

11 Q. It was a case that people in the community would be
12 aware of?

13 A. That's correct.

14 Q. Now moving forward from the date of that interview on
15 the 21st, have you had continued involvement in this case
16 up until today's date --

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

18 Q. -- the actual date of the trial?

19 A. Correct.

20 Q. And leading up to this point in time, have you
21 investigated the possibility of other people potentially
22 being involved?

23 A. We have.

24 Q. And what, if anything, changed any further -- let me
25 rephrase that. What, if anything, did you receive as an

1 investigator that led you to Nathaniel Hunter as the
2 suspect?

3 A. The thing that led us directly to Nathaniel Hunter was
4 his DNA.

5 Q. Now you mentioned Tanisha Taylor being his roommate.
6 You also mentioned that she was interviewed. On what date
7 was she interviewed?

8 A. She was interviewed on the 21st of April.

9 Q. All right. And at the time that she was interviewed
10 on the 21st of April, can you tell us whether or not she
11 gave consent for her residence to be searched?

12 A. She did.

13 Q. All right. And was a search conducted by officers
14 with the West Columbia Police Department of her residence
15 in conjunction with a Richland County officer?

16 A. It was.

17 Q. All right. And were you present or did you take part
18 in that?

19 A. I was not present for that search. That was
20 Investigator Neel and Investigator Bramlett.

21 Q. All right. Investigator Neel. And just to follow up
22 a little bit more, have you or any other officer at West
23 Columbia Police Department ever recovered the weapon that
24 was used in this particular crime, the shooting of Larenda
25 Simon?

1 A. No, ma'am. The weapon was never recovered.

2 MS. MAYES: Nothing further of Investigator Griffin
3 at this time.

4 THE COURT: Mr. Griffin {sic}, you may cross-examine.
5 Mr. Phillips.

6 MR. PHILLIPS: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. PHILLIPS:

9 Q. Good afternoon, Investigator Griffin. How are you?

10 A. Good.

11 Q. Starting with Ms. Simon -- we'll break it down. I'll
12 just kind of -- we'll go with Ms. Simon since we had a lot
13 of testimony from you. We'll go with Simon and then we'll
14 go to Hunter, okay --

15 A. Okay.

16 Q. -- to kind of keep it separated. That way it will be
17 easier to follow. With Ms. Simon, when you interviewed
18 her, in your notes you said you did a pre-interview before
19 you turned on the audio recording; is that right?

20 A. That's correct. As soon as I got to the room and
21 began speaking with her, I took notes of that interaction.

22 Q. She provided a description of this individual?

23 A. She did. Yes.

24 Q. She described him as a light-skinned black male?

25 A. My notes do not display that. If it says that in the

1 recorded statement, it may. My notes state suspect 5-4,
2 5-6, 150 pounds, small black, ski mask. If you happen to
3 see where I wrote light, if you could point it out to me.

4 Q. Absolutely. Handwritten notes. Are you looking at --

5 A. Yes, sir. I'm speaking of -- to handwritten notes.

6 **MR. PHILLIPS:** May I approach, Your Honor?

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

8 BY MR. PHILLIPS:

9 Q. (Indicating.)

10 A. Right. Uh-huh. That says sergeant says light black
11 male. That was referred to me from the sergeant at the
12 scene. That would be Sergeant Libertini at the time, I
13 believe.

14 Q. So an officer on the scene told you that it was a
15 light-skinned black male?

16 A. Correct. That would have been relayed to me by phone
17 prior to me getting to the hospital. I didn't arrive to
18 the hospital until it looks like 4 -- well, no, I was there
19 at 4:10. Prior to speaking with Ms. Simon, I was on the
20 phone with the sergeant.

21 Q. All right. So in your notes it says light-skinned
22 black male.

23 A. That the sergeant relayed to me, yes, sir.

24 Q. Because you weren't there when they were collecting
25 the evidence at the beginning?

1 A. Correct. At the scene, yes.

2 Q. Correct.

3 A. Yes.

4 Q. And when you spoke to her, she did provide a
5 description of the gun; is that right?

6 A. I'll have to refer back to the interview.

7 Q. It's in the notes.

8 A. In the handwritten notes or that of the --

9 Q. The same page towards the bottom.

10 A. Okay. Silver medium sized gun, out the whole time, is
11 what she stated.

12 Q. So she provided you the description of a silver medium
13 sized handgun?

14 A. That's what I have written down. Yes, sir.

15 Q. With the recorded part of the interview she said that
16 the voice was familiar?

17 A. In the recorded portion of the interview, she said it
18 seems like I heard his voice before, but I don't know for
19 sure.

20 Q. And going to photographs of -- that you took at the
21 hospital, there was photographs of her hands taken. Do you
22 remember that?

23 A. I know I took a full body photo of her, so the hands
24 would have been included in there.

25 Q. And I know the injuries were extensive and there was

1 testimony of a struggle obviously in what she provided to
2 you as to what happened that night. Did you instruct
3 the hospital personnel, the employees, to scrape her
4 fingernails for DNA?

5 A. We did not. The reason being for that is given her
6 speaking about the incident, she never once mentioned about
7 scratching the suspect or harming him in any way. All I
8 knew that had occurred was a struggle between her and the
9 suspect.

10 Q. She had explained to you that she had him pinned down,
11 she had grabbed at him, she had held him, she had pinned
12 him down and --

13 A. Whatever she says in her statement, yes, sir. There
14 was a struggle, but never once did she mention scratching
15 the suspect, so that's not where my mind went at that
16 point.

17 Q. But at that time you knew that there was a struggle
18 and you didn't ask any hospital employees to scrape her
19 fingernails?

20 A. No, sir. At that time the most important portion was
21 to get her side of what happened prior to her being wheeled
22 off to surgery.

23 Q. And in this case, you recorded all but one interview;
24 is that right?

25 A. I would have to look back as to how many interviews we

1 conducted and which ones were recorded. I know there were
2 recorded interviews in this case.

3 Q. Well, I don't want to get off -- let's say with
4 Ms. Simon now. It's easier for the jury, so let's stay
5 with Ms. Simon. Did you review as the investigator the
6 Dickerson Center report?

7 A. The report? I did review the report, as well as I
8 viewed the video of that.

9 Q. And in that report it references the Sister Care
10 services. Did you follow up at all on that?

11 A. At that time, no, sir, we did not. No, sir.

12 Q. And in that report, it noted that she was specifically
13 staying away from that person. That's the reason she was
14 receiving services; is that right?

15 A. That's correct, but typically with Sister Care cases
16 with the seriousness of this offence and not only the
17 presence of the gun, her being inside the house, but the
18 actual attempted sexual assault, it's pretty rare when it
19 comes to --

20 **MR. PHILLIPS:** Your Honor --

21 **THE COURT:** I sustain the objection. I sustain the
22 objection.

23 **MR. PHILLIPS:** I was trying to get some leeway.

24 **THE COURT:** Rephrase the question and let's get a
25 direct response to that question.

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

2 BY MR. PHILLIPS:

3 Q. But the main point is you read the report and you
4 didn't do any further investigation?

5 A. As to the Sister Care aspect, no.

6 Q. And there was mention of Detavian Smith, one of the
7 first names that you got as a possible suspect; is that
8 right?

9 A. Correct.

10 Q. And you said you did some follow-up investigation.
11 When was that?

12 A. A follow-up investigation was actually done, I
13 believe, that night of or within the days prior to
14 Mr. Hunter being identified by Investigator Bramlett. My
15 follow-up investigation, it would have been in the notes
16 that are provided by -- of Investigator Bramlett.

17 Q. It wasn't until -- 4-19-2017 did you run anything on
18 Detavian Smith?

19 A. I did. I did, yes. I'm talking about during the
20 beginning phases of the investigation prior to Mr. Hunter
21 being identified there was a work -- there was research
22 done on that Detavian Jovan Smith by another investigator.

23 Q. Have you reviewed those notes?

24 A. I have.

25 Q. You have?

1 A. Yes, sir.

2 Q. Have you provided those notes to the solicitor's
3 office?

4 A. And by notes, I simply mean a DMV printout that was
5 printed on the 16th of April, 2014, by Investigator
6 Bramlett showing Detavian Jovan Smith's particulars or
7 physical abilities, which -- or physical measurements,
8 which he is 6-1 and 160 pounds is what I believe it said.

9 Q. You provided all of that to the solicitor's office?

10 A. Yes. That's in Investigator Bramlett's handwritten
11 notes. I believe you-all have them as well.

12 Q. That he had checked that the night before?

13 A. I have the printout here with the actual date as well.
14 I apologize. That was actually the following day. It was
15 April 14, 2014, when that was printed off.

16 Q. And he printed it off? It shows that he printed it
17 off?

18 A. I can't tell who printed it off. I know it's in his
19 notes that were found in Investigator Bramlett's files.

20 **MR. PHILLIPS:** And that's subject to a prior motion.

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

22 A. And I apologize. He's 6 foot 1, 185 pounds.

23 Q. And with the recording with Ms. Simon, you tell her
24 that you are in the process of tracking her phone. She
25 asks about her phone being taken and you said we're in the

1 process of tracking that phone. Did you ever attempt to
2 track the phone?

3 A. No, sir. I actually said that's what we're trying to
4 do right now. She stated that one of the phones may have
5 been taken. The scene had been secured. While I was at
6 the hospital, the scene was secured. What that means is no
7 one's going back into that scene until a search warrant is
8 obtained by those investigators on the scene, so we had no
9 way of knowing at that time whether or not the phone was
10 taken or not because we were unable to check -- or
11 investigators and officers at the scene were unable to
12 check because they're not allowed to enter into that place
13 until they have a search warrant.

14 Q. Was any other phones found in her apartment?

15 A. I would have to relay that to Investigator Neel who
16 conducted the search warrant with Mr. Bramlett.

17 Q. In reviewing your notes, do you see a spot where you
18 mark -- or where you say Mark Burbee, SLED, attempting to
19 track phone?

20 A. Yes, sir, I do.

21 Q. That would be from your notes?

22 A. That was my handwritten notes, yes.

23 Q. That SLED was attempting to track the phone?

24 A. Correct.

25 Q. But there's been no further reports, no further

1 investigation into the tracking of the phone or --

2 A. No, sir. Typically with my experience when it comes
3 to crimes of violence where a phone is taken during a home
4 invasion or burglary or armed robbery --

5 **MR. PHILLIPS:** Your Honor, beyond the scope.

6 **THE COURT:** I think he -- you can explain if you want
7 to, officer, why it was not done and try to do it as
8 concisely as you possibly can.

9 **THE WITNESS:** Yes, sir.

10 BY MR. PHILLIPS:

11 Q. Did you contact Mark Burbee? I'll be specific.

12 A. According to my notes, I did. Yes, sir.

13 Q. And you put attempting to track phone?

14 A.. Correct.

15 Q. And just a second ago you said that wasn't even the
16 case?

17 A. And to be honest, this -- these notes that you're
18 referring to are not dated, it just has a time by it.
19 That could honestly be for that of Nathaniel Hunter when
20 attempting track phone.

21 Q. So you don't date your notes; is that what you're
22 saying? That it would have been confusing with
23 Ms. Larenda?

24 A. No, I do date my notes. I'm just saying there's not
25 a date on this form, so I don't know.

1 Q. So there's not a date on that note?

2 A. On this note, there's not. No, sir.

3 Q. And that's why it's important to have good
4 recordkeeping? I mean, in the audio -- I'll just be
5 specific. In the audio recording, you tell her we're
6 attempting to do that now.

7 A. I'm not disputing that I say that's what we're trying
8 to do right now.

9 Q. And then you say in your notes we're attempting to do
10 that now.

11 A. Okay.

12 Q. I'm just saying that in referring that it may be
13 Nathaniel Hunter's phone, you don't dispute that you tell
14 Ms. Simon that you're attempting to do it right then?

15 A. I do not dispute that. That's recorded.

16 Q. And then you wrote down in your notes that you
17 contacted Mark Burbee at SLED and you were attempting to
18 track the phone?

19 A. That is in the notes. Yes, sir.

20 Q. And there's no further reports, no further follow-up
21 at all?

22 A. Not to my knowledge. No, sir.

23 Q. And Ms. Simon told you that the person took her phone?

24 A. I think I recall her saying she thought they took her
25 phone. I was trying to turn on my lights to find my phone,

1 I couldn't find it, so I assumed he took it.

2 Q. In her -- we have a transcript of her audio recording.

3 A. No, sir. We didn't.

4 Q. He took my phone. That's what she told you.

5 Everything is programmed in my phone. I do have another
6 pink phone.

7 A. Okay. And in this one portion that I'm referencing,
8 I couldn't find it, so I assumed he took it.

9 Q. And that's when you made the context?

10 A. I assumed so. Yes, sir.

11 Q. And then you did nothing, right?

12 A. Nothing was ever found. No, sir.

13 Q. And had you possibly tried that, you could have maybe
14 gotten cell site location data from that phone if you did
15 a search warrant?

16 A. If I'd done a search warrant, that could be. Yes,
17 sir.

18 Q. So if you did a search warrant, it's possible we could
19 have cell site location data for that phone?

20 A. That's possible.

21 Q. And we could see where the person who took that phone,
22 if it was on, where it went?

23 A. Agreed, but that goes back to my experience in dealing
24 with cases such as these.

25 Q. And at that time you didn't have any suspects. You're

1 an investigator, you've been trained to track people. If
2 you went and got a quick search warrant and cell site
3 location data like you testified that you tracked
4 Mr. Hunter down through Richland County, that you did it
5 instantly, you could have done that with this phone and if
6 he still had it on you could have tracked him down like
7 that, the same way you did Mr. Hunter; is that right?

8 A. But it's not typical that they'd still have the phone
9 on after taking it.

10 Q. That's your experience.

11 A. They typically take the phone in order to not allow
12 the victim to contact law enforcement.

13 Q. Did you try it?

14 A. We did not.

15 Q. And because of your training and experience you think
16 that's a good idea?

17 A. That night I believe that was -- that was a good call,
18 yes, sir. We -- we had a lot of stuff going on that night
19 outside of tracking the phone.

20 Q. Trying to find the person who did it?

21 A. Correct.

22 Q. Tracking the phone that was told to you by the victim
23 that was taken by the person, that wouldn't have been a top
24 priority?

25 A. It was in the list. Yes, sir.

1 Q. But you didn't do anything with it?

2 A. We did not.

3 **MS. MAYES:** Asked and answered, Your Honor.

4 **THE COURT:** It has been.

5 BY MR. PHILLIPS:

6 Q. And based on your experience, you didn't think that
7 was a top priority?

8 A. Based on my experience, it wasn't the top of the
9 priority because they're usually discarded.

10 Q. Regarding records of Ms. Simon being a cabdriver, did
11 you ever investigate any of that --

12 A. I did not.

13 Q. -- you know, people that went -- you know, credit card
14 records or people that actually purchased the trips in her
15 cab?

16 A. No, sir. No, I did not.

17 Q. Did you even know she was a cabdriver?

18 A. I did not.

19 **MR. PHILLIPS:** A moment, Your Honor.

20 **THE COURT:** All right, sir.

21 BY MR. PHILLIPS:

22 Q. Before we move on from focussing on Larenda, had you
23 told the medical personnel to scrape the fingernails, it's
24 possible -- and in your training and experience as an
25 investigator, that there could have been the DNA left under

1 her fingernails?

2 A. Knowing that he was scraped when he was apprehended,
3 absolutely.

4 Q. And had you done that, that would be -- if you
5 believed he's the one, an open and shut case had you done
6 that?

7 A. It was an open and shut case with the DNA to me.

8 Q. And had you done that, it would be open and shut as
9 to whether it was someone else? If the DNA came back to
10 someone else, under her fingernails, had you done the
11 scrapings.

12 A. The fingernail scrapes were not taken, so I have no
13 answer for that.

14 Q. And had you done that, it possibly could have come
15 back to somebody else?

16 A. It possibly could have come back to Mr. Hunter.

17 Q. But it could have been someone else?

18 A. We don't know because it wasn't done.

19 Q. And you didn't do it?

20 A. Correct.

21 Q. Now moving to the recorded interviews, you said you
22 interviewed everybody around -- or just the interviews.
23 You interviewed everybody around the apartments. Did you
24 take notes or make any reports regarding all these other
25 witnesses you spoke to?

1 A. Notes were taken, but, again, no statement was taken
2 because there was no statement given, it was just a
3 conversation between myself and the other residents. I
4 have notes of me going to each door and if a resident was
5 there, I spoke to them, I notated it.

6 Q. You turned those notes over to the solicitor's office?

7 A. They were.

8 Q. With the recorded statements, you have two recordings
9 from Ms. Simon, you said a recording of the statement from
10 Ms. Tanisha Taylor and then no recording from Mr. Hunter;
11 is that right?

12 A. Correct.

13 Q. And you have an audio recorder that was issued to you
14 by the West Columbia Police Department?

15 A. That's correct. I do.

16 Q. And they issue that audio recorder to you to record
17 statements?

18 A. To record statements, which Mr. Hunter never gave a
19 statement.

20 Q. Say that -- say that again.

21 A. Mr. Hunter did not give a statement to law enforcement
22 when it comes to particulars in this case.

23 Q. So you testified before you made the conscious
24 decision not to record his statement.

25 A. Can I explain when I determine to record and when I

1 don't?

2 **THE COURT:** You can explain. Yes, sir.

3 A. Okay. Typically when we interview, whether it be a
4 suspect, whether it be a witness or a victim, we talk with
5 that victim, suspect or witness first. We talk about the
6 particulars of the offense, we talk about the particulars
7 of the crime and then once we're done discussing all those
8 things, once we're ready to make a statement, we either
9 refer them to a written statement where they'll write it
10 out or we decide to take a recorded statement. So we have
11 already had three discussions prior to that and they --
12 we're gonna talk about this or if they confess to me, I'm
13 gonna confess to you, so we would make a statement -- or a
14 recording of that confession or statement.

15 Q. So if somebody was telling you they wanted to make
16 deals about a -- just like an unrelated murder case, that
17 wouldn't be important to record?

18 A. No, sir, because we're not allowed to give deals
19 because that is a part of the coercion process.

20 Q. That's not the question. That wouldn't have been
21 important to record so the jury could hear it?

22 A. It wasn't a statement, Your Honor -- or, I'm sorry.
23 It wasn't a statement because we were looking for
24 particulars of the crime. Had he said I did this, I want
25 to talk to you and tell you what I did, we would have

1 talked about it first beforehand, then we would have
2 started the statement after it -- or, I'm sorry, the
3 recording after it.

4 Q. You recorded Larenda Simon's statements twice and
5 Tanisha Taylor's statement because you wanted to preserve
6 what they had to say.

7 A. And before each of those recordings they were spoke
8 to, yes.

9 Q. And when you're going to speak with somebody that's
10 charged with attempted murder, attempted -- or burglary
11 first degree, major charges, when you have somebody that
12 you said has a DNA hit and they are facing these big
13 charges there's times when you consciously decide not to
14 record what they have to say when you know you'll be in
15 court one day saying that well, he told me this and there's
16 no way for us to refute it?

17 A. Had he confessed, a statement, recorded, would have
18 been taken. He did not confess.

19 Q. Well, I mean, you have testified that he -- he denied
20 having any knowledge of the offense.

21 A. I testified to that. Yes, he did.

22 Q. So he denied having any knowledge of the offense?

23 A. He stated to myself on the 17th interview he denied
24 being at the apartment.

25 Q. And you interviewed him twice?

1 A. That's correct.

2 Q. So after coming back and interviewing him the second
3 time, you still made the conscious decision not to record
4 it?

5 A. I'm not gonna record a statement of something that's
6 not true. I had probable cause to believe that he
7 committed that crime, therefore, I'm not gonna let him
8 give me a story of something that did not happen.

9 Q. So you believe when he's telling you what you
10 testified to, that he wanted deals, that that shouldn't be
11 credible to the jury because you didn't record it, that's
12 not something that's true?

13 A. I never recorded it because it wasn't a confession and
14 it wasn't a statement after our speaking of it.

15 Q. But the testimony is that he asked for a deal related
16 to like an unrelated murder in Richland County. That's
17 pretty damning of evidence; wouldn't you say?

18 A. Yes, sir.

19 Q. And if it was recorded, the jury would be able to hear
20 it from his mouth?

21 A. Right, but I want to record particulars about the
22 crime that was committed, not about what deals he may want.

23 Q. And you made the conscious decision when you have an
24 audio recorder that's given to you by the West Columbia
25 Police Department and you've recorded every other witness's

1 statements not to record his?

2 A. He never gave a statement or a confession, so no
3 recorded statement was taken. You're talking about
4 recording the conversation. We did not record the
5 conversation, no.

6 Q. You said he freely and voluntarily gave a statement.
7 You have the right to remain silent. He voluntarily wanted
8 to speak to you?

9 A. Uh-huh.

10 Q. Anything you say can and will be used against as
11 evidence against you, right?

12 A. Correct.

13 Q. This happened before he made the statement?

14 A. Right.

15 Q. Or the conversation?

16 A. Correct.

17 Q. He signed all of this, he initialled it, before the
18 conversation?

19 A. (Nods head.)

20 Q. Everything after this could be used in court, right?

21 A. It could.

22 Q. You told him he could have a lawyer. He said he
23 didn't want one, right?

24 A. Correct.

25 Q. He voluntarily was gonna make a statement to you,

1 right?

2 A. Correct.

3 Q. At that point he's just gonna have a conversation with
4 you, that it wouldn't be an interrogation from a police
5 officer with evidence that would be used on the witness
6 stand in his trial?

7 A. It was, but he never confessed.

8 Q. And had he -- had he confessed to you, we wouldn't be
9 able to know specifically from an audio recording, it would
10 be solely based off your testimony?

11 A. Had he confessed, a recorded statement would have been
12 taken at that point.

13 Q. And then what if he said he wasn't gonna do it, how
14 would you be able to dispute that point?

15 A. Then I guess we'd sitting here like we are now.

16 Q. That's a problem, right?

17 **MS. MAYES:** Objection, Your Honor, to the form of the
18 question.

19 **THE COURT:** I sustain the objection as to the question
20 "That's a problem".

21 BY MR. PHILLIPS:

22 Q. That wouldn't be helpful to the State's case?

23 A. What would not be helpful? What was your question?

24 Q. If it came to a credibility battle based off something
25 said when it could have been recorded.

1 **MS. MAYES:** Objection, Your Honor, to the form of the
2 question.

3 **THE COURT:** I will sustain the objection as to
4 credibility. The first question was it wouldn't have
5 helped the State's case, that's a bad question.

6 **MR. PHILLIPS:** What was the what? I just want to make
7 sure.

8 **THE COURT:** The question you asked before that was it
9 would not have helped the State's case for him to say I
10 didn't do it, that's a bad question.

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

12 BY MR. PHILLIPS:

13 Q. So you walked through all of this with him on two
14 different occasions, he voluntarily said look, I'll speak
15 to you, I don't want a lawyer, no problem, right?

16 A. Right.

17 Q. And he gives you this information where he's telling
18 you about giving clothes, about asking for deals, and at
19 this point on two different occasions it never occurred
20 to you at some point I probably should have cut on the
21 recorder?

22 A. I would have turned on the recorder should he have
23 confessed and given a statement.

24 Q. In fact, your captain specifically instructs y'all not
25 to record defendants' statements?

1 A. It's a case by case basis. You --

2 Q. And in that room there is a videocamera, is there not?

3 A. There's a live feed video camera in there, yes.

4 Q. And y'all don't record that?

5 A. A live feed means it goes directly to a monitor where
6 my captain could view it should he choose and he can watch
7 a live interview. It's not recorded.

8 Q. So there was the possibility had they set up a VCR to
9 this live feed that we could see with our own eyes him
10 saying the things that you've testified to?

11 A. You would have to take that up with my captain.

12 Q. Is this what Mr. Hunter looked like? This is State's
13 Exhibit Number 80.

14 A. When he was apprehended and from the interview on the
15 17th, yes.

16 Q. He had the same long dreadlocks as he does today in
17 court?

18 A. Correct.

19 Q. That his appearance today as far as his hair is
20 essentially the same with the long dreadlocks?

21 A. Essentially the same, plus a few pounds now.

22 Q. And just to clarify, what photographs did you take in
23 this case?

24 A. Those -- I took photographs of Ms. Simon at the
25 hospital.

1 Q. Okay. The ones of her hands?

2 A. The ones of her lying on the stretcher filled with
3 bullet holes.

4 **MR. PHILLIPS:** Just a moment, Your Honor.

5 **THE COURT:** All right, sir.

6 BY MR. PHILLIPS:

7 Q. None of the descriptions that were provided to you had
8 any indication that the suspect had long dreadlocks; is
9 that right?

10 A. Dreadlocks, no, sir. She stated she never saw his
11 hair. All she was his eyes from the nose up to his
12 forehead.

13 Q. Which searches of Tanisha's property and vehicles did
14 you conduct?

15 A. I did none. That was all Investigator Neel.

16 Q. All Investigator Neel?

17 A. That's correct.

18 Q. But you were there when the arrest occurred and you
19 saw the car that was seized, correct?

20 A. Correct.

21 Q. What was put up here on the screen?

22 A. Right, the white Nissan Versa, yes.

23 Q. Was there any blood in that car?

24 A. Not that I saw. No, sir. And I believe he didn't
25 get that car until the -- I believe the rental agreement

1 is the 21st, the day he was apprehended.

2 Q. With the distance from the apartments from -- you
3 testified as to his apartment to hers. How far is that,
4 do you think?

5 A. I didn't testify from his apartment to hers. I did
6 not. No, sir.

7 Q. You said where his apartment was and you testified to
8 where --

9 A. No, I testified as to when we located him he was
10 leaving Bethel Bishop Apartments in Columbia. Those were
11 not his apartments.

12 Q. Through your investigation, did you find out that he
13 lived in Columbia?

14 A. In Columbia. Yes, sir.

15 Q. All right. And from that location through your
16 investigation, how far is that location from Ms. Simon's
17 apartment?

18 A. I honestly don't know without a map. I have not
19 tracked it or --

20 Q. If you were to drive it, how long do you think it
21 would take?

22 A. I have not taken the drive from that place to her
23 apartment. I have not been to Ms. Taylor's apartment. I
24 don't know.

25 Q. More than fifteen minutes?

1 A. I honestly could not tell you.

2 Q. Okay. So as part of your investigation you never even
3 tried to look at that?

4 A. That was Investigator Neel, I would imagine, because
5 he did go to Mr. Hunter's residence multiple times, I
6 believe.

7 **MR. PHILLIPS:** Your Honor, may I approach? I just
8 want to be sure --

9 **THE COURT:** Okay.

10 (Proceedings held at the bench; not reported.)

11 **MR. PHILLIPS:** Thank you, Your Honor, for being
12 patient with us.

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

14 BY MR. PHILLIPS:

15 Q. To be clear, you had Mr. Hunter's name before you had
16 any information about a DNA hit. He was listed at West
17 Columbia -- his name was there at West Columbia with your
18 captain, with you, you were notified, before you had DNA.
19 In other words, you had a name before you had DNA?

20 A. Are you talking about being notified by SLED or are
21 you talking about something completely unrelated to SLED?
22 I'm confused by your question.

23 Q. What I'm saying is you had a name before you had any
24 DNA.

25 A. I believe we may have been given that name. It was a

1 simultaneous -- it was the same day we received a name, I
2 believe, and the same day we received DNA. As to what came
3 first, I don't -- I don't recall.

4 Q. So your testimony is it was the same day?

5 A. I believe so.

6 Q. And if it was different, that's just --

7 A. It's possible.

8 Q. You're just unsure?

9 A. If you could show me something, I would be able to
10 agree to it, but without it in front of me I honestly
11 don't know.

12 Q. Without going through the back and forth, the big
13 thing is it's possible it was one day name, one day DNA?

14 A. It's possible because I believe there was some
15 reference to another investigator. Not myself though.

16 Q. Right, who's unfortunately not with us.

17 A. And I was speaking of someone else, but just to not go
18 into any further detail as to who may have received that
19 information.

20 Q. The overall arching theme with Mr. Hunter is that when
21 he went through that Miranda rights form and it wasn't
22 recorded, he had the right to remain silent, he voluntarily
23 spoke to you, you told him he could have an attorney, he
24 said he didn't even want an attorney and after he went
25 through all of that he denied committing the crime?

1 A. No, sir, he never denied committing the crime. He
2 stated he was not in the apartment. He never stated I did
3 not do that.

4 Q. Did you testify under oath in general he denied having
5 any knowledge of the events themselves?

6 A. Of the offenses themselves? He --

7 Q. The events, E-V-E-N-T-S. Did you testify in general
8 he denied having any knowledge of the events themselves?

9 A. If I testified to that, then I did.

10 Q. Under oath?

11 A. Yes.

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

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

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

15 **REDIRECT EXAMINATION**

16 **BY MS. MAYES:**

17 Q. So just to clear a couple of matters up because I
18 know some names have been thrown around and I want to just
19 clarify, during the course of an investigation where you
20 have an unknown suspect and the days that went by between
21 when this offense occurred, April 13th, and then ultimately
22 when he was arrested on April 17th, that's a four-day
23 period of time?

24 A. Correct.

25 Q. And before you received that notification letter from

1 the State Law Enforcement Division about the DNA match,
2 what efforts were made, if any, to reach out to other
3 agencies for any clues, any -- even a shot in the dark?

4 A. We would have reached out to any agencies in the
5 surrounding areas, being Columbia, Richland, Lexington
6 County, to see if they had similar experiences where a
7 burglary occurred along with a sexual assault.

8 Q. All right. And so previously on cross-examination,
9 Mr. Phillips asked about the name Detavian Jovan Smith.

10 A. Yes, ma'am.

11 Q. And did that name come from the victim?

12 A. It did not. I believe that was provided by
13 Columbia to Investigator Neel, but you would have to ask
14 Investigator Neel.

15 Q. All right. So just to clarify, during the course of
16 your investigation and your interviews with Larenda Simon,
17 the victim, did she ever indicate that this was in any way
18 connected to a Sister Care previous relationship?

19 A. She never gave us that idea. No, ma'am.

20 Q. Did she ever provide any information about knowing
21 the suspect or even having a clue who the suspect was?

22 A. No, ma'am.

23 Q. And as to Detavian Smith, again, you indicated that
24 is a name that was provided by another law enforcement
25 agency. What, if any, information was obtained early on,

1 as early as 2014, that ruled him out as a suspect?

2 A. That being his height. He was 6-1, 185 pounds, I
3 believe.

4 Q. All right. And so if you have information that you
5 obtained directly from the victim that the perpetrator is
6 5-4 to 5-6 and you get that directly from her own mouth,
7 are you going to spend a lot of time pursuing a suspect
8 that a name was provided by another agency who's 6 foot 1?

9 A. No, I would not.

10 Q. And Mr. Phillips was asking you about whether or not
11 someone ever described a suspect as being light-skinned.
12 Do you have any idea who that even came from?

13 A. I have in my notes that it came from a sergeant. I
14 believe the sergeant that was working at that time was
15 Sergeant Libertini with West Columbia.

16 Q. Libertini. And do you know who Libertini got the
17 information from?

18 A. I have no idea who he got the information from.

19 Q. All right. But was Libertini with you at the hospital
20 when Ms. Simon was being interviewed?

21 A. He was not. He was on the scene at her apartment.

22 Q. And do you have any indication that Libertini ever
23 interviewed Larenda Simon?

24 A. I have no information about that.

25 Q. All right. So moving on to the questions that were

1 posed to you previously about the recording process, you
2 used the example of your interview with Ms. Simon being
3 recorded. In that situation, she's getting ready to go
4 into surgery, she's suffered multiple gunshot wounds, why
5 was it important to record her statement?

6 A. Due to the nature of her injuries, she was gonna go
7 to surgery fairly quickly and I think I did kind of
8 beforehand try to speak to her because we usually speak
9 to them prior to us taking a recorded statement or a
10 statement in general, but given the nature of her injuries
11 I knew she was gonna be gone quick. I got a little bit of
12 information and realized I'm not gonna be able to do this,
13 so I went ahead with the recorded statement.

14 Q. All right. And on that same topic, are those ideal
15 circumstances to be conducting an evidence collection kit
16 from someone's fingernails?

17 A. At that time, no, ma'am, not when she's surrounded by
18 nurses and doctors and myself.

19 Q. Did you even have an evidence collection kit with you?

20 A. I did not, not when it comes to fingernail scrapings.
21 I'm not equipped for that. There's nurses that are trained
22 for that, to remove those, and they -- there are sexual
23 assault nurses and they need to be called in by the
24 hospital and it takes hours sometimes for them to respond.

25 Q. All right. And in that scenario where a sexual

1 assault nurse may be involved in doing an evidence
2 collection kit, are those normally situations where someone
3 is in a trauma unit getting ready to go into surgery?

4 A. Not into surgery, no, ma'am. Not typically.

5 Q. Would you have requested for the doctor to delay
6 surgery so that you could call in a sexual assault nurse
7 to bring a kit?

8 A. I would never delay surgery when it comes to someone's
9 well-being or health.

10 Q. And had -- during the course of that interview with
11 Ms. Simon, had she -- despite the detail she was giving
12 you, had she been able to elaborate enough that she may
13 have scratched him during the struggle with him?

14 A. If she had been able to, I believe --

15 Q. Did she?

16 A. She did not, no, ma'am. She never established that
17 she scratched him in any way. Just that a struggle ensued.

18 Q. All right. Now regarding the phones, there is a
19 notation that you did consult with the State Law
20 Enforcement Division regarding tracking of the phone?

21 A. Correct. According to my notes, yes, ma'am.

22 Q. All right. I'm gonna ask you specifically what the
23 date and time of that notation is?

24 A. I believe it's the same date, which is 4-13-14.

25 There's not a date on this sheet of paper, but the time is

1 0549, which would have been 5:49 in the morning.

2 Q. All right. And I think Mr. Phillips was asking you
3 specifically about the notation and the name. What is the
4 name in the notation?

5 A. The name is Mark Burbee, and it says SLED, attempting
6 to track phone.

7 Q. All right. Attempting to track phone through SLED.
8 Let me ask you that. Do you have the capabilities at the
9 West Columbia Police Department to track a phone yourself?

10 A. I do not have the capabilities to track a phone. We
11 as a department do not. We rely on SLED.

12 Q. All right. So you reached out to Mark Burbee at the
13 State Law Enforcement Division regarding tracking of that
14 phone?

15 A. Correct. It appears that I did. Yes, ma'am.

16 Q. Is there anything further that you could have done
17 within the West Columbia Police Department to physically
18 track that phone yourself?

19 A. We have no ability to do so.

20 Q. Now moving forward to when you did actually obtain a
21 phone number for Nathaniel Hunter and that phone number --
22 what efforts did you take regarding a search warrant to
23 potentially get phone records from a provider for that
24 phone?

25 A. We attempted to get records for a day or two before

1 the crime up until his apprehension. I believe those were
2 -- those were requested after his apprehension though, the
3 search warrants for his phone records.

4 Q. All right. And so the representative that we saw
5 earlier from the Sprint corporation, Ms. Sparks, just to
6 clarify, those records were actually obtained pursuant to
7 your investigation?

8 A. They were. Yes, ma'am.

9 Q. All right. And so a search warrant was conducted not
10 only for the physical phone records for ingoing and
11 outgoing calls, but was a search warrant also obtained to
12 locate any cell tower information, which would be location
13 data?

14 A. Yes, ma'am. It was attempted to locate the phone or
15 -- the phone that we were requesting during the time of the
16 crime, which I believe when Ms. Sparks was speaking between
17 1 AM to 5 AM because the crime was with a committed at
18 3 AM, so we did two hours before and two hours after just
19 to try to get a location of where the suspect may have come
20 from or where he had gone to.

21 Q. All right. So the search warrant was to obtain
22 information between 1 AM and 5 AM for the phone of
23 Nathaniel Hunter, correct?

24 A. That is correct.

25 Q. And then ultimately as Ms. Sparks indicated, there

1 was no tower information because the phone didn't show
2 activity?

3 A. That's correct.

4 Q. Now moving on to this process of taking statements,
5 you told us about the process that led to the actual
6 recording of Larenda Simon's statements and the process
7 that proceeded that with her getting ready to go into
8 surgery, but what about Tanisha Taylor? Tanisha Taylor is
9 someone that I believe Mr. Phillips also asked you about
10 having a recorded statement.

11 A. Correct. Tanisha Taylor came down to the police
12 department as well and spoke to us. We did complete a
13 conversation between myself and her and, I believe,
14 Captain Wade at the time. After we spoke about the nights
15 -- or the night of and the night after and Mr. Hunter, then
16 we recorded a statement from her.

17 Q. All right. So there's a conversation preceding that
18 recording and she agreed to the recording, correct?

19 A. That is correct.

20 Q. And then in comparison, can you tell us about when
21 you're interviewing a suspect or a defendant? How does
22 that correlate, how is that similar when a suspect or a
23 defendant is involved?

24 A. It, again, goes back to we're gonna have a
25 conversation prior to the statement, whether it be an

1 audible statement or a written statement. We're going to
2 speak about the incident first. Should the person deny all
3 involvement with it, there's really no point at that time
4 for a statement because we're not speaking of it and I'm
5 not gonna allow them to write a statement or record a
6 statement that's not true based on the facts that I have
7 at the time.

8 Q. The name Tanisha Taylor -- who did the name Tanisha
9 Taylor -- who brought that name to the attention of law
10 enforcement for the first time?

11 A. Tanisha was given -- that name was given to us by
12 Mr. Hunter on the night of his apprehension to explain away
13 the cuts to his head.

14 Q. All right. So that was during that first interview on
15 April 17th?

16 A. That's correct.

17 Q. And had you ever heard that name, Tanisha Taylor,
18 before that date?

19 A. I had not. No, ma'am.

20 Q. And it came from him during the course of that
21 conversation?

22 A. That is correct.

23 Q. And then did you follow up and determine there is,
24 in fact, a Tanisha Taylor?

25 A. There is and we did follow up with her.

1 **MS. MAYES:** Nothing further of Investigator Griffin,
2 Your Honor.

3 **THE COURT:** Thank you. Any follow-up on those narrow
4 points, Mr. Phillips?

5 **MR. PHILLIPS:** Yes, sir, Your Honor.

6 RE CROSS-EXAMINATION

7 BY MR. PHILLIPS:

8 Q. Have you testified under oath, specifically me
9 questioning you, about why didn't you record the
10 conversation with Nathaniel Hunter and your response was
11 sometimes we do, sometimes we don't, it depends on the --
12 I guess, the ability?

13 A. If that's what I said in the statement, yes.

14 Q. And you had at that time an audio recorder that was
15 given to you by the West Columbia Police Department?

16 A. That's correct.

17 Q. So you had the ability?

18 A. We had the ability had he given a statement.

19 Q. And then I think your follow-up -- I said well, does
20 the severity of the case have something to do with it and
21 your follow-up was not the severity of the case, I'm just
22 trying to think of the mindset of the victim or the
23 suspect, you know, whether -- and I said -- I think you
24 followed up, whether that person can read or write and then
25 I asked you whether he could read or write and you said he

1 did.

2 A. I recall those conversations.

3 Q. And then ultimately I said so I guess going back, the
4 bottom line is you just didn't record it, and you said
5 there's no rhyme or reason, just didn't do it -- or no,
6 that was my question. You said no, there's no rhyme or
7 reason, no, sir.

8 **MS. MAYES:** Objection, Your Honor, unless the witness
9 is allowed to see the document he's referring to and review
10 it and explain with clarity --

11 **THE COURT:** If he needs to see it, certainly he can
12 take a look at it.

13 BY MR. PHILLIPS:

14 Q. Do you need to see it?

15 A. I'll look at it, yes, sir --

16 Q. We have a clean copy.

17 A. -- but I recall what you're speaking of. I think I
18 may have it --

19 Q. Page 49.

20 A. -- if you'd tell me the page.

21 Q. Page 49, Line 15 through 17.

22 A. I'm on it. There's no rhyme or reason. Coming from
23 you, you just didn't do it. And I said -- I answered
24 there's no rhyme or reason, no, sir.

25 Q. Then I asked you but you had the ability?

1 A. And I responded correct. And this, I believe,
2 occurred in December of 2014.

3 Q. That's correct. This case is three years old.

4 A. It is.

5 Q. Talking about the tracking of the phone that the
6 solicitor brought up to you, you said -- basically said we
7 put it in SLED's hands and we're waiting on SLED, right?

8 A. That appears to be what happened, yes, sir.

9 Q. The day you had the DNA hit for Nathaniel Hunter,
10 correct --

11 A. Yes.

12 Q. -- you contacted SLED?

13 A. Yes.

14 Q. Within hours you were tracking him on the phone you
15 had?

16 A. We had a probable cause -- we had an arrest warrant
17 for him, so we were going to arrest him.

18 Q. And if you really wanted to track a phone, you can do
19 it quickly?

20 A. Yes. SLED can. They can.

21 Q. So you're saying to the jury that it was SLED -- it's
22 all on SLED the reason that phone didn't get track, not as
23 an investigator you didn't follow up. It wasn't your job
24 to follow up, it's all SLED's fault.

25 A. No, I'm definitely not saying it was all SLED's fault.

1 I'm saying there was a lot of stuff going on during that
2 time, so there were different things they we were doing.
3 SLED was contacted obviously from my notes. Mark Burbee
4 was contacted, attempting to track phone. Whether or not
5 I heard back, I don't recall.

6 Q. Not to beat the dead horse --

7 **THE COURT:** Please don't.

8 Q. -- had you tracked it there we could have some cell
9 site location data from that number?

10 **MS. MAYES:** Objection, Your Honor.

11 **THE COURT:** That's been asked and answered.

12 **MS. MAYES:** Asked and answered.

13 BY MR. PHILLIPS:

14 Q. The solicitor asked you that there was nothing
15 Ms. Simon provided to you that she would have known the
16 person -- again, I know we're going over the same things,
17 and I apologize -- she said the voice sounded familiar?

18 A. She stated it seems like I heard his voice before,
19 but I do not know for sure. That's what she stated.

20 Q. And the solicitor asked about the notes that you have
21 about the light-skinned black male.

22 A. Again, that was from -- relayed to me by the sergeant
23 on the scene.

24 Q. You wouldn't have wrote it in the notes if you didn't
25 think that was a credible lead, correct?

1 A. By a sergeant, not by the actual person who was shot.
2 I would have wrote it because that's the only information I
3 had at the time. Because it goes in chronological order
4 the way that I wrote. I write light-skinned black male up
5 here, I write 5-4 to 5-6, small black male, and that's
6 coming directly from Ms. Simon.

7 Q. And he wouldn't have called you to tell you a
8 light-skinned black male if that wasn't something he
9 thought was important. That he wouldn't have just out of
10 the blue said I'm gonna call the lead investigator on this
11 case and say it was a light-skinned black male?

12 **MS. MAYES:** Objection. Calls for speculation.

13 **THE COURT:** I sustain the objection as to what the
14 officer might have thought.

15 BY MR. PHILLIPS:

16 Q. But it's not usual for sergeants to call lead
17 investigators on the case, give a description that wouldn't
18 be accurate -- or at least wouldn't be information that
19 they had, let me rephrase it -- information that they had
20 been given?

21 A. It's just for them to give us an idea of something
22 that we're operating with, the small -- or the
23 light-skinned black male with a mask.

24 Q. But that wouldn't be -- it's not unusual for you to
25 get a phone call from another officer if they had been

1 provided a description and that not be accurate?

2 A. It's also not unusual for us to be provided with
3 information that's third-hand information to be found to be
4 inaccurate later.

5 Q. You talk about the videos in the case. The video from
6 the church, you never watched that video?

7 A. I did not.

8 Q. The video from the gas station Nathaniel Hunter wasn't
9 on it?

10 A. I watched it. He was not, but that was also in the
11 opposite direction of his house.

12 **MS. MAYES:** Objection, Your Honor. Not responsive to
13 redirect.

14 **THE COURT:** Well, I -- I wish that we were staying
15 within the bounds of recross and redirect, but it seems not
16 to be clear. It makes it longer to argue about it than it
17 does to get him to answer the question.

18 BY MR. PHILLIPS:

19 Q. The solicitor referred to the SANE nurse -- I'm sorry,
20 for using SANE, the sexual assault nurses -- I know you
21 understand it, but -- I understand you'd never hold off
22 surgery, but you could have made the request for them to
23 scrape the fingernails, correct?

24 A. And I would have made the request had she told me that
25 she had scratched him.

1 Q. So in any case that they say a struggle, you would
2 never check that?

3 A. Typically not.

4 Q. If it was a rape case and they say there was a
5 struggle, you'd never check the fingernails?

6 A. Had it been a rape, possibly.

7 Q. And they brought up the cell tower tracking with the
8 search warrant being limited to -- was it one to five?

9 A. It was.

10 Q. Had you expanded that search warrant -- because I'm
11 not even sure you're the one that signed the search warrant
12 now that I'm thinking about it?

13 A. I'm not, but I did have -- I was involved in the
14 search warrant, but I did not sign it. I know what you're
15 referring to though.

16 Q. But had they expanded it, we'd have been able to track
17 at least that phone -- not say who it was, but that phone,
18 you'd have been able to see if that phone cell tower-wise,
19 plot it, whether within the weeks or months before it had
20 been anywhere near West Columbia, whether it even crossed
21 the river?

22 A. We typically don't request -- when we're requesting,
23 we request certain dates and times at length when it comes
24 to text, phone calls, data, but when it comes to tower
25 records that's a very specific thing. And I've had cases

1 in the past if you don't narrow it down to a certain
2 timeframe, you're talking a pretty big delay when it comes
3 to when you receive those records because it takes a lot of
4 time for them to compile those. So it could have gone --
5 it could have gone a month, two months. I mean, it would
6 have been a while for us to receive those records.

7 Q. Right. And then when you received the information
8 from the one to five and realized there was no activity,
9 you didn't say let me investigate further, I'm trying to
10 build a case against this guy. If I just -- I've already
11 got these records, they didn't give me anything of value,
12 I could just request another set.

13 **MS. MAYES:** Objection to the form of the question.

14 **THE COURT:** I'll sustain the objection as to the
15 speculative nature of that, the hypothetical nature of
16 that, yes. Thank you.

17 **MR. PHILLIPS:** Just a moment, Your Honor.

18 **THE COURT:** Okay.

19 BY MR. PHILLIPS:

20 Q. And the description was brought up on redirect. It
21 has been three years, has it not, since his arrest?

22 A. Correct.

23 Q. Since this happened?

24 A. Correct.

25 Q. And in this three years, you haven't shown her a photo

1 lineup that included Nathaniel Hunter?

2 **MS. MAYES:** Objection to the fact that it's outside
3 the scope of redirect.

4 **THE COURT:** It is. It is and I'm not sure what --
5 that's enough. It's outside the scope. I don't need to
6 go beyond that.

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

8 **THE COURT:** Thank you. Ms. Mayes?

9 **MS. MAYES:** The State calls Leah Bonneville.

10 **THE COURT:** Okay. Mr. Griffin, that means you can
11 step down.

12 **THE WITNESS:** Thank you, sir.

13 (Witness excused.)

14 **THE COURT:** Ms. Bonneville, come forward, please,
15 ma'am, and be sworn.

16 (Whereupon, Leah Bonneville was duly sworn by the
17 Clerk of Court.)

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

20 **THE WITNESS:** My name is Leah Caldwell Bonneville,
21 B-O-N-N-E-V-I-L-L-E.

22 LEAH CALDWELL BONNEVILLE,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. MAYES:

1 Q. All right. And, Ms. Bonneville, tell us a little bit
2 about yourself. Where do you currently reside?

3 A. I actually live in Hilton Head and work at Palmetto
4 Health Richland.

5 Q. All right. And can you tell us whether or not you
6 were working at Palmetto Health Richland back in 2014?

7 A. Yes.

8 Q. And tell us what your actual job description is and
9 how you went about obtaining that role in that profession.

10 A. I work in the emergency department. I've been
11 qualified to work as a charge nurse and also as a trauma
12 room nurse.

13 Q. All right. And I want to ask you a little bit more
14 about that. What type of nurse are you?

15 A. I'm a registered nurse, like I said, in the emergency
16 department. I am emergency nurse-certified.

17 Q. All right. And how does that differ -- emergency
18 nurse-certified, how does that differ from the -- nurse who
19 doesn't play a role in an emergency room?

20 A. Different -- I've taken a national test that granted
21 me a certification in the emergency room role. There are
22 other tests that can be taken when you work in different
23 areas to certify you in that area.

24 Q. Okay. So as a registered nurse, how long have you
25 worked specifically in the trauma unit at Palmetto Health

1 Richland?

2 A. For nine years.

3 Q. All right. And what is meant by the term trauma or
4 trauma unit? How does that differ from, say, Lexington
5 County -- Lexington Medical Center's emergency room?

6 A. A hospital has to achieve trauma certification and
7 there's a variety of things that a hospital has to do in
8 order to become certified and Richland has achieved that
9 certification, has been the trauma center for a number of
10 years.

11 Q. All right. Now during your career, have you had the
12 opportunity to treat and assess cases of gunshot wounds?

13 A. Yes.

14 Q. And can you tell us whether or not you had the
15 occasion to treat Larenda Simon on or about the early
16 morning hours of April 13, 2014?

17 A. I did. She at that time was known as Trauma Female
18 140135.

19 Q. All right. And could you give us the time that she
20 first arrived in the trauma unit there at Palmetto Health
21 Richland?

22 A. According to my notes, she got into the trauma room
23 at 3:47 AM.

24 Q. And the trauma --

25 **MR. PHILLIPS:** Your Honor, may we approach?

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

2 (Proceedings held at the bench; not reported.)

3 BY MS. MAYES:

4 Q. All right. Let me go back a bit, Ms. Bonneville.

5 Again, as to Palmetto Health Richland Hospital on April 13,
6 2014, you were working in the trauma unit?

7 A. Yes.

8 Q. What time did Ms. Simon arrive?

9 A. According to my documentation, she got into the trauma
10 bay at 3:47 AM.

11 Q. 3:47 AM. Now what's the first step along the way in
12 assessing and treating a trauma patient and, specifically,
13 gunshot wounds to determine how many gunshot wounds there
14 may be and where they are located?

15 A. When a patient initially arrives, there is a trauma
16 timeout at which time the EMS personnel give us a brief
17 report of the patient's vital signs, their injuries, what
18 time their injuries were, and then the patient is moved to
19 our trauma table, they are undressed and -- different
20 people in the room have different roles, but the physicians
21 are the ones performing the initial assessment and in this
22 particular case I was the scribe who was documenting what
23 was being found during that initial assessment.

24 Q. All right. So I'm gonna show you four photographs.
25 They are currently in evidence. 62, 59, 60, and 61. Can

1 you tell us whether or not this procedure that's documented
2 in these photographs appear to be a routine procedure in
3 the going about treating a patient and assessing the
4 injuries?

5 A. Yes, it is.

6 Q. All right. And can you tell us what area of the
7 hospital this would be?

8 A. That is in the trauma room. I'm not sure which one.
9 There's two.

10 Q. Okay. And during the course of this, you indicated
11 that your job is to then assess the injuries and actually
12 note where they're located?

13 A. My role was as scribe, so I was documenting while the
14 injuries that were being noted were being called out to me.

15 Q. All right. And do you have a particular form that you
16 used to make that notation?

17 A. Yes, we have our trauma flow sheet.

18 Q. All right. And do you have a copy of that with you
19 today?

20 A. Yes, ma'am.

21 Q. And is that done in your own writing?

22 A. Yes.

23 Q. All right. And is that form also signed by you?

24 A. Yes.

25 Q. And can you tell us whether or not that's ordinary in

1 the course of medical diagnosis and treatment?

2 A. Yes.

3 **MR. PHILLIPS:** No objection, Your Honor.

4 **THE COURT:** Thank you. Without objection.

5 **MS. MAYES:** Without objection, Your Honor, we're gonna
6 go ahead and document -- or mark this exhibit to document
7 the injuries..

8 (State's Exhibit Number 83, a body diagram, was marked
9 and admitted into evidence.)

10 BY MS. MAYES:

11 Q. Now, Ms. Bonneville, I'm gonna ask you to step down --

12 **MS. MAYES:** Your Honor, if she may have permission to
13 step down?

14 **THE COURT:** She can step down.

15 (Whereupon, the witness steps down from the witness
16 stand.)

17 **THE COURT:** Nurse -- Ms. Bonneville, excuse me, if
18 you'll stand on the other side of that and just face in
19 this general direction so that the court reporter can hear
20 you? On the other side of the -- the other side. I'm
21 sorry. I wasn't real clear about that. Now you're right.
22 Thank you.

23 BY MS. MAYES:

24 Q. And you may refer to your notes as you go.

25 A. Okay.

1 Q. I'm gonna ask you if you could individually note what
2 is -- or document what is reflected in your notes and which
3 part or parts of the body that we're talking about as we
4 go, looking at this anatomical diagram of a female.

5 A. Wounds here on the hand.

6 Q. All right. I'm gonna need you to speak up --

7 A. I'm sorry.

8 Q. -- because not only the court reporter has to hear
9 you, but the jury as well.

10 A. Penetrating wounds to the right hand. There were also
11 to the left chest/breast area and beneath the left -- I'm
12 sorry, the right breast and beneath the right breast.

13 Q. And I'm gonna stop you right there. You mentioned
14 penetrating injury. What do you mean by that term?

15 A. That is -- in her case, since we knew ahead of time
16 this was a gunshot wound, penetrating can either be gunshot
17 or knife wounds.

18 Q. Okay. You indicated the right hand, the right breast
19 and then what is this location here?

20 A. Beneath the right breast. And then there were
21 multiple wounds to her left breast, beneath her left
22 breast and the lower portion of her left breast, her left
23 arm and then also there were two wounds in the left axilla,
24 underneath her arm area.

25 Q. All right. And when you're looking at these and

1 describing these injuries, is it possible to know which
2 ones are entry and which ones are exit?

3 A. No.

4 Q. So that's something that you're not able to determine,
5 but you're able to determine the location that you can
6 visually see a gunshot wound?

7 A. That's correct.

8 Q. And so this may include single injuries or it could
9 also include entries and exits; is that correct?

10 A. That's correct.

11 Q. And then where else?

12 A. There was also a note of a possible burn over here to
13 the left -- I'm sorry, to the right chest, right breast
14 area.

15 Q. All right. And what, if anything, was noted to the
16 back?

17 A. There was a -- appeared to be a penetrating wound to
18 the left back area.

19 Q. All right. And by penetrating, again, could that be
20 an exit wound?

21 A. Yes.

22 Q. Thank you. You may return.

23 (Whereupon, the witness returns to the witness stand.)

24 Q. When you're initially treating the patient in the
25 trauma unit, is that the step where she actually enters

1 surgery or is there another step before the patient
2 actually enters the surgery room?

3 A. Sometimes patients go straight from the trauma bay to
4 surgery and then other times if they're stable enough, then
5 they go to CAT scan and have imaging done prior to any
6 surgical intervention.

7 Q. All right. So it would be trauma unit first?

8 A. Correct.

9 Q. Then potentially to CAT scan or MRI and then onto
10 surgery?

11 A. Right, if indicated. Uh-huh.

12 **MS. MAYES:** Nothing further.

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

14 **MR. PHILLIPS:** No further questions of Ms. Bonneville.

15 Thank you very much.

16 **THE COURT:** Have a safe trip back.

17 **THE WITNESS:** Thank you.

18 **THE COURT:** Thank you.

19 (Witness excused.)

20 **THE COURT:** Folks, we'll take the afternoon recess at
21 this point in time. We'll get you back out at about 4:15
22 to conclude the afternoon's work. Please don't talk about
23 the case among yourselves while you're in the jury room.
24 Thank you.

25 (Whereupon, the jury retires to the jury room at

1 3:59 PM.)

2 **THE COURT:** Folks, we'll start back at 4:15. Thank
3 you.

4 **MS. MAYES:** Thank you, Your Honor.

5 (Recess taken.)

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

7 **THE COURT:** Thanks, folks. Y'all can be seated.

8 Madam Reporter, at the sidebar conference during
9 Ms. Bonneville's direct examination a sidebar conference
10 was held regarding the use -- the continued use of the
11 easel and the prior page which had the address of the
12 victim in this case and an abbreviated identification --
13 or description, I should say. Mr. Phillips requested that
14 Ms. Mayes be required to use another page. Ms. Mayes
15 indicated she was using that page because somebody else who
16 was present in the hospital apparently with Ms. Bonneville
17 and the other team there will testify that they heard that
18 description being made at that time. For that reason I
19 allowed her to continue using the sheet that she was using.

20 All right.

21 **MS. MAYES:** Your Honor, just to clarify, it was
22 Investigator Griffin who testified he was present in the
23 hospital when she gave that description and the easel says
24 Palmetto Health Richland, which is where she was when she
25 gave that description.

1 **THE COURT:** Okay. I knew it was somebody. I couldn't
2 remember the name. Thank you.

3 **MR. PHILLIPS:** Thank you, Your Honor. Just to, I
4 guess, elaborate was that in addition to what she wrote
5 on there and then the original Palmetto Richland Health
6 Hospital -- or Palmetto Health Richland Hospital, it did
7 have the 5-4 to 5-6 description written on it, 150 pounds,
8 small black, ski mask, written on the same part of the
9 easel. None of that was testified to by the witness.

10 Part of, you know, having our original argument
11 regarding the easel is the nature of a having a fresh set
12 of testimony that's not tainted. And, again, I don't want
13 to say -- with a sequestration order obviously that's why
14 you have witnesses out of the courtroom so they don't see
15 other testimony that's been provided to that's sitting
16 right in front of them as they testify. And, of course,
17 I understand Your Honor's ruling regarding the prior
18 description coming into evidence.

19 **THE COURT:** Right. Of course, Ms. Bonneville didn't
20 testify -- my recollection is the only point she testified
21 to is the time.

22 **MR. PHILLIPS:** That's correct, Your Honor. Trauma
23 and the time and what was still left on the board while
24 she testified and what was in front of her was -- and the
25 jury was the 5-4 to 5-6, 150, small black, ski mask.

1 **THE COURT:** So it doesn't appear that there was
2 anything that was on there that violates the spirit of
3 the sequestration order.

4 **MR. PHILLIPS:** Thank you, Your Honor.
5 May I approach?

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

7 **MR. PHILLIPS:** This is the SLED lab, the L14-04723
8 narrative. This is a clean copy for a Court's exhibit.

9 **THE COURT:** And this is what you've asked to be a
10 Court's exhibit, right?

11 **MR. PHILLIPS:** Yes, sir. Thank you so much.

12 **THE COURT:** Okay. Let me -- Ms. Mayes, you've seen
13 this, of course?

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

15 (Court's Exhibit Number 9 was marked for
16 identification.)

17 **THE COURT:** Bring us the jury.

18 (Whereupon, the jury returns to the courtroom at
19 4:21 PM.)

20 **THE COURT:** Thank you, folks. Mr. McNair.

21 **MR. McNAIR:** Your Honor, the State calls Lieutenant
22 Cain Mayrant.

23 **THE COURT:** Lieutenant, come forward, please, and be
24 sworn.

25 (Whereupon, Cain Mayrant 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:** Cain Mayrant, M-A-Y-R-A-N-T.

5 CAIN MAYRANT,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. McNAIR:

9 Q. Lieutenant Mayrant, where are you employed?

10 A. Lexington County Sheriff's Department.

11 Q. What is your position over there?

12 A. I'm the booking manager.

13 Q. All right. Now when somebody is arrested and booked
14 into the Lexington County Detention Center, do y'all create
15 a form or is a form generated that contains that arrestee's
16 personal identifying information?

17 A. It does.

18 Q. All right. And who provides the information contained
19 on the form?

20 A. The inmate.

21 Q. All right. And do you keep forms like that in the
22 ordinary course of your business?

23 A. I do.

24 Q. And what is that form called?

25 A. It's a booking report form.

1 Q. All right. Is that generated at the time that
2 somebody is arrested and booked into the detention center?

3 A. It is.

4 Q. All right. Do you recognize that form?

5 A. Yes.

6 Q. All right. Is that the booking report that you just
7 referred to?

8 A. It is.

9 Q. And what is the name on that booking report?

10 A. Nathaniel Antron Hunter.

11 Q. All right. How do you spell Antron?

12 A. A-N-T-R-O-N.

13 Q. So all of the information contained on this booking
14 report would have been provided by Mr. Hunter?

15 A. That's correct.

16 Q. All right. And did he provide his date of birth?

17 A. He did.

18 Q. What is that?

19 A. The date of birth is redacted.

20 Q. I see.

21 **MR. PHILLIPS:** Relevance, Your Honor.

22 **THE COURT:** What's that?

23 **MR. PHILLIPS:** To his date of birth.

24 **MS. MAYES:** It's an element of the --

25 **MR. McNAIR:** An element of the events, Your Honor.

1 **THE COURT:** Yeah, it is an element of the events. I
2 didn't -- had it been redacted, is that what he's saying?

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

4 **MR. McNAIR:** Yes, sir. I'll get a clean copy.

5 **THE COURT:** Okay.

6 BY MR. McNAIR:

7 Q. All right. Is this the same report you're looking at
8 there but un-redacted?

9 A. That's correct. It is.

10 Q. All right. And what is the date of birth listed on
11 that booking report?

12 A. [REDACTED] 1983.

13 Q. All right. So at the time he was booked in he was how
14 old?

15 A. Thirty-four.

16 Q. All right. And did he also provide you with his
17 height and weight?

18 A. He did.

19 Q. What was his height?

20 A. Five foot five inches.

21 Q. What was his weight?

22 A. 140 pounds.

23 **MR. McNAIR:** Lieutenant Mayrant, that's all the
24 questions I have. I appreciate it.

25 **THE COURT:** Mr. Chehoski, cross-examination?

1 **MR. CHEHOSKI:** Very briefly, Your Honor.

2 **THE COURT:** Okay.

3 CROSS-EXAMINATION

4 BY MR. CHEHOSKI:

5 Q. Good afternoon, Lieutenant Mayrant. I just wanted to
6 clarify a few things. At the time of the booking he would
7 be thirty-one; is that right?

8 **THE COURT:** What was the date of the booking,
9 Lieutenant? Do you have it written on there?

10 **THE WITNESS:** Date of the booking?

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

12 **THE WITNESS:** April 17, 2014.

13 **THE COURT:** Okay. Does that sufficiently answer your
14 question?

15 **MR. CHEHOSKI:** Yes, Your Honor. Thank you.

16 BY MR. CHEHOSKI:

17 Q. And you stated that all of the information here was
18 given to you by the inmate?

19 A. That's correct.

20 Q. There was no independent measuring?

21 A. No, sir.

22 Q. No independent weight for the weight?

23 A. No, sir.

24 Q. And you didn't confirm the birth certificate for the
25 age?

1 A. No, sir.

2 **MR. CHEHOSKI:** One moment, please, Your Honor.

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

4 BY MR. CHEHOSKI:

5 Q. And you weren't the one who personally booked
6 Mr. Hunter?

7 A. That's correct.

8 Q. Essentially all you're doing is reading the
9 information off of a piece of paper?

10 A. That's correct. I'm confirming it.

11 Q. Thank you.

12 **THE COURT:** Mr. McNair, any redirect?

13 REDIRECT EXAMINATION

14 BY MR. McNAIR:

15 Q. Mr. Hunter had to be an adult to be booked at the
16 detention center in the first place; is that correct?

17 A. That's right.

18 Q. All right. And you are aware of how those forms are
19 filled out and how they're kept, correct?

20 A. That's correct.

21 Q. All right. And the information provided on that form
22 is provided by the person who's being arrested and being
23 booked in, correct?

24 A. That's correct.

25 **THE COURT:** All right, sir. You can step down,

1 Lieutenant. Thank you.

2 **THE WITNESS:** Thank you.

3 (Witness excused.)

4 **MS. MAYES:** The State calls John Gresham.

5 **THE COURT:** Mr. Gresham, come forward and be sworn,
6 please, sir.

7 (Whereupon, John Gresham was duly sworn by the Clerk
8 of Court.)

9 **THE CLERK:** Thank you, sir. You can have a seat.
10 Once you're seated, state your full name, spelling your
11 last.

12 **THE WITNESS:** My full name is John Charles Gresham.
13 Last name is spelled G-R-E-S-H-A-M.

14 JOHN CHARLES GRESHAM,
15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MAYES:

18 Q. All right. And, Mr. Gresham, where are you employed
19 and in what capacity?

20 A. The Carolina Trader. My actual title is coordinator,
21 but I'm the keeper of records. I make sure everything's
22 squared away.

23 Q. All right. Tell us what The Carolina Trader is.

24 A. It's a classified advertising newspaper. We've got
25 state-wide distribution. People call us up and say hey,

1 I want to sell a thing and we advertise it for them.

2 Q. And how long have you been affiliated with The
3 Carolina Trader advertising company?

4 A. Nine years.

5 Q. And when we talk about the type of publication that
6 Carolina Trader is, is it a print publication, an on-line
7 publication?

8 A. Both, ma'am.

9 Q. All right. I'm gonna ask you whether or not you had
10 the opportunity to -- let me ask you specifically if you
11 have any records with you?

12 A. Yes, ma'am.

13 Q. Did you have the opportunity to pull records
14 affiliated with an Antron Hunter?

15 A. Yes, ma'am.

16 Q. All right. As to Antron Hunter, can you tell us
17 whether or not you were able to find records?

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

19 Q. And can you tell us whether or not you have the date
20 in which Antron Hunter requested an ad to run?

21 A. Yes, ma'am.

22 Q. And before you go any further, what is that date?

23 A. April 17, 2014, ma'am.

24 Q. All right. April 17, 2014. And then once you
25 actually locate the record, can you tell us whether or not

1 you're familiar with that document in your role as keeper
2 of records for Carolina Trader?

3 A. Yes, ma'am.

4 Q. Is the document before you a fair and accurate
5 representation of the ad that was requested by Antron
6 Hunter on the date of April 17, 2014?

7 A. Absolutely, ma'am.

8 **MS. MAYES:** Your Honor, at this time we would ask
9 that this document be marked as State's exhibit --

10 **THE COURT REPORTER:** 84.

11 **THE COURT:** 84. Any objection?

12 **MR. PHILLIPS:** Foundation for relevance.

13 **THE COURT:** Foundation?

14 **MR. PHILLIPS:** Foundation and relevance. Rule 401.

15 **THE COURT:** Well, he's testified that he's the keeper
16 of the records.

17 **MS. MAYES:** I can go further with that, Your Honor,
18 in laying a foundation.

19 **THE COURT:** Okay. If you will. Thank you.

20 BY MS. MAYES:

21 Q. When someone provides an ad, do you also obtain a
22 phone number?

23 A. Yes, ma'am.

24 Q. And did you obtain a phone number for this individual,
25 Antron Hunter, on the date of April 17, 2014?

1 A. Amongst other information, yes, ma'am.

2 Q. All right.

3 **MS. MAYES:** Your Honor, this would be State's 84.

4 **THE COURT:** All right. I'll allow it over objection
5 of defense counsel. I think he's established the
6 foundation. He's the keeper of the records, this is a
7 record that he maintained in the ordinary course of
8 business. It has a name and a phone number for foundation
9 and authentication. I'll allow it in evidence. Thank you.

10 (State's Exhibit Number 84, a Carolina Trader
11 document, was marked and admitted into evidence.)

12 BY MS. MAYES:

13 Q. Okay. I'm gonna return this document to you,
14 Mr. Gresham, State's Exhibit 84. Specifically, you
15 mentioned that a phone number was provided for Antron
16 Hunter and that was for an ad that was to run on
17 April 17th?

18 A. The first run for that ad would have been April 17th.
19 Yes, ma'am.

20 Q. All right. And do you know when the ad was placed?
21 And by that I mean when you were contacted to run the ad.

22 A. The same day, ma'am.

23 Q. That would be April 17th?

24 A. Yes, ma'am.

25 Q. And does a person have to pay a fee in order to run an

1 ad?

2 A. Not up front, ma'am.

3 Q. All right. And so what number was provided to you for
4 Antron Hunter?

5 A. [REDACTED]-4550.

6 Q. And, specifically, do you have an area of the form
7 called customer phone number?

8 A. Yes, ma'am.

9 Q. And is that what's listed as the customer phone
10 number?

11 A. Yes, ma'am, it is.

12 Q. And are there any other customers listed on this form
13 other than Antron Hunter?

14 A. There are not, ma'am.

15 Q. All right. And what is the item that he is seeking to
16 place this ad for?

17 A. A four-door 1968 Buick Skylark.

18 Q. All right. And, specifically, what is -- can you read
19 the ad? I'm gonna ask you to start slowly --

20 A. Yes, ma'am.

21 Q. -- and read slowly enough for the court reporter to
22 capture your testimony, but let's start with the item and
23 the full ad as it ran in The Carolina Trader beginning
24 April 17, 2014.

25 A. 1968 Buick Skylark, four-door. Strong 350 engine.

1 All original. Original paint. Minor body work needed.
2 Car runs really well. Daily driver, if needed. Serious
3 inquiries only. \$10,000 or best offer. This is a very
4 good investment, so please look into it. [REDACTED]-4550.
5 Columbia.

6 Q. All right. And when a series of numbers or a phone
7 number is included in an ad, it's included in an ad for
8 what reason?

9 A. Generally for contact purposes, ma'am.

10 **MS. MAYES:** Thank you. Nothing further, Mr. Gresham.

11 **THE COURT:** All right. Cross-examination,
12 Mr. Phillips.

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

14 CROSS-EXAMINATION

15 BY MR. PHILLIPS:

16 Q. Good afternoon, Mr. Gresham.

17 A. How are you, sir?

18 Q. Good. How are you?

19 A. Living the life.

20 Q. Living the dream, huh? Do you have any other reports
21 or documents regarding this ad? Is this one page the only
22 thing you have in regards --

23 A. I mean, I brought something with me.

24 Q. Could I see that?

25 A. Yeah, you absolutely can. It's just a printout of the

1 PDF copy of the actual ad as it ran.

2 Q. So it did run that day?

3 A. Yes, sir.

4 Q. And this is the only other report or document that you
5 have in regards to --

6 A. With me, yes, sir.

7 Q. Are there additional documents or --

8 A. Not that I can think of off the top of my head. There
9 should only be the record of the ad itself as it was placed
10 by Mr. Hunter and then the actual ad as it ran in the
11 paper.

12 Q. And when you say the -- these other notes, would it
13 be something handwritten for the phone call? Did you
14 specifically take the phone call?

15 A. No, I did not.

16 Q. So when somebody calls in, who do they speak to?

17 A. Just one of our representatives. At the time there
18 were, I think, three or four of us and what happens is
19 you call up, say you want to sell something like a 1968
20 Buick Skylark and you'll speak to one of us and as you're
21 speaking to one of us we're typing your ad as it's given
22 to us.

23 Q. Okay. So it's typed in, not handwritten?

24 A. It's typed into a database, correct.

25 Q. All right. And in that database, would it have any

1 other information other than what's provided?

2 A. Everything that's provided on that document that you
3 have in your hand is what we have.

4 Q. All right. But you weren't the one that took the
5 phone call?

6 A. I was -- more than likely not. No, sir.

7 Q. And you wouldn't -- and you said that they don't pay
8 up front, right?

9 A. It's not a pay upfront. What happens is whenever you
10 place an ad -- it's the honor system. So let's say you
11 place an ad for a 1968 four-door Buick Skylark. Whenever
12 it sells, that's when you call us and say hey, I sold my
13 1968 Buick Skylark and that's when we want to get paid.

14 Q. It's like an honor system?

15 A. Exactly the honor system.

16 Q. That's amazing.

17 A. Call us if you want to sell a Buick Skylark.

18 Q. So where it says daily driver, if needed -- I'm not
19 used to that term of art. Is that saying like he'll be the
20 -- like driving Ms. Daisy? Like, I mean --

21 A. Daily driver is actually pretty common in the verbiage
22 of selling vehicles. That means they drive it daily.

23 Q. Okay. If needed though. I'm just confused.

24 A. My guess is that if you need it to be a daily driver,
25 it's capable of that.

1 Q. That the car worked?

2 A. That's my interpretation of that.

3 Q. I was just confused.

4 A. Yeah.

5 Q. Thank you.

6 A. I don't write them. I just take dictation basically.

7 Q. And that's a common phrase used?

8 A. Daily driver, yes. If needed, not especially, but
9 it's pretty easy to suss out what it means. No offense.

10 Q. Thank you. Just my -- I've been called worse. Thank
11 you.

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

13 **MS. MAYES:** No, sir, Your Honor.

14 **THE COURT:** Thank you, Mr. Gresham for coming. You
15 can be excused.

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

17 (Witness excused.)

18 **MR. McNAIR:** Your Honor, the State calls Investigator
19 Scott Neel.

20 **THE COURT:** Come forward, Investigator Neel, please,
21 to be sworn.

22 (Whereupon, Scott Neel was duly sworn by the Clerk of
23 Court.)

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

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

3 SCOTT NEEL,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. McNAIR:

7 Q. Investigator Neel, where are you currently employed?

8 A. I currently work at the Aiken County Sheriff's Office.

9 Q. How long have you been with the Aiken County Sheriff's
10 Department?

11 A. Just over two years.

12 Q. All right. Prior to working in Aiken, did you work
13 for the West Columbia Police Department?

14 A. Yes, sir, I did.

15 Q. How long were you with West Columbia?

16 A. Eight years.

17 Q. And what was your position there prior to leaving?

18 A. I was working as an investigator.

19 Q. Were you working there back in 2014?

20 A. Yes, sir.

21 Q. Can you tell the jury a little bit about your
22 experience and training in working crime scenes?

23 A. I started working at West Columbia in 2006 and
24 spent about two years on the road and then moved into
25 investigations in 2008. Once you come in, as a part of

1 your training, you would train with the crime scene
2 investigators, you would go out on crime scenes with them.
3 They would teach you different techniques and things like
4 that. Also part of your training is you would go through
5 -- the Criminal Justice Academy offers crime scene
6 processing and basic techniques and things like that you
7 would use, so that was also a part of my training.

8 Q. Okay. And who was the lead crime scene investigator
9 at West Columbia at the time you were there?

10 A. Chuck Bramlett.

11 Q. Prior to his passing, how long had Chuck Bramlett
12 been in law enforcement?

13 A. I believe he'd been in just over twenty years,
14 twenty-one years.

15 Q. How much experience did he have doing crime scenes?

16 A. I believe about fifteen years he'd been doing it.

17 Q. All right. Have you worked your own crime scenes
18 before?

19 A. Yes, sir.

20 Q. Have you also worked crime scenes with Chuck Bramlett?

21 A. Yes.

22 Q. All right. And are you aware of Mr. Bramlett's -- how
23 he worked a crime scene?

24 A. Yes, sir, I was.

25 Q. How he collected and documented evidence?

1 A. Yes, sir.

2 Q. All right. Now did you respond to [REDACTED]
3 Apartments on April 13, 2014, in this case?

4 A. Yes, sir, I did.

5 Q. All right. What time did you get on-scene there?

6 A. I was notified at around 3:19 in the morning and I
7 made it on-scene around 3:51.

8 Q. All right. Were you briefed on what was going on when
9 you arrived?

10 A. Yes, sir.

11 Q. Where did you respond initially?

12 A. Initially we responded to Apartment [REDACTED] 11.

13 Q. All right. Is that where the victim was located?

14 A. Yes, sir.

15 Q. All right. Now I guess just walk us through, I guess,
16 kind of what you did at that point.

17 A. Okay. Initially when you respond to a scene like
18 this, you would meet with -- if there's a supervisor on the
19 scene or one of the patrol officers that first initially
20 responded, you would meet with them and gather up as much
21 information as they -- that they had available, you know,
22 your victim's information, what the victim was able to
23 state what happened prior to being transported to the
24 hospital. They'd provide you any witnesses that may be
25 available. You know, obviously in this situation they

1 explained to us that the victim was initially found in
2 apartment [REDACTED] 11 and just explained that the victim had --
3 was living in [REDACTED], but had walked down to [REDACTED] 11 and that's
4 why she was there.

5 Q. All right. Will you tell me had [REDACTED] been secured
6 prior to your arrival?

7 A. Yes, sir, it had.

8 Q. So other than clearing the residence, had anybody been
9 in [REDACTED]?

10 A. No, sir.

11 Q. Did you leave at some point and get a search warrant
12 for [REDACTED]?

13 A. I did, yes, sir.

14 Q. All right. Would anybody have entered [REDACTED] prior to
15 you getting back with that search warrant?

16 A. No, sir.

17 Q. Now, I guess, describe for the jury, in general, how
18 you approach working a crime scene.

19 A. Normally you'll start with -- kind of work it from
20 the outside in is what we kind of refer to it and what I
21 mean by that is in this scenario you would start from the
22 outside, you would start by taking photographs of the
23 outside of the apartment, but you would kind of walk the
24 area, look for any type of clothing or any type of article
25 that may be significant or may be evidence. You would walk

1 through -- do a walk through of the inside of the residence
2 looking to identify what items may be evidence. You would
3 -- once you've done a walk through of everything, you would
4 come back -- photograph everything before you actually
5 start doing any of your collecting.

6 Q. Okay. So you walk through to kind of get a fill of
7 what you're dealing with, what you're looking at?

8 A. Yes.

9 Q. And then you start working your way back and
10 documenting everything, taking photographs and marking the
11 evidence and collecting the evidence, correct?

12 A. Yes.

13 Q. All right. Now before we get to the particulars of
14 this case, did you work alongside Chuck Bramlett in
15 processing this crime scene?

16 A. Yes, sir, I did.

17 Q. Were you in his presence the entire time you-all were
18 working this scene?

19 A. Other than when I left for the search warrant, yes,
20 sir.

21 Q. Right. But he would not have entered the residence
22 and moved anything prior to you getting back with the
23 search warrant, correct?

24 A. No, sir. Correct.

25 Q. All right. Were you present when he marked and took

1 photos of the crime scene?

2 A. Yes, I was.

3 Q. And you were present when he collected evidence and
4 bagged evidence in this case?

5 A. Yes, I was.

6 Q. All right. And were you present when he sealed that
7 evidence in bags?

8 A. Yes, I was.

9 Q. In fact, were you present when he took any evidence
10 collected in this case back to the West Columbia Police
11 Department and put it in evidence?

12 A. Yes, I was.

13 Q. All right.

14 (State's Exhibit Number 85 through 100 were marked for
15 identification.)

16 BY MR. McNAIR:

17 Q. All right. I want to show you what's been premarked
18 as State's 85 through 100. Can you look through these and
19 tell me whether these are fair and accurate representations
20 of the way [REDACTED] looked on April 13, 2014?

21 A. Yes, sir.

22 Q. They are?

23 A. Yes, sir.

24 **MR. McNAIR:** Your Honor, we moved to admit State's 85
25 through 100 at this time.

1 **MR. PHILLIPS:** Subject to the prior motion, Your
2 Honor.

3 **THE COURT:** Subject -- over the objections and prior
4 motions already ruled upon, 85 through 100 in evidence.

5 (State's Exhibit Numbers 85 through 100, photographs,
6 were admitted into evidence.)

7 BY MR. McNAIR:

8 Q. I'm also gonna show you State's Exhibit 33, 34, 44 and
9 45 and tell me whether or not that accurately reflects the
10 scene on April 13, 2014.

11 A. Yes, sir, they do.

12 **THE COURT:** All right.

13 **MR. McNAIR:** Your Honor, permission for the witness to
14 step down. At this time, Your Honor, we do move State's
15 33, 34, 44 and 45 into evidence.

16 **THE COURT:** Subject to the same objection?

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

18 **THE COURT:** Thank you. In evidence over objection.

19 (State's Exhibit Number 33, 34, 44 and 45,
20 photographs, were admitted into evidence.)

21 **MR. McNAIR:** All right. Permission for the witness
22 to step down, Your Honor?

23 **THE COURT:** Yes, sir. Where's he going?

24 **MR. McNAIR:** To the overhead here.

25 **THE COURT:** Certainly.

1 (Whereupon, the witness steps down from the witness
2 stand.)

3 **THE COURT:** Investigator, please keep your voice up.
4 I know there's a microphone up there, but I'm not sure how
5 well it picks things up. The jury and the court reporter
6 need to hear you, okay?

7 **THE WITNESS:** Okay. Yes, sir.

8 BY MR. McNAIR:

9 Q. All right. Investigator Neel, you testified you
10 initially responded to Unit ■ 11 where Ms. Simon was?

11 A. Yes, sir, I did.

12 Q. All right. And what was going on with Ms. Simon when
13 you arrived there?

14 A. She had already been transported to the hospital.

15 Q. All right. I'm gonna show you what's marked as
16 State's Exhibit 6. What are we looking at here on the
17 floor?

18 A. This is the living room of Apartment ■ 11. On the
19 floor there was a black -- a black article of clothing
20 that's marked there in the center of the living room.

21 Q. All right. And through your investigation were you
22 able to determine who that article of clothing belonged to?

23 A. To the victim, Ms. Simon.

24 Q. All right. And was that placard there before you
25 arrived?

1 A. It was there when I got there. Yes, sir.

2 Q. All right. State's 2, what are we looking at here?

3 A. This is an up-close picture of the thing we just spoke
4 about. The white placard has been replaced by a yellow
5 placard by Investigator Bramlett. It's an up-close picture
6 of the black article of clothing and also there was a
7 projectile located on the ground.

8 Q. All right. Were you present when Officer Bramlett
9 marked that projectile?

10 A. Yes, sir, I was.

11 Q. This is just a close-up of that projectile?

12 A. Yes, sir.

13 **THE COURT:** That number please, sir?

14 **MR. McNAIR:** That is State's 3..

15 **THE COURT:** Thank you.

16 BY MR. McNAIR:

17 Q. And that was collected by Officer Bramlett and bagged
18 in your presence?

19 A. Yes, sir.

20 Q. State's 11, can you tell us what this is?

21 A. This is outside the apartment.

22 Q. Which apartment?

23 A. [REDACTED]. There was a black article of clothing that was
24 found outside within close proximity of the concrete pad
25 that leads up to the sliding glass door going into the

1 apartment.

2 Q. All right. And was that article of clothing collected
3 in this case?

4 A. Yes, sir, it was.

5 Q. All right. At the time you collected it, did you know
6 who it belonged to?

7 A. No, sir.

8 Q. Through your investigation, did you later learn who it
9 belonged to?

10 A. To the victim, Ms. Simon.

11 Q. All right. State's 44, what are we looking at here?

12 A. This is a picture of -- into the center of the living
13 room of Apartment [REDACTED]. There were two articles of
14 clothing found laying in the middle of the living room.
15 To the right there's gonna be that sliding glass entry
16 door and this would be looking at the main entrance into
17 the apartment.

18 Q. All right. And were these articles of clothing
19 collected?

20 A. Yes, sir, they were.

21 Q. And did you know their relevance to the investigation
22 at that point?

23 A. At that point, no, sir.

24 Q. All right. Did you later learn who those items of
25 clothing belonged to?

1 A. Yes, sir, they belonged to Ms. Simon.

2 Q. State's 45, is that the same articles of clothing,
3 just more placards?

4 A. Yes, sir. And just an up-closer view.

5 Q. Okay. Can you tell us what State's 85 is showing us?

6 A. This is one of the walls in the hallway of the
7 apartment. Down below the thermostat there was a bullet
8 hole.

9 Q. All right. Can you just point to where the bullet
10 hole is on that picture?

11 A. It is right there.

12 Q. All right. Sir, can you, please, mark on State's 53
13 for demonstrative purposes where that bullet hole would be
14 located on this diagram?

15 **MR. PHILLIPS:** Subject to the prior motion on the
16 diagram.

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

18 BY MR. McNAIR:

19 Q. And where is the bathroom represented on this diagram?

20 A. It's straight across from where the bullet hole went
21 through.

22 Q. Okay. State's 86, is that just a close-up of what we
23 just looked at?

24 A. Yes, sir, that's an up-close view of the bullet hole.

25 Q. State's 87, can you tell us what that is?

1 A. That is a closet door.

2 Q. All right. Do you know what's behind that closet
3 door?

4 A. I believe it went into the -- where the water heater
5 was located.

6 Q. All right. Can you point out on diagram where you
7 believe that door would be?

8 A. This is where the water heater was and this is the
9 door right here.

10 Q. Okay. State's 88, what does this show?

11 A. That is a picture of the electrical panel inside this
12 closet where the hot water heater was also located.

13 Q. All right. And is the electrical panel indicated in
14 red on that diagram?

15 A. Yes, sir.

16 Q. All right. And what, if anything, did you notice
17 about that electrical panel?

18 A. At the bottom part there was an indentation in it where
19 it looked like something had struck it.

20 Q. All right. Is that what appeared to be a bullet mark?

21 A. Yes, sir.

22 Q. All right. Can you point that out with the laser
23 pointer, please.

24 A. It was right there.

25 Q. All right. State's 89.

1 A. That is the floor in front of the control panel and
2 that is the projectile that struck the control panel and
3 fell to the floor.

4 Q. All right. Can you mark that with a "P" on the
5 diagram?

6 A. (Witness complies.)

7 Q. Okay. And can you mark that "X" with "BH" for bullet
8 hole?

9 A. (Witness complies.)

10 Q. State's 11 (sic), is that just a close-up of the
11 projectile in the water closet?

12 A. Yes, sir.

13 Q. All right. Now was that projectile collected in your
14 presence by Investigator Bramlett?

15 A. Yes, sir, it was.

16 Q. All right. And it was bagged and sealed in your
17 presence?

18 A. Yes, sir.

19 Q. State's 91.

20 A. This is just outside the closet that we were just
21 talking about. The wall that leads into the victim's
22 bedroom.

23 **THE COURT:** I'm sorry, your voice dropped off.

24 **THE WITNESS:** I'm sorry. This is the wall that leads
25 into the victim's bedroom.

1 **THE COURT:** Thank you.

2 BY MR. McNAIR:

3 Q. Okay. So the victim's bedroom is to the right and the
4 water closet to the left?

5 A. Yes, sir.

6 Q. And what is marked there by Placard 8?

7 A. Down here there was a shell casing found.

8 Q. All right. This is the shell casing?

9 A. Yes, sir, it is.

10 Q. All right. And can you just mark on the diagram where
11 this shell casing was.

12 A. (Witness complies.)

13 **THE COURT:** The number of that photograph, Mr. McNair?

14 **MR. McNAIR:** Your Honor, that's State's 92.

15 **THE COURT:** Thank you.

16 BY MR. McNAIR:

17 Q. Again, collected in your presence, bagged in your
18 presence and sealed in your presence?

19 A. Yes, sir.

20 Q. State's 93, what is represented in that photo?

21 A. This is a shell casing that was found on the bathroom
22 floor in front of the tub.

23 Q. All right. Can you, please, indicate on the diagram
24 where that is.

25 A. In that area.

1 Q. Okay. Again, collected in your presence and bagged in
2 your presence?

3 A. Yes, sir, it was.

4 Q. State's 94.

5 A. This is the tub that was in the bathroom. There were
6 two shell casings found laying inside of it.

7 Q. All right. State's 95, is that a close-up of the
8 shell casings in the tub?

9 A. Yes, sir, it is.

10 Q. Okay. Those were collected in your presence as well?

11 A. Yes, sir.

12 Q. State's 96.

13 A. This would be kind of standing at the bedroom, of the
14 victim's bedroom, looking out into the small hall. To your
15 right would be the closet where the electrical panel box
16 was and then straight in here is the bathroom where the tub
17 is where we found the shell casings.

18 Q. All right. State's 97.

19 A. That is another shell casing that was found in the
20 floor of the bathroom.

21 Q. All right. It's hard to see that in State's 96 that
22 you just looked at. Can you make you out that Placard
23 Number 3 in that?

24 A. It is right there.

25 Q. Okay. Can you, please, mark that on the diagram.

1 A. (Witness complies.)

2 Q. And that was collected in your presence, correct?

3 A. Yes, sir, it was.

4 Q. State's 98.

5 A. That was another shell casing that was found in the
6 floor of the bathroom.

7 Q. Okay. That's right near the Placard Number 3 that we
8 just viewed?

9 A. Yes, it is.

10 Q. And what is that? Is that a shell casing or is that
11 a --

12 A. Oh, a projectile. I'm sorry.

13 Q. A projectile?

14 A. A projectile from --

15 Q. All right. And what does that appear to be on that
16 projectile?

17 A. Where?

18 Q. Can you, please, mark where that projectile is on that
19 diagram.

20 A. (Witness complies.)

21 Q. That was collected in your presence as well?

22 A. Yes, sir.

23 Q. State's 99.

24 A. This is also in the bathroom. Behind the bathroom
25 door in the back corner, there was an additional projectile

1 found back there.

2 Q. All right. Can you mark that on the diagram?

3 A. Yes, sir.

4 Q. State's 34, what are we looking at here?

5 A. That's the doorway -- or, excuse me, the door into the
6 bathroom and that is a hole, a bullet hole, in the door of
7 the bathroom.

8 Q. All right. Is that at the bottom or the top or where
9 is that on the door?

10 A. That's towards the bottom. You can see the floor is
11 here and so it's just slightly up from the floor of the
12 bathroom.

13 Q. All right. And what is that indicative of?

14 A. It would indicate that when the round was fired that
15 it would have been either very low on the ground or laying
16 on the ground when the gun was fired.

17 Q. And State's 33.

18 A. That was a shell casing there that found in the middle
19 of the floor of the bathroom.

20 Q. Was that the one that was previously marked by
21 Number 3?

22 A. I believe so. Yes, sir.

23 Q. State's 100.

24 A. This in the bathroom. The door that leads out to the
25 hallway is here.. There was a large amount of transfer

1 blood found here in the center in front of the sink and
2 then there was also some clothing found here next to the
3 blood.

4 Q. All right. And were you present when that item of
5 clothing was collected?

6 A. Yes, sir, I was.

7 Q. Do you know whether -- how many pieces of clothing
8 that was?

9 A. There were two.

10 Q. All right. Can you describe how you found --

11 **MR. PHILLIPS:** That's subject to our prior motion,
12 Your Honor.

13 **THE COURT:** I note your objection. Is this something
14 you observed yourself?

15 **THE WITNESS:** Yes, sir.

16 **THE COURT:** All right, sir. Go ahead.

17 A. There were two articles of clothing. Inside the
18 clothing there was like a nylon knit skull-type cap.

19 Q. All right. And where was that located inside of the
20 clothing?

21 A. I believe it was found just kind of stuffed down
22 inside in the clothing.

23 Q. All right. Where -- I guess where your head would
24 come out, that portion?

25 A. Right. It was -- yeah, if there was a -- I guess the

1 hood -- the hood portion, kind of down inside that.

2 Q. All right. Now how was that particular item of
3 clothing packaged?

4 A. Both of those items were packaged together.

5 Q. All right. Why did you package them together?

6 A. Just to preserve any evidence that it may have had.
7 If you separate it out, you run the risk of evidence being
8 destroyed.

9 Q. Okay. I'm gonna show you what's been marked as
10 State's Exhibit 55. Can you tell me whether or not that is
11 an accurate representation of the bathroom on the incident
12 date?

13 A. Yes, sir, it is.

14 **MR. McNAIR:** Do you have any objection?

15 **MR. PHILLIPS:** Just subject to the prior motion.

16 **THE COURT:** I understand. Thank you.

17 **MR. McNAIR:** Your Honor, we offer State's 55 in
18 evidence.

19 **THE COURT:** Subject to prior objection, it's in.
20 Thank you.

21 **BY MR. McNAIR:**

22 Q. All right. So this item was collected. You said
23 there was a hoodie and then inside was another article of
24 clothing?

25 A. Yes, sir. I believe it was a nylon cap, a skull

1 cap-type.

2 Q. All right. And you could see it in there at the time
3 you collected it?

4 A. Yes, sir. When you picked it up, you know, to see if
5 there was anything that may fall out or anything like that,
6 you could clearly see it in there.

7 Q. All right. And that was bagged together to preserve
8 any type of evidence that may be obtained from it?

9 A. Yes, sir.

10 Q. All right. So how many total shell casings were found
11 inside of [REDACTED]?

12 A. We found five shell casings.

13 Q. All right. Where were the other two found that aren't
14 marked on this diagram? There were two in the tub,
15 correct --

16 A. Yes, sir.

17 Q. -- that you previously talked about. All right. And
18 how many total projectiles were recovered from the scene?

19 A. There were four.

20 Q. How many were recovered from [REDACTED]?

21 A. There were three found inside apartment [REDACTED] and then
22 one found that was found in [REDACTED] 11 where the victim was
23 found.

24 Q. Okay. You can have a seat again. Thank you.

25 (Whereupon, the witness returned to the witness

1 stand.)

2 BY MR. McNAIR:

3 Q. Not to beat the dead horse, but all these items that
4 were collected in your presence, you saw in Investigator
5 Bramlett collect them and bag them, correct?

6 A. Correct.

7 Q. And secure them in an evidence bag?

8 A. Yes, sir.

9 (State's Exhibit Number 101 was marked for
10 identification.)

11 BY MR. McNAIR:

12 Q. All right. I'm gonna show you what's marked as
13 State's Exhibit 101 and ask that you open that and tell me
14 if you can identify it, if you will.

15 A. Yes, sir.

16 Q. Do you want some gloves?

17 A. Yes. This was the black hoodie that was collected in
18 the bathroom floor.

19 Q. Okay. And is that also the cap that you mentioned as
20 being inside the hoodie when you collected it?

21 A. Yes, sir.

22 **MR. McNAIR:** Your Honor, we move to admit State's 101
23 at this time.

24 **MR. PHILLIPS:** Subject to prior motion, Your Honor.

25 **THE COURT:** Okay. I'll note it's subject to prior

1 objection, Mr. Phillips. It's also being offered subject
2 to being deemed to be relevant.

3 **MR. McNAIR:** We'll connect that up later, Your Honor.

4 (State's Exhibit Number 101, bag with hoodie and cap,
5 was admitted into evidence.)

6 (State's Exhibit Number 102 through 105 were marked
7 for identification.)

8 BY MR. McNAIR:

9 Q. All right. State's 102, can you identify this?

10 A. This is the black nylon cloth that was shown a picture
11 of that was located outside the apartment on the ground
12 close to the patio, the concrete patio.

13 Q. All right.

14 A. Do you want me to take it out?

15 Q. That's all right.

16 **MR. McNAIR:** Your Honor, we offer State's 102 into
17 evidence.

18 **THE COURT:** Same objection?

19 **MR. PHILLIPS:** Yes, Your Honor. Thank you.

20 **THE COURT:** Subject to same objection. Thank you.

21 (State's Exhibit Number 102, black cloth, was admitted
22 into evidence.)

23 BY MR. McNAIR:

24 Q. All right. State's 103, can you identify this?

25 A. This was one of the pieces of clothing that was

1 located where the victim was found in Apartment [REDACTED] 11.

2 Q. That you determined that belonged to the victim?

3 A. Yes, sir.

4 **MR. McNAIR:** Your Honor, we move State's 103 into
5 evidence at this point.

6 **THE COURT:** Subject to the same objection?

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

8 (State's Exhibit Number 103, a clothing item, was
9 admitted into evidence.)

10 BY MR. McNAIR:

11 Q. All right. State's 104.

12 A. This is the piece of clothing that was found in the
13 middle of the living room in Apartment [REDACTED].

14 Q. All right. That you determined belonged to the
15 victim?

16 A. Yes, sir.

17 **MR. McNAIR:** Your Honor, we offer State's 104 into
18 evidence at this time.

19 **THE COURT:** Subject to the same objection.

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

21 **THE COURT:** That was [REDACTED]?

22 **MR. McNAIR:** Yes, sir.

23 (State's Exhibit Number 104, a clothing item, was
24 admitted into evidence.)

25 BY MR. McNAIR:

1 Q. And State's 105.

2 A. This was the second article of clothing that was
3 located on the floor of the living room in Apartment [REDACTED].

4 MR. McNAIR: Your Honor, we offer State's 105 into
5 evidence at this time.

6 THE COURT: Also subject to the same objection.

7 MR. PHILLIPS: Yes, Your Honor.

8 (State's Exhibit Number 105, a clothing item, was
9 admitted into evidence.)

10 (State's Exhibit Number 106 was marked for
11 identification.)

12 BY MR. McNAIR:

13 Q. State's 106, can you please identify this? You can
14 open it up if you need to.

15 A. It looks like it contains four items. One is the
16 projectile that was located near the water heater in the
17 closet, a projectile that was also located in the bathroom
18 floor and another projectile that was collected from the
19 living room carpet in Apartment [REDACTED] 11 where the victim was
20 located, and then the fourth item is also a projectile that
21 was collected from the bathroom of Apartment [REDACTED].

22 Q. All right. Can you take a look at those projectiles
23 and confirm they're the ones viewed on the photographs?

24 A. This is the projectile from the closet where the water
25 heater was found. Let's see. And this is the projectile

1 from the floor of the bathroom that was marked with the
2 Placard Number 14 in the photographs. This is the
3 projectile that was taken from Apartment [REDACTED] 11. And then
4 this is the projectile taken from the bathroom floor that
5 was marked with Placard Number 7.

6 **MR. McNAIR:** Your Honor, we offer State's Exhibit 106
7 into evidence at this time.

8 **THE COURT:** Subject to the prior objection.

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

10 (State's Exhibit Number 106, projectiles, were
11 admitted into evidence.)

12 (State's Exhibit Number 107 was marked for
13 identification.)

14 BY MR. McNAIR:

15 Q. All right. State's 107, can you identify this for us?
16 You can use the scissors.

17 A. This is the shell casing that was photographed and
18 marked with Placard Number 6. This also is a shell casing
19 taken from the bathroom floor. This is a shell casing that
20 was also taken from the bathroom floor of Apartment [REDACTED].
21 And this is a shell casing that was located in the tub of
22 Apartment [REDACTED]. This is the shell casing that was found in
23 the hallway right outside the closet where the hot water
24 heater was.

25 **MR. McNAIR:** Your Honor, we offer State's 107 into

1 evidence at this time.

2 **THE COURT:** Subject to the same objection, 107 in
3 evidence.

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

5 (State's Exhibit Number 107, shell casings, were
6 admitted into evidence.)

7 (State's Exhibit Number 108 was marked for
8 identification.)

9 BY MR. McNAIR:

10 Q. I'll show you State's 108 and tell me if you can
11 identify that.

12 A. This contains a swab that was taken from the sliding
13 glass door of the apartment.

14 Q. Who took that swab?

15 A. Investigator Bramlett.

16 Q. Was that taken in your presence?

17 A. Yes, sir, it was.

18 Q. And bagged in your presence and sealed in your
19 presence?

20 A. Yes, sir.

21 **MR. McNAIR:** Your Honor, we offered State's 108 into
22 evidence at this time.

23 **THE COURT:** Same objection.

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

25 **THE COURT:** 108 in evidence over objection.

1 (State's Exhibit Numb 108, swab from door, was
2 admitted into evidence.)

3 BY MR. McNAIR:

4 Q. A few photos I neglected to show you. State's
5 Exhibit 14, can you see it?

6 A. Yes, sir. That's a picture standing outside the
7 victim's bedroom looking into her bedroom. That's her bed
8 there and then the door into the residence.

9 Q. What, if anything, did you notice about the wall in
10 that bedroom?

11 A. To the right wall there was a bullet hole.

12 Q. I'll show you State's 13. Can you see it from where
13 you are?

14 A. Right here. There was a bullet hole there.

15 Q. All right. State's 16.

16 A. That's a picture of the bed of Ms. Simon showing the
17 bed linens and it appeared there was some drywall and
18 things like that to indicate that something had struck the
19 wall close by and fell onto the bed.

20 Q. Were you involved in any -- executing any search
21 warrants in this case?

22 A. Yes, sir, I was.

23 Q. Were you involved in a search of [REDACTED] Belle Claire
24 Drive?

25 A. Yes, sir.

1 Q. All right. Why was that location searched?

2 A. That was the address for Mr. Hunter's mother.

3 Q. All right. Do you recall what date you searched that
4 residence?

5 A. It was searched on April the 22nd.

6 Q. Was anything of value collected from that location?

7 A. No, sir.

8 Q. Were you also involved in the search of a 1968 Buick
9 Skylark?

10 A. Yes, sir, I was.

11 Q. What date was that searched?

12 A. That was also completed on April 22nd.

13 Q. And why was that vehicle searched?

14 A. That was the vehicle that belonged to Mr. Hunter.

15 Q. All right. And where was it located when you searched
16 it?

17 A. It was in the driveway of [REDACTED] Twin Eagle Road.

18 Q. And through your investigation did you learn whose
19 residence that was?

20 A. Yes, sir, it belonged to Tanisha Taylor.

21 Q. All right. Is that also where Mr. Hunter was known
22 to reside at?

23 A. Yes, sir.

24 Q. All right. Were any items collected from the
25 Defendant's vehicle?

1 A. In the front driver's side seat, there was a black
2 T-shirt that we collected.

3 Q. Did that appear to have any relevance to this
4 investigation?

5 A. Not that we knew of, no, sir.

6 Q. All right. Now did you do a visual inspection of that
7 vehicle?

8 A. Yes, sir.

9 Q. Did you observe what appeared to be blood in that
10 vehicle?

11 A. I did not. No, sir.

12 Q. All right. What type of fabric did that vehicle have?

13 A. It appeared to have like vinyl seat coverings.

14 Q. Is that the type of fabric that's conducive to being
15 wiped down?

16 **MR. PHILLIPS:** Objection, Your Honor.

17 **THE COURT:** I sustain that objection to that.

18 (State's Exhibit Number 109 and 110 were marked for
19 identification.)

20 BY MR. MCNAIR:

21 Q. I'm gonna show you State's 109 and 110. Can you
22 identify these photos?

23 A. This is a photograph from the outside of the vehicle
24 and this is a photograph showing the T-shirt that was
25 collected.

1 **THE COURT:** Which vehicle was that?

2 **THE WITNESS:** Mr. Hunter's. The 1964 Buick Skylark.

3 **THE COURT:** Okay.

4 **MR. McNAIR:** Your Honor, we offer State's 109 and 110
5 into evidence.

6 **THE COURT:** Any objection?

7 **MR. PHILLIPS:** No objection.

8 **THE COURT:** No objection. 109 and 110 in evidence.
9 Thank you.

10 (State's Exhibit Number 109 and State's Exhibit
11 Number 110, photographs, were admitted into evidence.)

12 BY MR. McNAIR:

13 Q. State's 110. That's the Buick Skylark you were just
14 testifying about?

15 A. Yes, sir.

16 Q. State's 109, that is the inside of that vehicle?

17 A. Yes, sir.

18 Q. All right. And you testified the seats appeared to be
19 a vinyl-type material?

20 A. As best as I can tell, yes, sir.

21 Q. And what about the steering wheel?

22 A. It appeared to have -- wrapped in plastic.

23 Q. Okay. Based on your experience in crime scene
24 investigations, do stains -- or blood stains usually remain
25 in fabrics of that nature?

1 **MR. PHILLIPS:** Your Honor, you've already sustained
2 this line of questioning.

3 **THE COURT:** And really I don't think that that
4 requires -- I think that the jury's capable of reaching
5 those conclusions.

6 **MR. McNAIR:** Yes, sir. I'll move on.

7 **THE COURT:** Thank you.

8 BY MR. McNAIR:

9 Q. Did you -- were you also involved in a search of
10 [REDACTED] Twin Eagle Drive in Columbia?

11 A. Yes, sir.

12 Q. Who's residence was that?

13 A. That was the residence of Tanisha Taylor.

14 Q. And is that where the Defendant was known to live?

15 A. Yes, sir.

16 Q. What date did you search that residence?

17 A. April the 22nd.

18 Q. And what were you searching for in that residence?

19 A. I believe it was the day prior Ms. Taylor had been
20 interviewed at the police department and she had given us
21 some information that she believed Mr. Hunter --

22 **MR. PHILLIPS:** Objection.

23 **THE COURT:** I'll sustain the objection as to what she
24 may have believed. I'll let him testify as to what he
25 found.

1 **MR. McNAIR:** Your Honor, I guess my question is why he
2 was searching that particular residence, so he's offering
3 an explanation of what they were looking for. I think that
4 would be an exception to hearsay.

5 **THE COURT:** Well, it --

6 **MR. McNAIR:** Or it would not be hearsay.

7 **THE COURT:** Well, here's -- here's what's it's all
8 about. If he found what she said was there, then there's
9 some probative value. If they did not find what she said
10 was there, then it's hearsay and its prejudicial impact
11 could outweigh any probative value in that regard. In
12 other words, in that particular case it just becomes her
13 testimony about what she said was there. That's still
14 hearsay.

15 BY MR. McNAIR:

16 Q. What were you searching for at that location?

17 **THE COURT:** What did you find there.

18 Q. What did you find at that location?

19 A. There were no items collected from the residence.

20 **THE COURT:** Okay. Certainly you can ask her, if she
21 testifies, Ms. Taylor, what she told them, okay?

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

23 BY MR. McNAIR:

24 Q. Now during the course of your investigation, did you
25 have the opportunity to actually meet with Mr. Hunter?

1 A. Yes, sir.

2 Q. What date was that?

3 A. That was on April the 21st..

4 Q. All right. Was he under arrest or in custody at that
5 point?

6 A. Yes, sir, he was.

7 Q. Where did you meet with him?

8 A. We had him transported from Lexington County Detention
9 Center to West Columbia Police Department.

10 Q. Who was present for that interview?

11 A. Myself and Investigator Thomas Griffin.

12 Q. Prior to meeting him, did you advise of his Miranda
13 rights?

14 A. Yes, I did.

15 **THE COURT:** Are you looking for the Miranda form?

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

17 **THE COURT:** This is the same interview that
18 Investigator Griffin has previously testified about; is
19 that right?

20 **MR. McNAIR:** Yes, sir.

21 **THE COURT:** And so that's already in evidence and so
22 I don't think we need to go through all of that again.

23 **MR. McNAIR:** All right.

24 BY MR. McNAIR:

25 Q. You used the standard form issued by your department?

1 A. Yes, sir.

2 Q. Okay. And did you read the rights to Mr. Hunter?

3 A. Yes, sir.

4 Q. Did he acknowledge he understood his rights?

5 A. Yes, sir.

6 Q. And how did you have him acknowledge he understood his
7 rights?

8 A. After reading each one, you have him initial beside
9 it.

10 Q. All right. And did he, in fact, initial beside all
11 his rights?

12 A. Yes, sir, he did.

13 Q. And to the best of your knowledge, did he knowingly
14 and voluntarily waive those rights?

15 A. Yes, he did.

16 Q. Did you all force, threaten or promise him anything in
17 exchange for talking to you?

18 A. No, sir. Not at all.

19 Q. All right. What did you ask Mr. Hunter about when you
20 spoke to him?

21 A. This was the second interview and simply an attempt
22 to try to gain some type of information from him. The
23 conversation -- he never really wanted to tell us anything.
24 He --

25 **MR. PHILLIPS:** Objection, Your Honor. May we

1 approach?

2 **THE COURT:** All right. You can say what he said,
3 Investigator Neel. The jury will have to draw its
4 conclusion if they believe all of that as to exactly what
5 the import of that was. I will sustain the objection and
6 ask the jury to disregard any statement that he never
7 wanted to tell us anything. That's a very subjective
8 statement and it's -- you can -- the investigator can say
9 as to exactly what he was told, if anything.

10 **MR. McNAIR:** All right.

11 **MR. PHILLIPS:** And I'll need to put a matter of law
12 at some point.

13 **THE COURT:** Okay. We'll do that.

14 BY MR. McNAIR:

15 Q. Investigator Neel, did you take notes during your
16 conversation with Mr. Hunter?

17 A. I did.

18 Q. Are you taking those notes while you were speaking
19 with him?

20 A. Yes, sir.

21 Q. Do you have those notes with you?

22 A. I do.

23 Q. Will you, please, read any statements Mr. Hunter made
24 to you.

25 A. During the interview I showed him a confirmation

1 sheet that we had received from the State Law Enforcement
2 Division indicating that his DNA matched to some evidence
3 we collected. He stated to me that there was no reason
4 for him to confess, that it would not help him if he told
5 me the truth. I continued to tell Mr. Hunter that it
6 would be better for him if he did not -- if he did take
7 responsibility and told the truth.

8 **MR. PHILLIPS:** Your Honor, the witness is not allowed
9 to just read directly. He can fresh his recollection.

10 **THE COURT:** All right. I'm gonna let him do it. He's
11 refreshing his memory from these particular notes. I think
12 the concern is that he recount as best he can exactly what
13 was said and rather than a summary. We're all aware of how
14 -- of how nuances and paraphrases of these things can be
15 misconstrued. As a matter of fact, the first statement he
16 made in that regard is evidence of that, so.

17 **MR. PHILLIPS:** Right. And it would be his handwriting
18 and his impressions, his --

19 **THE COURT:** That's right. That's fine. They're his
20 notes and he can testify to them. Go ahead. You can
21 continue, Investigator.

22 **THE WITNESS:** Mr. Hunter continued to ask for charges
23 to be dropped and continued to ask for a bargain or some
24 type of deal.

25 BY MR. McNAIR:

1 Q. All right. And what did he tell you he would do if
2 you gave him a deal?. What did he indicate to you?

3 A. He indicated that if we were able to make some type of
4 bargain or deal that he would tell us the truth.

5 Q. Okay.

6 **MR. McNAIR:** I beg the Court's indulgence.

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

8 BY MR. McNAIR:

9 Q. Are you familiar with semiautomatic pistols?

10 A. Yes, sir.

11 Q. How does a casing travel out of a semiautomatic
12 pistol? Can it travel a distance away from where it's
13 actually fired?

14 A. Yes, sir, it can.

15 Q. All right. Is it -- and how does that happen?

16 A. There is typically an ejector port at the top of the
17 slide and when the projectile is forced through the barrel
18 the casing would be ejected out of the port.

19 Q. Okay. So a casing could end up in the tub, for
20 example, even though it wasn't fired in the tub?

21 A. Sure. Absolutely.

22 Q. Now are you familiar with [REDACTED] Apartments?

23 A. Yes, sir.

24 Q. I'm going to show you State's Exhibit 54, which is --
25 do you recognize that?

1 A. Yes, sir, I do.

2 Q. What is that?

3 A. That is an aerial view of [REDACTED] Apartments -- or
4 a section of the [REDACTED] Apartments.

5 Q. Do you know where [REDACTED] is on this exhibit?

6 A. I do. It should be on the far end in the bottom
7 apartment.

8 Q. Okay. And where would the victim's bedroom, Larenda
9 Simon's bedroom, have been located in this apartment? On
10 the front or the back?

11 A. It would have been on the back. On the front here is
12 where the sliding glass door is and then there's a front
13 main door here in the stairwell.

14 Q. All right. And what road is this back here?

15 A. [REDACTED].

16 Q. All right. And are there any streetlights back
17 there?

18 A. Yes, sir. And just out of the picture here is a
19 large church parking lot that is pretty well-lit.

20 Q. All right. So at night is that a fairly well-lit?

21 A. Yes, sir. There's typically usually a few lights
22 inside the apartment complex as well.

23 Q. In fact, are there streetlights?

24 A. I think there's one here and then one here.

25 Q. And one on the corner?

1 A. I can't tell. It appears so.

2 Q. All right.

3 **MR. McNAIR:** Thank you. That's all the questions I
4 have.

5 **THE COURT:** Thank you. Let's approach, folks, just
6 for a moment.

7 (Proceedings held at the bench; not reported.)

8 **THE COURT:** Folks, we all have an agreement on one
9 point. You've been here as long today as we have the
10 nerve to ask you to stay. We obviously did not want to
11 interrupt the direct testimony of Mr. Investigator Neel.
12 We're gonna have to interrupt his testimony in any event
13 because there's cross-examination, but it's gonna be
14 tomorrow. And it's gonna be somewhat lengthy and it's
15 twenty minutes until six right this minute and we're not
16 gonna test your tolerance any more. This should not be an
17 endurance contest and you should be free. We're sorry
18 we've kept you as late as we did today, but nonetheless we
19 did have to get through this point.

20 To make up for it in small way though, I'm not gonna
21 ask you to get back until 10:00 in the morning. Actually
22 I wasn't gonna ask you to come back until 10:00 in the
23 morning regardless of how long this witness took because
24 we've got to be here at 9:00 tomorrow morning and to do
25 some groundwork in order to lay the framework for testimony

1 that you will hear later in the day. But we sent you home
2 yesterday at 3:30. We probably made up for that today, I
3 guess, haven't we? But we stayed until 5:00 and the work
4 that we did yesterday between 3:30 and 5:00 was
5 instrumental in letting today's testimony come as quickly
6 as it has and as smoothly as it has, and so we hope to
7 accomplish that same thing tomorrow by getting you here at
8 10:00 and we'll be here at 9:00, and we'll pick up where we
9 left off tomorrow.

10 I'm sorry. If it's any consolation you shouldn't be
11 right in the midst of the traffic, but nonetheless have a
12 safe trip home and we'll see you tomorrow morning at 10:00.
13 Please remember as always not to discuss this case among
14 yourselves or with anybody else. Thank you. We'll see
15 you at 10:00.

16 (Whereupon, the jury was excused for the day at
17 5:42 PM.)

18 **THE COURT:** Mr. Neel, obviously we're not gonna make
19 you spend the night on the stand. I'm gonna give you all
20 night to worry about the grueling cross-examination of
21 Mr. Phillips tomorrow morning, but it probably won't be
22 until 10:00.

23 I tell you as I tell all witnesses in your situation,
24 you can study about your testimony, you can look at
25 anything you want to, your notes or anything else, but

1 you're not allowed to discuss your testimony with anybody
2 while you're on the stand. You're under oath now and
3 cannot discuss your testimony with anybody or ask anybody
4 about it. You can study up on it if you need to. If you
5 need to refresh your recollection, certainly you can do
6 that, but you cannot talk with anybody about it. Do you
7 understand?

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

9 **THE COURT:** You can step down.

10 (Whereupon, the witness steps down from the witness
11 stand.)

12 **THE COURT:** One last thing. Investigator Neel, in
13 response to the question about what statements he made
14 and he paraphrased and said he never wanted to tell us
15 anything or something to that effect, at which point in
16 time Mr. Phillips lodged an objection, I'll be glad to
17 hear from you now.

18 **MR. PHILLIPS:** Thank you, Your Honor. Let me move
19 this easel out of the way.

20 **THE COURT:** Good. Thank you. At this time we'd
21 make a motion for a mistrial based on an improper burden
22 shifting argument, as well as commenting on the right to
23 silence, and citing Doyle v. Ohio. That is 426 U.S. 610.
24 Essentially being a negative inference on his right to
25 silence or at least in this case as Your Honor had.

1 admonished in pretrial that that issue not come up during
2 the testimony of either investigator. In the burden
3 shifting argument, we would argue that it also denies his
4 right to a fair trial and, of course, under the Fifth,
5 Sixth and Fourteenth Amendments to the United States
6 Constitution and Article 1, Sections 3 and 10 of the
7 South Carolina Constitution. By having this negative
8 inference, certainly it can sway the credibility of the
9 jury based on, in this case, certainly was not harmless,
10 it was an unrecorded interview that can not be refuted
11 other than the testimony of the officer who just testified
12 to the jury which enhances its prejudice. Based on that
13 we'd make a motion for mistrial.

14 **THE COURT:** All right. Thank you. Obviously Doyle
15 says that the State cannot comment directly or indirectly
16 upon a defendant's failure to testify. There are --
17 there's a body of law, however, which says that -- that
18 even an improper comment on the failure to testify at
19 trial does not automatically require reversal that's not
20 prejudicial. Our court in Johnson versus State, a 1997
21 case found at 480 S.E.2nd 733, said that a charge that a
22 jury should not -- or not consider the defendant's failure
23 to testify, of course, at the outside didn't he say I never
24 used the words failure to testify, but a charge that the
25 jury should not consider the fact that the defendant did

1 not testify in any way and not use it against him normally
2 cures any potential error in the case and State versus
3 Pickens at 320 South Carolina 428 in 1996 said; that even
4 if there is a violation if the record establishes that the
5 reference to the right to silence only a single time and
6 that it was not repeated and that there was not some
7 further reference or attempt to tie that into the theory of
8 the case or into argument, then the error at best or worse,
9 I should say, would be harmless.

10 This obviously was corrected in many way after
11 Investigator Neel had made that statement. Of course, he
12 went on to say what exactly the Defendant had told him.
13 We have gleaned from the testimony of Investigator Griffin
14 and Investigator Neel that -- that they were looking for
15 confessions or admissions and that Investigator Neel said
16 if it wasn't an admission or a confession he wasn't going
17 to record it. And, of course, that's the investigators or
18 the prosecutors vent, that's what they're all about, and
19 you can make whatever you want to in the argument to the
20 jury about that certainly, and I'm sure that you will, but
21 it does not render the proceedings unfair, it does not
22 violate his constitutional rights to the effect that these
23 proceedings are tainted in that regard. I note your motion
24 for a mistrial and respectfully deny it.

25 **MR. PHILLIPS:** Thank you, Your Honor. And we would

1 just say that you couldn't un-ring the bell and that the
2 jury instruction itself would be insufficient.

3 **THE COURT:** Right. The jury instruction, of course,
4 will be what it will be and by that time I trust that they
5 will have even forgotten that slightly offhanded or off the
6 cuff remark that was made by Investigator Neel.

7 All right. We'll be here at 9:00 in the morning, of
8 course, to talk about the telephone records. Now tell me
9 what -- is there anything written that I need to read
10 overnight? Are there any extensive items of evidence that
11 are gonna be introduced in connection with the argument or
12 with the introduction of the evidence itself?

13 I think, Ms. Mayes, you told me that there was some
14 34 or therefore entries that y'all had intended to deal
15 with, some number around the thirties, and, of course,
16 Ms. Gilreath, you said that there's a lot more that y'all
17 need. Here's my concern. I want to get these things
18 premarked as quickly as we can. I mean, as best we can.
19 We've seen the delay.

20 And there's an awful lot of photographs here and I
21 realize that some of them you had to decide what you were
22 gonna use and what you weren't gonna use and foundations
23 had to be laid and all that kind of stuff, I understand
24 that, but if you propose to introduce something into
25 evidence, either in the course of argument or before this

1 jury, to the extent that it can be premarked if for no
2 other reason for identification so that -- well, it will
3 be quicker. The jury doesn't need to sit there and watch
4 this parade of coming up and Ms. Johnson has got her hands
5 full and she has to stop and put a stamp on them and then
6 register them on the list and then we go back and we show
7 it back and forth across the room. And -- and I realize
8 that -- there's nothing wrong with that procedurally, but
9 efficiently it's not a good way to handle things.

10 So, first of all, if you-all have got anything you
11 want me to read overnight, you can give it to me and I'll
12 read it. I don't care if it's marked or not. But sometime
13 -- I'll give you a few minutes when you get here at 9:00.
14 I'm not gonna ask Ms. Johnson to be here any earlier than
15 9:00, but try to get those things premarked at that time if
16 you can.

17 Is that gonna create any hardship for anybody from the
18 State's perspective, Ms. Mayes, Mr. McNair?

19 **MR. MCNAIR:** I don't believe so.

20 **MS. MAYES:** That's fine.

21 **THE COURT:** Ms. Gilreath?

22 **MS. GILREATH:** That's not a problem, Your Honor.

23 **THE COURT:** Okay. All right. I'll see you-all at
24 9:00 in the morning then. Thank you.

25 **MS. MAYES:** We do have the phone extraction, Your

1 Honor. We go can go ahead and mark this for your review.

2 **THE COURT:** It doesn't have to be marked for me to
3 take it home and review it. Unless you can mark it as a
4 single exhibit you can do that tonight.

5 **MS. MAYES:** We have the phone extraction and then we
6 have the phone chart. These are two documents that the
7 State has been working from regarding the potential
8 testimony of Detective Phipps. And these are just for
9 your review. They're not anything that we're marking or
10 offering.

11 **THE COURT:** Okay.

12 **MS. MAYES:** Mr. McNair can explain.

13 **MR. McNAIR:** Yeah, I already gave Your Honor the data
14 files we intend to get into. Do you still have a copy of
15 that? The photos?

16 **THE COURT:** Yeah, I've got those right here.

17 **MR. McNAIR:** So that's the main thing and then this
18 will be our summary exhibit based on the extraction.

19 **THE COURT:** Okay. Can I take this copy with me?

20 **MR. McNAIR:** Yes, sir. I marked on it updated, but --

21 **THE COURT:** That's okay. Ms. Gilreath, you've seen
22 all this, of course?

23 **MS. GILREATH:** I have, Your Honor.

24 **THE COURT:** Do you want to add anything to the
25 storehouse of knowledge about this?

1 **MS. GILREATH:** I don't believe so, Your Honor. I
2 gave the majority of my arguments. I think their intent
3 is to primarily use those things and depending what
4 happens with those they may use the larger reports. Is
5 that correct?

6 **MR. McNAIR:** Correct.

7 **THE COURT:** So your argument will refer to these
8 things then, right, and other things as well?

9 **MS. GILREATH:** It will start with those and then if
10 they move to using the bigger reports, of course, I have
11 move to those, but the smaller -- they're almost like
12 excerpts of the data, that's contained in that larger
13 report that they gave you and I believe that they're saying
14 that the color-coded copy is also based on the larger copy
15 that they provided.

16 **THE COURT:** Okay. All right. Good.

17 **MR. McNAIR:** Judge, I guess one of the issues is we
18 prepared that exhibit to cut down on the number -- the
19 immense number of redactions that we have to do on the
20 full extraction report. Clearly there's stuff that's not
21 relevant on there, it's probably prejudicial, so we tried
22 to cut it down to a limited amount of information, so. I
23 mean, if we have to put in the full extraction report,
24 that's gonna take a long time to redact and that was the
25 reason we did a summary exhibit.

1 **THE COURT:** Right. I understand. I tell you what.
2 I'm gonna do something novel. I'm gonna apply the rules
3 of evidence to all of this if that won't catch anybody off
4 guard.

5 **MR. McNAIR:** No, sir.

6 **MS. GILREATH:** And, Your Honor, my first argument
7 will actually be based on rules of evidence. If it goes
8 beyond that, then --

9 **THE COURT:** Good. If we stay within the bounds of
10 the rules of evidence we ought to be able --

11 **MS. MAYES:** And, Your Honor, we have a couple of
12 items of physical evidence that will come in through DNA
13 and serology. The reason we won't be able to pre-mark those
14 is because they are in the custody of --

15 **THE COURT:** That's fine. A couple of items like that
16 doesn't slow the wagon down. It's just that kind of stuff,
17 solicitor, okay?.

18 All right. What are the chances of finishing the
19 State's Case tomorrow?

20 **MS. MAYES:** Yes, sir, we will.

21 **THE COURT:** All right. Then thank you, folks.

22 (Whereupon, the proceedings were concluded for
23 April 26, 2017; at 5:53 PM.)

24 (Whereupon, the following proceedings were held
25 April 27, 2017, beginning at 9:08 AM.)

1 (Defendant's Exhibit Number 14 was marked for
2 identification.)

3 **THE COURT:** Thank you, ladies and gentlemen. Please
4 be seated. Good morning.

5 All right. Folks, we are prepared I think now to
6 deal with the issues of the telephone records and who's
7 gonna go first in that regard? Ms. Gilreath, I believe
8 it's your motion to suppress, so.

9 **MS. GILREATH:** That's correct, Your Honor.

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

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

12 Your Honor, we're moving to suppress a couple of
13 things that the State indicated that they're seeking to
14 introduce. These have to do with the data downloads from
15 Mr. Hunter's phone that was taken from him when he was
16 arrested. Your Honor, the first thing that I believe that
17 they already have marked as an exhibit -- has this already
18 been marked as an exhibit?

19 **MR. McNAIR:** No, it's not. We were gonna premark it,
20 but --

21 **MS. GILREATH:** That would be it, Your Honor.

22 **THE COURT:** I have it.

23 **MS. GILREATH:** And my understanding is they actually
24 have a different copy of that today that's different than
25 what they had yesterday that I was just provided with that

1 contains a few changes. We're moving to suppress that.
2 And there's also some photographs that they're intending
3 to introduce that came from that same data extraction from
4 the phone.

5 Your Honor, the simplest argument, my initial
6 argument, would just be that, Your Honor, these are
7 hearsay. Under Rule 803(a) I believe these would qualify
8 essentially as a report done by a law enforcement officer.
9 It's not the original data. These reports, they are
10 color-coded. Of course, this is not exactly how it comes
11 off of the phone. There's a lot of information not just
12 unrelated to this because we agree that if the entire
13 thing were to be entered, there would have to be a lot of
14 redactions.

15 **THE COURT:** Right.

16 **MS. GILREATH:** Your Honor, the issue is even with the
17 information that they have included here, there's a lot of
18 information missing that's very pertinent to what this is
19 and what it means. That information would have been
20 included in their extraction from the phone and we believe
21 that to introduce it as it is would be -- it would be
22 unduly prejudicial, Your Honor. Under 403 we believe that
23 there's a lot of things in here that are not relevant
24 under Rule 401. This table, I guess you would call it,
25 includes a lot of text messages. It appears that they've

1 got those in yellow -- or yellow and blue. I guess the --
2 I'm trying to see how they've got this done here. Okay.
3 I think the blue is their phone calls, the yellow are the
4 text messages, the green are cookies, which have to do
5 with whenever you access a website this is just sort of
6 information that is sent back and forth between your
7 computer and the server of the website. The -- and I
8 believe that's the extent as far as their colors.

9 Your Honor, there's a lot of things in here that have
10 been changed. Of course, when this data comes off the
11 phone it's not highlighted in any way. The times that are
12 listed on here, there are a number of different times. And
13 I can certainly, if the Court would prefer, call Mr. Phipps
14 to the stand to assist in explaining what some of this
15 information is, what information would have been included
16 in the original and that's not here. But, of course, the
17 time that's listed here is just one of the several times
18 that would be included for a number of these types of data.

19 For example, the cookies. He doesn't have listed
20 here which time he's referring to, but there are several
21 different types of times that would relate to these
22 cookies. One would be the creation time. That's
23 essentially the time -- the first time this device has
24 accessed this information.

25 **THE COURT:** Right.

1 **MS. GILREATH:** But there are a number of other times
2 that are equally, if not more relevant, than this time.
3 That's what I believe the time is that they've put in here,
4 but we would argue that without these other times it is
5 misleading to the jury, it would cause undue prejudice to
6 him and just, quite frankly, it doesn't accurately reflect
7 what would have been in their initial report.

8 Additionally, Your Honor, I believe they're intending
9 to introduce it under Rule 1006 of the rules of evidence.
10 We would argue that this is, one, not actually a true
11 summary. This is actually a summary of a summary and we
12 were never provided -- as the rule indicates, they have to
13 make the original available for us to inspect and/or copy
14 in order to ensure that we're in agreement that this is
15 what it purports to be and that it hasn't been unfairly
16 redacted. We were never provided with access to the
17 original data. We were given the original summary and this
18 is a summary taken from that summary.

19 We would also will argue that there's a lot of
20 information that is missing. I think they're intending to
21 kind of show this as a timeline to show all of the activity
22 from the earliest time here, which is April the 12th of
23 2014 at 2:10 PM and the latest time on here is April 17,
24 2014, 8:39 PM. Your Honor, there was a lot of other
25 activity that we believe would have been included if this

1 was a true summary and truly reflected the original data,
2 the original extraction.

3 Additionally, Your Honor, obviously there's -- there's
4 the highlighting. There's also information that has been
5 added that was not -- that we know would not have been in
6 the original extraction that was performed that would have
7 been added by someone later. So, Your Honor, we would
8 argue that under 401 it's not relevant. Of course, you
9 only know that the device was either accessing something or
10 sending a message or a phone call, it doesn't tell us who
11 actually did.

12 And, additionally, Your Honor, as to the phone
13 calls, for example, we would argue that that would be an
14 unnecessary presentation of cumulative evidence as they've
15 already introduced other phone records that reflect phone
16 calls. They've had testimony from the individual from --
17 the representative from Sprint as to the timeline of those,
18 so we would argue that the introduction of the phone calls
19 would be unnecessarily cumulative. And that's kind of the
20 essential basis or sort of the bare bones argument that we
21 have for that.

22 Our main issue there, Your Honor, is that in addition
23 to a lot of being not relevant, there are a lot of things
24 that would have to be included in order to make this a
25 true and accurate reflection of what would have been the

1 timeline for this phone; that essentially they have picked
2 out the parts that they would like to be in there, they
3 have added some information that would not have been in
4 the original and, additionally, Your Honor, the -- like
5 I said, the times. They've only included one of the
6 times and there are other times that are just crucial to
7 understanding what this information means and so we
8 believe that this is not a true summary, not relevant
9 under 401 and the probative value would be substantially
10 outweighed by the danger of unfair prejudice.

11 Your Honor, as to the photographs that also came from
12 their extraction of the phone, there are a number of issues
13 with those. First of all, we would argue that just sort of
14 in general these photographs aren't relevant. For some of
15 them I don't believe that they actually have the specific
16 date and time or they don't have the specific date and time
17 that these photos were actually taken. The times that I
18 believe that they have would be the time that it was at
19 some point accessed on the phone. Some of them I don't
20 believe were actually -- they were not taken with this
21 phone based on the date and time that they have included
22 there, so we would argue, Your Honor, that there's no
23 relevance because they can't say -- I mean, these could
24 have been taken five years ago and if they were taken five
25 years ago, obviously that would not have any bearing on

1 anything that happened in this particular case.

2 And, of course, in the situation where these photos
3 -- and I can -- I believe they have those premarked. You
4 did get those premarked, right?

5 **MR. McNAIR:** Not yet.

6 **MS. GILREATH:** Okay. The photos that they're
7 intending to introduce, Your Honor, show guns and one of
8 them is a picture of Mr. Hunter holding a gun. Of course,
9 in this case where there was a gun used, the danger of
10 unfair prejudice is enhanced. Your Honor, we would argue
11 that they would be -- under State v. Torres and State v.
12 Holder we would say that they would have an undue tendency
13 to suggest to the jury that they should be making a
14 decision on an improper basis. Again, if they can't show
15 that these were guns that were either in his possession
16 sometime right around the time of this event, if these were
17 taken five years ago, three years ago, two years ago, Your
18 Honor, I don't believe that -- or prior to the incident I
19 guess is what I mean, not from today, but prior to the
20 incident date --

21 **THE COURT:** Right. I understand.

22 **MS. GILREATH:** -- that they would not have any actual
23 relevance here.

24 Additionally, Your Honor, obviously I don't believe
25 that they can fully authenticate them based on the fact

1 that they don't know who took them, when they were taken,
2 where they were taken, whether they've ever been modified
3 from their original state. And I think the last thing
4 that I forgot to mention with the timeline there would
5 be the web sites here. I believe that they're going to
6 suggest that those web sites on Page 1 of the green
7 cookies section, that those were porn web sites. Your
8 Honor, we would argue, again, that there's absolutely no
9 relevance there, that it would suggest to the jury an
10 unreasonable or impermissible basis upon which to make
11 the decision because of the allegations regarding the
12 criminal sexual conduct.

13 Furthermore, Your Honor, it only shows what's here
14 for this particular time. It doesn't show whether he had
15 access to any other web sites, other applications on the
16 phone that are not included here. And obviously we would
17 also argue that thousands upon thousands of people access
18 porn all the time and that, of course, it has no bearing
19 upon whether someone has a propensity to do something like
20 this, so we would also argue that it would be impermissible
21 suggestion of character evidence under 404(b).

22 And, Your Honor, that would be essentially --
23 essentially the basis for the motion. I can certainly
24 call Mr. Phipps to the stand to give a further explanation,
25 but those are the underlying bases for the motion. I also

1 have a copy of our -- premarked of our investigator's
2 extraction that he did. We have not been provided theirs
3 for comparison, but it is the one that he did.

4 Your Honor, the report that they initially provided
5 us I believe was about 92 pages long for the date range of
6 April the 12th through the 17th. There are some things
7 included in there that do not correspond based on the dates
8 and times that they provided, that do not correspond to
9 that date range. However, with the date range that when
10 we pulled -- when our expert pulled the extraction for
11 everything I believe that the page count was 245 pages,
12 which is obviously a substantial difference from 92 pages,
13 so it's difficult for us to tell whether we have exactly
14 the same thing as what they have because all we have is
15 their report which is, of course, the -- essentially a
16 summary of the original data that we were never provided.

17 **THE COURT:** Ms. Gilreath, let me chop some of this
18 up into small pieces so that I can better understand it
19 because you obviously covered a whole lot in your summary
20 there. You've talked about that there are several times.
21 There's a creation time, I take it, and then a termination
22 time I would imagine and then perhaps other times beyond
23 that and if I need to know more about that, I'll get into
24 that.

25 You indicated that there was other activity that was

1 left out. Even within things that are included there is
2 activity or something that was left out. What sort of
3 stuff was actually omitted?

4 **MS. GILREATH:** Well, Your Honor, from the report that
5 they have here in terms of other activity, this information
6 only reflects the incoming and outgoing phone calls, text
7 messages, some of the website information, some of these
8 cookies here, and I believe there's a couple of references
9 to contacts. As far as things that were left out, as Your
10 Honor knows on smart phones these days there's all kinds
11 of applications that can be put on the phone, activities
12 can be conducted through those applications that is not
13 reflected here.

14 So if, for example, someone had a Facebook app or a
15 Twitter app or, you know, a music app such as Pandora or a
16 video app such as YouTube, this would not reflect whether
17 they were engaging in any activity on any of those apps and
18 so leaving that out of this report, of course, suggests
19 that there's a timeline that is not necessarily accurate as
20 to the activity of the phone. I believe what they're going
21 to be suggesting is this is all of the activity that was
22 taking place on that phone in order to try to establish
23 timelines for when the phone was not being used, whether it
24 was on or off, and I just -- I don't believe that it is a
25 fair and accurate reflection of the data that's on the

1 phone. And, of course, if we had their extraction, we
2 would know whether that was something that was obtained
3 through theirs or not.

4 **THE COURT:** I guess what -- I understand the argument
5 that there -- that there was other activity on this phone
6 that's not reflected anywhere on this chart, other calls,
7 other cookies, other whatever, text messages, whatever they
8 happen to be that are not reflected on there, but are you
9 saying within the context of things that are on here, for
10 example, the very first item, which is a text message on
11 April 12th at 2:10:13 from Nish, whoever that is, that say,
12 hey, word, or whatever, W-U-D, whatever that's shorthand
13 for, are you saying within that single message there's
14 something else that's left out that would add relevance to
15 that?

16 **MS. GILREATH:** Your Honor, I believe for the text
17 messages -- and I think one of the problems is that the
18 time, they just have time there and it doesn't tell us
19 which time they're referring to, so I would believe that
20 this is a time that it is received.

21 **THE COURT:** Okay. But my question is even if there
22 were another time there, is there a suggestion that
23 there's something within the context of that, either the
24 description of it or perhaps another time, a different
25 time, whatever it might be, that would have relevance to

1 that? Is that -- I'm trying to figure out whether the
2 activity that's left out that you're referring to is the
3 activity within these things that they have on this sheet
4 or it is the activity that they don't have on this sheet
5 that you-all would claim was activity engaged in by this
6 phone at the time and would be needed to give full context
7 to the phone itself?

8 **MS. GILREATH:** It's a little bit of both, Your Honor.
9 For example, with the text message that you referred to
10 they have time here. We don't know whether that was the
11 received time for the phone or the viewed, so that could be
12 the time that the phone received the message or it could be
13 the time that it was viewed. They don't actually have it
14 listed there, but it could be received and then viewed at a
15 completely different time, which would change the timeline
16 for purposes of what I believe they're trying to --

17 **THE COURT:** And I don't mean to interrupt you, but I'm
18 gonna ask Mr. McNair a question about the time to see if I
19 can't cut through some of this confusion about the time.

20 Mr. McNair, except for 1 AM to 5 AM on April the 13th
21 of 2014, how important are these times? Not the dates, but
22 how important are the times that are on this chart?

23 **MR. McNAIR:** I think they're important, Your Honor.
24 What the Sprint lady testified to yesterday is that there
25 could be activity on the phone that was not picked up in

1 the call detail records because what's reflected in the
2 call detail records would be calls that accessed the
3 cellular network. So there could be web searches or things
4 of that nature not reflected on the Sprint records that
5 would be reflected on his phone.

6 **THE COURT:** Right. I understand all of that. I
7 understand that, I think, but my point is, is it important
8 that the jury know that this very first thing was an
9 incoming call on 4-12-2014 from this number that had some
10 conversation that -- you don't have to tell me what the
11 relevance of that is, but is it important that they know
12 all of this stuff or that they just know that this phone
13 was used on a regular basis from April the 12th through
14 April the 17th except in the two hours or four hours that
15 you-all are talking about?

16 **MR. McNAIR:** Yes.

17 **THE COURT:** I want to know what's the relevance of
18 all that.

19 **MR. McNAIR:** I think the second thing you said is
20 definitely relevant showing how much activity happened on
21 his phone prior to there being no activity.

22 **THE COURT:** Right.

23 **MR. McNAIR:** I also think in their opening {sic}
24 statement obviously they're gonna attack the credibility of
25 Tanisha Taylor. Her testimony is that she saw the marks on

1 his head that next morning, but she didn't see the marks on
2 his head the night before.

3 **THE COURT:** Right.

4 **MR. McNAIR:** If you read these texts it implies that
5 they were gonna meet up and see each other the night before
6 this incident happened, so I think it's relevant for that.
7 There's a text --

8 **THE COURT:** Where do I see that? Tell me where that
9 appears in here.

10 **MR. McNAIR:** The second one on there says -- it's a
11 text from the Defendant to Nish, who is Tanisha Taylor,
12 saying watching TV, relaxing now, until you get here.

13 **THE COURT:** Right. Okay.

14 **MR. McNAIR:** So that is relevant to establish that --
15 hopefully corroborate her testimony that she saw him the
16 night before.

17 **THE COURT:** All right.

18 **MR. McNAIR:** And that they lived together.

19 **THE COURT:** All right. Well, why don't we -- why
20 don't we do this this way because there are other times
21 on all these things, of course, and I can appreciate the
22 relevance of that, but there's an argument about a whole
23 lot of other times on here that is apparently being made
24 about all of the times there and I can appreciate these --
25 the conversations with Nish during this period of time

1 having some relevance and I suppose your expert can testify
2 as to whether this was a beginning time or an ending time
3 or whatever it happened to be. Is that fair to say?

4 **MR. PHIPPS:** I'm sorry, Judge. Could you repeat that?

5 **THE COURT:** There's a single time listed by each of
6 these instances. For example, the very first one that I'm
7 looking at is 2:10:13, that is two hours, ten minutes and
8 thirteen seconds.

9 **MR. McNAIR:** Judge, I can explain that. I just
10 realized it. Those are text messages, so those aren't
11 gonna have a duration. If you go down to the blue items
12 beneath that, those are calls and if you see a description
13 it has the time call was made under time and then has the
14 duration of that call in the description category, so from
15 that you can deduct how long that call lasted.

16 **THE COURT:** Okay. So these then are origination times
17 when somebody plugs into this or when it's sent or what is
18 that?

19 **MR. McNAIR:** That would be the time the call was made
20 or received under the time category and then the duration
21 is under the description category.

22 **THE COURT:** Okay. All right. What -- does that add
23 to or take away from your heartburn in that regard,
24 Ms. Gilreath? Does it make a whole lot of difference as
25 to whether we're talking about this is when it was keyed

1 into or when it was cut off or when it was looked at or --
2 I'm trying to figure out how critical or how -- he's told
3 me how probative some of those things are. I'm trying to
4 figure out how prejudicial they are.

5 **MS. GILREATH:** Your Honor, it is absolutely
6 prejudicial, unduly prejudicial.

7 **THE COURT:** Tell me how.

8 **MS. GILREATH:** The times listed on here, and I'm more
9 referring to, for example, the green right there with the
10 XVideos. If that is the creation time, all that shows was
11 the first time that that was accessed on this device. It
12 would not show the most recent time, which could have been
13 an hour later, two hours later, it could have been accessed
14 again, and that's not reflected here.

15 Additionally, Your Honor, one of the big things
16 that's left out there's no Internet activity. This doesn't
17 reflect in terms of Internet that was used over a wi-fi
18 connection, Internet that is being accessed not using the
19 Sprint tower over the network, but using a wi-fi Internet
20 connection. If, for example, they were -- the phone was
21 using another one of these apps during that time, well,
22 this isn't going to accurately reflect the timeline. As
23 far as the times that should have been included if this
24 was going to be accurate, it would have had to have the
25 creation time, the accessed time and I believe there's an

1 additional time called a modified time which has to do with
2 other times that was -- it was accessed or reopened on the
3 phone, but if this is purely the creation time all this
4 shows is the original time.

5 Obviously, additionally, Your Honor, we have the
6 objection to having the XVideos. We don't think that
7 they're being porn web sites that were potentially accessed
8 by this phone, particularly since we can't actually say who
9 accessed it on the phone, but --

10 **THE COURT:** Okay. Let me -- let me delve into that
11 with Mr. McNair. I don't mean to cut you off, but I see
12 where you're going and I'm trying to see if we can't save
13 some time and save you some time as well.

14 Mr. McNair, on these green cookies --

15 **MR. McNAIR:** Yes, sir.

16 **THE COURT:** -- what is the relevance of the
17 description, that is the cite itself?

18 **MR. McNAIR:** Your Honor, I guess as far as the CSC
19 charge we have to prove lewd and lascivious intent. Of
20 course --

21 **THE COURT:** You're not gonna get this in on that.

22 **MR. McNAIR:** Well, Your Honor, it shows that --

23 **THE COURT:** That's character evidence. It's doesn't
24 come in. You're gonna have to do something better than
25 that.

1 **MR. McNAIR:** Your Honor, we've done this before and
2 we've redacted it to reflect something like entertainment
3 site. That would -- but it's relevant to us to show the
4 last activity --

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

6 **MR. McNAIR:** -- prior to the phone going dead.

7 **THE COURT:** That's good. I'm with you on that. The
8 activity of the phone, I understand all that. I'm trying
9 to see what the relevance is as to the type of activity
10 other than this time and the date of the activity. That's
11 my concern.

12 **MR. McNAIR:** Okay. Your Honor, I mean, I know there's
13 case law there out there about drug use being kind of the
14 motive for a crime and stuff like that, but I understand
15 your concern and to ease your concern we can change that to
16 entertainment site if that would appease the Court or web
17 activity.

18 **MS. GILREATH:** Your Honor, again, we would argue that
19 this doesn't actually reflect web activity. It doesn't
20 reflect all web activity, so it's incredibly misleading
21 as to when this phone is being used or actively doing
22 something or not.

23 **THE COURT:** That's a matter of cross-examination
24 really. You can develop that through to say there's more
25 on the phone than is on this sheet and -- and certainly

1 raise issues there. That doesn't necessarily mean that
2 what's on here is not relevant, of course. I suppose that
3 almost any single snapshot of -- of any criminal activity
4 that is evidence that whoever's charged did it because
5 there's evidence to reflect that person's conduct within a
6 given timeframe. That's not to say that the State is
7 required to reflect other activity by that same person
8 either in a different timeframe or even within that
9 timeframe that might be consistent with his guilt as long
10 as it's not something exculpatory, of course. In other
11 words, I don't think it's necessary for the State to
12 reconstruct Mr. Hunter's life during this period of time in
13 its entirety nor to reconstruct his activity on his phone
14 during that time in its entirety. They have a right to
15 pick out those things as long as they're not -- as long as
16 they're not inaccurate as to their content or prejudicial
17 as to their content. They're not required to fill in the
18 gaps between things that might be missing like the other
19 -- however many pages you mentioned that were not here. So
20 what I'm trying to focus on is what is here and what needs
21 to come out. For example, it -- I'm not even sure that the
22 -- I take it -- would you call these things -- are these
23 web sites? Is that what these things are? Is that what
24 you call them?

25 **MR. McNAIR:** Yes, sir.

1 **THE COURT:** Okay. If you just put web sites down
2 there, if that's what they are, if that's an accurate
3 description.

4 **MR. McNAIR:** Okay.

5 **THE COURT:** That indicates that the phone is being
6 used during that particular timeframe. And, once again,
7 this would seem to indicate at the bottom of Page 1 some
8 cookie of some unknown whatever it is with the time of
9 April 13, 2014, at 1 AM, and then the next item on there is
10 4-13 at 9:52 AM. And certainly I can appreciate the fact
11 that if there was nothing in between, and that's what
12 you're saying --

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

14 **THE COURT:** -- you're entitled to get that before the
15 jury that between 1:00 and 9:00 there was no activity of
16 that nature on this phone and that's fair game under these
17 circumstances, but I'm not sure that -- the possible
18 identification of these as porn web sites or anything of
19 that nature, that's clearly -- that can't come in. And so
20 as to the phones during this period of time, the calls
21 between him and Nish, you've got a time -- apparently a
22 start time and an origination time, so that -- assuming
23 that's what your expert is going to say, would appear to
24 answer that question. That's subject to cross-examination,
25 of course.

1 As to the content of these of these text messages, I
2 suppose that has some relevance to their association during
3 this period of time leading up to when he supposedly got
4 the scratch, I guess, is what that's all about; is that
5 right?

6 **MR. McNAIR:** Yes, sir.

7 **THE COURT:** That would be relevant.

8 Going on to the text messages of the next day, this
9 is -- tell me what -- tell me what the purpose of those
10 messages -- the content of those messages is, Mr. McNair,
11 exactly.

12 **MR. McNAIR:** Frankly, Judge, I don't know what angle
13 they're gonna take with Tanisha Taylor and depending on
14 that it may become relevant.

15 **THE COURT:** Okay. Well, if they do, if
16 cross-examination makes them relevant, then I'll let you
17 -- you can revisit that.

18 **MR. McNAIR:** We'll have two different versions then.
19 One where we redact that, one where we keep that in.

20 **THE COURT:** Well, the jury is not gonna see any of
21 this until cross-examination is over. So you can work off
22 of what you've got marked, the complete thing right here,
23 but unless this other part becomes relevant it's not gonna
24 come in front of the jury. Does that make sense?

25 **MR. McNAIR:** Yes, sir.

1 **THE COURT:** Now back to you, Ms. Gilreath. Let me
2 see. I had another question. Added information. You
3 mentioned that information has been added, Ms. Gilreath.
4 Would you explain that for me?

5 **MS. GILREATH:** That's correct, Your Honor. Just for
6 an example, if you turn to Page 2 -- and let me make sure.
7 Because, again, they handed me a new one this morning. Let
8 me make sure that the page -- because I assume you have the
9 one from yesterday. There would still be an example on
10 Page 2 regardless of which report that you have. If you
11 look down towards the bottom in the blue, a lot of these
12 calls -- and then you go to -- that's just where these
13 calls are starting that have numbers and names on them.

14 **THE COURT:** Right.

15 **MS. GILREATH:** Just for an example, on 4-15-14 at
16 12:09 PM, it has a phone number and indicates Richland
17 County Sheriff's Department Warrant Division, there's
18 others that listed South Carolina state agency and things
19 like that, and then on Page 3 we have more of these phone
20 calls in blue and it lists more phone numbers and as you
21 can see kind of once you start getting down about, I guess,
22 midway through on that page there start being attorney
23 names that are in there and it has Deborah, I guess,
24 Barbier, parentheses attorney, Clinch Belser, attorney,
25 William Lee Smith, attorney, none of the names and

1 identifications of what these numbers are were included
2 there. This is something that someone would have had to
3 have looked up and added and, of course, Your Honor, we
4 think that that, first of all, makes this not a true
5 summary. It's something that's been altered in addition to
6 the color-coding here, but we don't believe that it would
7 be admissible that he would be calling these attorneys to
8 begin with, much less with it being added to a report where
9 this is something that someone has looked up, added in
10 there almost as though this was saved into his phone, and
11 you've got all these calls that they just added who the
12 call was to. I assume they just looked up the number and
13 figured out who it was to and added that in, but that does
14 not reflect what was actually coming off of the phone.

15 **THE COURT:** Right. Of course, then you would
16 acknowledge that they have the right to get the telephone
17 number in there that was called, right?

18 **MS. GILREATH:** As accurately reflecting what was
19 coming off of the phone, yes, that would accurately reflect
20 that.

21 **THE COURT:** Would they not then have the right to have
22 somebody testify who knows, who has access to a telephone
23 book, who that telephone number belongs to? If it were not
24 -- don't include it on here perhaps, just don't put it on
25 this sheet, have the telephone number, would they not have

1 the right to have somebody else testify that a 799-7900 is
2 Bernstein and Bernstein? It's here in the phonebook.
3 Public record.

4 **MS. GILREATH:** Well, Your Honor, I -- first of all,
5 we would argue against them being able to show that he's
6 calling attorneys to begin with --

7 **THE COURT:** Right.

8 **MS. GILREATH:** -- but, again, this is something that
9 would have had to have been looked up presumably several
10 years later, added in. I'm not sure who necessarily could
11 testify to -- that this is what this phone number was at
12 that time or for that matter who made the phone call, who
13 answered the phone call or anything along those lines, so
14 we would argue under, you know, 401 and 403, among other
15 things, that it's not relevant, unduly prejudicial, and
16 1006 that this doesn't -- you know, this is presented as
17 a summary of what was supposed to have been on the phone,
18 that's information that was not on the phone and, of
19 course, when you add that to relevant information that was
20 taken out of here, we just think that this -- it clouds it
21 so much that it would not be admissible.

22 **THE COURT:** Okay. What I'm trying to do is figure
23 out some way to address your concerns about that and --
24 and also allow the State to produce evidence that it has
25 a right to produce in this regard. I mean, obviously

1 when you look at this you can see the story that the
2 State is putting together. When I say story, I mean the
3 -- I don't mean that in a derogative way, I mean the
4 presentation of this is pretty clear to anybody and, of
5 course, they hope to make it clear to the jury as well
6 that all of a sudden after this event occurred calls
7 start being made to the sheriff's department, to the
8 probation agency, although thankfully they didn't put
9 that name down there, the forensic -- to attorneys,
10 places trying to sell the car, for example, one thing,
11 and perhaps other things as well, and I think that they
12 have a right under these circumstances to create, given
13 the nature of these and the time -- compressed timeframe
14 of these things, to introduce a good bit of that into
15 evidence. The question is whether it comes in under
16 this sheet of paper here or whether it comes under a
17 combination of documents that can be presented to the
18 jury.

19 **MS. GILREATH:** And, Your Honor, one thing I would
20 say is that they're adding information to it changes the
21 nature of this from a summary, as I believe they were
22 intending to introduce it, but adding information
23 essentially changes it to a report done by a law
24 enforcement officer, which would not be admissible under
25 the hearsay rule.

1 **THE COURT:** Okay. You're not listening to me real
2 clearly. What they've added is the attorneys' names,
3 right?

4 **MS. GILREATH:** For some of it, yes.

5 **THE COURT:** Okay. And we'll address -- I'm trying
6 to chop this up into little pieces because you've covered
7 an awful lot of stuff and it's impossible for me to -- I
8 have to think small. You're talking about those telephone
9 numbers now of the attorneys and you said that it changes
10 it -- at least that part of it is what changed and I'm
11 telling you if they can get the number in there and have
12 somebody write on this -- subject to objection, of course,
13 this easel who that telephone number belongs to, it gets
14 to the jury in any event in that regard, so that just
15 takes care of one small piece of what you're talking
16 about and that is those things have been added insofar as
17 those attorneys' names and things are concerned.

18 Let me address now the green -- the web cookie
19 description which appears on Page 4 and especially on
20 Page 5 and to lesser extent on Page 6. First of all,
21 Mr. McNair, where did that information come from as far
22 as the description is concerned that appears in that last
23 column?

24 **MR. McNAIR:** Your Honor, that is directly from the
25 extraction report which is how it was saved on his phone.

1 **THE COURT:** Okay. All right.. And that -- that has
2 been lifted, I think, verbatim so to speak? Is that --

3 **MR. McNAIR:** Yes, sir. It should be just like that
4 on the extraction report.

5 **THE COURT:** Okay. All right. Thank you.

6 Any -- any problems with -- with that description
7 part of that, first of all, Ms. Gilreath?

8 **MS. GILREATH:** Well --

9 **THE COURT:** Other than relevance and prejudicial
10 stuff.

11 **MS. GILREATH:** Correct, Your Honor. I would argue
12 that, again, one of the other issues is that under 1006
13 if this is this being presented as a summary we were not
14 provided access to the original to be able to see what was
15 here for impeachment purposes or for cross-examination in
16 order to know exactly what was included in their original
17 extraction, so.

18 **MR. McNAIR:** I disagree with that, Your Honor. We
19 provided Mike Phipps's name and number last week for their
20 expert to get with him and go over his whole extraction if
21 they wanted to. All of this underlying data was available
22 for their inspection and we limited the extraction report
23 to a reasonable time period so it's not thousands of pages
24 long, but it was available for their inspection and their
25 own expert did their own full extraction of this phone as

1 well.

2 **THE COURT:** Okay. What say you to that,
3 Ms. Gilreath?

4 **MS. GILREATH:** Your Honor, first of all, there is a
5 difference in making their expert available to talk to
6 our expert. This partly goes -- or very much goes to
7 directly to our continuance motion because this extraction
8 was performed so late in the game in terms of this case,
9 having been performed just in March, I believe the 10th,
10 is the date that the State did theirs, we were provided
11 with it the following week and immediately started
12 attempting to obtain funds to acquire an expert. Of
13 course, these things take time and providing us access
14 for our expert to talk to their expert less than a week
15 before the start of trial is just simply not enough time.
16 We would have needed a copy of the original extraction as
17 Rule 1006 requires. It doesn't say access to their expert
18 who did it. We would have needed a copy in order for him
19 to perform the appropriate checks and tests and analysis
20 to determine whether what we have is what they have and I
21 would give the example that --

22 **THE COURT:** What the rule actually says, Ms. Gilreath,
23 is that the originals or duplicates shall be made available
24 for examination or copying or both by other parties at a
25 reasonable time.

1 **MS. GILREATH:** And, Your Honor, the message that we
2 got was simply your expert can call our expert to see if
3 they have everything. If we -- if our expert had
4 provided -- and we didn't have him do this because we
5 thought the cost wasn't justified, his full extraction if
6 you were to print it out is over 14,000 pages.

7 **THE COURT:** Right.

8 **MS. GILREATH:** So in order to compare theirs to his
9 it's not feasible to have done that just through a phone
10 call and particularly not within less than a week before
11 trial clearly while he's still working on putting together
12 our report because of the length of time that it takes, so
13 that would be one thing. And additionally, Your Honor --

14 **THE COURT:** My understanding was that within a week
15 of they're getting their expert's extraction report they
16 notified you of -- what did you notify them of within a
17 week, Mr. McNair?

18 **MR. McNAIR:** We gave them the extraction report we
19 received from Investigator Phipps when we received it. We
20 made the phone available for them to go look at whenever
21 they wanted to. I mean, it's been sitting in evidence. I
22 think they went to go look at it a week or two ago, but
23 it's been available for them to go look at it at any time.
24 And they extracted the phone twice, I believe. I'm not
25 sure on what date they actually did that one, but they did

1 it twice.

2 **THE COURT:** All right. Ms. Gilreath.

3 **MS. GILREATH:** That's part of what I was getting to,
4 Your Honor. Our expert actually had to do two because
5 there is a -- I believe it's like a loose port in the phone
6 and so the connection when you plug in the -- I guess the
7 USB, if the connection's not full you're only getting part
8 of the information. When we were provided with their
9 extraction report -- we aren't experts in this area, so we
10 weren't aware that that was not the full extraction until
11 our expert performed -- he performed his extraction,
12 compared it to what they had provided to us and said mine
13 apparently didn't go through fully based on what they have,
14 but I'm not sure theirs is a full one either. So he had to
15 go back and figure out what the problem was on the phone
16 itself, perform another one and this time his came out with
17 so much more that he said this isn't their full extraction,
18 this is simply a report because, again, it doesn't include
19 anything regarding wi-fi activity or anything done on
20 applications or anything along those lines. But, Your
21 Honor, our investigator, our expert in this, just finished
22 up the report -- I guess it would have been yesterday, late
23 yesterday -- early yesterday morning.

24 **THE COURT:** Right.

25 **MS. GILREATH:** That's just kind of how long this

1 takes. So in order to have a comparison, that's the time
2 that was needed and part of the reason we were asking for
3 the continuance motion. Simply talking to him there's not
4 really a way for them to just sort of talk through
5 everything that's there and not there. It requires a lot
6 more time and analysis than that.

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

8 Let me sort of put all of this together in my head
9 now. Let me see.

10 **MR. McNAIR:** Judge, can I give you one date?

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

12 **MR. McNAIR:** The extraction report that Investigator
13 Phipps did was provided on March 13, 2017.

14 **THE COURT:** March the what?

15 **MR. McNAIR:** 13th.

16 **THE COURT:** Is that the full extraction report?

17 **MR. McNAIR:** Well, Your Honor, obviously, you know,
18 the full -- we didn't request an extraction on everything
19 he'd ever done on his phone, so we limited it to that
20 relevant time period, but that report was provided on
21 March 13, 2017.

22 **THE COURT:** For the 12th through the 17th dates; is
23 that right? For the April the 12th through April the 17th?

24 **MR. McNAIR:** Yes, sir.

25 **THE COURT:** Yes, ma'am, Ms. Gilreath.

1 **MS. GILREATH:** And, again, Your Honor, we would argue
2 that their -- the extraction report that they have there
3 and that they did provide actually does not reflect all
4 activity during that time period, there's a lot that was
5 left out, so it's not really a true and accurate reflection
6 of the activity of that phone during that time period.

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

8 **MS. GILREATH:** Your Honor, for purposes of the
9 in-camera hearing we would ask to call our expert to be
10 able to explain in much clearer and more eloquent wording
11 than what I'm able to present to the Court exactly what
12 we're talking about.

13 **THE COURT:** You can do that right now.

14 **MS. GILREATH:** Thank you, Your Honor. We call Chris
15 Watkins.

16 **THE COURT:** Mr. Watkins, come forward, please, and be
17 sworn.

18 (Whereupon, Christopher James Watkins was duly sworn
19 by the Clerk of Court.)

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

22 **THE WITNESS:** Christopher James Watkins,
23 W-A-T-K-I-N-S.

24 **THE COURT:** Ms. Gilreath.

25 CHRISTOPHER JAMES WATKINS,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION (In-Camera)

3 BY MS. GILREATH:

4 Q. Mr. Watkins, where are you employed?

5 A. Watkins Digital Forensics and Investigations.

6 Q. And what kind of work do you do there?

7 A. I'm a private investigator. My focus is in criminal
8 defense and digital forensics.

9 Q. And when you say digital forensics, what exactly does
10 that mean?

11 A. Digital forensics is the area of forensic science
12 that consists of securing, authenticating, processing and
13 reporting digital data or electronically stored information
14 from digital devices such as computers, cell phones..

15 Q. And what's your background in this area? What kind of
16 education and training do you have in this area?

17 A. I've been a private investigator since February 2,
18 2010. My background is in IT. I studied at Midlands Tech.
19 I'm a certified general technician. I've been working in
20 the field of digital forensics since 2010 as well.

21 Q. And what did you perform in this case? What activity
22 did you do in relation to this case?

23 A. I was hired to assist in extracting a forensic image
24 from the cell phone in evidence.

25 Q. And is that something that you've done before?

1 A. Yes, many times.

2 Q. Is this something that you've done in criminal cases
3 before?

4 A. Yes.

5 Q. Is it something that you have been called to court to
6 testify about before?

7 A. Yes, several times.

8 Q. Have you ever been qualified as an expert in this
9 area?

10 A. Yes, I've been qualified as an expert in the field of
11 digital forensics in United States federal court, South
12 Carolina circuit court, common pleas and family court.

13 Q. And as far as doing these kinds of things, testifying
14 in court, about how many times would you say that you've
15 done -- performed these digital forensic investigations and
16 testified in criminal court?

17 A. Since 2010, the number of cases involving digital
18 forensics is around a thousand, in the range of a thousand.
19 I've testified in court as an expert at least fifteen times
20 and I've also been -- my services have been requested by
21 family court judges in the past as well where testimony
22 wasn't necessarily needed.

23 MR. McNAIR: Your Honor, I'll stipulate he's an
24 expert.

25 THE COURT: Okay. Thank you. He's qualified as an

1 expert in digital forensics.

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

3 BY MS. GILREATH:

4 Q. And, Mr. Watkins, you said you had an opportunity to
5 do something in this case, correct?

6 A. Yes.

7 Q. Can you tell us exactly what you did as it pertains to
8 this case?

9 A. Yes, I received a request to review the phone in
10 evidence on April 5th. It was scheduled for April 7th at
11 the West Columbia Police Department. That's when the
12 first extraction was -- was completed. Following that,
13 in examining what was provided in Investigator Phipps's
14 report, I observed that some of the information had not
15 been acquired during my extraction. We scheduled another
16 extraction which took place on the 19th. This extraction
17 had to be restarted four times because we had an issue with
18 the connection port. Finally we were able to get a full
19 extraction of the phone and from there I analyzed the data
20 on that device and I produced several reports.

21 Q. Now when you say that there was a problem with the
22 connection, was that a problem with any of your equipment
23 or software or was that a problem with the cell phone
24 itself?

25 A. My general assessment was that it was an issue with

1 the phone's data port. I did not spend any additional time
2 troubleshooting or trying to identify the exact problem.
3 My goal there was just to get the extraction, which was
4 completed.

5 Q. Now when you say extraction, what does extraction mean
6 exactly?

7 A. So when we do a digital forensic extraction, we are
8 essentially connecting a forensic computer to the device
9 and we are extracting a copy of the data that's stored on
10 the device.

11 Q. And when you say you're obtaining a copy of the data
12 that's stored on the device, are you sort of picking and
13 choosing what data at that point where you're obtaining the
14 data or does it copy everything? How does that work?

15 A. No, in the extraction process it communicates with the
16 phone itself and it pulls the data as it appears on the
17 phone and there's no selection process. It pulls the data
18 as it is on the phone and once it gets to the forensic
19 software from there we can parse it out and go through and
20 select which data we want to look at.

21 Q. What type of data is obtained when you perform one of
22 these extractions?

23 A. Generally with a smart phone you're going to get the
24 communication data, phone calls, text messages. You're
25 also going to get browsing history, application data,

1 information from the -- from the file browser, which would
2 be like your pictures, videos, music. In addition to that,
3 depending on how deep the extraction was able to go, which
4 in this case it was a full extraction, we're also gonna
5 get access to system files and processes that run in the
6 background, information about what's going on in the
7 background of the phone.

8 Q. And that's what you performed on the cell phone in
9 this case?

10 A. That's correct.

11 Q. And where was the cell phone at the time you performed
12 the extraction?

13 A. This was at the West Columbia Police Department.

14 Q. Now once you performed the extraction, what's your
15 next step in terms of your role as a digital forensic
16 investigator?

17 A. Well, given the scope of the request, my goal was to
18 review the full and complete timeline with focus, of
19 course, to what was provided in Investigator Phipps's
20 report, as well as the timeline of all activity on the date
21 of the incident, April 13, 2014.

22 Q. And were you able to produce a timeline as you said of
23 the activity from that timeframe?

24 A. I was. Now the forensic tools that we use they're
25 designed to simplify the examiner's work. It helps us

1 to speed up the process a little bit and by that it will go
2 ahead and pull -- we can filter the data to a certain range
3 and it will pull the most common data, your text messages,
4 phone calls, all your communications, your web data that's
5 available -- or web browsing history that's available and
6 any files that may fall in that range, but what it would
7 not include, just doing it the simple method, it's not
8 going to include any application data, application cache,
9 which is files that are created during the use of an app,
10 especially an app that's utilized on-line using the
11 Internet. It's not going to get any information pertaining
12 to system files or anything that runs in the background
13 either. That's something that the examiner would have to
14 take a few extra steps and do a little extra digging to
15 pull that data and make it available.

16 Q. And what would be the reason for pulling that extra
17 data and making it available as it relates to creating that
18 timeline?

19 A. Because we want to have a full and complete timeline
20 to see what the activity was on the phone. It's my
21 understanding that what we've been presented is a gap of
22 time between the hours of 1 AM and 5 AM on the date of the
23 incident that's not reflected -- or no data is reflected
24 in Investigator Phipps's report, so it suggests that no
25 activity had occurred during that time and that's not the

1 case.

2 Q. And what are you basing that on?

3 A. Application data. One application -- one application
4 that was accessed during that time period was the YouTube
5 application and it was utilized routinely between the hours
6 of 12 AM and just -- it was 2:25 AM was the last time for
7 the YouTube data, which is reflected in the report that was
8 provided.

9 Q. Now we've been talking about the --

10 **THE COURT:** Excuse me. The YouTube application on
11 April the 13th, 2014, during what timeframe, Mr. Watkins?

12 **THE WITNESS:** That was between 12 AM and 2:25 AM.

13 **THE COURT:** Okay. And how many times was that
14 accessed during that period of time, can you tell, sir?
15 And when it was within that timeframe.

16 **THE WITNESS:** Yes, sir. Let me -- if you don't mind,
17 I'll --

18 **THE COURT:** No, please do.

19 **THE WITNESS:** All right. According to the report
20 pertaining to just the YouTube cache information, there are
21 -- it appears to be well over a hundred records. These
22 are cache files, so this isn't reflecting a very specific
23 search term or video in particular. It's just showing that
24 the application is being used at this time. So to -- to
25 give you a definite answer of what's being accessed and how

1 many videos are being accessed during this time, I can't
2 say based on just on this data alone. I can only say that
3 the app itself is being accessed between this time period
4 and this begins 12:19 AM and ends -- there's 2:25 AM and
5 then 3:54 AM.

6 **THE COURT:** Okay. Now to use what Ms. Gilreath has
7 already instructed me and educated me on, what time is
8 that 12:19? Is that a beginning time, an ending time or
9 one of these other times that goes into this mixture?
10 What kind of time is that?

11 **THE WITNESS:** So that's just a -- on the 13th, that's
12 the first date that we have in reference to one of the
13 cache files that were created through the use of the
14 YouTube app.

15 **THE COURT:** All right. Now if I were trying to
16 present this to a jury and give accuracy to that date,
17 that this YouTube app on this particular phone had activity
18 at 12:19 AM, would I be able to tell the jury that that's
19 when the app was accessed or what would I tell them about
20 12:19 AM?

21 **THE WITNESS:** That would indicate that that's the
22 first time on the 13th that this app is being used in some
23 fashion to access something over the Internet.

24 **THE COURT:** Okay. Does it tell me how long that --
25 this is YouTube. He could have been listening to records

1 and, of course, once you plug into it anything that's on
2 that page shows up as a possible item that was viewed, as
3 I understand it. Whether you look at it or not, if it's
4 on that screen you get credit for it or blame for it; is
5 that right?

6 **THE WITNESS:** If it's created at that time, that means
7 something's being accessed at that time on that app.

8 **THE COURT:** All right. Okay. In other words, the
9 phone was being used at that time?

10 **THE WITNESS:** That's correct. These files would not
11 be created or accessed if the phone were turned off.

12 **THE COURT:** Okay. And the same is true at 12:25. It
13 was used again is what you're saying?

14 **THE WITNESS:** That's correct.

15 **THE COURT:** And, again, at 3:54 AM?

16 **THE WITNESS:** That's correct.

17 **THE COURT:** Okay. All right. Thank you.
18 Ms. Gilreath.

19 BY MS. GILREATH:

20 Q. Mr. Watkins, you referenced the -- this was the
21 YouTube app you were talking about?

22 A. Yes.

23 Q. Was there any application information, data, anything
24 along those lines that you found that showed any kind of
25 activity on the phone during this timeframe that was not

1 reflected in Mr. Phipps's report or -- did you have an
2 opportunity to you review the summary provided by --

3 A. I did.

4 Q. -- the report here?

5 A. Yes.

6 Q. The color-coded one?

7 A. Yes.

8 Q. Do you have a copy of that?

9 A. I do not. Not the new one.

10 Q. And by new one you mean --

11 A. The one I was provided this morning.

12 **MS. GILREATH:** Your Honor, I don't know if they --
13 this still hasn't been marked, right?

14 **MR. McNAIR:** No. I'll go ahead and mark them.

15 (State's Exhibit Number 111 through 116 were marked
16 for identification.)

17 **MS. GILREATH:** And that is the new one from today,
18 correct?

19 **MR. McNAIR:** Correct.

20 Judge, do you want the marked copy? I think -- I
21 mean, it's pretty much identical. Just one or two things
22 maybe were out of order, so we just put them in the correct
23 order.

24 **THE COURT:** Okay. Thank you, Mr. McNair.

25 **MS. GILREATH:** Your Honor, may I approach the witness

1 with this?

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

3 BY MS. GILREATH:

4 Q. Mr. Watkins, I'm showing you this. And you said you
5 had an opportunity to review that?

6 A. I did.

7 Q. Now when we're talking about these times and the
8 timeframes, specifically I'm referring to the timeframe
9 that's in the color-coded report.

10 A. Yes.

11 Q. Did you find any additional data, app information,
12 anything at all that reflected activity on the phone that's
13 not included here outside of the YouTube information you
14 were just talking about?

15 A. Yes, I did.

16 Q. What other kinds of information did you find?

17 A. Information pertaining to the cookies specifically.
18 We have --

19 Q. Can you explain what cookies are?

20 A. Yes. So when a browser -- in a computer or a cell
21 phone, the browser is utilized to access a website. The
22 web server sends a tiny piece of data to the browser,
23 it's kind of like a text message that says hey, you're
24 connected, and the browser will sent it back saying this
25 is who I am, it creates an ID, it keeps track of -- they're

1 designed to keep track of your activities to help speed up
2 your browsing experience. An example of how cookies are
3 used, if you log into a website with a username and
4 password and cookies didn't exist, then the next time you
5 log into that website -- or every time you logged into that
6 website you'd have to put your username and password every
7 time.

8 Q. So you're saying -- if I'm understanding correctly,
9 you're saying that's what allows it to repopulate when you
10 go back to that web page after you've left the page?

11 A. Right. Essentially it's keeping track of the user so
12 that the next time you go back it remembers that you had
13 visited the site before.

14 Q. Now are cookies all the same? Are there more than one
15 type of cookies?

16 A. No, there's generally two different types. You've got
17 session cookies and you've got persistent cookies. The
18 session cookies are going to keep track of the session;
19 meaning from the moment you visit that site to the moment
20 that you close your browser or end the session by going to
21 a different page or exiting the page, the cookies are
22 designed to track from when it starts to when it ends.
23 When you close your session or close your browser, it will
24 end, it will delete that piece of information. Whereas a
25 persistent cookie it will stay in your computer for some

1 amount of time and they generate an expiration date. The
2 expiration date is determined by whoever created the cookie
3 from the web server and persistent cookies are designed to
4 -- they track a little bit more information about the user
5 and they keep that on the server so that -- the purpose is
6 that every time you go to the website you don't have to
7 enter in the same information that you've already entered
8 in for it, so it's kind of like memory for the web server.

9 Q. So does knowing which type of cookie we're talking
10 about tell us anything different rather than just -- if we
11 just say it's a cookie, knowing what type of cookie it is,
12 is that important understanding what kind of information
13 we're looking at?

14 A. Yes. For the purpose of this report what we're seeing
15 is just the creation time of each of these cookies and that
16 will be the time that the computer -- or, I'm sorry, the
17 browser on this cell phone accesses this website and that
18 cookie is downloaded. It does not reflect the last access
19 time that -- so the last time that that particular file was
20 accessed on the browser.

21 Q. And are you able to tell just from looking at the
22 report what kind of time it is? Is there something about
23 that time that tells you whether it is that access time or
24 creation time?

25 A. Well, comparing to my extraction, I can tell you that

1 this is the creation time only, not the access time. Not
2 the last access time.

3 Q. So you know this from comparing your report, not from
4 just looking at this report?

5 A. Right. I can't look at this and tell you that that's
6 the creation time. I had to refer to my extraction.

7 Q. Now kind of back to my original question, based on
8 this timeline, assuming that these are all, I guess,
9 creation times, is there other data or information that you
10 were able to see in your report that's not reflected here
11 that would reflect other activity during this time?

12 A. Pertaining to the cookies you mean?

13 Q. Well, just in general, but if cookies apply, then
14 sure.

15 A. Okay. So you're saying -- ask the question again.
16 I'm sorry.

17 Q. I'm sorry. Let me simplify it a little bit. The
18 report that you were provided, this color-coded copy here,
19 other than what you mentioned earlier about there being
20 YouTube data during this time is there any other
21 information that you had that showed other activity besides
22 the YouTube data that's not reflected in this report during
23 this timeframe?

24 A. Yes. When I ran a search on the extraction for all --
25 all items that are within this time period, I did find a --

1 it's called a tombstone file and -- and I'll explain that
2 because that's -- you know, me just saying that nobody's
3 gonna understand what that is.

4 Q. Please, do.

5 A. On the android operating system, these files would be
6 created when something is terminated or something crashes,
7 like an application. Sometimes -- if anybody has used an
8 android device, then they've probably experienced at some
9 point an app crashing that says something unfortunately
10 has stopped. There is a tombstone file that was -- that
11 I did find that was dated April 13, 2014, at 2:51 AM, and
12 it did reference an application, but it gives a process
13 identification number and I've not been able to determine
14 what application that was at this time, I haven't completed
15 it, but I did find that this file was created at 2:51 AM,
16 which would indicate that the phone is still on at this
17 time. That file's not gonna be created if the phone's
18 turned off.

19 Q. And when you say you haven't been able to determine,
20 is it because that information doesn't allow you to
21 determine that? What's the reason you weren't able to
22 determine what application it was from?

23 A. Well, there's an ID number for the application. What
24 I would need to do is run a search for that particular ID
25 and try to locate it and I have not had an opportunity to

1 complete that before today.

2 Q. Now as to -- there's also some photos that have been
3 referenced that relate also to this phone. Do you know
4 which ones I'm talking about?

5 A. I do. The ones provided in Investigator Phipps's
6 report.

7 Q. That's correct. I believe that there's a few that
8 they've taken out.

9 **MS. GILREATH:** Are those already marked?

10 **MR. McNAIR:** The pictures? No.

11 **MS. GILREATH:** I can give them to him in another form.
12 I just didn't know if you already had them marked.

13 (State's Exhibit Number 117 was marked for
14 identification.)

15 **MS. GILREATH:** Your Honor, may I approach the witness?

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

17 BY MS. GILREATH:

18 Q. Mr. Watkins, I'm gonna hand you what's been marked as
19 State's Exhibit 117. What is that?

20 A. This is -- looks like an excerpt from Investigator
21 Phipps's report with just the data files section containing
22 the pictures.

23 **THE COURT:** What image is that on that? There are a
24 numbers of images under your left thumb. What image is
25 that?

1 **THE WITNESS:** The image indicated here?

2 **THE COURT:** Yes, sir. You're saying that that is one
3 of these?

4 **MR. McNAIR:** These pictures were derived from that.

5 **MS. GILREATH:** That's correct.

6 **THE COURT:** Exactly. And since I don't have those in
7 front of me, I'm just trying to figure out which one of
8 these is an image right here based on the ones used.

9 **THE WITNESS:** That will be the next page, Number 8.

10 **THE COURT:** Okay. Thank you.

11 **MR. McNAIR:** Do you still have a copy of that, Your
12 Honor?

13 **THE COURT:** I have a copy of this, yes. I've got it.
14 Thank you.

15 BY MS. GILREATH:

16 Q. Mr. Watkins, I'm handing you what's been marked as
17 State's Exhibit 115 and you said that this is the one that
18 you said corresponds to the -- you said to Image 8 on --
19 A. That's correct, yes.

20 **THE COURT:** 116 that is?

21 **MS. GILREATH:** The one that I just handed him was 115,
22 Your Honor.

23 **THE COURT:** 115. Okay. Thank you.

24 BY MS. GILREATH:

25 Q. I'm also gonna hand you what's been premarked as

1 State's 116. Does that correspond to anything in there,
2 the data report?

3 A. Yes, that's gonna be Number 15.

4 **THE COURT:** Thank you.

5 Q. I'm also handing you what's been marked as State's
6 112. Can you tell us which one that is in relation to that
7 report?

8 A. This is 13.

9 Q. And I'm going to hand you what's been marked -- these
10 are actually two. It's State's Exhibit 113 and State's
11 Exhibit 114. Can you tell us how those relate to that
12 report?

13 A. All right. These would be from -- they appear to be
14 from Image Number 16.

15 Q. And you said these, you mean the two that I just
16 handed you, correct?

17 A. Yes.

18 Q. You're saying they're from the same data file number?

19 A. It appears to be -- Number 16 and Number 13 are very
20 -- they appear to be the same -- pictures of the same
21 items, so it's kind of difficult to tell which one
22 represents which image in that -- in that report.

23 Q. Now had you seen these photos in that report before?

24 A. In this report, yes.

25 Q. What can you tell us about that report, the data

1 report? What does that report reflect?

2 A. The report reflects that these images were extracted
3 from the SD card and the path for that would indicate it's
4 in -- they're associated with the app Cooliris Media.

5 Q. Are you familiar with that app?

6 A. I am a little bit.

7 Q. What's your familiarity with it? What do you know
8 about it?

9 A. This is an app that's used for browsing or sharing
10 photos similar to Instagram.

11 Q. Now you said that the photos -- and when you're saying
12 these photos, do you mean all of the ones in the data
13 report or do you mean just the ones that have been sort of
14 pulled out as the other exhibits there of the photos?

15 A. Yes, just the ones that are -- that are here before me
16 correspond with that application.

17 Q. Now you mentioned that these were from the SD card.
18 What does that mean?

19 A. Well, the SD card is a removal chip. It's removable
20 data. These photographs, they're dated September 13, 2013.

21 Q. What does that time tell us or the date?

22 A. And the time is 6:10 PM and 6:11 PM and that tells us
23 that this picture was -- at least originated on this SD
24 card at that time.

25 Q. When you say originated, what does that mean? Does

1 that mean that that's when it was -- the picture was taken
2 and put on there or what does that mean?

3 A. Not when it was taken. Now the picture itself
4 resolves to the application directory for Cooliris Media.
5 That means it's stored within the application file that
6 keeps track of the cache. So when using that application
7 on a device and you're browsing, it's -- the data being
8 accessed on that application is being saved to this
9 directory, this location. So because the date is
10 September 13, 2013, and the phone -- that the earliest time
11 on the phone is October 23, 2013, and that time can also be
12 verified or seen in the Sprint search warrant return, that
13 time is also reflected as the subscription time when that
14 subscription was started.

15 Q. And what does that mean? You said you had an
16 opportunity to review the Sprint report as well relating
17 to this phone?

18 A. Yes. So where I am getting at is that would tell us
19 that October 23, 2013, would be the time that this phone
20 was -- was first used with this subscription just based on
21 that -- that date information alone. So that would imply
22 that this -- these pictures from September 13, 2013, did
23 not originate through the use of this phone, at least not
24 with this subscription. Now there are other image files
25 that were found on the SD card that correspond with other

1 devices. There was one Samsung device, there was also a
2 Blackberry device that had taken photos, or at least the
3 photos had a camera make and model from a Blackberry and
4 Samsung device respectively, so that would also imply that
5 the SD card has moved around to other devices just based
6 on that information alone.

7 Q. So the time that you -- or the date and time that you
8 mentioned was from September of 2013 for the photos?

9 A. Yes.

10 Q. That's a time that is in the data report from --
11 that's an excerpt from Mr. Phipps's report?

12 A. Yes. That's contained in this report, yes.

13 Q. Does that date and time that you mentioned tell us
14 anything about when the actual photograph itself was taken?

15 A. No, it doesn't because this -- these pictures appear
16 in the cache directory for this particular application,
17 so that would indicate that through the access of that
18 application is how these photos were originated. That does
19 not imply that the device in evidence is the device that
20 created those photos. It also doesn't give any information
21 as to when this photo was taken, just that it existed on
22 this particular date.

23 Q. Is there any way to tell from Mr. Phipps's data report
24 when these photographs were taken?

25 A. No.

1 Q. Is there any way to tell from Mr. Phipps's report who
2 took those photos?

3 A. No.

4 Q. Is there any way to tell from Mr. Phipps's report who
5 accessed those photos on that September 2013 date that you
6 mentioned?

7 A. No.

8 Q. Is there any way to tell from that whether the SD card
9 -- because you said that the SD card that they were taken
10 from was in the phone that you performed the extraction on?

11 A. Yes.

12 Q. Was there any way to tell from that whose phone --
13 as far as the SD card having been in existence from what
14 you're saying prior to this phone beginning to be used, is
15 there any way to tell whose phone that was, who owned the
16 phone where the SD card was on September, I think you said,
17 22nd of 2013?

18 A. September 13, 2013.

19 Q. Or 13th. I'm sorry.

20 A. No.

21 Q. Is there anything that data report can tell us outside
22 of it simply being something that was stored on the SD
23 card?

24 A. The report merely reflects that that item was stored
25 on the SD card and that's the date of creation.

1 Q. On the SD card?

2 A. Yes.

3 Q. And now referring to the ones that are of the -- I
4 believe it was -- there were four or five exhibits that I
5 handed to you. There were a couple that were just of guns.

6 A. Yes.

7 Q. Is there any way to tell whether those were
8 photographs that were actually taken by the user of the
9 phone or whether they were something that was accessed on
10 the Internet? Is there a way to tell that from the data
11 report?

12 A. Based on the data in the report and the way it's
13 presented and the way the information is stored for this
14 particular photo, it would be impossible to determine any
15 of that information.

16 Q. Now you mentioned cache files, that these related to
17 cache files. What does that mean? What is a cache file?

18 A. Okay. So cache would be -- to keep it simple, use of
19 the app -- these arise from the app Cooliris Media. Use
20 of that app -- that app works on the Internet as you're
21 browsing. When these photos are accessed from the device,
22 you're actually downloading that data, you're downloading
23 it and it's being stored in this particular directory on
24 the phone. So by simply accessing it on a web page
25 through this -- or not through a web page, through this

1 application, they are downloaded to the phone and that's
2 how -- that's how these were stored here. That's why they
3 appear in this directory.

4 Q. And when you say it was downloaded, is that something
5 that the person using the phone does manually or is that
6 just a process that happens by accessing it?

7 A. It happens automatically by using the application
8 without the user's knowledge in most cases.

9 Q. Now there's other photos that are in the data report,
10 correct?

11 A. Yes.

12 Q. Now do those relate to the -- the same SD card?

13 A. At least two other photos originate from the SD card.

14 Q. And the other photos, if they don't originate from the
15 SD card, where would they originate from?

16 A. They come from the phone. Some of them -- let me see.
17 All right. The remainder were accessed from the phone or
18 downloaded to the phone through use of web browsing using
19 the android web browser and the Google search bar.

20 Q. Are these you -- also mentioned the others were cache
21 files. Are they also cache files or are they a different
22 type of file?

23 A. Yes, they're cache files.

24 Q. Now are you able to tell from looking at those other
25 cache files -- outside of the ones that are separated as

1 other pictures, you said that some of them were through a
2 Google search?

3 A. Yes.

4 Q. Are you able to tell through looking at that report,
5 the excerpt from Mr. Phipps's report, what was searched
6 that would have caused these to have been accessed just
7 from looking at that report?

8 A. Just by looking in this report, no, you cannot tell
9 what was searched; however, you can determine that by
10 looking at the application data files if you -- like I
11 said earlier, some of the data on these phones they're not
12 quickly available through the use of the application.
13 Generally when you produce a report, the software can work
14 like an easy button. You just pick what you want it to
15 show and it will show it, but if you want to go a little
16 bit deeper and try to find out how these got here you would
17 have to refer to the application that it references; in
18 this case, the default Android browser for some of them and
19 then the Google search bar application, which is -- which
20 is something that appears on the phone screen. You turn
21 the screen on and highlight the search bar and you just
22 start typing in that search bar to search on Google. So in
23 order to find out more information about that, you have to
24 go to the application directory and look at the data files
25 associated with the use of the application. From there you

1 can determine what was searched to produce these -- these
2 photos or to access these photos.

3 Q. And, Mr. Watkins, the data files that are in this
4 excerpt from the report, are those reflected in the
5 extraction that you performed?

6 A. The data files, I was able to review them after
7 extracting -- or after performing an extraction, yes.

8 Q. Are these the only data files that were included in
9 your extraction?

10 A. Can you rephrase?

11 Q. The data files that you have there in front of you,
12 when you performed your extraction are these the only data
13 files like this with these little, I guess, thumbnail
14 pictures?

15 A. Okay. I just wanted to make sure I understood the
16 question. Yes, these were included as well as many others.

17 Q. And are you able to tell from -- you've been able to
18 review Mr. Phipps's full report that the State had
19 provided, correct?

20 A. The 92-page report, yes.

21 Q. That's correct. Are you able to tell from his report
22 whether these 33 files were the only data files that his
23 extraction obtained?

24 A. Right. There were -- these were not the only files
25 in these directories or the only files in the application

1 cache. There were more.

2 Q. And is that reflected in Mr. Phipps's report?

3 A. No, these -- these would be -- appear to be selections
4 cut from there.

5 Q. I guess what I'm asking is can you tell from
6 Mr. Phipps's -- the full extraction report that we were
7 provided, that full report, are you able to tell whether he
8 when he performed his extraction accessed additional data
9 files?

10 A. Based on just looking at his report, I would not know
11 that. I can only see what's in the report.

12 **MS. GILREATH:** Your Honor, I think that that is
13 essentially all of my questions.

14 **THE COURT:** All right.

15 EXAMINATION (In-Camera)

16 BY THE COURT:

17 Q. Mr. Watkins, looking at this report right here and
18 talking about the times, Ms. Gilreath had indicated to me
19 earlier, for example, the time some of these that are
20 reflected on here are not complete times, that there are
21 other times. It doesn't reflect whether it's an
22 origination time or a termination time or a duration or
23 whatever the concern was because obviously you had
24 indicated to her that the time information is not complete.
25 Do you recall that discussion?

1 A. Yes, sir, I do.

2 Q. Okay. I'm just looking at the -- just for example,
3 on Page 1 the text up here. Of course, the text is just
4 plugged in as you go to somebody else at some point in
5 time. What does the time that is reflected on here tell us
6 about that particular text message?

7 A. So that's gonna be the time that the messages are sent
8 or received.

9 Q. Are sent or received? That's two things at the same
10 time?

11 A. If it's an incoming message, it would be the time that
12 it's received on the device. If it's a sent message, it
13 would be the time that it was sent on the device.

14 Q. Okay. Thank you. And so as far as you can tell, the
15 times that are reflected on here appear to be accurate from
16 what you observed?

17 A. Yes.

18 Q. Okay. Now the telephone, incoming and outgoing, of
19 course, have a time as well and I assume that that's the
20 same time; if it's an incoming time, it's the time it's
21 received, if it's an outgoing, that's the time it was sent.
22 Is that fair to say?

23 A. That's correct. That same -- same concept.

24 Q. And then but this has a duration, of course, because
25 it's a telephone call, right?

1 A. Yes. So we would see when the phone call was
2 initiated or received, but not when it's ended.

3 Q. But the duration would tell us when it was ended?

4 A. Correct. Yes.

5 Q. Okay. So those are accurate so far as you can tell?

6 A. Yes.

7 Q. All right. There's a reference down here to some sort
8 of a screen shot, and I don't know what that means, but
9 there's a time on that as well and apparently it came from
10 a telephone call. The incoming, that would just indicate
11 the time that it was received?

12 A. That's correct.

13 Q. Okay. Now as to these cookies down here that get onto
14 these web sites, what does that time reflect?

15 A. This would be the creation time for that cookie, so
16 the first time that it was being downloaded after accessing
17 the site.

18 Q. Okay.

19 A. But this is not -- this table does not reflect the
20 last access time.

21 Q. I understand.

22 A. Okay.

23 Q. I understand. You can flip back and forth on those
24 things all day long if you want to, I suppose, once you get
25 it on your computer; is that right, sir?

1 A. Yes. However, by looking at the access time we would
2 have a better understanding of the last time this website
3 was accessed.

4 Q. Okay.

5 A. So it gives an idea of the duration.

6 Q. Okay. You don't have that information regarding
7 duration here; is that what you're telling me?

8 A. That's not reflected in this report.

9 Q. Okay. At the bottom of that -- there's a critical
10 timeframe here and you testified about this. I want to
11 make sure I understand. I'm looking at the very third from
12 the last entry and fourth from the last entry on Page 1.
13 Are you following me on that, in the green?

14 A. Yes:

15 Q. The third to the last -- the fourth to the last entry
16 indicates an entry or some contact with a website at 1 AM
17 -- or 1:20 AM on the 13th and then the next indication is
18 another activity at 9:52 AM, some -- nearly eight hours
19 difference in which there was no activity located within
20 that timeframe; is that right?

21 A. That's what they're reflecting.

22 Q. Now what you said was, however, is that you discovered
23 that during that time period there was a YouTube app that
24 reflected some activity during that period of time; is that
25 right?

1 A. Yes, Your Honor.

2 Q. Okay. Now on Page 3 and on Page 4 within the green
3 -- the web cookie stuff in the fourth column -- or fifth
4 column, the description column, there is a description,
5 of course, of each of those -- the web history and what
6 was revealed. It's been represented, of course, by
7 Mr. McNair, and he's not under oath and he's not testifying
8 and I want to make sure that we're clear on this, that
9 those descriptions that are end to end are accurately
10 reflected -- for what is accurately reflected in that item
11 within the phone itself. In other words, that's not
12 something that somebody's typed in there or has summarized
13 or has in some way extrapolated. That's what actually
14 shows up when you access that particular data as to that
15 phone; is that right?

16 A. That's correct.

17 Q. Okay. And that's true on Page 5 and so forth as well?

18 A. Yes, that's correct.

19 **THE COURT:** Okay. Thank you, Mr. Watkins.

20 Mr. McNair, you can cross-examine.

21 CROSS-EXAMINATION (In-Camera)

22 BY MR. McNAIR:

23 Q. I guess, Mr. Watkins, what you testified to is you
24 did a full extraction on this phone, correct?

25 A. Yes, I did.

1 Q. All right. And you're not saying anything contained
2 in Investigator Phipps's extraction is inaccurate, you're
3 just saying your extraction had more information in it,
4 correct?

5 A. That's correct.

6 Q. All right. And you used a different software program
7 than Cellebrite?

8 A. I did. And to go back to that -- that first point,
9 the only thing that I noticed that was not in Investigator
10 Phipps's extraction that I felt like should have been there
11 is under the cookie section he doesn't have any times or an
12 access column, whereas that data was available.

13 Q. Okay. But nothing that you reviewed in his extraction
14 report was inaccurate, you just had more information from
15 your extraction, correct?

16 A. That is correct.

17 Q. All right. And my understanding as far as the -- the
18 cookies are concerned, that is -- that would be the time,
19 I guess, when somebody -- the cached represents the time
20 somebody clicks on something. That would be the creation
21 time reflected, but you can't say what the duration of that
22 would be, correct?

23 A. Pertaining to the cookies, that would be the time that
24 that particular data file was downloaded onto the phone's
25 browser.

1 Q. Okay. Your testimony was that pursuant to your
2 extraction, you saw activity on YouTube from 12:00 to
3 12:25 AM on the 13th?

4 A. 12:00 to 2:25.

5 Q. 2:25. Excuse me. And where was that reflected?

6 A. That's from the YouTube cache data.

7 Q. All right. And then you testified that you also have
8 where YouTube was accessed at 12:19 AM?

9 A. Yes. I was stating that that's the first -- that's
10 the first record in the cache history for the 13th.

11 Q. Okay. So you can't say how long he was -- why can you
12 say -- put a duration on that first YouTube access in the
13 cache document, but not the second?

14 A. What you do mean the second?

15 Q. Well, you said -- you testified on the 13th he clicked
16 on, I believe, YouTube at 12:19 and then, again, I thought
17 at some other time, but you didn't put a time period that
18 he was using YouTube at that point.

19 A. To be clear, the cache is not going to be
20 representative of a duration per se. It's going to keep
21 track of the use. It can -- what we can -- what we can
22 take out from the cache history is that the device is
23 being used to access -- or the YouTube application is being
24 accessed. The cache is being downloaded through the use
25 of this application. I can't from just looking at those

1 records alone give you a duration such as this is the video
2 and let's say it's a twenty-minute video and he accessed it
3 for twenty minutes and then he clicked on another video and
4 so on and so on. I can't determine that just based on
5 that.

6 Q. Okay. So the cache information just tells you when
7 that video was accessed, right?

8 A. It's just saying that the YouTube application is being
9 accessed to view content.

10 Q. Correct.

11 A. Right.

12 Q. All right. What I'm confused about is why were you
13 able to put a duration on the first time he accessed
14 YouTube from 12:00 to 2:25 AM that you say --

15 A. Okay. So to explain, the cached history I'm saying
16 goes from -- the first record is at 2:19 and then the last
17 record before the time of the incident would be 2:25 AM,
18 so I'm just saying there's records that fall within that
19 range.

20 Q. I got you. Not that he's viewing anything during that
21 whole time period, correct?

22 A. It would appear it's being utilized through that time
23 period. I just can't say what he's accessing throughout
24 that time period.

25 Q. So you can say he accessed YouTube at 2:25 AM, but

1 you don't have any idea how long he was on YouTube?

2 A. Correct.

3 Q. Okay.

4 **THE COURT:** There was another activity at 3:54 as
5 well, right?

6 **THE WITNESS:** Yes, Your Honor.

7 **THE COURT:** Okay.

8 BY MR. McNAIR:

9 Q. And you also agree that the last time anything was
10 accessed on -- well, you agree that everything contained
11 in this exhibit that you've viewed is accurate and is
12 contained in the extraction report?

13 A. Yes, this data with the exception of the added
14 information under the -- I guess, the party column in some
15 of these records.

16 Q. Right. Correct.

17 A. With the exception of that, yes, all this data can be
18 found on the extracted data, yes.

19 Q. Okay. You're just aware and found more
20 information not on this report?

21 A. Correct.

22 Q. Now you mentioned a tombstone file and you said that's
23 created when an app crashes essentially?

24 A. That's correct.

25 Q. All right. And now, I guess, in order for that to

1 happen the phone has to be on?

2 A. It does have to be on, yes.

3 Q. But it does not have to be in use, correct?

4 A. Not necessarily, no.

5 Q. And if a phone is in airplane mode, then does that
6 mean it is not picking up on any towers?

7 A. If it's on airplane mode, it's not gonna have any kind
8 of connection, no.

9 Q. It's not accessing the cellular network, correct?

10 A. Right. Now what was not -- what's also not reflected
11 in the report is the -- whether the phone was accessed on
12 wi-fi and whether it was being used on wi-fi at the time.
13 Now we know that the YouTube application has to have been
14 used because we see the cache history, so there must be
15 some connection. If it wasn't mobile data, then it had to
16 have been wi-fi.

17 Q. Okay. So the phone has to be connected to some
18 network in order to have a crash?

19 A. To -- no, I'm referring back to the YouTube data
20 again. But as far as the --

21 Q. I'm talking about the tombstone.

22 A. -- the tombstone file, no, it does not necessarily
23 have to have an Internet connection for that.

24 Q. All right. It doesn't have to be connected to the
25 cellular network or wi-fi --

1 A. It just simply means --

2 Q. In other words, it doesn't have to be in use, it just
3 has to be on.

4 A. It just simply means an application on the device --
5 I don't want to get too technical. It just means that an
6 application crashed. It could be a process that's running
7 in the background and it just reached a point in its coding
8 where there was an error and it's producing a file to log
9 that -- log that error.

10 Q. Okay. And as far as the photos are concerned based on
11 data files, I guess you were saying you can't tell whether
12 those photos were taken by that phone or some other phone
13 or whether he just accessed them from some other location,
14 correct?

15 A. Just that -- we talked about that for just the files
16 that were recovered from the SD card. Those -- there's no
17 way to determine what cell phone that came from. We can
18 just surmise based on the date and time that it's not
19 likely to have come from this particular phone because the
20 subscriber data indicated that the phone was activated on
21 October 23, 2013, and these exist prior to that.

22 Q. Okay. Now the data files with the pictures of the
23 West Columbia Police Department, you said the cached time
24 is created at the time somebody uses their browser to click
25 on whatever site it is that they click on, correct?

1 A. Did you say cache?

2 Q. Yeah.

3 A. Yes.

4 Q. So I don't know what State's exhibit that is up there,
5 but the one that has the data files obtained from the
6 phone, for instance, Number 3, do you have that up there?

7 A. When you say Number 3, you're referring to the data
8 file section?

9 Q. Yes, sir.

10 A. Okay. Yes, I do.

11 Q. All right. And you said that was a picture that was
12 generated through use of the web browser on that device?

13 A. That's correct.

14 Q. All right. And the date recorded there would have
15 been the date he clicked on whatever site that was that
16 created that picture?

17 A. Yes. So whatever web page this particular picture
18 came from, the time that he accessed that web page and that
19 picture was downloaded, meaning he can see it on his phone,
20 will be the time that it's downloaded on the phone.

21 Q. All right. So on April 16, 2014, he collected on
22 something that generated a picture of the West Columbia
23 Police Department?

24 A. Well, and also I can't testify who's clicking on
25 anything. I don't know who's using the phone. I can only

1 say that the phone's being accessed and when this --
2 whatever website has this picture once it's downloaded or
3 it's visible on the phone is the time indicated under the
4 creation time.

5 Q. All right. And you have been sitting through trial,
6 correct?

7 A. I have, yes. Well --

8 Q. And you've heard that this phone was recovered on his
9 person and this number has been attributed to him?

10 A. I haven't been here through all the testimony, but I
11 understand.

12 Q. All right. So all the photos, I guess, the 4, 9, 10,
13 11, 12, all those photos involving the West Columbia Police
14 Department would have been the result of him clicking on
15 some website on April 16th?

16 A. So these -- these would have been downloaded as soon
17 as these particular pictures are accessed from whatever
18 website they're hosted on.

19 Q. All right.

20 **MR. McNAIR:** Thank you. That's all the questions I
21 have.

22 **THE COURT:** Thank you. Redirect, Ms. Gilreath?

23 REDIRECT EXAMINATION (In-Camera)

24 BY MS. GILREATH:

25 Q. Mr. Watkins, very briefly, if I could refer you back

1 to the color-coded report that you have.

2 A. Yes.

3 Q. Based on your examination of the phone, your
4 examination of the extractions, would you consider this to
5 be a fair and accurate depiction of all of the activity of
6 that phone during the timeframe that this report reflects
7 from the earliest time to the latest time?

8 A. It's not a fair and accurate representation because it
9 didn't include all the data within that timeframe that was
10 accessed on the phone.

11 Q. So if someone were to say that is everything that
12 that phone was doing during this time period, would that
13 be correct?

14 A. No, and I'm afraid that's the -- I'm telling you
15 that's how it looks here, but that's not the case, no.

16 **THE COURT:** Is anybody saying that? Is anybody saying
17 that, that this is all that was on the phone during that
18 particular time period?

19 **MS. GILREATH:** Your Honor, just based on the timeline
20 that the State was attempting to create based on the
21 testimony from the person from Sprint about the activity of
22 the phone, it appears that that is at least partially the
23 purpose of this report is to reflect the activity of the
24 phone during this timeframe.

25 **THE COURT:** All right.

1 BY MS. GILREATH:

2 Q. And as to the pictures of the -- specifically the ones
3 that were taken from the SD card that were, I guess, blown
4 up there into larger pictures, again, you can't tell what
5 device those originated from?

6 A. No, I can't.

7 Q. And as to those photos, you can't tell when they were
8 created. I mean, when the photo itself was created, not
9 when it was created onto the phone or the SD card, but the
10 photo itself you can't tell what day, month, year, time it
11 was actually created?

12 A. Right, and that -- that is a common misconception
13 about the creation times. That creation time doesn't
14 reflect the time that that picture was created and put
15 into existence. That picture -- or that creation time
16 just means that that's the time it was accessed using that
17 application, which means that that picture had been
18 uploaded to that application and then accessed at that time
19 and that's the time that that picture was downloaded.
20 There's no way to tell based on that data when that picture
21 was actually taken.

22 MS. GILREATH: Your Honor, I have no further
23 questions.

24 THE COURT: All right. Thank you.

25 Mr. McNair, any brief follow-up on those points?

RECROSS-EXAMINATION (In-Camera)

BY MR. McNAIR:

Q. In the one photo you have there of the Defendant holding two guns, do you see a magazine in that photo?

A. Yes.

Q. All right. What kind of magazine is that?

A. I'm not familiar with it.

Q. All right. Does it appear to be an Ebony magazine?

A. It could be.

Q. Did you research the date on the subscription of that magazine?

A. I did not.

Q. Okay. And if we knew the date of that magazine, that would potentially put a date on that photo, correct?

A. It would certainly narrow down the timeframe of when it was taken, yes.

Q. All right. Are you aware of where that photo was taken?

A. I am not.

Q. All right. So you don't know whether or not that is Tanisha Taylor's residence where the Defendant was known to live?

A. No, I would not know that.

MR. McNAIR: All right. Thank you.

THE COURT: All right. Thank you, Mr. Watkins. You

1 can step down.

2 **THE WITNESS:** Thank you.

3 (Witness excused.)

4 **THE COURT:** Ms. Gilreath, any further evidence to be
5 offered in regard to your motion to suppress the records?

6 **MS. GILREATH:** Your Honor, given that it is
7 Mr. Phipps's report and the extraction was obtained by
8 him and that's where these items were taken from, we
9 would request to proffer Mr. Phipps's testimony as well.

10 **THE COURT:** I was hoping somebody was gonna call
11 Mr. Phipps. Either one of you or me.

12 All right. Mr. Phipps, if you'll come around, please,
13 and be sworn.

14 (Whereupon, Michael Stewart Phipps was duly sworn by
15 the Clerk of Court.)

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

18 **THE WITNESS:** Michael Stewart Phipps, P-H-I-P-P-S.

19 **THE COURT:** Ms. Gilreath.

20 **MS. GILREATH:** Thank you.

21 MICHAEL STEWART PHIPPS,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION (In-Camera)

24 BY MS. GILREATH:

25 Q. Thank you, Mr. Phipps. Can you tell us where you are

1 employed?

2 A. With the Lexington County Sheriff's Department.

3 Q. And what do you do there?

4 A. I'm a forensic technology examiner.

5 Q. And as a -- we heard earlier about forensic
6 examinations, specifically what kind of forensic
7 examinations do you perform there?

8 A. Just examine any digital evidence; computers, cell
9 phones, memory devices, that type of thing.

10 Q. And how long have you been doing that?

11 A. I've been doing it full-time for just over a year.
12 Prior to that it was done in conjunction with my services
13 as crime scene investigator since about 2009.

14 Q. So as a full-time forensic examiner, that's about a
15 year before that?

16 A. Just -- yes, ma'am, just over a year. And then prior
17 to that we've been doing forensic -- digital forensic exams
18 on cell phones since about 2009 within the crime scene
19 unit.

20 Q. And you had an opportunity to review something in
21 relation to this case, correct?

22 A. Yes, I did.

23 Q. And what was that?

24 A. A ZTE cell phone that was brought to me by the West
25 Columbia Police Department.

1 Q. And what did you first -- what was the first thing you
2 did with that phone?

3 A. Well, it was first brought to me back in April of
4 2014. At that time the phone was PIN locked. When it
5 powers up, it requires an access code to get into it. The
6 forensic software we had at that time wasn't capable of
7 bypassing that PIN lock. At the time the only option we
8 had was to remove the media card and image it by itself.
9 That process was completed, the phone was given back to
10 West Columbia Police Department. Subsequent to that, in
11 March of this year the discussion was made as to whether
12 technology had improved sufficiently to bypass the PIN
13 lock. That was researched and it was determined that it
14 was potentially an option to now bypass that PIN lock, a
15 new search warrant was issued and it was brought back to me
16 at that time.

17 Q. So you had some new software at the point where you
18 did the March 2017 extraction?

19 A. Updated software, yes.

20 Q. What was the name of that software?

21 A. We use a product from Cellebrite. It's two-step
22 process. We use their hardware acquisition tool, which is
23 a UFED Touch, and then we use their forensic software,
24 which is Physical Analyzer, both by Cellebrite.

25 Q. And how long have you been using, I guess, the

1 hardware -- the UFED, is that something that you've had for
2 a while? You mentioned an update.

3 A. In various incarnations. They've updated throughout
4 the years, but since 2009.

5 Q. The software, the Physical Analyzer that you
6 mentioned, that was what actually gave you access to bypass
7 that PIN code?

8 A. Actually the hardware is what allows us to bypass.
9 The Touch device itself was what allowed us to bypass.

10 Q. Okay. And how long have you had that hardware that
11 permitted you to access this phone?

12 A. Again, we've owned the hardware since 2009. It's gone
13 through various updates and incarnations where they've
14 changed out the hardware altogether and then there's
15 software updates to the hardware, and it's a continuing
16 process that goes on month to month.

17 Q. And at what time did the update or, I guess, whatever
18 happened changed the hardware to be able to bypass the PIN
19 code?

20 A. I didn't research exactly at what point in time that
21 option became available. It was just when we were
22 researching whether it was now capable of doing that,
23 which was back in March.

24 Q. So the -- in between April of 2014 and March of 2017,
25 there were no other attempts to see if anything could be

1 accessed or the PIN code bypassed, I guess, on the phone?

2 A. I'm not sure. Again, I'm -- I'm not the investigating
3 agency, I work for Lexington County Sheriff's Department,
4 so we offer our forensic service to outside agencies.

5 Q. I just meant by you. You didn't make any other
6 attempts in between?

7 A. Right. No.

8 Q. That request wasn't made?

9 A. No. I didn't have possession of the evidence either
10 during that time.

11 Q. But law enforcement, the solicitor's office, nobody
12 requested? Knowing that you had these updates month to
13 month or however often, there were no other requests until
14 March of 2017?

15 A. Not to me. No, ma'am.

16 Q. Now you said you did perform an extraction in March of
17 2017?

18 A. Correct.

19 Q. And I know we mentioned earlier what an extraction is,
20 but just to kind of, I guess, refresh our memories, was an
21 extraction obtained?

22 **THE COURT:** I still remember. I remember what an
23 extraction was.

24 **BY MS. GILREATH:**

25 Q. I guess where I'm going with this is when you obtain

1 an extraction, you heard earlier from Mr. Watkins that he
2 mentioned it obtains everything from the phone. Is the
3 extraction that's performed with your software the same
4 -- does it obtain the same information that the other
5 extraction software would obtain?

6 A. Yes, we -- I acquired the phone both in the logical
7 manner and a physical acquisition.

8 Q. And when you obtained that, it includes phone calls,
9 text messages, SMS messages, web history, data files,
10 contacts, applications, all those things are included?

11 A. Yes, ma'am.

12 Q. So when you performed that full extraction initially,
13 it did obtain all of that information from the phone?

14 A. Yes, ma'am.

15 Q. Now when you obtain that information, you said you
16 obtain the logical and the physical images?

17 A. Yes, ma'am.

18 Q. And then is that -- that's what you used to translate
19 into the report that was provided, correct?

20 A. Yes.

21 Q. The report that you provided, it doesn't contain all
22 of that information from the phone?

23 A. It does not.

24 Q. It's narrowed to a specific date range?

25 A. Correct.

1 Q. What was the specific date range that was requested?

2 A. It was -- we were trying to target the April 12th
3 through the end of the device to the point it was seized.

4 Q. And in that specific date range, you would have had
5 everything that was on that phone for that date range,
6 correct, from that extraction?

7 A. Yes, and that was indicated in the content section of
8 my report.

9 Q. Correct. And so if I can point you to the contents
10 section, I believe that's Page 3 of your report; is that
11 correct?

12 A. Yes, ma'am.

13 Q. It lists there -- if I'm correct, this is just the
14 contents of what is in this particular report, correct?

15 A. Correct.

16 Q. So that the type there, that just reflects the type
17 of data that was included in your report, not all types of
18 data that was on the phone?

19 A. Correct.

20 Q. And then included in the report number -- in that
21 second column, what does that number reflect?

22 A. The second column shows the total number of items for
23 that particular category that were identified.

24 Q. Is that what were identified for the phone or
25 identified in the report in that section?

1 A. Identified on the phone. The included in report means
2 that's what's included in the report.

3 Q. Right. And then that total number is what you're
4 talking about with the total number that was of that type
5 in the phone?

6 A. Yes, ma'am.

7 Q. And so what was included in the report there we agree
8 is a substantially smaller number than what the total
9 amount was recovered from the phone for that category?

10 A. Yes, ma'am.

11 Q. And we agree that in terms of the type there where
12 you have listed call logs, contacts, cookies, there are a
13 number of other types of data that would have been included
14 for your extraction during that same timeframe that were
15 not included in your report?

16 A. Yes, ma'am.

17 Q. Now part of your report -- let me make sure I'm
18 pointing to the right page -- includes what we call a
19 timeline, correct?

20 A. That is correct.

21 Q. And that's on Page 58 of your report?

22 A. Yes, ma'am.

23 Q. And for that timeline there's a column there that
24 says type. That's the second column, correct?

25 A. Correct.

1 Q. And that shows what kind of data each entry is
2 showing, correct?

3 A. Yes, ma'am.

4 Q. And we agree that the type that's included here
5 reflects the same types that are on the list of that second
6 page of the report, not all types from the phone?

7 A. That's correct.

8 Q. So the timeline that's created in this section of the
9 report starting on Page 58 isn't actually a true timeline
10 from that range on the phone, it's just a timeline for
11 these particular kinds of data entries?

12 A. That's correct. It's a timeline for all artifacts
13 that were included in the report.

14 Q. And so this here isn't a printout of your original
15 extraction, correct?

16 A. No, ma'am.

17 Q. This is -- this is simply a report that you created
18 generated based on that extraction?

19 A. Yes, ma'am.

20 Q. Now do you have a copy of the color-coded report that
21 we were referencing earlier?

22 A. Yes, ma'am.

23 Q. Is that something that you generated?

24 A. I assisted in the process, yes, ma'am.

25 Q. You -- what do you mean by assisted?

1 A. We -- we assembled a sequence of events that were
2 trying to use this as an exhibit to show certain events
3 that occurred on the phone, not as an all inclusive,
4 everything that happened on the phone during this time
5 period.

6 Q. And when you say we, you mean yourself in conjunction
7 with the solicitor's office?

8 A. Yeah, and investigators.

9 Q. And the information that's included here is
10 color-coded according to various types of data?

11 A. Correct.

12 Q. And if I can point you to that third column there
13 where it says time, the times that you listed there would
14 be what times as it relates to the extraction, what you
15 obtained for those entries related to the extraction?

16 A. And it is somewhat dependent upon the type that we're
17 referring to. As far as call logs are concerned, they're
18 the exact times displayed in the original report. As far
19 as -- I believe it was SMS, it included a network time,
20 which would be the time that that actual message processed
21 through the cellular services network, and then a timestamp
22 a few seconds later where it's delivered to the phone, and
23 in this instance we used the time that it was delivered to
24 the phone.

25 Q. Now is that explained here in the report anywhere?

1 A. What -- which report are you speaking of?

2 Q. What kind of time. Knowing that there are various
3 types of time for some of these entries, does anything in
4 your report explain what kind of time we're talking about?

5 A. Well, in the report, which is my forensic report, it
6 does show both times. Yes, ma'am.

7 Q. But not in the color-coded report here?

8 A. Right, the exhibit that was prepared we used the time
9 that the message was actually delivered to phone.

10 **THE COURT:** How much time -- how much difference are
11 we talking about in terms of seconds or minutes or hours
12 between the time that is first indicated in whatever your
13 information is and is indicated on this report?

14 **THE WITNESS:** In the majority of them, it's just a
15 couple of seconds.

16 **THE COURT:** A couple of seconds. Is that what we're
17 talking about?

18 **MS. GILREATH:** I apologize, Your Honor. What was the
19 question?

20 **THE COURT:** He said it's a couple seconds time between
21 -- between the first time that he indicated and then the
22 time that's indicated in the report, I guess, when
23 something opened it or something. I can't -- have we been
24 talking about this time stuff all this time about a couple
25 of seconds?

1 **MS. GILREATH:** Well, I guess, I would have to direct
2 a question at him because our position is that that -- it
3 varies substantially based on individual entries.

4 **BY MS. GILREATH:**

5 **Q.** If we're talking about the -- for example, the cookies
6 here, it's -- Mr. Phipps, it could be -- it could be a
7 day's separation, it could be an hour's separation.
8 There's nothing that would -- in terms of this, this is
9 the creation time. You said this is the creation time.
10 For cookies here, that would be the creation time that's
11 reflected in this color-coded, correct?

12 **A.** When you asked me about times, I said it varied
13 specifically to the type of artifact you were speaking of.
14 I then began to tell you that SMS or text messaging there
15 were two different times represented in the report. One
16 time was network time, one time was the time that it was
17 actually delivered to the phone. Not viewed, but actually
18 loaded onto the phone. There's no way to tell exactly when
19 someone actually looked at it. So in that instance, it
20 varies by anywhere from -- I think the largest discrepancy
21 I saw in that was maybe a minute to just slightly over a
22 minute to usually four or five seconds.

23 **Q.** And you're talking about the SMS messages
24 specifically?

25 **A.** Correct.

1 Q. We're not talking about the cookies, for example.
2 We're not talking about the difference between the creation
3 time and the last access time for the cookies?

4 A. Correct. And the cookies that we used here they were
5 used for the purpose of this exhibit specifically because
6 web history had been deleted for that time period, so the
7 only artifact I had available to me to show web activity
8 were the cookies. And I believe as the gentleman just
9 testified, the different types of cookies, these being the
10 persistent type, that the only time represented was the
11 creation time and that was the -- that is the date and
12 time that is used in this exhibit is the creation time.

13 Q. I guess we're -- what I'm trying to get at is you put
14 the creation time in here and you mentioned that some of
15 these other access times, for example, last access time
16 could be the same or it could be a few seconds difference,
17 but that's not necessarily true for every single one.
18 It could be that the creation time is on 4-13-14 at
19 12:23:49 AM and the last access time could be two hours
20 later, correct?

21 A. My forensic tools did not parse out any data that
22 would give me any type of last access time for the cookies
23 that were represented on this exhibit.

24 Q. So your software that pulls the extraction does not
25 actually give you last access time?

1 A. It did not give me last access time for the cookies
2 that are represented in this exhibit.

3 Q. That are represented in this exhibit?

4 A. Correct. Yes, ma'am.

5 Q. But there are additional cookies, correct?

6 A. There may be. And, again, the reason cookies were
7 used at all in this exhibit was that web history had been
8 deleted and there was no other point of reference for web
9 activity during that time period.

10 Q. We agree, however, that not having that last access
11 time there it tells us what time that was created. It
12 does not tell us the last time it was viewed not having
13 that last access time?

14 A. You are correct.

15 Q. And so in your full extraction report there were items
16 that did have last access time; meaning it didn't just
17 leave out every last access time for every single thing.
18 There were some that had that?

19 A. I didn't look at cookies beyond the ones that we used
20 here just to show some activity to that point.

21 Q. Okay. But your full extraction would have reflected
22 that, you just opted not to look at it?

23 A. Correct.

24 Q. And you didn't -- you never provided that full
25 extraction; meaning the report that we have here, that's

1 the one that you limited down to the information that was
2 being -- that was wanted for this case, that was being
3 requested?

4 A. Yes.

5 Q. And that full extraction was not provided?

6 A. It was made available should anyone request it.

7 Q. But it wasn't ever actually turned over or provided?

8 A. No.

9 Q. And from your full extraction report you knew that
10 there were applications on the phone, correct?

11 A. Yes. Most smart phones do have applications that have
12 been installed.

13 Q. So your full extraction included the data or the
14 information for those applications in that full extraction?

15 A. The original physical acquisition, yes, would have all
16 that data incorporated in it.

17 Q. And that was not included in the report that was
18 provided?

19 A. To my knowledge, the Physical Analyzer software I
20 was using at the time did not parse out probably certain
21 versions of applications, third-party applications, so I
22 included any activity for any applications that the
23 software identified to me within the report originally.

24 Q. So are you saying that your software didn't provide
25 you with any information as to applications that aren't

1 included here in the report?

2 A. I'm sorry. Rephrase.

3 Q. Are you saying that in your extraction your software
4 wasn't able to pull any information as to the applications
5 that were on the phone other than whatever you've included
6 in this report?

7 A. Correct.

8 Q. So you didn't have any information as to there being
9 other applications on the phone, what they -- when they
10 were used and what they accessed, nothing like that?

11 A. It did not report that out, no, ma'am.

12 Q. So did your extraction reflect that there were actual
13 applications on the phone?

14 A. Yes, all applications that it identified were
15 examined. Any activity that occurred during the time
16 period was included in the report.

17 Q. Okay. Let's -- just a couple of more questions as
18 it relates to the color-coded report that you said you
19 assisted in creating. If I can direct you, and let me make
20 sure I'm -- I'm not sure if I'm looking at the old one or
21 the new one, but I think the page numbers are still pretty
22 similar. If I can point you to Page 2, for example, kind
23 of towards the bottom figures, it might be more towards the
24 middle, but there are a number of phone numbers there with
25 the call logs in the blue, correct?

1 A. Yes, ma'am.

2 Q. Those numbers list the -- I guess what's listed as
3 the owner of the number or what would have been being
4 called or incoming from, that was not included in the
5 original extraction, correct?

6 A. That is correct.

7 Q. That's something that you added?

8 A. Yes, ma'am.

9 Q. And so you essentially just looked up the phone
10 numbers to see who it was?

11 A. Yes. The phone number was identified, researched
12 through open source methods and then the phone number was
13 called. I called the number, verified with the person on
14 the other end that that number did belong to the stated
15 owner and that it was a working number during the time
16 period in question.

17 Q. And that was after you did the extraction?

18 A. Yes, ma'am.

19 Q. So that would have been in 2017?

20 A. This year, yes.

21 Q. And so you added the names to the report based on that
22 information?

23 A. As an exhibit. This isn't a report, this is an
24 exhibit.

25 Q. It does reflect what's in your report, correct?

1 A. It's portions of the report used and drawn out
2 specifically to create an exhibit to present to the jury.

3 Yes, ma'am.

4 Q. With information that you added such as with the phone
5 numbers?

6 A. Yes, ma'am.

7 Q. And with information that was not included for some of
8 these things, correct?

9 A. Yes, ma'am.

10 **MS. GILREATH:** Your Honor, I don't have any further
11 questions.

12 EXAMINATION (In-Camera)

13 BY THE COURT:

14 Q. Mr. Phipps, you heard Mr. Watkins testify that at the
15 critical timeframe for which this entire -- or at least a
16 good bit of this report or this chart or whatever you want
17 to call it is designed to address, and that is that gap
18 between 1 AM and 5 AM on the morning of the 13th, that his
19 report indicated that there was activity by the phone
20 during that period of time, and you heard him testify,
21 specifically that YouTube cached out or revealed that there
22 was activity on that phone at 12:19 AM, at 2:25 AM and,
23 again, at 3:54 AM. Would you address that testimony,
24 please, sir?

25 A. Yes, sir. The software that he was using was able to

1 identify the third-party application of YouTube and that he
2 identified activity during that time period. The software
3 that I had did not specifically parse out YouTube activity,
4 so I was unaware of the YouTube activity during that time
5 period.

6 Q. If you had had that software, do you have any question
7 as to whether or not your examination would have revealed
8 the same activity as Mr. Watkins's examination revealed?

9 A. I haven't had a chance to look at the report. I was
10 handed it this morning, but I have no doubt it would reveal
11 the same thing, yes, sir.

12 **THE COURT:** All right. Thank you, sir.

13 Mr. McNair.

14 **MR. McNAIR:** Very briefly, Your Honor.

15 CROSS-EXAMINATION (In-Camera)

16 BY MR. McNAIR:

17 Q. Investigator Phipps, were you able to corroborate the
18 times indicated on this spreadsheet by comparing them to
19 the Sprint records?

20 A. Yes, I had access to the CDR, the call detail record,
21 and the phone calls in and out were verified to be
22 accurate.

23 Q. All right. So the times reflected on this exhibit
24 that we prepared also correspond with the times on the
25 records provided by Sprint?

1 A. Yes, sir.

2 MR. McNAIR: I don't have any further questions, Your
3 Honor.

4 THE COURT: Thank you. You can step down, Phipps.

5 MS. GILREATH: Your Honor, can I have one additional
6 question based on something that was covered after I
7 completed my questioning?

8 THE COURT: Okay.

9 REDIRECT EXAMINATION (In-Camera)

10 BY MS. GILREATH:

11 Q. Mr. Phipps, you mentioned that your software doesn't
12 parse out that application data. That doesn't mean it's
13 not here, correct?

14 A. That is correct.

15 Q. That just means you would have to manually cause it
16 to be translated into a parsed out viewable form?

17 A. Yes, ma'am.

18 Q. And that's something that you could have done,
19 correct?

20 A. Yes, ma'am.

21 Q. But you chose not to do?

22 A. It's not that I chose not to. I wasn't aware of it.

23 Q. So you know that it pulls that data that's there and
24 that you can manually cause it to be parsed out, you just
25 didn't check to see what kind it was that you could have

1 manually parsed out?

2 A. No, I wasn't aware that there was a YouTube
3 application that was in use, so.

4 Q. So you didn't do any searches based on the kinds of
5 apps that you already knew were on the phone from just
6 looking at it?

7 A. That is correct.

8 **MS. GILREATH:** No further questions, Your Honor.
9 Thank you.

10 **THE COURT:** Thank you. Mr. Phipps, you can step down.
11 (Witness excused.)

12 **THE COURT:** All right. Mr. McNair, let me hear from
13 you first. You obviously have been able to glean my
14 concern about at least a portion of this chart or report or
15 whatever, State's Exhibit 111, insofar as it is being used
16 at least in part to indicate a gap in the use of the phone
17 at the critical time period involved. Are you prepared to
18 amend this report on the basis of Mr. Watkins's testimony
19 to include under the cookies portion activity on 4-13 at
20 12:19 and 2:25 and 3:54 or do you feel like you don't have
21 to do that?

22 **MR. McNAIR:** Your Honor, we're willing to do that.
23 Of course, we'd like to review his report first just to
24 see what, in fact, it shows. But, yes, we are willing to
25 insert that into this chart.

1 **THE COURT:** Okay. And now then I'm concerned about
2 the relevance of the timeline given that information and
3 given that testimony insofar as those critical times are
4 concerned. I can appreciate that the communication between
5 Nish and Mr. Hunter during this period of time is relevant,
6 not insofar as that critical time period is concerned, but
7 because the evidence in this record is that he and Nish
8 were together and that they were play fighting sometime
9 before he was -- before he was arrested. This could --
10 that could be critical -- or I should say relevant as to
11 that. As to the balance of the cookies and the call log
12 at the bottom, which really is there just to show that
13 the gap now is over and the phone is back in activity
14 supposedly, I'm not -- I'm not sure that that's relevant.
15 On 4-14, again, there's communications with Nish that go
16 back to that other information regarding whether they were
17 -- whatever their connection was and whatever they were
18 doing with each other at the time.

19 The -- now the phone calls, the call logs beginning
20 on 4-14, those numbers are fine. It's just a question
21 of whether I'm gonna let you put this in some sort of a
22 demonstrative exhibit, which is all that it's gonna be in
23 my view in any event, to indicate the agency or the person
24 being called or if you have to call another witness to do
25 that, I'm really not inclined to have do that, to have you

1 call some other witness. The same is true on Page 3. The
2 green information, of course, is accurate and I think that
3 it is relevant on Pages 3 and 4 and 5. On Page 6, the text
4 information regarding the sale of those things, I suppose
5 that's relevant given all of the other activity that's
6 going on at this particular time. Those things don't --
7 don't create the concern for me that the timeline during
8 the period of this crime creates.

9 Has your -- is the next witness -- is the next thing
10 we're gonna go into this telephone stuff?

11 **MR. McNAIR:** No, sir. We'll need time.

12 **THE COURT:** Okay. I'm gonna give you time to present
13 some redactions to me in that regard.

14 And, Ms. Gilreath, your motion to suppress is granted
15 in part and denied in part. After we've got some proposed
16 redactions we'll revisit that, okay?

17 **MR. McNAIR:** Your Honor, can we get a CD version of
18 whatever extraction they've done to view for purposes of
19 this?

20 **THE COURT:** Okay.

21 **MS. GILREATH:** Your Honor, we would request the same
22 from them of whatever they've provided.

23 **THE COURT:** Sure. We've got nothing else to do. Go
24 ahead and swap that stuff.

25 **MR. McNAIR:** I believe we already gave them one,

1 but --

2 **MS. GILREATH:** Not of the full extraction. Or do you
3 mean of just this report?

4 **MR. McNAIR:** Well, all we have is the limited
5 extraction, the DVD that was provided as the basis for
6 that.

7 Your Honor, do we need to provide the underlying data
8 for the whole extraction on the whole phone? I think we're
9 just -- we're limiting this to a relevant time period.

10 **MS. GILREATH:** I just wasn't sure if that's what you
11 were asking for from us, the full thing or just of that
12 report that --

13 **MR. McNAIR:** Yeah, the time period we're talking
14 about, if that's possible.

15 **THE COURT:** Is that a problem?

16 **MS. GILREATH:** That shouldn't be a problem, Your
17 Honor.

18 **THE COURT:** Ma'am?

19 **MS. GILREATH:** That shouldn't be a problem, Your
20 Honor.

21 **THE COURT:** Okay. Good.

22 **MS. GILREATH:** At the appropriate time, I do have an
23 additional motion, Your Honor, and put out a request for a
24 ruling as well.

25 **THE COURT:** Regarding the photographs themselves, I

1 haven't even got to those, quite frankly. I'm gonna have
2 to deal with those individually. Some sort of foundation
3 is gonna have to be laid. I tell you I have a concern as
4 to the probative value of the Defendant holding the guns.
5 September of 2013. You might -- you might have another
6 date on the Ebony magazine that updates that somewhat, and
7 I'll be glad to hear about that, but it is not -- it is not
8 the distance in time alone from April the 13th of 2014 that
9 concerns me about that.

10 **MS. GILREATH:** Your Honor, I'm not sure what we're
11 talking about with the Ebony magazine. Is that an
12 additional photograph that's up there?

13 **THE COURT:** It's a portion of the photograph shown in
14 Image 8 and 15. It's on the bed. I tell you I'm concerned
15 about that.

16 Folks, this case is about DNA. That's what this case
17 is about. It's not about character, it's about the conduct
18 -- certainly the conduct around the crime, the time itself,
19 his interaction with Nish because that was listed as an
20 excuse for the scar on his head. That's fair game. His
21 activity following this with Nish. His concern about
22 calling the sheriff's department and these agencies to get
23 his DNA removed. That's fair game. The fact that he was
24 calling lawyers even during this period of time. Given the
25 nature the number of calls that he made may very well be

1 relevant during this period of time. The fact that he was
2 trying to sell items during this period of time. All those
3 things may be relevant given, frankly, the scope of them,
4 but all of those things, of course, create additional
5 appellate issues, which is gonna be somebody else's concern
6 and not mine. But this case is about DNA. If they believe
7 the DNA, they're not gonna care about this stuff. And if
8 they don't believe the DNA, they don't care about this
9 stuff either. But that's the -- that's to a certain extent
10 for you-all to decide. In the end result I'll decide it,
11 but you might be able to do some of it on your own.

12 We need about ten minutes for a bathroom break. That
13 jury has been sitting back there for one hour and a half.
14 One hour and a half. What I was told was gonna take
15 one hour has taken two hours and a half. Now that jury
16 -- I don't know if that jury is even gonna believe me now
17 when I charge them about the law. I don't know whether
18 they're gonna believe me when I try to tell them what the
19 burden of proof and the presumption of innocence is because
20 I haven't told them the truth about a single time that I
21 was gonna need them out here, and it's too late now. But
22 that is the reason that I tried to impress on you-all not
23 to make me waste that jury's time. But as I say, this
24 hasn't been a waste of time, it's been time that we needed
25 to spend. I thought it was gonna be an hour.

1 We're gonna take five minutes and we're gonna get the
2 jury in and we're gonna start. Cue up the next witness.

3 (Recess taken.)

4 (State's Exhibit Number 118 was marked for
5 identification.)

6 **THE COURT:** Are both sides ready for the jury?

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

8 **THE COURT:** Thank you. Bring us the jury.

9 (Discussion off the record.)

10 **THE COURT:** Wait just a minute.

11 **MR. McNAIR:** Your Honor?

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

13 **MR. McNAIR:** I hate to ask, but is it possible for me
14 to ask just two questions prior to cross since we kind of
15 rushed him through direct yesterday?

16 **THE COURT:** Of Mr. Neel?

17 **MR. McNAIR:** Yes, sir.

18 **THE COURT:** I'll let you do that.

19 **MR. McNAIR:** Thank you.

20 (Whereupon, the witness returns to the witness stand.)

21 (Whereupon, the jury enters the courtroom at
22 11:41 AM.)

23 **THE COURT:** Ladies and gentlemen, if I just kept you
24 back thirty minutes over, I would try to make a joke about
25 it. I don't have any jokes that would address an hour

1 and forty-five minutes of your time. I've spent most of
2 my twenty-five years as a circuit judge on my knees
3 apologizing to jurors for the time that I've wasted while
4 they've been in the jury room and we've been out here.
5 We've been here since 9:00 this morning. I thought it was
6 gonna take an hour. I was wrong, and I'm sorry. I
7 apologize for the time that we've wasted. I'll tell
8 you that we try not to waste your time, but sometimes I
9 miscalculate and I waste your time. And that's on me and
10 I'm sorry. But I'm not gonna waste any more of time.
11 We're gonna start back with the trial of this case.

12 Investigator Neel was on the bench -- or on the
13 witness chair yesterday and he still has a couple more
14 questions, or Mr. McNair does, on direct examination and
15 then Mr. Phillips will have the right to cross-examine him.

16 Investigator Neel, of course, you're still under oath.

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** Thank you. Mr. McNair.

19 **MR. McNAIR:** Thank you, Your Honor.

20 SCOTT NEEL,

21 having been previously sworn, testified as follows:

22 CONTINUED DIRECT EXAMINATION

23 BY MR. McNAIR:

24 Q. Very briefly, Investigator Neel, you testified that
25 you were present for the collection of all the evidence in

1 this case with Investigator Bramlett, correct?

2 A. Yes, sir.

3 Q. Were you present with Investigator Bramlett when he
4 dropped that -- dropped the evidence into the evidence
5 room?

6 A. Yes, sir.

7 Q. What date was that on?

8 A. That was on the date of the incident, the 13th.

9 Q. All right. And you testified previously about a
10 breaker box at the incident location being struck by a
11 projectile?

12 A. Yes, sir.

13 Q. Was the electricity working in [REDACTED] when you responded
14 there?

15 A. No, sir, it was not.

16 **MR. McNAIR:** Thank you, Your Honor.

17 **THE COURT:** All right. Mr. Phillips, you can
18 cross-examine.

19 CROSS-EXAMINATION

20 BY MR. PHILLIPS:

21 Q. Good morning.

22 A. Good morning, sir.

23 Q. How are you?

24 A. Good. How are you?

25 Q. Doing well. Can you see that good?

1 A. Yes.

2 Q. Okay. Yesterday you testified that Sergeant Bramlett
3 was very meticulous in his collection of evidence?

4 A. Yes, sir.

5 Q. And you watched him be very meticulous?

6 A. Yes, sir.

7 Q. And you would describe yourself as very meticulous --

8 A. Yes, sir.

9 Q. -- in the collection of evidence?

10 A. Yes, sir.

11 Q. How long have you been doing investigations?

12 A. Strictly investigations, I did it for six years at
13 West Columbia and then about nine months at the sheriff's
14 offices in Aiken.

15 Q. How much training did you get in -- regarding the
16 collection of evidence?

17 A. I think I stated yesterday that when you first start
18 off as a new investigator with the police department you
19 would start off training typically with Investigator
20 Bramlett on how to do crime scenes. You would go out with
21 him and then he would teach you different techniques and
22 how to properly walk through everything.

23 Q. So you were taught by Investigator Bramlett basically
24 how to do the job, how to collect evidence?

25 A. Yes, sir.

1 Q. And you would have taken courses on how to be
2 meticulous; is that right?

3 A. Yes, sir. I attended a class through the academy,
4 yes, sir.

5 Q. Okay. And part of that meticulous nature is kind of
6 leaving no stone unturned, right?

7 A. As far as your crime scene, yes, sir. I would agree.

8 Q. And with that, that's logging every piece of evidence?

9 A. Yes, sir.

10 Q. Taking pictures of every piece of evidence?

11 A. Yes, sir.

12 Q. Being very detailed in how you write and describe
13 everything as you collect it?

14 A. Yes, sir.

15 Q. And you were there when every piece of evidence was
16 collected in this case?

17 A. Yes, sir.

18 Q. Meticulously?

19 A. Yes, sir.

20 Q. Going to the key point in this case, the hoodie and
21 the alleged cap that was found inside the hoodie, you were
22 there --

23 A. Yes, sir.

24 Q. -- when the cap and the hoodie was found?

25 A. That's correct.

1 Q. Have you reviewed the search warrant return that was
2 done by Investigator Bramlett?

3 A. I may have initially, yes, sir. It's been a while
4 since then.

5 Q. Do you have it with you?

6 A. I do.

7 Q. Can you pull it?

8 A. Okay.

9 Q. This report was done the morning of the crime at
10 7:10 AM; is that right?

11 A. That's when the subpoena execution began, yes, sir.

12 Q. And as you do that, you log every piece with the
13 return?

14 A. Yes, you basically make a list as you're walking
15 through and then at the end you would fill out the return.

16 Q. Right. And at 7:00 in the morning -- you got there at
17 what time?

18 A. Around 3:15 in the morning.

19 Q. So it was right after you finished this paperwork gets
20 done?

21 A. Yes, sir.

22 Q. You go to Item Number 7, could you read that for me?

23 A. One black hoodie taken from bathroom floor.

24 Q. Is there any mention of a cap?

25 A. Not on this, no, sir.

1 Q. Have you reviewed Investigator Bramlett's report?

2 A. Yes, sir.

3 Q. Do you have it with you?

4 A. You're referring to the supplemental report that he
5 completed?

6 Q. Yes.

7 A. Just making sure.

8 Q. I'm sorry about that.

9 A. That's okay.

10 Q. Read, say, the first two or three sentences. It will
11 be in about the third line.

12 A. Start at the beginning, is that what --

13 Q. Yes, and I'll ask you questions.

14 A. On April the 13th, 2014 --

15 Q. Oh, no. They generally don't want you to read it, so
16 if you'll just read over it to yourself and then I'll ask
17 you questions.

18 A. Okay.

19 Q. Have you had a chance to read it?

20 A. The first few lines. Yes, sir.

21 Q. Is this the first page you're looking at? Because I
22 just realized this would be probably the second.

23 A. Yes.

24 Q. I'm sorry. I just making sure so we don't waste the
25 jury's time. Right there. I'm sorry. What he put in his

1 report says the black hoodie from the bathroom; is that
2 correct?

3 A. Yes, sir.

4 Q. Is there any mention of the cap?

5 A. No, sir.

6 Q. And when you're trained at the South Carolina Criminal
7 Justice Academy, they train you to be meticulous in your
8 report writing?

9 A. Yes.

10 Q. Because three years later you could be in court?

11 A. Correct.

12 Q. And as you log evidence, you're not gonna remember
13 necessarily what you did three years ago better than what
14 you did within the few hours of after it happened?

15 A. Correct.

16 Q. Being meticulous and logging this information is
17 critical; is it not?

18 A. Yes, sir.

19 Q. And you're trained to be meticulous?

20 A. Yes, sir.

21 Q. And you were meticulous?

22 A. Yes, sir.

23 Q. In being meticulous and following your training, the
24 search warrant return and the incident report doesn't list
25 anything about a cap; does it not?

1 A. No, sir.

2 Q. In this process you take photographs of the evidence
3 that you find; is that right?

4 A. Yes, sir.

5 Q. And this is a photograph you took of the hoodie; is
6 that right?

7 A. Yes, sir.

8 Q. And I'm referring to State's Exhibit 55. Are there
9 any photographs of this cap?

10 A. No, sir.

11 Q. At all? None?

12 A. Not from the crime scene. No, sir.

13 Q. Not in the search warrant return, not in the incident
14 report, no photographs of the cap?

15 A. Correct.

16 Q. And this is the cap that allegedly has his DNA on it?

17 A. Yes, sir.

18 Q. Is the whole reason why he got arrested?

19 A. Part of it, yes, sir.

20 Q. Do you have -- and you were there when the evidence
21 was turned in to the West Columbia Police Department's
22 evidence room, weren't you?

23 A. Yes, sir.

24 Q. Do you have those records with you?

25 A. No, sir.

1 Q. I'll show you this document and give you a chance to
2 look over it. Does that look like a fair and accurate
3 evidence custodial-type record from West Columbia?

4 A. Yes, sir, this would be from the computer system.

5 Q. And this crime happened on what date?

6 A. April the 13th.

7 Q. And you were done collecting all of the evidence by,
8 say, 7:00 of the 13th?

9 A. That's when we started collecting the evidence.

10 Q. Okay. What time do you think you were done?

11 A. I'd say it was probably maybe 10:30 or so.

12 Q. 10:30 on the 13th?

13 A. Yes, sir.

14 Q. What day was it when that evidence was finally logged
15 in the West Columbia Police Department?

16 A. It was logged into the computer system on the 14th.

17 Q. At what time?

18 A. 11:17.

19 Q. So almost twenty-four hours later -- or over
20 twenty-four hours later the key piece of evidence that
21 hasn't been listed in any report, no photograph as first
22 described, over twenty-four hours later at the West
23 Columbia Police Department?

24 A. The evidence would have been secured in our evidence
25 room the day before. This is simply whenever it was

1 actually logged into the computer system. It would have
2 been secured into the evidence room on the morning of the
3 13th before we left.

4 Q. Okay. Specifically to my question, the first time the
5 cap is ever referenced is over twenty-four hours later --

6 A. Okay.

7 Q. -- that we can find a record of, right?

8 A. Yes, sir.

9 Q. Okay. And based on your training and your experience,
10 that cap should have been listed in the search warrant
11 return; is that right?

12 A. Maybe, maybe not. Essentially when we discovered the
13 hoodie, we noted --

14 Q. Not about what you think may happen. No speculation.

15 **MR. McNAIR:** Your Honor, he can explain his answer.

16 **THE COURT:** That's right. I'll allow him to explain
17 his answer.

18 **MR. PHILLIPS:** And I would have one clarification,
19 Your Honor. It can't be based on speculation.

20 **THE COURT:** Right. He's telling you what he did with
21 the -- how they collected the hoodie. He can testify about
22 that. Now speculation, he can't go beyond that.

23 **MR. PHILLIPS:** Thank you.

24 **THE COURT:** You can go ahead and talk about how you --
25 what you did when you collected the hoodie. That's fine.

1 **THE WITNESS:** Okay. When the hoodie was discovered,
2 there was fabric that was found. At that point we didn't
3 know the relevance of it, we didn't know exactly what it
4 was, and so we collected the whole item and kept everything
5 together. Investigator Bramlett once the evidence would
6 have been secured into evidence would have taken a closer
7 look at --

8 BY MR. PHILLIPS:

9 Q. Not would have. Did you see him do it?

10 A. Did I see him? No, sir. I did not.

11 Q. Not would have. Did you see it?

12 A. No, sir.

13 Q. Okay. But you were trained if it is there you would
14 put it in the search warrant return?

15 A. If you can -- if you can positively identify what the
16 item specifically is, yes.

17 Q. If there are two separate items, would you list it as
18 two separate items?

19 A. If you can identify what the item is, yes.

20 Q. On the search warrant return, are individual items
21 separated?

22 A. Yes.

23 Q. Okay. In the report where you had even more time
24 after that to include where it says the hoodie from the
25 bathroom and there's no reference to the cap, wouldn't it

1 say unidentified or unknown fabric?

2 A. I can't answer that.

3 Q. But if you were trained and you found an unidentified
4 fabric, that would be something you'd want to put in your
5 report so when you come to court three years later you
6 could say well -- it would support what you just testified
7 to?

8 A. Yes, sir.

9 Q. And if you had this unidentified fabric, you would
10 want to take it apart like you've identified with every
11 piece of evidence with the number system and take a picture
12 of it?

13 A. As far as the collection on-scene, your number one
14 concern is the preservation of that evidence and so if
15 you're separating those items, pulling them apart, you do
16 run the risk of damaging or losing some of the items.

17 Q. And then once you get to a secure location, you would
18 then take a picture of it?

19 A. Yes, sir.

20 Q. And there's no picture of it?

21 A. Not to my knowledge.

22 Q. Because there were things that were done outside of
23 your presence?

24 A. Once they were secured into the evidence room, yes,
25 sir.

1 Q. And the size of the hoodie is extra large?

2 A. I'm not sure.

3 Q. To refresh your memory as far as -- the information
4 that would have been logged in should be accurate; is that
5 right?

6 A. Yes, sir.

7 Q. And it has the hoodie listed as extra large?

8 A. That's what it states, yes, sir.

9 Q. And in the collection of this evidence there were
10 fingerprints found?

11 A. At the crime scene, yes, sir.

12 Q. You dusted them?

13 A. Investigator Bramlett did, yes.

14 Q. He took pictures of them?

15 A. Yes.

16 Q. Is that right?

17 A. Yes, sir.

18 Q. And in doing that, that's to preserve all the
19 evidence?

20 A. Yes, sir.

21 Q. He did that at the critical scenes, the bathroom, the
22 sliding glass door?

23 A. Yes, sir.

24 Q. So he dusted for all those fingerprints and did find
25 some fingerprints?

1 A. Yes, sir.

2 Q. At both locations?

3 A. I believe there was a palm print, partial palm print,
4 found on sliding glass door, a partial palm print, and then
5 there were two prints found in the bathroom.

6 Q. Now the crime scene is covered in blood; is it not?

7 A. Yes, sir.

8 Q. And with it being covered in blood, did you also look
9 for any hairs that were amongst the crime scene?

10 A. Well, we certainly would have looked for them, yes.

11 Q. Because that would be DNA evidence that could link you
12 to a suspect; is that right?

13 A. Yes, sir.

14 Q. And if there were hairs in the bathroom or other parts
15 of the house, you would have looked for them and you would
16 have found them -- hopefully would have found them?

17 A. Yes, sir.

18 Q. Where there was a struggle and where Ms. Simon told
19 you -- or at least where you eventually found out that
20 there was a struggle and where he was pinned down, did you
21 look for any hairs on the floor?

22 A. Yes, sir.

23 Q. Did you find any hairs on the floor?

24 A. Nothing was -- no, sir.

25 Q. When you started taking swabs of DNA from the hoodie

- 1 and other parts, was that you or Bramlett?
- 2 A. We actually did the swab -- two of the swabs for --
- 3 the item was left packaged as it was found and the --
- 4 Q. SLED did all that?
- 5 A. They did all the swabs.
- 6 Q. So at this point you took photographs or Bramlett
- 7 did --
- 8 A. Yes, sir.
- 9 Q. -- of the crime scene and then, of course, later on at
- 10 Tanisha Taylor's home?
- 11 A. I don't believe there were any photographs taken at
- 12 her house. Are you referring to the one a few days later?
- 13 Q. (Nods head.)
- 14 A. No, sir.
- 15 Q. And Mr. Hunter's mother's home, you were there when it
- 16 was searched?
- 17 A. Yes, sir, I was.
- 18 Q. You took photographs of that?
- 19 A. I don't recall whether I did or not.
- 20 Q. But you were there?
- 21 A. Yes, sir.
- 22 Q. And both vehicles that were related to Mr. Hunter, you
- 23 were part of the search of those vehicles?
- 24 A. I was to the Buick Skylark.
- 25 Q. And then both residences --

1 A. Yes, sir.

2 Q. -- to the search warrant? Okay. Did you find any
3 evidence at any of those locations?

4 A. The only item that I recall collecting was in the
5 Buick Skylark. There was a black T-shirt that we
6 collected.

7 Q. On that black T-shirt did you find any blood?

8 A. No, sir.

9 Q. Did you find any hair?

10 A. No, sir.

11 Q. Did you find any rips or cuts or anything that made it
12 relevant to this?

13 A. Not that I recall, no, sir.

14 Q. Just a black T-shirt?

15 A. Yes, sir.

16 Q. And there were multiple black T-shirts just laying
17 around Ms. Simon's home, right?

18 A. Yes, sir.

19 Q. So there's nothing of value to a black T-shirt?

20 A. No, sir.

21 Q. And with that, when you searched all these places, his
22 mother's home, Tanisha Taylor's home, the Skylark, there
23 was not one shred of evidence linking Mr. Hunter to this
24 crime?

25 A. No, sir.

- 1 Q. When you got to the crime scene there it was dark,
- 2 correct? It was very late at night?
- 3 A. Yes, sir.
- 4 Q. And the lights had been knocked out; is that right?
- 5 A. Are you referring to the streetlights?
- 6 Q. No, inside the apartment.
- 7 A. I believe so, yes, sir.
- 8 Q. So -- because the breaker box got hit with a bullet
- 9 and the lights didn't work?
- 10 A. Yes, sir.
- 11 Q. Did you take pictures with the lights off?
- 12 A. I mean, by the time we started execution of the search
- 13 warrant, the sun was coming up, so I don't recall whether
- 14 we -- I'm sure we had flashlights and used those.
- 15 Q. And with that, so it would have been fairly -- I mean,
- 16 if the lights were off and it's in the middle of the night,
- 17 it would have been real dark in the apartment. That's fair
- 18 to say?
- 19 A. Yes, sir. I was trying to remember correctly. It
- 20 seemed like maybe there were some lights that were working
- 21 and some that weren't. I'm not sure if it was all the
- 22 lights or whether it was just one or two.
- 23 Q. Do you have any idea as to that?
- 24 A. I don't recall specifically, no, sir.
- 25 Q. But you might have waited until later to take pictures

1 so you can get good pictures; is that right?

2 A. Well, in this particular situation by the time we had
3 gotten the search warrant and began to process the scene,
4 it was daylight.

5 Q. The sun was coming up?

6 A. Yes, sir.

7 Q. And all these pictures of the crime scene showing
8 blood and things of that nature all over the crime scene,
9 where did y'all -- I mean, at that point you said SLED did
10 the swabs. Did y'all take pieces of the blood or did you
11 just assume it was all Ms. Simon's? I'm just trying to
12 think in the evidence collection process if there's blood
13 everywhere, how did you collect that for testing?

14 A. There were four swabs that we did take there on the
15 scene.

16 Q. Just four?

17 A. Yes, sir.

18 Q. Where were the locations of those four?

19 A. The first swab was on the outside of the sliding glass
20 door leading into the apartment, there was also a swab
21 taken from the concrete pad that led to that door, that
22 same door, and there was a sample taken from the front
23 door, the main entrance door to the apartment, and then
24 also some of the blood that led upstairs to Apartment 18,
25 and we took a swab from that.

1 Q. All right. And no where else out of all of that crime
2 scene, you didn't take any other swabs to see if he was
3 injured it might be his blood? Because you can't really
4 tell one set of blood from another; is that right?

5 A. Correct.

6 Q. Did you search this shirt for hairs? Did you look for
7 hairs in this shirt?

8 A. I did not specifically search it for hair, no, sir.

9 Q. I guess this is a better picture. So if there was a
10 struggle and that was Ms. Simon's shirt, there would be
11 possible hairs inside that shirt. Did you check the hairs
12 shirt for hairs?

13 A. Typically whenever Investigator Bramlett or in general
14 when someone would collect a piece of clothing, he would
15 normally kind of hold it up to see if there were any lose
16 items with it and he may search it briefly on-scene for any
17 obvious signs of it blood or tearing or anything obvious,
18 yes.

19 Q. When you searched the Skylark, you looked for any
20 other type piece of evidence and there was nothing there?

21 A. Correct.

22 Q. And that's a picture of -- State's Exhibit 109, that's
23 picture of what the Skylark looked like when you searched
24 it?

25 A. Yes, sir.

1 Q. And there were, you said, a palm print and possibly
2 fingerprints taken from the sliding glass door?

3 A. If I remember correctly there was on the outside, I
4 believe.

5 Q. And this is another angle of the hoodie coming from
6 inside the bathroom; is it not? That's State's Exhibit
7 Number 118.

8 A. Yes, sir.

9 Q. State's Exhibit 11, this piece of cloth that was found
10 outside, were you present when one of the police dogs kind
11 of drug it around?

12 A. I don't believe I -- I might have been there, but I
13 did not see it happen. I was told about it after the fact.

14 Q. And you were present when you said all the evidence
15 was collected; is that correct?

16 A. Yes, sir.

17 Q. And Sergeant Bramlett, if he watched one of the dogs
18 manipulate this piece of evidence, you would have been
19 there, right?

20 A. I don't know that he actually saw it either. We were
21 told about it.

22 Q. All right. And these type of photographs where you're
23 sitting there and you're trying to recreate the scene, you
24 didn't find any hairs?

25 A. No, sir.

1 Q. There's no hairs as you could tell them -- that you
2 could see them?

3 A. Correct.

4 Q. So there's no disputing that the critical piece of
5 DNA evidence came from the hat -- the cap that you say was
6 in the hoodie?

7 A. Correct.

8 Q. And in being meticulous and not having the cap
9 mentioned in the search warrant return and the incident
10 report, was there any other mistakes that you were aware
11 of as to where the cap was listed?

12 A. I don't understand the question, sir.

13 Q. Was it listed or at least testified to one time that
14 the cap was found in the hood part and then later listed in
15 another report as in the pocket of the hoodie?

16 **MR. McNAIR:** Objection, Your Honor. He's been
17 sequestered. He doesn't know any other witnesses'
18 testimony.

19 **THE COURT:** I'll sustain the objection as to -- you
20 can ask him if he knew about that.

21 **MR. PHILLIPS:** I'll rephrase. It was unartfully
22 worded.

23 BY MR. PHILLIPS:

24 Q. In reviewing for this case, has there been -- are you
25 aware that it's been said that the cap was found in the

1 pocket of the hoodie?

2 A. No, sir.

3 Q. Only the hood?

4 A. That's -- yes, sir.

5 Q. So if there is a report from SLED saying that it was
6 found in the pocket, you wouldn't have any idea?

7 **MR. McNAIR:** Objection. Hearsay.

8 **THE COURT:** I'll sustain the objection once again.

9 BY MR. PHILLIPS:

10 Q. Did you find any boots in any of your searches?

11 A. No, sir, I don't believe so.

12 Q. Based on the description, the suspect had boots?

13 A. I'd have to look back to confirm that.

14 Q. But if there was, you didn't find any boots?

15 A. No, sir.

16 Q. Were you aware that Ms. Simon's phone had been taken?

17 A. Yes, sir.

18 Q. Were you involved in the process of getting that phone
19 tracked for cell site location data?

20 A. No, sir.

21 Q. So you were not involved in any of that?

22 A. No, sir. We were made aware that the phone was taken
23 during the incident. That was the extent of my involvement
24 with it.

25 Q. That was another investigator's job?

1 A. Yes, sir.

2 Q. The distance from Tanisha Taylor's apartment to
3 Ms. Simon's apartment, what would you estimate that to be?

4 A. Maybe a hundred feet, one hundred twenty feet.

5 Q. No, Tanisha Taylor's apartment in Columbia -- West
6 Columbia.

7 A. I'm sorry. I'm thinking about the other apartment.
8 Maybe fifteen minutes or so.

9 Q. About a fifteen minute drive --

10 A. Yes, sir.

11 Q. -- between Columbia and West Columbia?

12 A. Under normal traffic conditions. Yes, sir.

13 Q. And there's no indication that the two knew each
14 other?

15 A. The victim and Mr. Hunter, no, sir.

16 Q. And in her initial report she said the voice sounded
17 familiar?

18 A. I don't recall being told that, no, sir.

19 Q. In your investigative notes?

20 A. I don't believe it's in my investigative notes, no,
21 sir.

22 Q. In doing the search warrant for phone records of the
23 phone that was recovered in the Skylark of Mr. Hunter's
24 or in the rental car of Mr. Hunter, you did the search
25 warrant; is that correct?

1 A. I'd have to look back. I know I did a search warrant
2 for a phone, but that was for the extraction of the phone,
3 yes.

4 Q. So I can give you a hypothetical then. If the search
5 warrant limited from between the hours of, say, one and
6 five and you were asking for cell site location data --
7 you're aware of what that is, right?

8 A. Yes, sir.

9 Q. You could go farther back to see where that -- what
10 towers that phone's pinged on in the days, weeks and months
11 before?

12 A. Yes, sir. Hypothetically speaking, yes, sir.

13 Q. So hypothetically if you wanted to see if a phone
14 pinged off a tower near an apartment complex in West
15 Columbia within the weeks and days before, you could do
16 that?

17 A. Yes, sir.

18 Q. To your knowledge neither you or any of the other
19 investigators did that?

20 A. Yes, sir. We used the timeframe around the incident.

21 Q. But it could have been subpoenaed?

22 A. Hypothetically, yes, sir, it could have.

23 Q. And in only requesting cell site location data between
24 one and five, you didn't request any Internet activity.

25 You could have subpoenaed Internet activity from the phone?

1 A. From my understanding, the -- with the tower data it
2 wouldn't necessarily show you what Internet content per se,
3 but if the phone hit off a tower it would recognize that.

4 Q. But if somebody was using wi-fi, that's a whole other
5 search warrant. You would have to request that --

6 A. I believe so, yes, sir.

7 Q. You'd have to request that from the Internet service
8 provider?

9 A. Yes, sir.

10 Q. And you didn't request that?

11 A. No, sir.

12 Q. You didn't request the Internet service provider
13 records between one and five?

14 A. No, sir.

15 Q. Not even a limited time period?

16 A. Not for the Internet, no, sir.

17 Q. With that, you were part of the interview of
18 Mr. Hunter on the 21st?

19 A. Yes, sir.

20 Q. Were you part of the interrogation on the 17th?

21 A. No, sir.

22 Q. Solely the 21st?

23 A. Yes, sir.

24 Q. What's listed as State's Exhibit 82, this is the
25 Miranda rights form that you're well aware of?

1 A. Yes, sir.

2 Q. And this is the one that was used in this case?

3 A. Yes, sir.

4 Q. And he voluntarily spoke to you after you told him he
5 had a right to remain silent?

6 A. Yes, sir.

7 Q. And he voluntarily spoke to you after you told him he
8 could have a lawyer?

9 A. Yes, sir.

10 Q. And in this as you read it, it says I'm willing to
11 make a statement and answer questions and I understand and
12 know what I'm doing, no promises or threats have been made
13 to me, no pressure or coercion of any kind has been used
14 against me. I'm willing to make a statement. So at that
15 time, you do that at the very beginning; is that right?

16 A. Make a statement at the very beginning?

17 Q. Go through this Miranda form.

18 A. Oh, I'm sorry. Yes. The Miranda form, yes, sir.

19 Q. Make sure he's well aware of his rights?

20 A. Yes, sir.

21 Q. So the last thing you do before he signs it, I'm
22 willing to make a statement, he has to read that?

23 A. Yes, sir.

24 Q. And you were given an audio recorder by West Columbia
25 Police Department?

1 A. Yes, sir.

2 Q. And that was to record witness statements?

3 A. Yes, sir.

4 Q. And when you had him in the interview room, you
5 consciously made the decision not to record that
6 conversation?

7 A. Typically you record the statement. You don't record
8 the interview itself.

9 Q. That's why I said the conversation. So when -- it's
10 not -- it's not a conversation, is it? It says I'm willing
11 to make a statement. That's why you had him sign it,
12 right?

13 A. Yes, sir.

14 Q. All right. So everything he's saying after that is a
15 statement; that is, it says in Number 2 anything you say
16 can and will be used in court as evidence against you?

17 A. Yes, sir.

18 Q. And so if you recorded it we could have had that
19 available?

20 A. Yes, sir.

21 Q. And there's a live feed camera in that interview room;
22 is that correct?

23 A. I believe so, yes, sir.

24 Q. And if you would have set up a VCR to that live feed,
25 you could have recorded the interview, audio and video?

1 A. Yes, sir.

2 Q. And we'd have that to show to the jury?

3 A. Yes, sir.

4 Q. And that interview lasted well over an hour?

5 A. It was approximately an hour, yes, sir.

6 Q. And lasting over an hour, there was even an
7 interchange of detectives who went in and out; is that
8 correct?

9 A. Yes, sir.

10 Q. So could you walk me through that? So it was
11 initially you and which investigator?

12 A. Investigator Griffin.

13 Q. And after an hour, you kind of tagged out and Captain
14 Wade came in?

15 A. Yes, sir.

16 Q. So this conversation that the West Columbia Police
17 Department talked about, conversations with somebody with
18 arrest warrants who's been arrested for attempted murder,
19 last over an hour and have multiple investigators come in
20 and out; is that right?

21 A. Yes, sir.

22 Q. So it's not a statement, it's a conversation?

23 A. It's an interview.

24 Q. Okay. So at that point statements are to be recorded,
25 but not interviews?

1 A. Correct.

2 Q. And interviews that last over an hour with multiple
3 investigators when someone's arrested for attempted murder,
4 is different than a person making a statement?

5 A. Yes.

6 Q. And when do you make that choice as to when an
7 interview becomes a statement?

8 A. Typically you conduct an interview and you ask
9 questions. The person may answer -- will answer the
10 questions in an attempt to gain information. You try to
11 learn what this person may know about a particular
12 incident. That's the interview process. Once the
13 interview process is completed and you feel like you have
14 obtained as much information as possible and as much
15 accurate and truthful information as possible, you would
16 then ask that person if they would provide a statement to
17 that information and then that is when you would record
18 their statement.

19 Q. So if somebody denies committing a crime and doesn't
20 confess, it never turns itself into a statement?

21 A. In the conversations with Mr. Hunter, he spoke of
22 asking for charges to be dropped, he spoke of wanting a
23 bargain or a deal to be put in place, which is something I
24 couldn't do. I don't have the authority to drop charges.

25 Q. That's pretty heavy stuff, right?

1 A. Yes, sir.

2 Q. And in this interview, had that been recorded, we
3 would know for certain that that happened, correct?

4 A. Yes, sir.

5 Q. And you said I'm willing to make a statement at the
6 very beginning, right?

7 A. Yes, sir.

8 Q. And we can agree it's a statement?

9 A. No, sir.

10 Q. No. Okay. So with this, it only becomes a statement
11 when someone confesses to you. When they deny that they've
12 committed a crime and that it's -- in your mind they're not
13 being truthful, it's not a statement?

14 A. I would take a statement from somebody who I felt like
15 I was getting truthful information from, yes.

16 Q. That's my point. You get to make the determination of
17 what gets recorded; yes or no?

18 A. Yes, sir.

19 Q. Knowing that it could be played in court, knowing he's
20 being arrested for attempted murder --

21 A. Yes, sir.

22 Q. -- you get to make that determination?

23 A. Yes, sir.

24 Q. And that's based off your belief of whether or not
25 he's confessed to the crime?

1 A. Yes, sir.

2 Q. And he denied it?

3 **MR. McNAIR:** Your Honor, may we approach real quick?

4 **THE COURT:** Excuse me?

5 **MR. McNAIR:** May we approach real quick?

6 **THE COURT:** Okay.

7 (Proceedings held at the bench; not reported.)

8 BY MR. PHILLIPS:

9 Q. I'm sorry to get worked up. My point is you get to
10 make the determination as to when a statement is recorded?

11 A. Yes, sir.

12 Q. And when somebody denies the crime, that can be during
13 this conversational interview and there's no way to prove
14 what they've said during that entire time third-party?

15 A. There would not be a recording of that conversation,
16 no, sir.

17 Q. And you had the ability to do it?

18 A. Yes, sir.

19 Q. You had an audio recorder?

20 A. Yes, sir.

21 Q. And you had a live video feed?

22 A. Yes, sir.

23 Q. And your captain's even kind of instructed that y'all
24 not record defendant interviews?

25 A. Yes, sir, that's the way I've always been trained, not

1 to record the interviews.

2 Q. That's based on your training not to record that part
3 of any defendant unless they confess?

4 A. It doesn't necessarily have to be a defendant. It
5 could be a witness or it could be anybody. It's handled
6 the same way.

7 Q. How about just a defendant? The confession is when it
8 becomes recorded?

9 A. Yes, sir.

10 Q. That's the threshold. They confess, you record?

11 A. Once you feel like you're obtaining truthful
12 information, you would start -- you would take a statement
13 from that person.

14 Q. And you get to make that determination?

15 A. Yes, sir.

16 Q. And there's no way to challenge it with a third-party
17 piece of evidence that you would be able -- that was in
18 your hands that you would be able to do without any
19 hesitation?

20 A. No, sir.

21 Q. And you know that other statements that are critical
22 in this case were audio recorded?

23 A. Yes, sir.

24 Q. And the only one that wasn't audio recorded was his
25 statement?

1 A. Yes, sir.

2 Q. All right. In the three years leading up to this
3 case, did you or any other investigators show Ms. Simon a
4 photo lineup of Mr. Hunter?

5 A. I did not, no, sir.

6 Q. And had you recorded the audio statement in the
7 three years leading up to this case, you could have played
8 that for her so she could see if she identified the voice?

9 A. I guess you could theoretically say that, yes, sir.

10 Q. And it's fair to say that over three years people's
11 memories are different than they were?

12 A. Absolutely.

13 Q. So much happens and at this point over three years
14 there's only been one person arrested and one person that
15 everybody is pointing the finger at, right?

16 A. Yes, sir.

17 Q. But no photo lineup was shown to her?

18 A. Not to my knowledge.

19 Q. No audio recording of his voice has been played for
20 her --

21 A. No, sir.

22 Q. -- over the last three years?

23 A. No, sir.

24 Q. And no evidence was found in anything, in his
25 vehicles?

1 A. No, sir.

2 Q. Tanisha Taylor's apartment?

3 A. No, sir.

4 Q. His mother's home?

5 A. No, sir.

6 Q. Or the crime scene other than the cap?

7 A. Yes, sir.

8 Q. And there's no picture of the cap at the crime scene?

9 A. No, sir.

10 Q. And there's no log of that morning of the search
11 warrant return, literally that morning as you did it, of
12 the cap?

13 A. Yes, sir.

14 Q. And the incident report that you do after that
15 detailing like your training and it's meticulous and it's
16 fully detailed, there's no mention of the cap in that
17 report?

18 A. No, sir. I mean, in fact, the report was done after
19 the evidence was gone. I mean, where it was documented.

20 Q. And the first time it ever is even described is over
21 twenty-four hours later?

22 A. Yes, sir.

23 Q. And you have Bramlett's supplemental report?

24 A. Yes, sir.

25 Q. And the date of that report?

1 A. At the bottom it's dated April 29th.

2 Q. And this is the report we've been referring to the
3 whole time?

4 A. Yes, sir.

5 **MR. PHILLIPS:** No further questions. Thank you.

6 **THE COURT:** Thank you. Mr. McNair, redirect?

7 REDIRECT EXAMINATION

8 BY MR. MCNAIR:

9 Q. Investigator Neel, Mr. Phillips asked you multiple
10 times about whether or not you record when somebody denies
11 committing a crime and he made a comment indicating
12 Mr. Hunter did, in fact, deny committing this crime. Did
13 you take notes of your interview with Mr. Hunter?

14 A. I did, yes, sir.

15 Q. Are these the notes that you type up regarding that
16 interview?

17 A. Yes, sir, they are.

18 Q. Did Mr. Hunter ever once deny committing these crimes?

19 A. No, sir, he did not.

20 Q. In fact, didn't he ask for a deal in order to tell you
21 the truth?

22 A. He did, yes.

23 Q. Now we covered this yesterday, but would you, please,
24 explain to the jury again why the cap or fabric inside the
25 hoodie was collected together and not pulled apart?

1 A. When the item was found, we didn't exactly know what
2 the cloth material was, so we left it the way it was found
3 to preserve the evidence.

4 Q. And why -- to preserve the evidence. And as a CSI,
5 is your job to process evidence or is it to collect
6 evidence?

7 A. It's to collect the evidence.

8 Q. All right. And where is evidence sent to be tested?

9 A. For DNA evidence it's sent to SLED.

10 Q. All right. So prior to sending it to SLED, you did
11 not want to disturb it in any way, did you?

12 A. Correct.

13 Q. Now Mr. Phillips also brought up the evidence log-in
14 sheet where it showed this evidence was logged in on the
15 14th.

16 A. Yes, sir.

17 Q. This incident happened on the 13th, which is a Sunday,
18 correct?

19 A. Yes, sir.

20 Q. Do evidence custodians work on Sunday?

21 A. Not normally, no, sir.

22 Q. All right. So do you recall if the evidence custodian
23 was present on the 13th that day?

24 A. No, sir.

25 Q. All right. So you put it in an evidence room, but

1 it wasn't actually logged into the computer until Monday
2 morning, correct?

3 A. Correct.

4 Q. All right. Mr. Phillips brought up some latent prints
5 that were collected from the crime scene.

6 A. Yes, sir.

7 Q. All right. Were those sent to SLED for testing as
8 well?

9 A. Yes, sir.

10 Q. Were you informed of the results of those?

11 A. Yes, sir.

12 Q. All right. Did those change the focus of your
13 investigation?

14 A. At the time we sent the prints, I had obtained two
15 names from other agencies who were investigating similar
16 incidents, so we had the prints found at this scene
17 compared to them.

18 Q. Were those prints a match?

19 A. They did not match.

20 Q. And were those people excluded as potential suspects
21 in this crime?

22 A. Yes, sir, they were.

23 Q. All right. Now during the course of your career in
24 investigations, have you ever seen anybody be able to age
25 a fingerprint?

1 A. No, sir.

2 Q. So all a fingerprint tells you is that somebody was
3 there at one time or another, but you can't put a date on
4 it, right?

5 A. Correct.

6 Q. Mr. Phillips asked you about photo lineups. If a
7 victim or a witness doesn't see -- or sees only a portion
8 of the defendant's face, for instance, just the eyes, do
9 you typically show photo lineups in that case?

10 A. No, sir.

11 Q. And just to clarify once again about the hoodie, when
12 you observed that hoodie at the crime scene, where was --
13 the fabric that you could see inside, where was that
14 located?

15 A. To the best of my knowledge, it was located in the
16 hood portion. The back of the -- the part on the back of
17 the sweatshirt that comes up over the head.

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

19 **THE COURT:** Any follow-up on that point, Mr. Phillips?

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

21 **RE CROSS EXAMINATION**

22 **BY MR. PHILLIPS:**

23 Q. The best of my knowledge?

24 A. Yes, sir.

25 Q. Not the best, your knowledge, is that where it was

1 located?

2 A. Yes, sir.

3 Q. Under oath?

4 A. Yes, sir.

5 Q. But it was never logged anywhere else?

6 A. Correct.

7 Q. And you being part of this investigation should have
8 noticed that there was no mention of this cap.

9 **THE COURT:** Is that a question?

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

11 A. Are you asking me if I noticed it as part of my
12 investigation?

13 Q. As the investigator, it would be normal for you to
14 notice that a key piece of evidence would not be listed in
15 any report and that -- I can rephrase it.

16 **MR. McNAIR:** I think he's asked this about a hundred
17 times, Your Honor.

18 **THE COURT:** Well, we'll let him ask it again. Again,
19 put it in the form of a question. We're applying Jeopardy
20 rules here.

21 **MR. PHILLIPS:** Yes, sir.

22 BY MR. PHILLIPS:

23 Q. When you see that there's a key fact in dispute or
24 missing, that's the purpose of drafting supplemental
25 reports?

1 A. The purpose of drafting a supplemental report is to
2 document what you've done in a particular investigation.

3 Q. Or to include additional information?

4 A. Yes, sir.

5 Q. And if you've noticed that you hadn't taken
6 photographs or logged in the search warrant or the incident
7 report this cap, you would just do a supplemental report
8 and say I noticed that it's not in here; by the way, here's
9 my supplement report?

10 A. Yes, sir.

11 Q. And that was never done?

12 A. No, sir.

13 Q. And in doing these reports or supplemental report if
14 there was this unknown material at the time, you would list
15 unknown cloth inside hoodie?

16 A. On the supplemental report?

17 Q. Any report.

18 A. It would -- I guess at that point in time not knowing
19 what the exact item was, I don't know that it necessarily
20 would have been listed on the return of the search warrant
21 as a separate item since it was included within that item.

22 Q. How about the report that was on the 29th?

23 A. There again, I would kind of be speculating as to what
24 somebody else would do with it.

25 Q. And you would list it because it's separate and you

1 wouldn't want there to be any challenge of whether -- where
2 it was found?

3 A. You're asking me that question?

4 Q. Sure.

5 A. Okay. Yes, sir. In a perfect world, yes, sir.

6 Q. And there's no mention of any unknown material in
7 combination with the hoodie?

8 A. No, sir.

9 Q. And talking about the fingerprints that was brought
10 up by the solicitor, Mr. Hunter was excluded as well?

11 A. From the fingerprints, yes, sir.

12 Q. And as the investigator, was it your knowledge that
13 during that first interrogation on the 17th the reason why
14 you did a second interrogation was because Mr. Hunter
15 denied the allegations?

16 A. I can't say that he denied the allegation, no, sir.

17 Q. And if he would have confessed on the 17th, would you
18 have come back and gotten a second statement -- or a
19 conversation first?

20 A. I can't answer that. We may still would have done a
21 second interview.

22 Q. Investigator Griffin never told you anything about it?

23 A. I believe you asked me that if he had confessed on the
24 17th would we have still done a second interview on the
25 21st. I may have misunderstand your question, but if

1 that's the question, then we may or may not have still done
2 a second interview.

3 Q. It would be my fault. Let me rephrase it.

4 Investigator Griffin never talked to you, never -- there's
5 no notes. Because you're an investigator in the case,
6 you're reviewing everything that's being done. You and the
7 other lead investigator, you're talking back and forth,
8 you're trying to solve a crime. The content of the
9 interrogation on the 17th never would have come up, the
10 fact that --

11 A. No, sir, we spoke about it. If I said that, I must
12 have misunderstood your question.

13 Q. We're good. And the fact that he had denied the
14 events on the 17th's, that was not your knowledge?

15 A. That he had denied it? No, sir.

16 Q. That he had denied it. And when you turned this
17 evidence over to West Columbia Police Department, the hands
18 are clean. Y'all -- it's Sunday or no Sunday, you know the
19 severity of the crime, it will just sit until Monday every
20 time, there's no log of anything?

21 A. It would be secured into the evidence room and then
22 the next business day is when it would physically be logged
23 into the computer system.

24 Q. And that's why those search warrant returns and
25 reports are so critical?

1 A. Yes, sir.

2 Q. Because that's the only thing to document it up until
3 the point where that records custodian starts listing them?

4 A. Yes, sir.

5 Q. And they bring up about the photo lineup and the eyes,
6 correct?

7 A. Yes, sir.

8 Q. If somebody was about this far away, would you be able
9 to identify my eyes?

10 A. No, sir.

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

12 **THE COURT:** You've got the last question, Mr. McNair.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. McNAIR:

15 Q. Is there any indication the victim was that far away
16 from the Defendant?

17 A. No, sir.

18 Q. I mean, she's right at the -- wasn't he right at the
19 foot of her bed?

20 A. Yes, sir.

21 Q. About right here?

22 A. Yes, sir.

23 Q. And isn't it true -- I think the victim was even lying
24 with her feet facing the doorway.

25 A. Yes, sir.

1 Q. So he was literally right on top of her, correct?

2 A. Yes, sir.

3 Q. Okay. He brought up the prints and he said those
4 didn't come back as a match to anybody, correct?

5 A. Correct.

6 Q. All right. Are you familiar with [REDACTED]
7 Apartments?

8 A. Yes, sir.

9 Q. Do they have a maintenance man?

10 A. They do.

11 Q. And, once again, anybody could have left those prints
12 because you can't put a date on them, can you?

13 A. Correct.

14 MR. MCNAIR: Thank you.

15 THE COURT: You can step down, Investigator.

16 MR. PHILLIPS: One question, Your Honor.

17 THE COURT: About the janitor?

18 MR. PHILLIPS: No, about the eyes. Just one question,
19 please.

20 THE COURT: One about the eyes?

21 MR. PHILLIPS: That's it.

22 THE COURT: You've got one questions about the eyes.

23 MR. PHILLIPS: Yes, Your Honor. I only had one
24 question, so I wasn't going to ask it back there.

25 THE COURT: All right. I'm taking it back.

1 FURTHER RECROSS EXAMINATION

2 BY MR. PHILLIPS:

3 Q. If I was that close to you and three years later I
4 was, say, this far away from you, would you remember my
5 eyes?

6 **MR. McNAIR:** Is that a fair --

7 A. I -- I guess I can't a hundred percent answer that
8 question definitively. I mean, I've never used an eye
9 lineup to identify a suspect in any experience.

10 **MR. PHILLIPS:** Thank you.

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

12 Now, Mr. Neel, you can step down.

13 **THE WITNESS:** Yes, sir.

14 **THE COURT:** How long will your next witness take,
15 Ms. Mayes, Mr. McNair; do you think?

16 **MS. MAYES:** Fairly brief, Your Honor. Ten minutes.

17 **THE COURT:** Okay. Let's do that.

18 **MS. MAYES:** The State calls Crystal Owens.

19 **THE COURT:** Crystal Owens, come forward, please, and
20 be sworn.

21 **MR. PHILLIPS:** And that's subject to a prior motion,
22 Your Honor.

23 **THE COURT:** It is. Ms. Owens is testifying subject
24 to objection. Thank you.

25 (Whereupon, Crystal Owens was duly sworn by the Clerk

1 of Court.)

2 **THE CLERK:** Once you're seated up there, state your
3 full name, spelling your last.

4 **THE WITNESS:** My name is Crystal Owens. Last name is
5 O-W-E-N-S.

6 CRYSTAL OWENS,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. MAYES:

10 Q. All right. And, Ms. Owens, are you employed by the
11 State of South Carolina?

12 A. I am.

13 Q. And as such, do you have access to information related
14 to the DNA database?

15 A. Yes, ma'am.

16 Q. On the date of April 16, 2014, did anyone contact you
17 on that date regarding the DNA database?

18 A. Yes, ma'am. I received a call around 11:30 AM.

19 Q. All right. On the date of April 16th?

20 A. Yes. I'm sorry.

21 Q. All right. And who was that call from?

22 A. Nathaniel Hunter.

23 Q. All right. And how did he identify himself to you?

24 How did you go about making an actual identification of

25 the person that you were talking to and how you could reach

1 him?

2 A. He gave his name as Nathaniel Hunter and upon request
3 he gave me his date of birth of [REDACTED] of 1983.

4 Q. And did he ever leave you a voicemail on that same
5 date?

6 A. Yes, ma'am. Around 11:30 he left me voicemail and
7 included a phone number where I could get back in touch
8 with him.

9 Q. All right. So I want to start by asking you what
10 phone number did he give you for you to get back to him?

11 A. [REDACTED]-4550.

12 Q. 4550?

13 A. Yes, ma'am.

14 Q. All right. And you mentioned that he called you. Do
15 you know what number he would have called you at?

16 A. I think he actually called my direct office line.

17 Q. Okay. And what is that?

18 A. 803-734-9041.

19 Q. All right. And as such, can calls be transferred to
20 you?

21 A. Yes. The other number that -- my main office line
22 is actually 803 -- I'm sorry, the main building line,
23 803-734-9220.

24 Q. All right. So you could potentially be reached at
25 either one of those numbers?

1 A. Yes, ma'am.

2 Q. Now when you spoke with him on this date, what was his
3 request or inquiry to you?

4 A. He was checking to see if his DNA was on file because
5 he wanted it removed from the system.

6 Q. All right. So he's calling to ask whether his DNA's
7 on file and he wants it removed. Did you hear from him
8 again after that date of April 16, 2014?

9 A. Yes, I spoke to him twice on April 17th.

10 Q. All right.

11 A. Once at approximately 1:30 and then again at
12 approximately 2:30.

13 Q. Approximately 1:30?

14 A. Yes, ma'am.

15 Q. And approximately 2:30?

16 A. Yes, ma'am.

17 Q. And those times may not be exact, but that's based on
18 your best estimation?

19 A. Yes, ma'am.

20 Q. And what name did he provide on this date?

21 A. He identified himself in both those calls as Nathaniel
22 Hunter.

23 Q. And, again, what telephone number did he provide that
24 he could be reached at?

25 A. At 1:30 he gave me number [REDACTED]-4550 and then at

1 2:30 he actually answered that line when I called him back.

2 Q. All right. So when you called this number back, the
3 4550 number, he actually answered?

4 A. Yes, ma'am.

5 Q. And on this particular date, April 17th, the next day,
6 what was his request or inquiry?

7 A. He was following up on his call from the day before
8 wanting to know if I had received a call from SLED
9 regarding his DNA.

10 Q. All right. And did he name a specific person at SLED
11 that was supposed to be contacting you about his DNA?

12 A. No, ma'am.

13 Q. But he wanted to know if you had received a call from
14 SLED about his DNA?

15 A. Yes.

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

17 **THE COURT:** Thank you. Cross-examination?

18 CROSS-EXAMINATION

19 BY MS. GILREATH:

20 Q. Ms. Owens, you said that you spoke to Mr. Hunter on
21 April 16th of 2014?

22 A. Yes, ma'am.

23 Q. Now when he first called you, he actually told you he
24 had just taken a class, correct?

25 A. Uh-huh.

1 Q. And that the class had to do with DNA and the law,
2 correct?

3 A. Correct.

4 Q. And he was asking you when that law went into effect
5 as to whether his DNA was in your database?

6 A. Yes.

7 Q. And that's what he told you was the reason for the
8 call?

9 A. Yes. He felt that his DNA should not be in the system
10 due to what he learned in that class.

11 Q. Correct. And at some point while you were talking to
12 him, you actually told him to call SLED, didn't you?

13 A. Yes.

14 Q. So then whenever he called you back and he asked if
15 you had received a call from SLED, you had told him to call
16 SLED already, correct?

17 A. Yes.

18 Q. And he did tell you that he had taken a class and that
19 was the reason for the call?

20 A. He explained to me the reason for his call was to see
21 if his DNA was in the system because he wanted it removed,
22 but he said the information he had was due to the class
23 that he had taken.

24 Q. Correct.

25 **MS. GILREATH:** No further questions, Your Honor.

1 **THE COURT:** Thank you. Redirect?

2 **MS. MAYES:** Yes, sir, Your Honor, in follow-up.

3 REDIRECT EXAMINATION

4 BY MS. MAYES:

5 Q. What was the date that the -- his DNA was originally
6 added to the database?

7 A. October 25th of 2004.

8 Q. Okay. So it had been in there since 2004?

9 A. Yes, ma'am.

10 Q. Now when he called you and stated that about having
11 taken a class and he wants it out, what was that date?

12 A. That would have been April 16th of 2014.

13 Q. Okay. So it was this call right here on April 16th?

14 A. Yes.

15 Q. Had he ever contacted you before that date about
16 having his DNA removed from the database?

17 A. No, ma'am.

18 **MS. MAYES:** Nothing further.

19 **THE COURT:** Thank you. You can step down, Ms. Owens.
20 Thank you very much.

21 **MS. GILREATH:** Your Honor, can I just verify one
22 question with this witness?

23 **THE COURT:** Okay.

24 RECROSS-EXAMINATION

25 BY MS. GILREATH:

1 Q. The first call that you got from him, that was on
2 April 16th of 2014?

3 A. Yes.

4 Q. And that was the day that you told him to call SLED?

5 A. Yes. For further information he would have to call
6 SLED, yes.

7 Q. I'm just confirming both were on April 16th. That's
8 all I wanted to clarify.

9 A. Uh-huh. Yes.

10 **MS. GILREATH:** Thank you.

11 **THE COURT:** All right. Ms. Owens, you can step down.
12 Thank you, ma'am. Without objection Ms. Owens can be
13 excused?

14 **MS. GILREATH:** No objection, Your Honor.

15 **THE COURT:** Okay. Thank you.

16 (Witness excused.)

17 **THE COURT:** Ladies and gentlemen, we'll take the
18 recess at this point in time. We'll be back at 2:00 to
19 resume the afternoon's work. Please remember not to
20 discuss this case among yourselves or with anyone else.
21 And I apologize, again, for wasting your time today.
22 We'll get started this afternoon at 2:00. Thank you.

23 (Whereupon, the jury was excused for lunch at
24 12:44 PM.)

25 **THE COURT:** Anything from the State before we break

1 for lunch, Ms. Mayes?

2 **MS. MAYES:** No, sir, Your Honor.

3 **THE COURT:** Okay. Mr. Phillips, anything from the
4 defense before we break?

5 **MR. PHILLIPS:** Since we had so many motions and
6 arguments regarding the investigative interview at the
7 Dickerson Center, we had it transcribed and I'd like to
8 make that a Court's exhibit.

9 **THE COURT:** Okay. All right. That will fine. Thank
10 you.

11 **MR. PHILLIPS:** It's still in its original transcript
12 package with the seal.

13 **THE COURT:** Okay. That's good. Hand it up in that
14 fashion and you can mark it as Court's next exhibit, okay?

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

16 (Court's Exhibit Number 10 was marked for
17 identification.)

18 **THE COURT:** All right, folks. Who will be your next
19 witness be at 2:00? Do you have one?

20 **MS. MAYES:** Yes, sir, Your Honor. We have Theresa
21 Hines from SLED. We also have some chain of custody
22 witnesses, Your Honor, and then we have at least two SLED
23 agents this afternoon.

24 **THE COURT:** All right. Very good.

25 Okay. Thank you, folks. We'll start back at two.

1 **MS. MAYES:** And then we have one lay witness as well.

2 **THE COURT:** Okay.

3 (Whereupon, a luncheon recess was taken at 12:46 PM.)

4 **BAILIFF:** All rise.

5 **THE COURT:** Thank you, folks. You-all can be seated.

6 Good afternoon.

7 All right, folks. Are we ready for the jury?

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

9 **THE COURT:** Is the defense ready?

10 **MR. PHILLIPS:** Yes, Your Honor. Thank you.

11 **THE COURT:** Okay. Bring us the jury.

12 (Whereupon, the jury returns to the courtroom at
13 2:09 PM.)

14 **THE COURT:** Thank you, folks. We'll continue now as
15 the State continues to offer evidence and testimony in this
16 case.

17 Ms. Mayes.

18 **MS. MAYES:** The State calls Theresa Hines.

19 **THE COURT:** Ms. Hines, come forward, please, ma'am,
20 and be sworn.

21 (Whereupon, Theresa Hines was duly sworn by the Clerk
22 of Court.)

23 **THE CLERK:** One you're seated, ma'am, state your full
24 name, spelling your last, please.

25 **THE WITNESS:** Theresa Hines, H-I-N-E-S.

1 THERESA HINES,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. MAYES:

5 Q. Good afternoon, Ms. Hines.

6 A. Good afternoon.

7 Q. And can you tell us whether you are employed by the
8 State Law Enforcement Division, commonly known as SLED?

9 A. Yes, I am.

10 Q. And do you have access to a DNA database as a result
11 of your job?

12 A. I do.

13 Q. I want to take you back to the date of April 16, 2014.
14 Do you recall that date?

15 A. I do.

16 Q. And also as a result of events going on, do you have
17 notes and take notes contemporaneous with that course of
18 time?

19 A. I did.

20 Q. What two events were going on at the State Law
21 Enforcement Division on the date of April 16, 2014?

22 A. On April the 16th of 2014, we had a rush case that
23 was assigned to the casework department. On that same
24 day, I received a phone call from an individual with the
25 name of Nathaniel Hunter requesting to have his sample

1 removed from the database.

2 Q. All right. I want to take you back to what you
3 remember about the two events. Are those two events taking
4 place independent of one another?

5 A. Yes, they were.

6 Q. So the first event you mentioned was a rush request?

7 A. That's correct.

8 Q. And that request was for which division within SLED?

9 A. That would be the DNA casework department.

10 Q. All right. And, specifically, the rush request for
11 the DNA department was to analyze evidence from what
12 agency?

13 A. For this particular case, it was the West Columbia
14 Police Department.

15 Q. All right. Evidence from the West Columbia Police
16 Department. And based upon your familiarity with the case,
17 can you tell us whether or not that was evidence from a
18 crime scene?

19 A. Yes, it was.

20 Q. Now the second event that occurred was that a phone
21 call was placed. Who received that phone call?

22 A. I did.

23 Q. And how do you know who made that call? How did that
24 person identify himself to you?

25 A. That individual stated that his name was Nathaniel

1 Hunter.

2 Q. And what, if anything, was his specific request to
3 you?

4 A. To remove his sample from the DNA database.

5 Q. All right. Later that day what, if anything,
6 occurred?

7 A. There was a DNA profile developed from the case that
8 that casework had. Upon a search, that particular case
9 came back to a hit with an individual by the name of
10 Nathaniel Hunter.

11 Q. All right. So at the time that you received this
12 phone call from Nathaniel Hunter wanting his DNA removed
13 from the database, you didn't have the results yet of the
14 crime scene evidence analysis?

15 A. No, we did not.

16 Q. And then once you learned of the results, ultimately
17 what action did you take?

18 A. I would have had to start what we refer to as a hit
19 confirmation process.

20 Q. All right. And did you do that?

21 A. I did.

22 Q. And as a result, was a notification sent to a
23 particular agency notifying them of that DNA hit?

24 A. Yes, a hit notification letter was issued to the West
25 Columbia Police Department.

1 Q. Now prior to that date of April 16, 2014, had you
2 ever one time before received a phone call from Nathaniel
3 Hunter?

4 A. I did not.

5 Q. Are you aware of any request ever made by Nathaniel
6 Hunter for removal of his DNA from the database prior to
7 April of 2014?

8 A. No.

9 **MS. MAYES:** Nothing further.

10 **THE COURT:** Thank you. Cross-examination?

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

12 **THE COURT:** Yes, sir, Mr. Chehoski.

13 CROSS-EXAMINATION

14 BY MR. CHEHOSKI:

15 Q. Good afternoon, Ms. Hines.

16 A. Good afternoon.

17 Q. I just want to make sure I clarify a couple of things.
18 You stated that you spoke to Mr. Hunter on April 16th?

19 A. That is correct.

20 Q. And do your notes indicate what time you spoke to
21 Mr. Hunter?

22 A. It was approximately 12:05 PM.

23 Q. And so that's when you first learned of his name?

24 A. It was during that phone conversation, yes.

25 Q. All right. And you did not receive -- the hit

1 notification came at about 4:15 PM?

2 A. It was around 4:00, 4:15 PM. That's correct.

3 Q. After you learned of his name?

4 A. That's correct.

5 Q. And as far as the database hit, you just run the
6 profile through the computer?

7 A. That is correct.

8 Q. And this was, again, after you had learned of
9 Mr. Hunter's name?

10 A. Yes, but at that point in time I had no idea that
11 there was a case involving the individual identifying
12 himself as Nathaniel Hunter.

13 Q. But it was still after it, right?

14 A. Yes.

15 **MR. CHEHOSKI:** That's all I have.

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

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

18 REDIRECT EXAMINATION

19 BY MS. MAYES

20 Q. Just to clarify that, do you enter a name into the
21 database or do you enter a DNA profile into the database?

22 A. Their DNA profile is housed within a database, but
23 names are not associated to those profiles. There are
24 unique identifiers, but we would have no way of knowing
25 that a particular sample from evidence is going to, in

1 fact, match a particular person until the hit actually
2 occurs.

3 Q. Okay. And who actually entered the DNA profile
4 information from the crime scene at West Columbia?

5 A. That would have been our DNA casework analyst, Mary
6 Ann Boehm.

7 Q. And then who actually conducted what's known as the
8 search?

9 A. I did.

10 Q. All right. At the time you conducted that search in
11 the late afternoon of 4-16, did you have any idea or
12 inclination that it would come back to Nathaniel Hunter?

13 A. Absolutely not.

14 Q. And at the time that it did, at that time did you
15 associate that event with the earlier phone call from
16 Hunter?

17 A. Yes, which is the reason why I had to make notation of
18 that.

19 Q. Is that a usual or unusual event at the State Law
20 Enforcement Division?

21 A. It's a very unusual event.

22 **MS. MAYES:** Nothing further.

23 **THE COURT:** Thank you. Mr. Chehoski, any follow-up
24 from those standpoints?

25 **MR. CHEHOSKI:** One moment, please, Your Honor.

1 No further questions and no objection to her being
2 excused.

3 **THE COURT:** Thank you, sir. Ms. Hines, you can step
4 down and you can be excused. Thank you for coming.

5 **THE WITNESS:** Thank you.

6 (Witness excused.)

7 **MS. MAYES:** The State calls Page McCraw.

8 **THE COURT:** Come forward, please, and be sworn.

9 (Whereupon, Page McCraw was duly sworn by the Clerk of
10 Court.)

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

13 **THE WITNESS:** It's Page McCraw. Page is P-A-G-E.
14 McCraw is M-C-C-R-A-W.

15 PAGE McCRAW,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. All right. And where are you employed and in what
20 capacity?

21 A. I'm employed at West Columbia Police Department and
22 right now I do crime scene and evidence.

23 Q. All right. I want to ask you whether or not part of
24 your responsibility with your current occupation and
25 current rôle at the West Columbia Police Department

1 involves collection of what's known as buccal swab samples?

2 A. Yes, ma'am, that would be correct. That's part of my
3 job.

4 Q. All right. When a buccal swab is collected, what part
5 or parts of the body is it collected from?

6 A. Usually the best place to collect it from is inside
7 the left and right cheek.

8 Q. All right. I want to give you the name of Nathaniel
9 Hunter and ask you whether or not you've ever had the
10 opportunity to collect a buccal swab sample from Nathaniel
11 Hunter?

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

13 Q. All right. I'm gonna show you this item and ask
14 whether or not you recognize it?

15 A. Yes, ma'am, I do. It has my initials and date on it.

16 Q. All right. And also if you could unseal this package
17 and inspect the contents as well.

18 A. Okay.

19 Q. All right. Do you recognize that item?

20 A. Yes, ma'am, I do. It's my handwriting and it has my
21 initials on it.

22 Q. All right. And on what date were buccal swab samples
23 collected from the Defendant in this case, Nathaniel
24 Hunter?

25 A. They were collected on December 10, 2015, by myself.

1 Q. All right. Now you mentioned 2015, so let me ask you
2 is that collection separate and independent from a DNA
3 database? That's a yes or no question.

4 A. Is it separate? I would say yes.

5 Q. Okay. In other words --

6 A. Sorry.

7 Q. -- this is a new sample?

8 A. Right.

9 Q. And can you tell us a little bit about the collection
10 procedure as it applied to Mr. Hunter and how the item was
11 packaged once the buccal swabs were collected?

12 A. Yes, ma'am. I collected the sample on December 10,
13 2015, by myself and I had a witness, which was Investigator
14 Griffin. When you take DNA samples, I put gloves on and
15 also a breathing mask because I don't want to contaminate
16 it with my DNA, so I use a mask. It was taken from
17 Mr. Hunter on December 12th -- or December 10th.

18 Q. All right. I'm gonna ask you to go ahead and unseal
19 that package.

20 A. And it is sealed with red evidence tape.

21 Q. And can you tell us whether or not it was sealed upon
22 your initial collection?

23 A. Yes, ma'am. It's got December 10, 2015, and my
24 initials on it.

25 Q. All right. So there are two items here. You

1 mentioned one's left cheek and one's right cheek. Do you
2 see your signature on these items?

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

4 Q. All right. And, again, the time of collection on the
5 date of December 10, 2015?

6 A. Both are 11:55 AM.

7 Q. All right. And then the item would have been sealed
8 and taken where?

9 A. To SLED. Once -- once I put it in this item after
10 I collect it, I take it back to my job and put it into
11 evidence and then once evidence logs it in and gives it a
12 date and time, then I check it out and take it directly to
13 SLED.

14 Q. All right. And once you took it to SLED, did you
15 unseal it at any point in time prior to taking the sample
16 and making that delivery?

17 A. No, ma'am, I did not. And SLED places it in this bag
18 and I put my initials and date on it.

19 Q. All right. And is that a heat-sealed pouch for
20 protection of the evidence?

21 A. That's correct.

22 Q. And does SLED unseal it at the log-in procedure?

23 A. Not at the log-in, no.

24 Q. And so it remains sealed even when it's logged in as
25 evidence at SLED?

1 A. Yes, ma'am.

2 Q. And do you observe them place it in that heat-sealed
3 pouch?

4 A. I do.

5 Q. Now from there I want to move on to a different
6 question. How long have you been an officer with the West
7 Columbia Police Department?

8 A. Eleven and a half years.

9 Q. And as such, are you familiar with the surrounding
10 areas, the community of West Columbia?

11 A. I am. I was an investigator for approximately eight
12 of those years; one year on the road and two and a half --
13 or a year and a half in crime scene and evidence.

14 Q. Does that include the vicinity of [REDACTED]
15 Apartments?

16 A. Yes, ma'am. I've gone there on several occasions,
17 several calls.

18 Q. I want to ask you about this exhibit, which is State's
19 Exhibit 118.

20 **MS. MAYES:** Your Honor, if the witness may have
21 permission to step down.

22 **THE COURT:** Yes. Ms. McCraw, if you will stand on
23 the other side of that easel and face in this direction,
24 please, ma'am, so the court reporter can hear what you're
25 saying.

1 **THE WITNESS:** Yes, sir.

2 (Whereupon, the witness steps down from the witness
3 stand.)

4 **THE COURT:** Thank you.

5 BY MS. MAYES:

6 Q. Detective McCraw, looking at this aerial view of the
7 West Columbia community, where are the [REDACTED]
8 Apartments located?

9 A. [REDACTED] Apartments would be these three sets right
10 here.

11 Q. All right. And [REDACTED]?

12 A. This would be -- Craft goes off to the right and then
13 [REDACTED] comes by [REDACTED] Apartments.

14 Q. All right. And Highway 378?

15 A. And Sunset Boulevard, yes, ma'am.

16 Q. Is located where?

17 A. Is right here. The main highway.

18 Q. All right. Now are you familiar with an apartment
19 complex formerly known as River Bend?

20 A. Yes, I am. It's on the back side of [REDACTED].

21 Q. And do you see it on this aerial map?

22 A. Yes, ma'am. It's right here.

23 Q. With the white colored roofing?

24 A. Yes, ma'am.

25 Q. And that apartment complex was previously known as

1 River Bend?

2 A. Yes, ma'am.

3 Q. Can you tell us whether or not both of these apartment
4 complexes were in place in 2014?

5 A. They both were. Yes, ma'am.

6 Q. You may return to your seat.

7 A. Thank you.

8 (Whereupon, the witness returns to the witness stand.)

9 **THE COURT:** What's that number again?

10 **MS. MAYES:** Your Honor, this is 118 without objection.

11 **THE COURT:** Okay. It's in. Thank you, ma'am.

12 (State's Exhibit Number 118, a blowup photograph, was
13 admitted into evidence.)

14 **MS. MAYES:** Your Honor, the item previously identified
15 by Detective McCraw would be offered now as evidence in
16 this case, being packaged together, the left and right
17 buccal swabs of Nathaniel Hunter.

18 **THE COURT:** Ms. Gilreath?

19 **MS. GILREATH:** Subject to prior objection, Your Honor.

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

21 (State's Exhibit Number 119, buccal swabs, were marked
22 and admitted into evidence.)

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

24 **THE COURT:** Cross-examination?

25 CROSS-EXAMINATION

1 BY MS. GILREATH:

2 Q. You said the date that you collected these swabs was
3 on December 10th of 2015?

4 A. Yes, ma'am.

5 Q. And this was after Mr. Hunter had already been
6 arrested as it relates to this case, correct?

7 A. Yes, ma'am.

8 **MS. GILREATH:** Nothing further, Your Honor.

9 **THE COURT:** Thank you. Redirect?

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

11 **REDIRECT EXAMINATION**

12 BY MS. MAYES:

13 Q. And just to clarify, who requested the new set of
14 buccal swabs? What agency?

15 A. I believe the solicitor's office did.

16 Q. All right. And do you know whether or not that's
17 common at SLED?

18 A. Is it common at SLED to take another sample?

19 Q. Correct.

20 A. Yes, that is common.

21 **THE COURT:** Ms. Gilreath, any follow-up on that point?

22 **MS. GILREATH:** Nothing further, Your Honor.

23 **THE COURT:** Thank you. Ms. McCraw, you can step down.
24 Without objection can she be excused?

25 Hearing no objection, you're excused, Ms. McCraw.

1 Thank you.

2 (Witness excused.)

3 **MR. McNAIR:** Your Honor, the State calls Tanisha
4 Taylor.

5 **THE COURT:** Ms. Taylor, come forward, please, ma'am,
6 and be sworn.

7 (Whereupon, Tanisha Taylor was duly sworn by the Clerk
8 of Court.)

9 **THE CLERK:** Once you're seated, speak up loud and
10 clear. State your full name, spelling your last, please.

11 **THE WITNESS:** Tanisha Taylor.

12 TANISHA TAYLOR,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. McNAIR:

16 Q. Spell your last name, please.

17 A. T-A-Y-L-O-R.

18 Q. Ms. Taylor, where do work?

19 A. Sentara Medical Group.

20 Q. What is your job title?

21 A. Certified medical assistant.

22 Q. All right. How long have you been a medical assistant
23 for?

24 A. Since 2005.

25 Q. Okay. Now do you know the Defendant in this case,

- 1 Mr. Hunter?
- 2 A. Yes.
- 3 Q. How do you know him?
- 4 A. He's my cousin.
- 5 Q. Have you known him your whole life?
- 6 A. No.
- 7 Q. How long have you known him for then?
- 8 A. Since I came here in the nineties to South Carolina.
- 9 Q. Okay. At some point in time did you and Mr. Hunter
- 10 live together?
- 11 A. Yes.
- 12 Q. All right. And where was that?
- 13 A. Initially in River Bend Apartments.
- 14 Q. River Bend Apartments. Is that right across from
- 15 [REDACTED] Apartments?
- 16 A. Yes.
- 17 Q. Do you recall when y'all first started living there?
- 18 A. It would have been in 2009.
- 19 Q. 2009. Okay. Did anybody else live there with y'all?
- 20 A. My daughter.
- 21 Q. Now at some point did y'all move from River Bend?
- 22 A. Yes.
- 23 Q. All right. Where did y'all move to?
- 24 A. To the northeast. Twin Eagles.
- 25 Q. Do you know the address there, the actual number?

- 1 A. Sir?
- 2 Q. The actual number address?
- 3 A. Yes. [REDACTED] Twin Eagle Drive.
- 4 Q. All right. Do you recall when y'all first moved
- 5 there?
- 6 A. I moved there in 2010.
- 7 Q. All right. And now was the Defendant living with you
- 8 there in 2014?
- 9 A. Yes.
- 10 Q. Okay. Let's talk about April 13, 2014. Do you recall
- 11 something waking you up that night or early that morning?
- 12 A. Yes.
- 13 Q. And what was it?
- 14 A. I just heard noises in my walk-in closet.
- 15 Q. Okay. Were you awake or were you asleep?
- 16 A. I was asleep.
- 17 Q. Where were you, in your bedroom?
- 18 A. In bed.
- 19 Q. All right. And approximately what time did something
- 20 wake you up?
- 21 A. Around four in the morning.
- 22 Q. All right. And just tell the jury what it was, what
- 23 you saw, what you heard.
- 24 A. I just heard a lot of noise in my walk-in closet where
- 25 the washer and dryer was and noises in the bathroom.

1 Q. Okay. Now the noises you heard where your washer and
2 dryer was, did it appear somebody was doing laundry?

3 A. Yes.

4 **MR. PHILLIPS:** Objection, Your Honor. Speculation.

5 **THE COURT:** It was leading, but I'm not --

6 **MR. PHILLIPS:** Leading and speculation.

7 **THE COURT:** I'll overrule it. I think it moves the
8 testimony along and it's not prejudicial. Go ahead.

9 BY MR. McNAIR:

10 Q. All right. You also mentioned you heard something in
11 the bathroom?

12 A. Yes.

13 Q. What did you hear in the bathroom?

14 A. Running water.

15 Q. All right. At the time you were hearing that noise,
16 did you see who was making that noise?

17 A. Yes.

18 Q. Who was it?

19 A. It was Nate.

20 Q. All right. And when you saw him, how did he appear?
21 Could you tell me whether or not he had clothes on?

22 A. When I saw him, he had on like a tank top and shorts
23 or boxers.

24 Q. And that was -- did you see -- was that after he left
25 the laundry area?

1 A. Yes.

2 Q. Okay. Did you speak to him at that time?

3 A. He was saying something about look at his face or what
4 happened to his face.

5 MR. PHILLIPS: Objection.

6 MR. McNAIR: Admission of party opponent.

7 THE COURT: I'm sorry? Mr. Phillips, do you have an
8 objection?

9 MR. PHILLIPS: Yes, Your Honor.

10 THE COURT: What's the objection?

11 MR. PHILLIPS: Hearsay.

12 THE COURT: All right. Overruled. She identified
13 it being the Defendant in this case as I understand.
14 I couldn't hear the answer to the question though,
15 Ms. Taylor. What -- you said he said something and -- I'm
16 sorry.

17 THE WITNESS: Something in regards to look at his
18 face.

19 THE COURT: Okay.

20 BY MR. McNAIR:

21 Q. Did you ask him anything about what had happened to
22 his face?

23 A. Not specifically, no, because I was half sleeping,
24 not really paying attention, so I didn't think a lot about
25 it.

1 Q. Okay. Did he ever make any comments about what had
2 happened to his face to you?

3 A. No.

4 Q. Did you ever hear him talking to somebody else about
5 what had happened to his face?

6 A. He said something to my daughter, you know, like as
7 far as look what your mom did, we were playing around, she
8 scratched my face up, something to that effect.

9 Q. All right. Why was he telling your daughter that?

10 A. I don't know. I just took it as just joking around
11 trying to be funny.

12 Q. Okay. Well, was that true?

13 A. No.

14 Q. Had y'all been in a play fight?

15 A. No.

16 Q. Had you caused those injuries?

17 A. No, sir.

18 Q. Did he have those injuries the night prior?

19 A. No.

20 Q. That was the first time you saw those injuries was on
21 April 13th around 4:00 in the morning?

22 A. Yes.

23 Q. All right. And they were not there the night prior
24 when you saw him?

25 A. No.

1 Q. And what -- can you describe the marks you saw?

2 A. (Nods head.)

3 Q. Where were they?

4 A. Over his left -- up here, up in this area --

5 Q. Okay.

6 A. -- on his left side.

7 Q. I'm gonna show you State's Exhibit 77. Are those the
8 marks you recall observing on April 13th?

9 A. I remember the top one. I don't remember specifically
10 the side one.

11 **THE COURT:** Could you repeat that again?

12 **THE WITNESS:** Me?

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

14 **THE WITNESS:** I remember the top -- the mark over his
15 eye.

16 **THE COURT:** Okay.

17 BY MR. McNAIR:

18 Q. Did he make any comments about being sore or anything
19 of that nature?

20 A. Yes.

21 Q. And what did he say?

22 A. He was just like his body was aching.

23 Q. Okay. And did he have any explanation for why his
24 body was aching?

25 A. No.

1 Q. So you first saw him come in, I guess, and heard him
2 making the ruckus around 4 AM on April 13th?

3 A. As I recall, yes.

4 Q. Later that day do you recall seeing him watching
5 something on TV?

6 A. Yes.

7 Q. What was he watching?

8 A. Regular TV. The news.

9 Q. All right. And in particular what was he watching on
10 the news at that time?

11 A. What caught my attention was the incident that
12 happened in West Columbia about a woman being shot and
13 attacked.

14 Q. Did you have any conversation or make any comment to
15 him about that news report?

16 A. I just stopped and, you know, listened for a few
17 minutes and I made a comment about I would just had to have
18 -- let somebody rape me instead of getting shot or killed,
19 something to that effect.

20 Q. All right. And what was his response?

21 A. I think like you would let somebody, you know, hurt
22 you and I'm like yeah, I wouldn't want to be raped, I
23 wouldn't want to, you know, die. If it takes being raped,
24 I'd rather be raped than killed, yes.

25 Q. Now during the time the Defendant lived with you, do

1 you know whether or not he owned a gun?

2 A. I had seen him with one before, yes.

3 Q. All right. And what type of gun did you know him to
4 have?

5 A. I think it was a Glock.

6 **MR. PHILLIPS:** Objection. Speculation. She said "I
7 think".

8 **THE COURT:** Ask her if she can give you the basis of
9 her belief that it happened to be that type of weapon.

10 **MR. McNAIR:** Yes, sir.

11 BY MR. McNAIR:

12 Q. All right. You mentioned -- have you seen him
13 handling a gun before?

14 A. Yes.

15 Q. All right. And you've seen him -- what have you seen
16 him doing with a gun in your presence?

17 A. Clean it.

18 Q. All right. Several times, one time, two times?

19 A. Just one time.

20 Q. Do you recall talking to investigators from West
21 Columbia on April 21st of 2014?

22 A. (Nods head.)

23 Q. Do you recall telling them at that time that you
24 believed it to be a 40 caliber Glock?

25 A. Yes.

1 Q. All right. Would that have been accurate at the time
2 you spoke to investigators?

3 A. Yes.

4 Q. Okay. And what color was that gun?

5 A. Black.

6 Q. Now were you aware of where he kept that gun at
7 y'all's apartment at Twin Eagles?

8 A. I had seen it in a -- like a little plastic stand,
9 like one of those stackables with the little drawers. It
10 was in that.

11 Q. Where was that?

12 A. Where at in the --

13 Q. Where in your apartment was that?

14 A. In my bedroom.

15 Q. Okay. Were you present when investigators searched
16 your residence?

17 A. Yes.

18 Q. Was the gun there at that time?

19 A. No.

20 Q. Okay. Are you familiar with the car that Mr. Hunter
21 drove?

22 A. Yes.

23 Q. All right. What was that?

24 A. A Buick Skylark.

25 Q. Was that car in working condition? Was it able --

1 did it work properly?

2 A. It ran, yes. It was drivable.

3 Q. Did he regularly drive that vehicle?

4 A. He drove my car more.

5 Q. Okay. Did he drive that vehicle as well though?

6 A. Yes.

7 Q. Do you know of any reason -- well, let me rephrase
8 that. Were you aware that he was trying to sell that
9 vehicle?

10 A. No.

11 Q. Would that surprise you if he'd tried to tell that
12 vehicle?

13 **MR. PHILLIPS:** Objection, Your Honor.

14 **THE COURT:** I sustain the objection.

15 **MR. PHILLIPS:** Move to strike.

16 **THE COURT:** It's just a question. There's no answer
17 yet, okay? The jury knows the question is not evidence.

18 BY MR. McNAIR:

19 Q. He never discussed wanting to buy a new car?

20 A. No, he liked his car. It was just older.

21 Q. Thank you. Now as a medical assistant, do you have
22 access to rubber or latex gloves?

23 A. Yes.

24 Q. And do you keep some of those gloves --

25 **MR. PHILLIPS:** Objection, Your Honor. They've got

1 to lay a foundation for relevance for access to rubber
2 gloves.

3 **THE COURT:** Well, if she had gloves in her apartment
4 where he was living, that's a relevant area of inquiry.
5 I'll allow that.

6 **MR. McNAIR:** Thank you.

7 **THE COURT:** Thank you.

8 BY MR. McNAIR:

9 Q. And did you keep some of those gloves at your
10 apartment at Twin Eagles where Mr. Hunter lived?

11 A. Yes.

12 Q. Where did you keep them?

13 A. Underneath my kitchen sink. I clean with them.

14 Q. Okay. Just for the record, Ms. Taylor, what was your
15 phone number back in 2014?

16 A. [REDACTED]-0828.

17 Q. 08 --

18 A. 28.

19 Q. Okay. Now -- so did you talk to Mr. Hunter and see
20 him on a regular basis?

21 A. Yes.

22 Q. Did he ever mention to you wanting to have his DNA
23 removed from some database?

24 A. No.

25 Q. Were you aware that he was taking some class on DNA?

1 A. No.

2 Q. I'm gonna show you what's been marked for
3 identification as State's 112 and can you tell me whether
4 or not one of the guns in this picture appears to be --

5 **MR. PHILLIPS:** Your Honor, we need to approach,
6 please.

7 **THE COURT:** Well, nobody's seen this yet. The jury
8 -- she's the only person who's seen it. Until he gets
9 past this, you know, certainly you're entitled to raise an
10 objection before the jury sees it. First of all, I want
11 to know if she can identify it, first of all. Go ahead.

12 BY MR. McNAIR:

13 Q. Can you identify one of the weapons in this picture
14 as being similar to the one you've seen Mr. Hunter with?

15 A. Similar, yes.

16 Q. All right. Which one?

17 A. The black one.

18 Q. Okay.

19 **THE COURT:** The one in the bottom of the photograph?

20 **THE WITNESS:** Yes.

21 **THE COURT:** Okay. Go ahead.

22 BY MR. McNAIR:

23 Q. Can you tell me whether or not the background in this
24 photo appears to be similar to the countertops you had at
25 Twin Eagles Drive?

1 A. Not positively. It could be. I have no idea.

2 **MR. PHILLIPS:** Your Honor, may we approach for just
3 a second?

4 **THE COURT:** That photograph is not coming into
5 evidence, Mr. Phillips, if that gives you any relief of
6 your heartburn.

7 **MR. PHILLIPS:** It doesn't have to. They fully
8 described these weapons that they don't even get to see.
9 Its prejudicial effect --

10 **THE COURT:** She has described the fact that he had a
11 40 caliber Glock. She's seen him with it. She said that
12 the weapon in that photograph appeared to be the same gun
13 or one similar to it. That's all there is.

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

15 **THE COURT:** Okay. Thank you.

16 BY MR. MCNAIR:

17 Q. Ms. Taylor, let me kind of flesh this out a little
18 more. Where is, I guess, your laundry room in relation to
19 your bedroom?

20 A. Inside the bedroom. I mean, you have to go in the
21 bedroom and it's to the left. It's a walk-in closet with
22 the washer and dryer.

23 Q. All right. It's right adjacent to your bedroom?

24 A. In the bedroom.

25 Q. In the bedroom?

1 A. Yes.

2 Q. Okay. So you saw him doing the laundry then, correct?

3 A. I didn't see. I heard noises.

4 Q. All right. And then the bathroom, where is that
5 located?

6 A. You've got to come out of the closet and the bathroom
7 is like right there.

8 Q. Okay. So it's all right inside your bedroom?

9 A. Yes.

10 Q. Okay.

11 **MR. McNAIR:** That's all the questions I have at this
12 time. Thank you.

13 **THE COURT:** Mr. Phillips, you can cross-examine.

14 CROSS-EXAMINATION

15 BY MR. PHILLIPS:

16 Q. Good afternoon.

17 A. Hello.

18 Q. How are you?

19 A. I'm okay.

20 Q. The cops came to see you, correct, about this case?

21 A. When they had a search warrant, yes.

22 Q. You were very nervous and scared?

23 A. I still am.

24 Q. Did you write Nathaniel Hunter a letter while he was
25 in jail?

1 A. Yes.

2 Q. And in that letter did you say "my words were
3 twisted"?

4 A. What words?

5 **MR. PHILLIPS:** Your Honor, may I approach the witness?

6 **THE COURT:** Sure.

7 BY MR. PHILLIPS:

8 Q. Just take your time. Take your time and read the
9 letter and I'll do some follow-up questions, okay? Just
10 take your time.

11 A. Okay.

12 Q. In reference to speaking with the police, did you
13 write a letter to Nathaniel Hunter after that?

14 A. Yes.

15 Q. And in that letter did you tell him -- or did you
16 write "my words were twisted"?

17 A. Yes. I'm looking at it.

18 Q. And in that letter, did you write "I didn't say you
19 came home and started washing. I said I woke up to the
20 noise of the washer and dryer as I come home -- or as I
21 have before. It's not like you never washed clothes late
22 at night".

23 A. That's what I said. I said it sounded like washing.
24 The same thing, yes.

25 Q. And that it's not uncommon for him to wash clothes

1 late at night. You put that in there?

2 A. Yes.

3 Q. And then you also say "I'm sorry for hurting you by my
4 stupidity"?

5 A. It's in the letter, so at the time, yes.

6 Q. And that's what you wrote?

7 A. Yes.

8 Q. And you didn't see him leave that night?

9 A. No, I didn't see him leave.

10 Q. You didn't hear him leave that night?

11 A. No.

12 Q. And you didn't see him washing clothes?

13 A. I didn't actually see him, no.

14 Q. And you didn't see anything on him that night that
15 would make you think that he was covered in blood or
16 anything of that nature?

17 A. Besides the mark on his forehead?

18 Q. Besides the scratch. Specifically, you told the
19 police, quote, I really didn't think much about it.

20 A. Yeah, talking about the mark on him. I mean, why
21 would I think that allegedly he had just been attacking a
22 female? So, no, I didn't think anything about it.

23 Q. So there was nothing about his appearance, his
24 demeanor, that would have made you think that he just did
25 something horrible or came from a crime scene that -- what

1 you've you learned of now, there was nothing at that time
2 to make you think any of that just occurred?

3 A. No, what I thought was he must have got into
4 something.

5 Q. Was he known to get into fights with other people?

6 A. I mean, I'm sure he has.

7 Q. There was nothing at that time that made you think
8 anything like what you know about now?

9 A. About what I'm here for, no.

10 Q. Nothing. Nothing startled you about it. You even
11 joked about it, right?

12 A. What?

13 Q. There was jokes about it, wasn't there?

14 A. What do you mean --

15 Q. About --

16 A. -- there was jokes?

17 Q. About the scratch.

18 A. Yeah, about when he said something to my daughter,
19 yeah.

20 Q. And it's actually that -- you told police that you
21 were the one that told your daughter about the scratch; is
22 that right?

23 A. No, he said something to her --

24 Q. So --

25 A. -- and she asked me and I was like yeah, yeah, you

1 know I did it, but she know I didn't. She know I wouldn't.
2 have done anything like that.

3 Q. So if you told police -- I mean, if there was an audio
4 recording of you telling police that you told your daughter
5 that the scratch came from you, that would be untrue?

6 A. I said that he told my daughter that I did it and I
7 was joking like yeah, yeah, I scratched her -- scratched
8 him, something like that. I don't remember word for word.

9 Q. So Investigator Griffin, if he would have asked you,
10 "So earlier your daughter had saw the cuts as well" and
11 your response, you tell me if this is true or not, would
12 have been, "Yeah, later on that day or the next day, I'm
13 not sure, I think it was later on that day she had jokingly
14 asked man, what happened to your face and I was just like
15 we were messing around, I scratched him up, I was just
16 joking with me, like, yeah, you know how I got them
17 fingernails and something like that", if you would have
18 made that statement --

19 A. I think he made that statement, talking about you know
20 with your mom's fingernails or something. I don't remember
21 exactly.

22 **MR. McNAIR:** Your Honor?

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

24 **MR. McNAIR:** Can I approach real quick -- can we
25 approach real quick?

1 **THE COURT:** Okay.

2 (Proceedings held at the bench; not reported.)

3 BY MR. PHILLIPS:

4 Q. And then Investigator Griffin asked you, "Was he going
5 along with it as far as that goes" and you said, "Yeah, he
6 was laughing. He was like, yeah, you know how your mom can
7 be sometimes, you know, just because he didn't want to
8 really", and then Investigator Griffin kind of interrupts
9 you. So if that's what you told Investigator Griffin, is
10 that -- I mean, that's --

11 A. I told them what I just told you, that when he said,
12 "Oh, your mom did that", I was jokingly like yeah, yeah, I
13 did that. Yeah, I did say that, but I did not really
14 scratch him or put any marks on him is what I'm saying. At
15 the time I was just saying that because my daughter was
16 asking and it was like ha, ha, whatever, so that was the
17 end of that.

18 Q. So you were the one that told your daughter that you
19 scratched him?

20 A. When she asked me about it, yeah.

21 Q. Okay.

22 A. I just said I said it in a joking manner with her.
23 Like, yeah, yeah, you know I did that. She know I don't do
24 that though. I wouldn't mark up anybody.

25 Q. And you realize there's only one truth, right? And

1 what I mean is, something's either true or it's false.

2 A. What's true is that I never touched him, I didn't put
3 any marks on him. That's the truth.

4 Q. And you told Investigator Griffin that you made --
5 that you told your daughter that you made the scratch,
6 right?

7 A. Yeah, agreeing with him in a joking manner at the time
8 when that was brought up, yes. I'm saying I said that then
9 with my daughter in regards to at the time, but did I
10 actually do that, no.

11 Q. In the letter you wrote about your words being
12 twisted. You said essentially at the same time you were
13 being asked questions by Investigator Griffin, you just
14 didn't ask any questions really about it or you didn't
15 think much about, quote end quote. I mean, there was
16 nothing about it that made you think anything unusual about
17 any of this?

18 **MR. McNAIR:** Judge, he's asked it twenty-five times.

19 **THE COURT:** Okay. Well --

20 **THE WITNESS:** What I said was --

21 **THE COURT:** Excuse me. Excuse me just a minute,
22 Ms. Taylor.

23 **THE WITNESS:** Okay.

24 **THE COURT:** Is there anything different about this
25 question than the similar ones you asked a while ago,

1 Mr. Phillips?

2 **MR. PHILLIPS:** I think the point's been made.

3 **THE COURT:** I'm sorry?

4 **MR. PHILLIPS:** I'm sorry. I think the point's been
5 made. I'll move along.

6 **THE COURT:** Okay. Thank you.

7 BY MR. PHILLIPS:

8 Q. As to the gun, they said reference to a black gun. It
9 wasn't silver, right?

10 A. Correct.

11 Q. And the caliber, how did you know the caliber if
12 you're not quite sure if it was a Glock?

13 A. I didn't know exactly. I said it looked like a 40 or
14 a gun that a cop would have.

15 Q. Did the cops tell you it was a 40 caliber gun?

16 A. No.

17 Q. You just said it --

18 A. I said it looked like a 40.

19 Q. But you don't know what caliber it was?

20 A. Exactly, no.

21 Q. And this was a gun that was kept in your room in a
22 plastic container by your bed?

23 A. Correct.

24 Q. And it wasn't silver?

25 A. No.

1 Q. You made the statement today about watching the news
2 and the interplay between you and him. Today's the first
3 time you've ever said that to either an investigator or the
4 prosecutors; is it not?

5 A. No, I've talked about it before.

6 Q. You've told them that you watched the news and y'all
7 had that interplay? That's been provided to them?

8 A. I've talked to one of the officers. I've said that
9 before, yes. Not in my initial statement, I don't think
10 so, but recently, yes.

11 Q. Recently. When was that?

12 A. I don't know, ask him. Whenever they interviewed me.

13 Q. So there is a more recent interview with an officer?

14 A. I mean, yes, I got subpoenaed. I had to meet with
15 people before I came here today.

16 Q. And you gave new statements?

17 A. Well, if that's a statement, okay.

18 Q. I'm not trying to ask the same questions. You said
19 it's not unusual for him to be up late at night, correct?

20 A. Correct.

21 Q. With that being the case, you didn't see him cleaning
22 the floor or anything that would have been on shoes or
23 anything like that? There was no cleaning of your living
24 room floor or anything like that?

25 A. No.

1 Q. And they discussed moving back in 2010, so the last
2 time you had lived anywhere near there was, say, four years
3 in between?

4 A. There where?

5 Q. The previous apartment complex they talked about.

6 A. Yes.

7 Q. It had been four years since then?

8 A. Yes.

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

10 **THE COURT:** Thank you. Redirect, Mr. McNair?

11 **MR. McNAIR:** Thank you.

12 REDIRECT EXAMINATION

13 BY MR. McNAIR:

14 Q. Ms. Taylor, when we met with you prior to this trial,
15 did we ask you questions you'd never been asked before?

16 A. Maybe a couple.

17 Q. Had you ever been asked about whether or not you --
18 about the news that you saw the Defendant watching?

19 A. Yes.

20 Q. You had been asked that before?

21 A. When we were talking?

22 Q. Right.

23 A. Or I might even -- yes. Yes.

24 Q. With our office, correct?

25 A. Yes.

1 Q. Okay. Thank you. Now after the Defendant was
2 arrested, did you speak with him after that point?

3 A. About -- yeah, after he got arrested?

4 Q. Yes.

5 A. Yes.

6 Q. Was he upset with you about telling law enforcement
7 about something?

8 A. Yes.

9 Q. And what was that?

10 A. Mentioning that I had seen him with a gun before.

11 Q. All right. Is that the reason you sent him that
12 letter?

13 A. What -- as far as this letter or just in general?

14 Q. Well, he was upset with you because you told law
15 enforcement about the gun, correct?

16 A. Yes.

17 Q. And you wrote that letter saying they twisted your
18 words. Was that in response with him being upset with you?

19 A. I don't really know exactly when I wrote this, this
20 was in 2014, what I meant about twisted because I -- I
21 brought it up about the gun, I mean, so --

22 Q. And you have -- you have been -- you have told
23 investigators the truth from day one?

24 A. Yes.

25 Q. Now when you first saw Mr. Hunter that night, you said

1 he wasn't wearing clothes, was he, other than boxers and
2 T-shirt?

3 A. That would have been after he came out.

4 Q. Of the laundry room?

5 A. Yes.

6 Q. All right. So if he had anything on his clothes, you
7 wouldn't have seen it because they were already in the
8 washing machine, right?

9 A. Correct. And when the officer was interviewing me,
10 they kept asking me had I seen any blood or anything. I
11 didn't see anything like that.

12 Q. And then when you didn't tell your daughter -- or you
13 didn't want to tell her -- or you told her the reason he
14 got the scratches, was that just to protect her from
15 knowing what the truth was?

16 A. Yes, which in retrospect now since they're harping on
17 that, making it seem like it was bigger than what it was,
18 at the time I wasn't thinking nothing. Like I said, it was
19 just yeah, yeah, you know I did that, and she looked at me
20 like okay, I know you didn't do that, and that was the end
21 of that.

22 **MR. MCNAIR:** No further questions. Thank you.

23 **THE COURT:** Thank you. Mr. Phillips, any follow-up on
24 that narrow point?

25 **MR. PHILLIPS:** No further questions. Thank you.

1 **THE COURT:** Ms. Taylor, you can step down. Thank you,
2 ma'am.

3 (Witness excused.)

4 **MR. McNAIR:** Your Honor, the State calls SLED Agent
5 Chad Smith.

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

7 Come forward, Agent Smith, please, and be sworn.

8 (Whereupon, Chad Smith was duly sworn by the Clerk of
9 Court.)

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

12 **THE WITNESS:** My name is Chad Smith, S-M-I-T-H.

13 CHAD SMITH,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. McNAIR:

17 Q. Agent Smith, where are you employed?

18 A. I'm employed with the South Carolina Law Enforcement
19 Division, which is also known as SLED. Specifically, I
20 work in the firearms department of SLED's forensic services
21 laboratory in Columbia.

22 Q. How long have you been in that position?

23 A. About eight and a half years.

24 Q. All right. As part of your job, do you do firearm
25 identification?

1 A. Yes, sir.

2 Q. What type of education and training do you have in
3 that regard?

4 A. I went to Clemson University, where I earned a
5 bachelor of science degree in biological sciences. Then
6 I came onboard with SLED in November of 2008 and began
7 my training in the firearms department as a firearms
8 examiner. This training program lasts several years.
9 It's supervised by the court-qualified examiners of the
10 firearms department. It involves extensive reading and
11 studying. There are multiple examinations and tests given
12 during this period. And I also had the opportunity to
13 help other examiners prepare their own casework during this
14 time. At the end of my training period, I was given a
15 comprehensive multipart examination, which I successfully
16 passed, and then I began to receive my own casework.

17 Q. All right. Approximately how many firearm
18 identifications have you done?

19 A. Well, probably in the thousands as far as
20 identifications, looking at different cartridge cases and
21 bullets and things like that.

22 Q. Have you been qualified as an expert in general
23 sessions court before?

24 A. Yes, sir.

25 Q. How many times?

1 A. Thirty-three times.

2 MR. McNAIR: Your Honor, at this time we'd offer
3 Agent Smith as an expert in firearms identification.

4 MR. CHEHOSKI: Without objection, Your Honor.

5 THE COURT: Thirty-four, Mr. Smith.

6 BY MR. McNAIR:

7 Q. Can you just describe for the jury what makes firearm
8 identification possible?

9 A. Firearms identification is basically -- what I'm
10 attempting to try to do is match a particular ammunition
11 component, such as a bullet or a cartridge case, back to
12 the firearm that fired it. How we're able to do this is
13 during the manufacturing process of the firearm itself,
14 there are many different machine marks placed on the
15 various surfaces of the firearm and these are just various
16 random marks, microscopic marks, that could be impressions
17 or scratches, and it's based on the actual machinery making
18 the firearm parts. And so what happens is when you've got
19 a firearm that fires a cartridge and you have a bullet and
20 the cartridge case, the parts of the firearm that come into
21 contact with the bullet and the cartridge case makes marks
22 on that bullet or cartridge case. So it's the marks, the
23 scratches and impressions that impart onto the individual
24 ammunition components so we can use those marks to try to
25 determine if they were fired by a specific firearm.

1 Q. All right. And if you don't have a gun to compare
2 anything to, what can you say based just on the
3 projectiles?

4 A. As far as bullets are concerned, we can attempt to
5 determine possibly what caliber the bullet is by doing
6 different tests as far as measuring the diameter of the
7 bullet and weighing it, then we can try to determine based
8 on the markings on the bullets possibly what -- what sort
9 of firearm fired it, and oftentimes we're able to give an
10 investigative lead onto what type of gun they should be
11 looking for.

12 Q. All right. And when you say what type, that would be
13 like the potential make and model or manufacturer of a
14 weapon?

15 A. Correct.

16 Q. Now what can you say just based on just analyzing
17 shell casings?

18 A. Cartridge cases, again, we can analyze them and try
19 to determine basically how many guns were involved. We can
20 do that with the bullets as well based on the individual
21 markings that we're looking at and those individual
22 markings are microscopic marks and what we use is a tool
23 called a comparison microscope. That's basically if you
24 can imagine two separate microscopes that are connected
25 by an optical bridge system and we look into it and we can

1 compare two samples simultaneously. So we're looking for
2 -- we're matching up the scratches and the impressions and
3 that sort of thing to try to determine if they were fired
4 by the same gun.

5 Q. Okay. I'm gonna show you -- we'll start with State's
6 106. Can you take a look at those and tell us whether
7 those were submitted to you for analysis?

8 **MR. CHEHOSKI:** Your Honor, this is all subject to our
9 previous objections and motions.

10 **THE COURT:** Thank you, Mr. Chehoski. That's correct.
11 This is subject to the objections that have previously been
12 argued and ruled on.

13 A. Yes, these are some of the bullets or bullet pieces
14 that I received for analysis.

15 Q. All right. How are you able to identify those?

16 A. Well, the actual individual item itself. Here we
17 have a specific bullet, a fired bullet. I would mark with
18 several identifying characteristics such as the lab number,
19 the SLED lab number, which is what would be here, and then
20 my initials as well as the SLED lab item number, but also
21 in addition with -- some of these I can't really see the
22 markings too well, but the packaging themselves, I
23 repackage the evidence after analyzing it, and it has my
24 initials and a sealed date, so all of these have retained
25 their heat seal.

1 Q. All right. And do you assign a SLED number as well
2 to those items?

3 A. , Correct. That's done during the login process of the
4 evidence. It is given a bar code. The containers are
5 given a bar code and a specific SLED lab number that
6 corresponds to the agency's lab number that submits the
7 evidence.

8 Q. All right. Let me refer you to SLED Item 22. How's
9 that item described?

10 A. It is a fired bullet and it was listed on the
11 packaging, as well as the submission documents, as from
12 living room carpet, Apartment ■-11.

13 Q. Okay. So what examinations or tests were performed
14 on that item?

15 A. I try to determine what sort of caliber it would be,
16 again, by weighing it and measuring the diameter of the
17 actual bullet, and then I would look at the markings
18 created by the firearm itself to see what sort of markings
19 were on it and possibly compare it with the other bullets
20 to see how many guns were involved and also try to generate
21 a list of possible guns that could have fired them.

22 Q. All right. And what did you conclude about that item?

23 A. Item 22 would be most consistent with a bullet loaded
24 into either 40 Smith & Wesson caliber cartridges or 10
25 millimeter auto caliber cartridges. I can't really tell

1 because both of those calibers share the same diameter
2 bullet and are usually the same weight and that sort of
3 thing, so it could be one or the other.

4 Q. And were you able to generate a potential list of
5 manufacturer's weapons that could have fired that
6 projectile?

7 A. Correct.

8 Q. All right. And was a Glock one of those weapons?

9 A. Yes, it was.

10 Q. All right. I'll refer you, please, now to Examined
11 Item Number 24 and describe what that is.

12 A. 24 was actually submitted as two separate pieces.
13 There's a fired bullet component. There's also a small
14 fragment, which is a jacket fragment, and what I'm
15 referring to is some bullets are jacketed bullets, which
16 means they have a soft metallic core, which is the inside,
17 usually it's a material like lead, then it has a harder
18 covering around it called the jacket, and that's usually
19 some sort of copper or possibly brass or sometimes steel
20 material, and so that's just -- the fragment is just a part
21 of that jacket material that just had broken off at some
22 point.

23 Q. All right. What can you tell us about Item 24?

24 A. 24, again, is being consistent with being either a
25 40 Smith & Wesson caliber or a 10 millimeter auto caliber.

1 And, again, I was able to use the markings on it and
2 determine what sort of possible firearm fired it.

3 Q. All right. And could that have been fired by a Glock?

4 A. Yes, sir.

5 **THE COURT:** What else could it have been fired by?

6 **THE WITNESS:** Other firearms?

7 **THE COURT:** Yes, sir. I think you said possibly fired
8 by a Glock.

9 **THE WITNESS:** Correct. There are other -- a small
10 list of firearms that came up on the list.

11 **THE COURT:** Do you mind sharing that with me and the
12 jury?

13 **THE WITNESS:** Sure. The 40 Smith & Wesson caliber,
14 we have manufacturer called Bursa. Glock, Heckler and
15 Koch, which is sometimes -- H&K is what it's known as.
16 IMI, Kahr Arms, which is K-A-H-R, Vektor, V-E-K-T-O-R, and
17 Walther are the firearms that came up on our list for the
18 40 Smith & Wesson calibers. For the 10 millimeter auto,
19 the only one that came up would be Glock.

20 **THE COURT:** Thank you.

21 BY MR. McNAIR:

22 Q. All right. Now Item -- SLED Item 25, where is that
23 item listed or described as being obtained from?

24 A. 25 is listed as being from behind bathroom door marked
25 Number 14. And let's see if I can -- the label is actually

1 covering it up, but for this specific item I couldn't tell
2 if it was either a core, a lead core, or it could have been
3 actually a lead bullet itself. Based on the damage and the
4 condition it was in, I couldn't make a determination either
5 way, but there were no markings on it that I could use for
6 identification for a possible weapon that could have fired
7 it.

8 Q. So that item was too damaged for you to analyze and
9 reach a conclusion on?

10 A. Yes, sir.

11 Q. All right. Now SLED item 26, what is that described
12 as -- or where is that described as coming from?

13 A. From bathroom floor marked Number 7.

14 Q. Okay.

15 A. And, again, it's another fired bullet, jacketed
16 bullet, which I determined to be consistent with the
17 40 Smith & Wesson caliber or 10 millimeter auto caliber.
18 And, again, as with other bullet, I generated a list of
19 possible firearms that could have fired it.

20 Q. All right. And Glock was on that list, correct?

21 A. Yes, sir.

22 Q. All right. State's 107, can you tell me whether or
23 not those items were submitted to you for analysis?

24 A. Yes, sir. These are the five fired 40 Smith & Wesson
25 caliber cartridge cases that were submitted for

1 examination. And, again, they're in my heat-sealed
2 packaging with the SLED lab number, the item number and
3 then my initials and sealed date at the top of the
4 packaging, so they haven't been tampered with.

5 Q. All right. And those -- what SLED items numbers are
6 those?

7 A. 7 through 11.

8 Q. All right. Did you examine those items?

9 A. Yes, sir.

10 Q. What can you tell us about those?

11 A. That they were all fired by the same firearm. Through
12 my microscopic analysis comparison, I was able to determine
13 that the microscopic individual characteristics, the
14 scratches, they all matched each other on the cartridge
15 cases, so I determined they were, indeed, all fired by the
16 same firearm.

17 Q. Now based on your training and experience, can you
18 tell us what type of firearm most likely fired those
19 casings?

20 A. The firing pin impression, which you can imagine the
21 rear of the cartridge case is where the primer is, that's
22 the igniting component of the cartridge itself. The firing
23 pin of the gun strikes the primer and then a chain reaction
24 happens which ignites the powder and then the bullet goes
25 down the barrel. Well, the firing pin leaves an impression

1 on the primer itself and some types of firearm pin
2 impressions are unique to particular firearms. In this
3 case, it is a Glock-type firing pin impression, so that is
4 indicative of being either fired from a Glock-type pistol
5 or possibly even early Smith & Wesson Sigma series pistols
6 also use the same type firing pins, and that's pretty
7 common among the firearms community, that those two are the
8 most common ones, and I don't know of any other that could
9 have actually made that type of impression, but --

10 (State's Exhibit Number 120 was marked for
11 identification.)

12 BY MR. McNAIR:

13 Q. I'll show you State's Exhibit 120. Can you tell us
14 what that's a picture of?

15 A. That's a photo I took --

16 Q. Don't show it yet.

17 A. Okay. It is a photo I took of the evidence when I
18 received it, of the actual specific cartridge cases.

19 **MR. McNAIR:** All right. Your Honor, we'd offer
20 State's 120 into evidence.

21 **MR. CHEHOSKI:** Subject to prior objection and motion,
22 Your Honor.

23 **THE COURT:** Subject to prior objection, 120 is in
24 evidence.

25 (State's Exhibit Number 120, a photograph, was

1 admitted into evidence.)

2 **MR. McNAIR:** May the witness step down, Your Honor?

3 **THE COURT:** Yes, he can.

4 **MR. McNAIR:** Agent Smith, can you step down and show
5 the jury what you're talking about?

6 (Whereupon, the witness steps down from the witness
7 stand.)

8 **THE COURT:** Agent, you have to keep your voice up,
9 of course, while you're away from the microphone.

10 **THE WITNESS:** Yes, Your Honor.

11 **THE COURT:** It's helpful if you can stand just like
12 you're doing right there facing in this direction. Thank
13 you.

14 **THE WITNESS:** Again, this is a photograph I took. The
15 SLED lab number is at the top with my initials and then
16 each individual cartridge cases, Item 7 through 11. So
17 we've got several different manufacturers that were
18 submitted, Speer, Brazier and the RP Remington, as well as
19 Federal, so you can see the actual firing pin impressions
20 left by the firearm during the firing process. So that
21 particular firing pin impression, again, is consistent
22 and indicative as being either from a Glock pistol or
23 sometimes the early Sigma, Smith & Wesson pistols can
24 leave a similar type impression, but it's those markings.
25 And it's hard to see. Again, we're looking under a

1 microscope for the individual markings and characteristics
2 that we can use to try to determine if they were fired by
3 the same firearm.

4 BY MR. McNAIR:

5 Q. All right. Thank you. So in summary, all these
6 casings were fired by the same weapon, they're 40 caliber,
7 and based on the firing pin markings they were fired by a
8 Glock, correct?

9 A. A Glock or --

10 Q. Early Sigma series?

11 A. Correct.

12 **MR. McNAIR:** Thank you. I have no further questions,
13 Your Honor.

14 **THE COURT:** Thank you. Cross-examination,
15 Mr. Chehoski.

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

17 CROSS-EXAMINATION

18 BY MR. CHEHOSKI:

19 Q. You said that there were six different types of guns
20 that could have fired these projectiles?

21 A. The list that was generated had six different types of
22 manufacturers listed.

23 Q. And you did not review any individual gun in this
24 case?

25 A. Correct.

1 Q. And you have not identified the specific gun that had
2 fired these projectiles?

3 A. Right. No firearm was submitted.

4 **MR. CHEHOSKI:** Nothing further, Your Honor.

5 **THE COURT:** Thank you.

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

7 **THE COURT:** Thank you. Without objection, Agent
8 Smith, you can step.

9 **MR. CHEHOSKI:** No objection to his being excused.

10 **THE COURT:** Thank you. You can be excused.

11 (Witness excused.)

12 **THE COURT:** How long will your next witness take? Do
13 you have any idea?

14 **MR. McNAIR:** Good question.

15 **THE COURT:** Okay.

16 **MR. McNAIR:** Ten minutes, Your Honor.

17 **THE COURT:** Ten minutes? Good. Just exactly the
18 right time I wanted.

19 **MS. MAYES:** The State calls Jackie Davis.

20 **THE COURT:** Ms. Davis come forward, please.

21 **THE COURT:** Come forward, please, ma'am and be sworn.

22 (Whereupon, Jackie Davis was duly sworn by the Clerk
23 of Court.)

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

1 **THE WITNESS:** My name is Jackie Davis, D-A-V-I-S.

2 JACKIE DAVIS,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MAYES:

6 Q. All right. And, Ms. Davis, where are you employed and
7 in what capacity?

8 A. I work for the South Carolina Law Enforcement
9 Division, also known as SLED, and I'm a forensic
10 technician.

11 Q. All right. And what division or department do you
12 work at within SLED?

13 A. I log in the evidence.

14 Q. All right. Tell us a little bit about the login
15 department. What is your role? And expound on that and
16 tell us a little bit more about and exactly what you do
17 with the evidence.

18 A. When the officers bring in the evidence, it's sealed
19 already, but they bring it to us and we log it in. We
20 reseal it and then we put it in a secure evidence room
21 until the analyst requests it.

22 Q. All right. And when you say analyst, would that
23 include the DNA analyst if it's a buccal swab, for example?

24 A. That's correct.

25 Q. And when you say analyst, would that include the

1 evidence processing analyst if it's an item of clothing,
2 for example?

3 A. Correct.

4 Q. All right. So they're the ones who actually unseal
5 the evidence?

6 A. Yes.

7 Q. Do you unseal evidence?

8 A. No.

9 Q. Now who is Amy Stephens?

10 A. Amy Stephens is a co-worker of mine. We do the exact
11 same thing, evidence login.

12 Q. All right. So she has the same exact job description
13 as you and do you both have the same protocol?

14 A. Yes.

15 Q. Do you know -- can you tell us whether or not Amy was
16 trained in that protocol exactly as you are?

17 A. Yes.

18 **MR. PHILLIPS:** Your Honor?

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

20 **MR. PHILLIPS:** She can't testify as to another
21 witness's training and experience.

22 **THE COURT:** Well, if she knows. They might have been
23 in the class together for all we know. I don't know what
24 the foundation on this is, but she can testify if she
25 knows.

1 **MS. MAYES:** I can rephrase that, Your Honor.

2 **THE COURT:** Okay.

3 BY MS. MAYES:

4 Q. What can you tell us about any type of training that
5 you and Amy Stephens have received?

6 A. Actually Amy trained me. She trained me from A to Z.

7 Q. All right. And does that include on evidence login
8 procedures?

9 A. Correct.

10 Q. And based upon your observations, does she follow
11 those procedures as well?

12 A. To a T.

13 Q. All right. And does anyone within the login
14 department open evidence?

15 A. Never.

16 Q. And how do you repackage evidence?

17 A. When it comes to us, say it's a buccal swab, it is
18 labeled and the department has already sealed it. When we
19 get it, we double-check the information, make sure it is
20 what they say they are submitting to our laboratory and we
21 seal it in a SLED bag. We then have the officer who's
22 bringing it to us initial and date it and then we put it in
23 the part of the evidence room so the analyst can retrieve
24 it.

25 Q. All right. And is it bagged again in a heat-sealed

1 pouch?

2 A. Yes, we bag it in a heat-sealed pouch.

3 Q. All right. So where is Amy Stephens today, your other
4 login partner?

5 A. Amy is out with a medical emergency today.

6 Q. All right.

7 **MR. PHILLIPS:** Your Honor, may we approach?

8 **THE COURT:** Okay.

9 (Proceedings held at the bench; not reported.)

10 BY MS. MAYES:

11 Q. I'm gonna ask you about this particular item of
12 evidence that's currently marked as State's Exhibit 119.

13 I'm gonna ask you whether or not you received that item of
14 evidence at SLED login?

15 A. I did.

16 Q. All right. And that being the buccal swab samples
17 taken by West Columbia Police Department Detective Page
18 McCraw of Nathaniel Hunter?

19 A. Correct.

20 Q. And did you ever unseal that item?

21 A. No.

22 Q. Who did you send it to for purposes of analysis and
23 being unsealed?

24 A. I sent it -- may I look at my notes?

25 Q. Yes.

1 A. I received it on 12-10-15, I put it in the evidence
2 room for storage on 12-10 and on 12-21 Mary Ann requested
3 it and I gave it to her on 12-21 at 10:15 in the morning.

4 Q. And you said Mary Ann, can you tell us exactly who
5 Mary Ann is and what her role is?

6 A. Mary Ann is a DNA analyst at SLED.

7 Q. Mary Ann Boehm?

8 A. Yes.

9 Q. And with her being the analyst, it went to her for
10 what purpose?

11 A. To analyze it.

12 Q. And unseal it?

13 A. Yes.

14 Q. Okay. And as to any other items of evidence that you
15 or Amy Stephens received at login, do you ever received
16 items unsealed?

17 A. If we do, which is very seldom, the officer has to
18 seal it. We do not touch it. When they put it on our
19 desk, we're like it's not sealed, you must seal it before
20 we can take it.

21 Q. So you only take sealed evidence?

22 A. Only sealed.

23 Q. And once it's sealed or once it arrives to you sealed,
24 do you ever unseal it?

25 A. Never.

1 Q. All right. Does anyone in the login process unseal
2 it?

3 A. Never.

4 **MS. MAYES:** I beg the Court's indulgence. Nothing
5 further of this witness, Your Honor.

6 **THE COURT:** Thank you. Ms. Phillips, cross-examine.

7 CROSS-EXAMINATION

8 BY MR. PHILLIPS:

9 Q. Good afternoon.

10 A. Hi.

11 Q. In receiving this evidence, you were the person who
12 personally received it?

13 A. Yes.

14 Q. Did Amy Stephens have any role in the process of this?

15 A. Not in the buccal swab.

16 Q. But in other evidence?

17 A. Yes.

18 Q. And as far as the process of this evidence, you were
19 the only one that had control of that until it went to the
20 analyst?

21 A. Correct.

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

23 **THE COURT:** Thank you. Any follow-up, Ms. Mayes?

24 **MS. MAYES:** No, sir, Your Honor.

25 **THE COURT:** Thank you. Ms. Davis, you can step down.

1 Thank you, ma'am.

2 **THE WITNESS:** Thank you.

3 **THE COURT:** And you can be excused.

4 (Witness excused.)

5 **THE COURT:** Folks, we'll take the afternoon recess at
6 this time. I'm gonna send you to the jury room. We'll
7 take about fifteen minutes and get you out at a quarter of
8 the hour to continue. Please remember not to talk about
9 this case among yourselves. Thank you.

10 (Whereupon, the jury retires to the jury room at
11 3:29 PM.)

12 **THE COURT:** Madam Reporter, please note that during
13 the testimony of Ms. Taylor when she was being shown
14 State's Exhibit 112, which is a photograph of two weapons
15 apparently taken from the telephone images of some sort,
16 Mr. Phillips, of course, lodged an objection and asked for
17 a sidebar conference at that point in time. I was looking
18 at the evidence, I knew what the photograph was, I allowed
19 her to testify as to the single gun which she said was
20 comparable to or similar to the weapon which she had seen
21 in the possession of Mr. Hunter. The photograph itself is
22 not coming into evidence for several reasons. First of
23 all, it would be cumulative to her testimony. Secondly, it
24 would be far more prejudicial than probative because it
25 showed another firearm, which the jury certainly does not

1 see in this case as there's not been any evidence or
2 testimony at this point of any other firearm. And so
3 having peremptorily ruled out the item as coming into
4 evidence, I didn't go any further with it at that time.

5 Mr. Phillips, I'll be glad to allow you to put
6 anything else on the record that you want to.

7 **MR. PHILLIPS:** Yes, Your Honor. In making the
8 original 401 that the picture of the gun was irrelevant
9 and the 403 argument that any probative value of it would
10 be substantially outweighed by its prejudicial effect --

11 **THE COURT:** That's what I agreed to.

12 **MR. PHILLIPS:** Yes, Your Honor. I'm trying to -- I'm
13 sorry. I'm trying to get there. So by having the witness
14 identify that it is a picture and then describing it as a
15 gun, the Defendant's argument is that is the exact same
16 thing as showing them the picture of the gun.

17 **THE COURT:** I'll be glad to withdraw my ruling and let
18 her -- if you think it would be fairer to your client, I'll
19 let them see it.

20 **MR. PHILLIPS:** We certainly would make the argument
21 that that would that would deny his right to a fair trial.

22 **THE COURT:** Well, I think it would, too, and that's
23 the reason I kept it out.

24 **MR. PHILLIPS:** Well, and -- we reserve our prior
25 objection and renew it.

1 **THE COURT:** I understand. I understand. And I
2 think at sidebar when we were talking about Ms. Davis's
3 situation -- Ms. Stephens's situation while Ms. Davis was
4 testifying, I don't think we got to any evidence that
5 Ms. Stephens actually handled, so I don't think that we
6 have a confrontation issue at this juncture. We might
7 have to deal with that again down the road, but not at
8 least through this witness. Is that your understanding?

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

10 **THE COURT:** Okay. All right. We'll be back at a
11 quarter of the hour.

12 Tell me -- Ms. Mayes is out getting the next witness
13 ready. I'm just trying to figure out how much we've got
14 left to do today and how far we can get. And I'll share
15 with you-all what some jurors have shared with the bailiffs
16 and which the bailiffs have shared with me, I don't need to
17 be the only person who knows this, some of the jurors are
18 being concerned about this case running past tomorrow and
19 so I don't know how I can address that concern, quite
20 frankly, but you need to be aware that it is a concern of
21 theirs because I know it is, okay?

22 All right. Thank you.

23 (Recess taken.)

24 **BAILIFF:** All rise.

25 **THE COURT:** Thank you, folks. You-all can be seated.

1 Are you ready for the jury, folks?

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

3 **THE COURT:** Bring us the jury, please.

4 (Where upon, the jury returns to the courtroom at
5 3:49 PM.)

6 **MS. MAYES:** The State calls Verona Herrera.

7 **THE COURT:** Ms. Herrera, come forward and be sworn.

8 (Whereupon, Verona Herrera was duly sworn by the Clerk
9 of Court.)

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

12 **THE WITNESS:** My name is Verona Herrera,
13 H-E-R-R-E-R-A.

14 VERONA HERRERA,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MAYES:

18 Q. Good afternoon, Agent Herrera. Can you tell us a
19 little bit about yourself?

20 A. I'm employed with the South Carolina Law Enforcement
21 Division, or SLED, and I've been there approximately
22 nine years in the DNA casework department as a forensic
23 technician.

24 Q. And, specifically, what educational background and
25 training do you have that lead you to becoming an evidence

1 processing technician at SLED?

2 A. I have two associate's degrees; one in science, one
3 in criminal justice and criminology, and I also have a
4 bachelor of science degree in criminal justice from
5 Liberty University. There's extensive in-house training
6 at SLED that must be completed before we're allowed to
7 process evidence on our own.

8 Q. Do you also have training in serology analysis?

9 A. Yes, ma'am.

10 Q. How so?

11 A. For the first approximately eight years, I was just
12 an evidence processing technician. There were additional
13 duties added when the serology section was created, so they
14 identify the body fluids that we're screening for. So it's
15 additional duties basically doing the same thing I was
16 doing all along.

17 Q. How long have you specifically been in the role of
18 evidence processing at the State Law Enforcement Division?

19 A. Approximately nine years.

20 Q. And is that department now combined with serology?

21 A. Yes, ma'am, as a section of the DNA department.

22 Q. Have you testified previously as an expert in the
23 field of evidence processing?

24 A. I have. Yes, ma'am.

25 Q. Is it possible to estimate how many such times you've

1 been qualified as an expert in the field of evidence
2 processing?

3 A. Approximately fourteen.

4 **MS. MAYES:** Your Honor, at this time the State would
5 offer Verona Gibson Herrera as an expert in the field of
6 evidence processing?

7 **THE COURT:** Voir dire?

8 **MR. CHEHOSKI:** Very briefly, Your Honor.

9 **THE COURT:** Okay.

10 VOIR DIRE EXAMINATION.

11 BY MR. CHEHOSKI:

12 Q. You're testifying as to what you've done in this case?

13 A. Correct.

14 Q. Is that testimony going to be containing any opinion
15 evidence?

16 A. I don't believe so, but --

17 **MR. CHEHOSKI:** Your Honor, I would object to her
18 being qualified as an expert as under Rule 702 as there's
19 no scientific or technical expertise that would aid the
20 trier of fact in the case.

21 **THE COURT:** And, I'm sorry, I didn't get -- I couldn't
22 hear your last question to her, Mr. Chehoski. I'm sorry,
23 and I apologize.

24 **MR. CHEHOSKI:** I apologize, Your Honor. My last
25 question regarded Ms. Ferrera -- I'm sorry, Ms. Herrera;

1 is that right?

2 **THE WITNESS:** Correct, sir.

3 **MR. CHEHOSKI:** -- is not gonna be offering any opinion
4 testimony, therefore, qualifying her as an expert would be
5 improper as there's no particular scientific or technical
6 experience that would aid the trier of fact.

7 **THE COURT:** I understand. Is she gonna be asked to
8 render any conclusions on any points, Ms. Mayes?

9 **MS. MAYES:** I can expound on that further, Your Honor.

10 **THE COURT:** Okay.

11 CONTINUED DIRECT EXAMINATION

12 BY MS. MAYES:

13 Q. Was there some testing using a SLED procedure
14 identifying any types of bodily fluids such as blood?

15 A. There was presumptive testing, yes, ma'am.

16 Q. All right. And is that something that you are trained
17 in?

18 A. Yes, ma'am.

19 Q. And was that conducted in this case pursuant to your
20 training?

21 A. It was. Yes, ma'am.

22 Q. And did that give you --

23 **MR. CHEHOSKI:** Your Honor, objection. We need to
24 approach, please.

25 **THE COURT:** What's that?

1 **MR. CHEHOSKI:** May we approach, please?

2 **THE COURT:** All right. She's trying to lay a
3 foundation as I understand it.

4 **MR. CHEHOSKI:** There's --

5 **THE COURT:** I'll deal with your first objection
6 before we go any further. Let's hear what it is.

7 (Proceedings held at the bench; not reported.)

8 BY MS. MAYES:

9 Q. So, Ms. Herrera, the question that I posed just a
10 few moments ago was whether or not in addition to
11 actually processing the evidence you conducted any type
12 of presumptive testing.

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

14 Q. And are you trained in the use of presumptive testing?

15 A. Yes, I am.

16 Q. Does that require a certain type of evidence
17 processing tools or kits?

18 A. It requires some chemicals, yes, ma'am.

19 Q. Okay. And you're particularly trained in that field
20 in terms of interpreting those results?

21 A. Correct.

22 Q. And did you interpret results in connection with those
23 findings in this case?

24 A. Yes, ma'am.

25 Q. Now in addition to that, did you also receive

1 evidence, multiple items of evidence, for processing?

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

3 Q. And do those items come to you sealed or unsealed?

4 A. Sealed.

5 Q. And the items which you actually processed as
6 evidence, who unsealed those items?

7 A. I did.

8 **MS. MAYES:** Your Honor, at this time as previously
9 proffered, we do offer Ms. Herrera as an expert in the
10 field of evidence processing.

11 **MR. CHEHOSKI:** Your Honor, we renew our previous
12 objection.

13 **THE COURT:** All right. I note that. I respectfully
14 overrule it. My understanding that she conducts
15 presumptive tests; is that right?

16 **MS. MAYES:** Correct, Your Honor.

17 **THE COURT:** On the basis of those presumptive tests,
18 then I take it she refers it to somebody else or does not
19 refer it; is that right?

20 **MS. MAYES:** I'll ask her one more question, Your
21 Honor.

22 BY MS. MAYES:

23 Q. Where do you send those items following your testing?

24 A. They're passed along either to a serologist or to a
25 DNA analyst for further testing.

1 Q. All right. And in this particular case, do you know
2 who they went to for further testimony?

3 A. Yes, ma'am.

4 Q. Who was that person?

5 A. To Mary Ann Boehm, a DNA analysts.

6 Q. All right. Is she also present here today?

7 A. She is. Yes, ma'am.

8 **THE COURT:** I'll allow her to testify. I agree. I'm
9 not sure this is evidence processing expertise and such,
10 but certainly she's qualified to testify about what she has
11 done in this particular case, has conducted presumptive
12 testing. Field officers conduct presumptive tests in the
13 field every day of their lives that they're working and
14 they don't require expertise in that regard. She can
15 testify about it. Thank you.

16 BY MS. MAYES:

17 Q. Now, Ms. Herrera, you indicated that you received
18 several items of evidence and you received those items for
19 the purpose of analysis?

20 A. Yes, ma'am.

21 Q. And did those items come to you sealed or unsealed?

22 A. They were sealed.

23 Q. Do you have with you a copy of your report?

24 A. Yes, ma'am.

25 Q. I want to ask you specifically about an item, which is

1 a hoodie. Was anything packaged with that hoodie when it
2 came to you?

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

4 Q. All right. How did you go about unsealing that item?

5 A. They were packaged in a box and inside that box were
6 a couple of bags. Those bags were sealed. Those were
7 opened and then the items inside that bag were laid out on
8 the table for processing.

9 Q. Okay. I'm gonna show you this item and ask you
10 whether or not you recognize it.

11 A. Yes, ma'am. This is the hoodie and the cap, our
12 Item 2 and Item 3.

13 Q. All right. I'll try and lay this out. Now as to this
14 particular item, what came packaged with it?

15 A. The hoodie and the cap were packaged together in a
16 paper bag.

17 Q. This being the hoodie and what is this item here?

18 A. That is the cap.

19 Q. And is that how you noted them or labeled them in your
20 report?

21 A. Yes, ma'am.

22 Q. What is this item?

23 A. This is the item used in processing items that have an
24 ownership request.

25 Q. All right. I'm gonna ask you a little bit more about

1 that. How did this item end up in this package with the
2 hoodie and the cap?

3 A. After we use it, we return the scraper is what we call
4 that, with the item, if possible. It just shows that we
5 only used it on a single item and it's returned.

6 Q. All right. Now you mentioned the term "ownership
7 testing". Is that a SLED term, ownership?

8 A. It is a term we use. There's touch DNA processing.
9 Ownership is a little more specific type of touch DNA
10 processing. It's trying to identify the person who was
11 wearing an item or had long-term contact with an item..

12 Q. All right. And did you conduct processing for the
13 purpose of determining ownership?

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

15 Q. And can you show us -- I'm gonna hand you this while
16 you're still gloved and also the scraper, and ask you to
17 demonstrate exactly how you go about processing this
18 evidence for the purpose of determining ownership.

19 A. First, I lay out the paper that the items were wrapped
20 in, so that there's a barrier between my table and the
21 items, and then I would scrape the entire surface of the
22 cap, in this case inside and out, onto that paper. A swab
23 is moistened with sterile water to swab the entire surface
24 of the cap, the scraper and the paper on which I scraped
25 and then any debris is collected after that.

1 Q. All right. You mentioned a swab. It's actually a
2 swab that is used for that item?

3 A. Correct. Yes, ma'am.

4 Q. And what type of DNA -- if you could elaborate a
5 little bit further, what type of DNA are you attempting to
6 retrieve when you're processing that -- that cap?

7 A. Usually it's skin cells. Where the fabric has
8 impacted the skin, the weight of the fabric can collect
9 skin cells that are shed naturally.

10 Q. All right. I'm gonna show you this item and ask you
11 to go ahead and unseal it.

12 A. (Witness complies.)

13 Q. And from this series of envelopes, if you could tell
14 us each item that you yourself collected and processed and
15 from what type of original evidence items you did that
16 processing.

17 A. Okay. The first envelope is from our Item 1 and it's
18 a cutting from a piece of cloth.

19 Q. Let me stop you right there.

20 A. Okay.

21 **MR. CHEHOSKI:** Your Honor, this is, again, subject to
22 our prior objections and motions.

23 **THE COURT:** Yes, sir. Certainly. Thank you.

24 BY MS. MAYES:

25 Q. I'll show you an item and ask you whether or not you

1 recognize it?

2 A. This is the bag in which Item 1 was sealed when I
3 received it. I had the item number, my initials, our lab
4 number at SLED and then the date in which I opened the
5 item.

6 Q. All right. So those are your initials?

7 A. They are. Yes, ma'am.

8 Q. Now are you also the person who unsealed this item?

9 A. Yes, ma'am.

10 Q. And how is it labeled to indicate where that cloth
11 came from?

12 A. It says from -- I think it's supposed to be yard at
13 Apartment [REDACTED].

14 Q. All right. And what color is the item?

15 A. It's black.

16 Q. All right. So the black cloth's from the yard at

17 [REDACTED]. And you just indicated that there's an envelope?

18 A. Yes, ma'am, there is.

19 Q. Did you process this item?

20 A. Yes, there were two cuttings taken from that item.

21 Q. All right. And moving along?

22 A. Item Number 2 for us, which is the hoodie, there is
23 a cutting from it and a swab from scraping the neck and
24 the cuff areas that were available for processing on that
25 item.

1 Q. All right. Can I stop you right there?

2 A. Yes.

3 Q. All right. So you're referring specifically to the
4 hoodie?

5 A. Correct.

6 Q. And you indicated that you took not only a swab but
7 cuttings as well?

8 A. A cutting. Yes, ma'am.

9 Q. All right.

10 A. And then Item 3, which was the cap, there is a swab
11 from it and then there is debris collected from Items 2
12 and 3 to collect together.

13 Q. All right. So debris was collected from both the cap
14 and the hoodie?

15 A. Correct.

16 Q. And swabs from both?

17 A. Yes, ma'am.

18 Q. And a cutting from the hoodie?

19 A. Correct.

20 Q. And were you able to swab the entire area of the
21 hoodie and why or why not?

22 A. No, we normally on a long-sleeved item scrape and swab
23 the neck and the cuff area, the interior neck and the
24 interior cuff area. In this case, there were areas that
25 tested positive in the presumptive test for blood. We

1 avoid those areas because we want the skin cells, not the
2 blood, to produce the DNA profile, if possible.

3 Q. All right. So there was blood on the hoodie?

4 A. There were areas that tested positive in the
5 presumptive test for blood, yes, ma'am.

6 Q. All right. And then what about the actual cap? I
7 want to take you back to the swab that you say you
8 conducted the evidence processing ownership collection on
9 that swab?

10 A. Yes, ma'am.

11 Q. What did you do with that swab?

12 A. That swab was dried and placed in a coin envelope.
13 I'll show you the actual one. It has, again, the case
14 number, the item number, which it is now 3.1 because it is
15 a swab taken from Item 3, and then it's just telling what
16 we need it tested for and then my initials and the date it
17 was collected are on the back.

18 Q. All right. After you did your collection, did you
19 then seal it?

20 A. Yes, ma'am.

21 Q. And it went to who?

22 A. It was returned to our evidence -- oh, I'm sorry. I
23 handed that directly to Mary Ann Boehm, the DNA analyst.
24 I apologize.

25 Q. All right. Now all of these other items where you

1 collected on the additional cuttings and swabs, can you
2 tell us whether or not those items were sealed by you?

3 A. Yes, ma'am. All of the coin envelopes were sealed by
4 me.

5 Q. All right. And you indicated earlier in your
6 testimony that you sealed them for the purpose of going
7 off for further testing?

8 A. Correct.

9 Q. Do you know who they went to for additional testing in
10 this case?

11 A. All of the items that I took swabs and cuttings and
12 debris from went to Mary Ann Boehm.

13 Q. All right. And would anyone else have unsealed it
14 between yourself and Ms. Boehm?

15 A. No, ma'am.

16 Q. All right. And all of the evidence that you've
17 testified that you received, the packaged hoodie and cap,
18 the cloth from the yard individually packaged here --

19 A. Uh-huh.

20 Q. -- would any of those items have been unsealed by
21 anyone prior to reaching you?

22 A. No, ma'am.

23 Q. And can you tell us whether or not blood was indicated
24 on the black cloth from the yard?

25 A. Yes, ma'am, both cuttings that I took were positive

1 for the presumptive test for blood.

2 Q. And the cutting from the hoodie?

3 A. Yes, it was also positive for the presumptive test
4 for blood.

5 Q. All of those envelopes that you just showed before
6 us, they came packaged in this one envelope together?

7 A. Correct. I placed them in that envelope, my initials
8 are on the front of it, as well as on the seal at the
9 top, and I filled out the rest of the front of it as well.

10 **MS. MAYES:** Your Honor, this will be State's exhibit
11 for evidence and we're gonna keep it packaged together as
12 it arrived.

13 **THE COURT:** Those are the swabs?

14 **MS. MAYES:** And cuttings.

15 **THE COURT:** Subject to previous objection.

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

17 **THE COURT:** Those were the items that were sent to
18 Ms. Boehm?

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

20 (State's Exhibit Number 121, swabs and cuttings, were
21 marked and admitted into evidence.)

22 **MS. MAYES:** I beg the Court's indulgence. Nothing
23 further of Agent Herrera.

24 **THE COURT:** And the item number, please?

25 **THE COURT REPORTER:** Exhibit Number 121.

1 **THE COURT:** 121. Thank you.

2 Cross-examination, Mr. Chehoski?

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

4 CROSS-EXAMINATION

5 BY MR. CHEHOSKI:

6 Q. Good afternoon again, Ms. Herrera. I just want to
7 ask a couple things. Before you received these items, a
8 forensic technician handled them for you, correct?

9 A. She handled the box, yes, sir.

10 Q. The -- handled, yeah, the box where the items were
11 contained in. And when these items were first brought to
12 SLED, you were not the first person to receive them?

13 A. No, the evidence -- the login technicians would have
14 received them from the agency.

15 Q. Correct. And you are familiar with the SLED chain of
16 custody forms?

17 A. Correct. Yes, sir.

18 Q. All right. And those forms reflect the order of
19 people at SLED who would handle the -- who handled the
20 items or had custody of the items?

21 A. Correct.

22 Q. And so if there is a name before yours in the list,
23 you weren't the person -- there was somebody before you,
24 you weren't the first person to receive them?

25 A. Correct.

1 Q. All right. Thank you. A couple of other things I
2 just wanted to kind of -- I'm sorry. You talked about
3 ownership swabs and ownership DNA and touch DNA. I want
4 to kind of develop that a little bit. You had said that
5 ownership -- ownership swabs are looking for long-term
6 contact with the item; is that right?

7 A. That's kind of an easy explanation. Usually it's the
8 person who's worn the item or a had a long-term contact
9 with it.

10 Q. Worn or has long-term contact. Whereas, again, touch
11 DNA could just be from anyone coming into contact with
12 their skin?

13 A. Correct, like grabbing a pen or a countertop or
14 something like that.

15 Q. Exactly. And so with the hoodie, you had scraped --
16 done an ownership swab -- or scraped for an ownership swab
17 of that hoodie?

18 A. That is correct.

19 Q. And those items that you scraped included the neck
20 area?

21 A. Part of the neck area.

22 Q. Part of the neck area. The inside part of the neck
23 area?

24 A. But I couldn't swab the complete neck -- or scrape the
25 entire neck area.

1 Q. Right. Because you said there was a presumptive test
2 for blood?

3 A. Right.

4 Q. But the other areas that were not -- that did not
5 presumptively test for blood you scraped, correct?

6 A. Correct.

7 Q. And you also scraped the inside cuff area?

8 A. It didn't test positive for the presumptive test for
9 blood.

10 Q. And these were the areas most likely to come in
11 contact with the skin?

12 A. That's the areas we routinely do, yes, sir.

13 Q. All right. And also with scraping the cap, I notice
14 that you scraped both the inside and the out, correct?

15 A. Yes, sir.

16 Q. And you only did one swab for the cap?

17 A. Yes.

18 Q. And did not do separate swabs for the inside or the
19 outside?

20 A. No, that material's very, very thin, so it's not thick
21 enough to warrant a different swab for the interior and the
22 exterior.

23 **MR. CHEHOSKI:** One moment please, Your Honor.

24 **THE COURT:** All right.

25 **BY MR. CHEHOSKI:**

1 Q. And just one more question about the DNA, is that the
2 ownership DNA, that is coming through skin cells?

3 A. Yes, sir.

4 Q. All right. Not blood?

5 A. That's the reason we try to avoid the blood.

6 Q. Not hair?

7 A. Not on the swab, no, sir.

8 Q. Okay. And these all come to you in one box --

9 A. Correct.

10 Q. -- and at which point they are separated by item?

11 A. No, as they're logged in, they're given specific item
12 numbers for the different items of evidence. The hoodie
13 and cap were just packaged together. They had already been
14 assigned their item numbers before I received the item.

15 Q. But after you unsealed the bag they were separated?

16 A. They were still on the same table together. Yes, sir.

17 **MR. CHEHOSKI:** One moment, please, Your Honor.

18 **THE COURT:** Okay.

19 BY MR. CHEHOSKI:

20 Q. And so you have Item 2 as the hoodie?

21 A. Correct.

22 Q. And separately labeled as Item 3 is the cap?

23 A. Correct.

24 Q. So different numbers different items?

25 A. Right, but that was assigned at login.

1 Q. And you were not that person who logged that in?

2 A. No, sir, I'm not an evidence control technician.

3 **MR. CHEHOSKI:** Your Honor, we renew our previous
4 motion as well.

5 **THE COURT:** I'll note the previous ruling to your
6 objection. Thank you.

7 **MR. CHEHOSKI:** Nothing further, Your Honor.

8 **THE COURT:** All right. Ms. Mayes, any follow-up on
9 that narrow point?

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

11 **REDIRECT EXAMINATION**

12 **BY MS. MAYES:**

13 Q. He asked you if you were the first along the way in
14 the chain there at SLED. Were you the first to unseal
15 these items?

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

17 Q. And he was asking you about the swabbing of the neck
18 area of that hoodie. Why weren't you able to swab the
19 entire neck area?

20 A. Because there were areas that tested positive for the
21 presumptive test for blood.

22 Q. Someone had bled on it?

23 A. It appeared so. Yes, ma'am.

24 **MS. MAYES:** Nothing further.

25 **THE COURT:** All right. Thank you, Ms. Herrera. You

1 can step down.

2 (Witness excused.)

3 **MS. MAYES:** The State calls Mary Ann Boehm.

4 **THE COURT:** Ms. Boehm, come forward, please, ma'am,
5 and be sworn.

6 (Whereupon, Mary Ann Boehm was duly sworn by the clerk
7 of court.

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

10 **THE WITNESS:** My name is Mary Ann Elizabeth Boehm,
11 B-O-E-H-M.

12 MARY ANN ELIZABETH BOEHM,
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MAYES:

16 Q. Good afternoon, Agent Boehm. Where are you employed?

17 A. I am employed at the South Carolina law enforcement
18 agency commonly known as SLED.

19 Q. How long have you worked at SLED?

20 A. Approximately eleven years.

21 Q. And what specifically is your job at the State Law
22 Enforcement Division?

23 A. I'm assigned to the DNA casework department. I
24 process evidence from cases that local law enforcement
25 drop off and generate a profile and testify when needed.

1 Q. You are a DNA analyst?

2 A. Yes, ma'am.

3 Q. What is your educational background and training
4 that led you to become a DNA analyst?

5 A. I received a bachelor of science in integrated
6 science and technology with a concentration in
7 biotechnology from James Madison University. That's in
8 Harrisonburg, Virginia. Upon appointment at SLED, I was
9 in the training for approximately a year on the proper
10 procedures and techniques used in the laboratory. I had
11 to complete a series of tests before I was signed off to
12 perform independent casework.

13 Q. And do you receive continuing education as a part of
14 your role as a DNA analyst at SLED?

15 A. Yes, ma'am. We are required to have eight hours of
16 continuing education each year. It's fulfilled by going
17 to different conferences within our field or having
18 in-house training on specific methods used in our
19 laboratory.

20 Q. Can you tell us whether or not the DNA testing
21 procedures used by SLED are also approved and used by
22 agencies such as the FBI, the Canadian Royal Police and
23 other agencies of that nature?

24 A. Yes, ma'am, they are.

25 Q. Have you testified as an expert in DNA identification

1 testing before?

2 A. Yes, I have.

3 Q. How many such times?

4 A. Approximately sixty times.

5 **MS. MAYES:** Your Honor, at this time the State offers
6 Agent Boehm as an expert in the field of DNA analysis and
7 statistical calculation.

8 **THE COURT:** Voir dire?

9 **MR. CHEHOSKI:** Very briefly, Your Honor.

10 **THE COURT:** Yes, Mr. Chehoski.

11 VOIR DIRE EXAMINATION

12 BY MR. CHEHOSKI:

13 Q. Do you have any experience in statistical mathematics?

14 A. Yes, I use statistics in casework.

15 Q. Okay. And are you familiar with the formula used to
16 generate random probability matches?

17 A. Yes, sir.

18 Q. And you're -- and so you're familiar with how that
19 works and how those numbers are generated and what they
20 mean?

21 A. That's correct.

22 **MR. CHEHOSKI:** Your Honor, nothing further.

23 **THE COURT:** All right. Thank you. Ms. Boehm is
24 qualified as an expert in DNA analysis and statistical
25 calculations. Ms. Mayes.

1 CONTINUED DIRECT EXAMINATION

2 BY MS. MAYES:

3 Q. What is meant by the term "deoxyribonucleic acid"?

4 A. That is the long word for the abbreviation DNA. It
5 is the chemical found within all of our cells of our body
6 except for red blood cells.

7 Q. All. I'm gonna need you to slow down --

8 A. I'm sorry.

9 Q. -- so that the court reporter can capture what you are
10 saying.

11 A. It gives us our physical features, such as our hair
12 color and eye color. It's also important for passing along
13 traits from generation to generation. We get half of our
14 DNA from our mother and half from our father. With the
15 exception of identical twins, no two individuals have the
16 same DNA. In forensic science we're interested in those
17 portions of DNA that differ between individuals. We test
18 fifteen different locations and the combination of those
19 locations make up what we call a DNA profile.

20 Q. For any given individual is the DNA information in
21 one bodily fluid or tissue the same as DNA information in
22 other bodily fluids or tissues?

23 A. Yes, ma'am.

24 Q. In other words, DNA from blood or skin cells is the
25 same as the DNA from any other part of the body?

1 A. That's correct.

2 Q. In general, what are you trying to determine through
3 DNA analysis?

4 A. We are trying to determine who left the DNA profile
5 at a scene.

6 Q. At a crime scene?

7 A. That's correct.

8 Q. Now can you explain to us what is meant by known DNA
9 as opposed to unknown DNA?

10 A. Yes, ma'am. We call -- unknown DNA would be items
11 that are collected from a crime scene. We don't know the
12 source of that DNA profile. Known DNA would be that we do
13 know the source of that profile, it was collected off of a
14 person, such as a buccal swab, which is a swab from inside
15 the cheek, or from blood or hair.

16 Q. All right. I'm gonna ask you a little bit about your
17 procedures and policies there at SLED. When evidence is
18 logged in initially to one of the login technicians,
19 whether that's Amy Stephens or whether that's Jackie Davis,
20 is it unsealed at that point?

21 A. When it's logged in, they ensure that it is sealed.

22 Q. All right. So it's sealed?

23 A. Yes, ma'am.

24 Q. Do they unseal it?

25 A. They do not.

1 Q. And if it's going directly to DNA, such as a buccal
2 swab, a known standard, who unseals it?

3 A. I would be the first one to unseal that item.

4 Q. All right. And in this particular case, I'm gonna
5 ask you whether or not you had the opportunity to examine
6 certain items of evidence in a case involving a Nathaniel
7 Hunter with a SLED lab number of L14-04723?

8 A. Yes, ma'am.

9 Q. All right. What agency submitted those items to you
10 for analysis?

11 A. West Columbia Police Department.

12 Q. Now I want to backtrack just a little bit. I want to
13 take you to the time period of April 16, 2014. Can you
14 tell us whether or not you yourself as a DNA analyst
15 received a rush request to examine evidence from a crime
16 scene in West Columbia?

17 A. Yes, I was informed by my supervisor that a rush
18 request had been made on this case and she assigned this
19 case to me to do.

20 Q. All right. I'm gonna ask you whether or not that
21 involved the examination of a swab or cuttings from hoodie?

22 A. Yes, ma'am.

23 Q. And swabs from a cap --

24 A. Yes, ma'am.

25 Q. -- known as Item 3?

1 A. Yes, ma'am.

2 Q. And when you examined the swab from that cap, Item 3,
3 were you able to develop a full DNA profile?

4 A. I was.

5 Q. Once you developed a full DNA profile, what did you
6 do with that information?

7 A. I first looked at the profile and I determined that
8 it was a mixture of at least two individuals and then I
9 determined that there was a major contributor to that
10 mixture. That means that there was one person that left
11 more DNA on that item of evidence than another person or
12 persons. I was able to then put the major contributor
13 into our database to see if there was a hit on anyone.

14 Q. All right. I'm gonna clarify that a little further.
15 You say there was a major contributor and a minor
16 contributor. Talking about the minor contributor, was
17 the DNA from the minor contributor even sufficient for
18 analysis?

19 A. It was not sufficient for comparison.

20 Q. Was it even enough DNA to tell you whether it was male
21 or female?

22 A. No, ma'am.

23 Q. Could it have even been the victim Larenda Simon's
24 DNA?

25 A. It's possible. I could not make any comparison.

1 Q. Because it was such a small amount?

2 A. That is correct.

3 Q. Could it have even been left behind from the
4 manufacturing process of this item?

5 A. It's possible.

6 Q. But you were able to develop a full DNA profile on the
7 major contributor?

8 A. That's correct.

9 Q. What is meant by the term "ownership testing" at SLED?

10 A. Ownership is a terminology we use to -- as a request
11 of who wore or owns an object.

12 Q. All right. Can you tell us whether or not being able
13 to develop a full DNA profile is consistent with ownership
14 of the item?

15 A. It's possible, yes.

16 Q. Wearing the item?

17 A. That is correct.

18 Q. Now when you entered that full DNA profile into a DNA
19 database, were you able to get what you termed a hit?

20 A. Yes, ma'am, there was a hit.

21 Q. All right. And who is that person that it was a hit
22 to?

23 A. It hit to a Nathaniel Hunter.

24 Q. All right. Now once you get that information and it's
25 a hit to Nathaniel Hunter, to follow up a little bit more,

1 is the agency who submitted the evidence notified?

2 A. That is correct.

3 Q. In this case, West Columbia Police Department?

4 A. Yes, ma'am.

5 Q. So moving on down the road, do you rely just on that
6 one hit or does SLED also request follow-up testing?

7 A. We do. We request a known standard for confirmation.

8 Q. All right. And in this particular case, can you tell
9 us whether or not SLED did receive follow-up buccal swabs
10 from Nathaniel Hunter for additional confirmation?

11 A. I did..

12 Q. I'm gonna show you this item, which is State's
13 Exhibit 119, and ask you whether or not you recognize it?

14 A. I do recognize this.

15 Q. All right. Who was the person who actually unsealed
16 these buccal swabs collected by Detective Page McCraw of
17 the West Columbia Police Department, both the left cheek
18 and the right cheek? Who's the person who unsealed this
19 evidence?

20 A. I did.

21 Q. And it arrived to you sealed?

22 A. That's correct.

23 Q. Directly from login?

24 A. That's correct.

25 Q. Once you unsealed this new set of buccal swabs from

1 Nathaniel Hunter, what did you do with that evidence?

2 A. I compared the standard that was submitted to the
3 evidence.

4 Q. Okay. I believe your testimony was from the cap you
5 had already developed a full DNA profile?

6 A. Yes, ma'am.

7 Q. And does that -- once you develop that full DNA
8 profile from the cap, does it remain in your system, in
9 your database for additional testing?

10 A. We don't have to perform an additional test. Once
11 we have the profile developed, we can make any further
12 comparisons to it, but we don't need to do additional
13 testing on it.

14 Q. All right. So it stays -- that information from that
15 profile stays with you?

16 A. That's correct.

17 Q. Did you compare this to that new set of buccal swabs
18 taken by Page McCraw December 10, 2015?

19 A. I did.

20 Q. What, if anything, did you determine?

21 A. That the DNA profile developed from the major
22 contributor to the cap matches the DNA profile of Nathaniel
23 Hunter.

24 Q. And, again, by major contributor, do you mean a full
25 DNA profile?

1 A. Yes, ma'am, it was a full profile.

2 Q. To what extent was it a match? And by that, I'm
3 asking for the type of statistical calculation involved in
4 that.

5 **MR. CHEHOSKI:** Your Honor, I object to this line of
6 testimony.

7 **THE COURT:** I'll note your objection. She has
8 testified that she is trained in this area and understand
9 the analysis, she understands how it's done, she
10 understands the science and the math. I'll allow her to
11 testify.

12 **THE WITNESS:** Whenever we make a match to an item to
13 a standard, we have to state how rare that match is. So
14 the DNA profile developed from the major contributor to
15 this profile matches the DNA profile of Nathaniel Hunter.
16 The probability of randomly selecting an unrelated
17 individual having a DNA profile matching the major
18 contributor to this item is approximately one in 320
19 quintillion.

20 BY MS. MAYES:

21 Q. One in 320 quint -- did you say quintillion?

22 A. Yes, ma'am.

23 Q. Are there even one quintillion people alive on the
24 planet?

25 A. No, there's approximately seven billion people.

1 Q. So more rare than everybody currently on the planet?

2 A. That's correct.

3 Q. Now when we talk about the science of DNA, what causes
4 DNA to be left behind? What factors play a role in the
5 process of leaving DNA behind on an item of clothing, for
6 example?

7 A. There are about five factors, general factors, that
8 can affect the potential of leaving DNA behind. How often
9 you touch it. If I -- for example, my steering wheel on
10 my car, I touch that multiple times a day, so I have the
11 potential to leave my skin cells on that item every time I
12 touch that steering wheel. However, if I ask a friend to
13 move my car to a different parking spot, they only touch it
14 briefly once, their DNA may not be left behind. Another
15 factor would be how hard I touch an item. If I just brush
16 against a surface say, I may not leave skin cells behind
17 versus if I really rub a surface and create a lot of
18 friction, the potential for me leaving DNA behind is a lot
19 greater.

20 Q. All right.

21 A. And the third would be how clean a surface or item.
22 Cleaning an item would remove the DNA from either the
23 clothing or the surface.

24 Q. All right.

25 A. And another one would be if I have a barrier between

1 my skin and whatever I'm -- the object I'm interested in.
2 So if I had a glove on and I touched the countertop, I
3 would not leave DNA behind because the glove would be in
4 between my skin and the item.

5 Q. All right. I want to follow up on that one. So I'm
6 wearing gloves now and wearing gloves now, touching certain
7 items, how may that affect the ability to leave touch DNA
8 behind such as skin cells?

9 A. If your skin does not come in contact with the item,
10 then you will not leave DNA behind.

11 Q. All right. What else?

12 A. If you're sweating, there's more potential to leave
13 skin cells behind, so it would be, I guess, the heat, the
14 temperature that lead to your sweating.

15 Q. Conditions?

16 A. Yes.

17 Q. Now taking into account all of these factors, if a
18 person is actually wearing this item against their skin
19 without a barrier and then this item is snatched away
20 resulting in friction such as factor number two, would you
21 expect to find DNA left behind?

22 A. It's definitely possible.

23 Q. And if they were wearing it skin to fabric and it was
24 snatched away, would you expect even a full DNA profile
25 under those circumstances?

1 A. It's possible, yes.

2 Q. Now also considering the hoodie, if a person is
3 wearing another layer of clothing underneath the hoodie
4 and gloves, for example, underneath the cuff creating a
5 barrier, would you necessarily expect to find DNA?

6 **MR. CHEHOSKI:** Objection to the form of the question,
7 Your Honor. It's outside the scope of knowledge.

8 **THE COURT:** Well, I think she's just testified as
9 to the factors. Ms. Mayes has just listed two of those
10 factors or at least one of those factors in the question.
11 I think there's a proper foundation. Go ahead.

12 **THE WITNESS:** Could you repeat the question, please?

13 BY MS. MAYES:

14 Q. Yes. So with the hoodie, for example, and if it has
15 a barrier underneath such as another layer of clothing or
16 gloves underneath the cuffs, would you necessarily expect
17 to find DNA?

18 A. No, because the skin cells are not coming in contact
19 with that hoodie.

20 Q. All right. So I want to ask you about some of the
21 additional testing that was done in addition to the cap.
22 Did you have a chance to look at the cuttings and swabs
23 from the hoodie?

24 A. Yes, I analyzed a cutting from the hoodie and a swab
25 from the hoodie.

1 Q. All right. And specifically had there been blood on
2 the hoodie?

3 A. Yes, there was blood.

4 Q. And whose blood was left behind on the hoodie?

5 A. The DNA profile developed from the blood on the hoodie
6 matches the DNA profile of Larenda Simon.

7 Q. Okay. And let me ask you this. In addition to the
8 buccal swab of the Defendant, Nathaniel Hunter, did you
9 also receive a cheek buccal swab from the victim in this
10 case, Larenda Simon?

11 A. Yes, I did.

12 Q. And that was to determine whether she may have left
13 any evidence behind as well?

14 A. That is correct.

15 Q. Including blood?

16 A. That is correct.

17 Q. So the blood on this hoodie belonged to Larenda Simon?

18 A. In my expert opinion, yes, ma'am.

19 Q. And did you have an opportunity to examine Item 1 in
20 your report, which is the black cloth taken from outside
21 the yard at [REDACTED]?

22 A. Yes, I received two cuttings from that cloth.

23 Q. All right. And what was -- was blood indicated?

24 A. Yes, ma'am.

25 Q. All right. And whose blood was that determined to be?

1 A. Larenda Simmons -- Simon.

2 Q. All right. Did you also receive a swab from the
3 sliding glass door?

4 A. Yes, I did.

5 Q. Let me show you that item and ask you whether or not
6 you recognize it. I'm sorry. This is gonna be State's
7 Exhibit 108.

8 A. Yes, ma'am. Our lab Item Number 4 is the swab from
9 the outer sliding glass door.

10 Q. All right. Now did that item come directly to you?

11 A. Yes, ma'am.

12 Q. All right. Was it unsealed by anybody before it got
13 to you?

14 A. No, ma'am.

15 **MS. MAYES:** Your Honor, at this time we'd offer
16 State's 108 into evidence.

17 **MR. CHEHOSKI:** Subject to previous objection.

18 **THE COURT:** Thank you. It's in.

19 BY MS. MAYES:

20 Q. Were you able to develop a full DNA profile from that
21 item?

22 A. No, ma'am. I developed a partial DNA profile from
23 that item.

24 Q. All right. Were you able to make any kind of
25 determination?

1 A. No, that partial profile was insufficient for reliable
2 interpretation, meaning I cannot make any comparisons to
3 that profile.

4 Q. Because you don't have enough to work with?

5 A. That's correct.

6 Q. So to sum up your findings, you confirmed the presence
7 of blood from Larenda Simon?

8 A. Yes, ma'am.

9 Q. And you developed a full DNA profile that's a match to
10 this Defendant, Nathaniel Hunter, on this cap?

11 A. That's correct.

12 **MS. MAYES:** Your Honor, I believe all items are in
13 evidence now. If not, we would offer them at this time.
14 That is going to include the swab from the sliding glass
15 door --

16 **MR. CHEHOSKI:** Renewing all prior objections and
17 motions, Your Honor.

18 **THE COURT:** All right. Noted. And adopting my
19 earlier rulings, I've got Exhibit 121, the swabs and the
20 cutting that was sent to Ms. Boehm, and certain items.

21 **MS. MAYES:** The buccal swabs from the victim, Larenda
22 Simon, which is Item 63.

23 **THE COURT:** Okay.

24 (State's Exhibit Number 63, buccal swabs, was admitted
25 into evidence.)

1 **MS. MAYES:** Then the buccal swabs from the left and
2 right cheek of Nathaniel Hunter, which is packaged together
3 as State's 119.

4 **THE COURT:** 119, that's right. That's in evidence.

5 **MS. MAYES:** Swab from the sliding glass door, which
6 is 108.

7 **THE COURT:** I've got that in evidence.

8 **MS. MAYES:** The cap and hoodie are packaged together
9 as 101 and the nylon cloth from the yard is 102, and the
10 State would offer all items at this time.

11 **THE COURT:** Subject to previous objection, those items
12 are in evidence as well.

13 **MS. MAYES:** Nothing further at this time, Your Honor.

14 **THE COURT:** Thank you.

15 Mr. Chehoski, you can cross-examine.

16 CROSS-EXAMINATION

17 BY MR. CHEHOSKI:

18 Q. Ms. Boehm, the ownership swabs from the hoodie, they
19 were from the inside neck area, correct?

20 A. I believe so, and the cuff area.

21 Q. And the cuff area. These were what's called the wear
22 areas, right?

23 A. You can term them that way. We try to target the
24 areas that rub against the skin.

25 Q. Right. And our most frequent long-term contact with

1 the skin?

2 A. That would be correct.

3 Q. Right. This isn't blood that we're talking about?

4 A. No, sir.

5 Q. So this is either skin, right, or sweat?

6 A. It possible. We didn't test for other possibilities
7 on that swab.

8 Q. And the profile you developed from that hoodie, that
9 most -- that profile was most consistent with Larenda
10 Simon, correct?

11 A. No, sir. It was the mixture of at least two
12 individuals and she could not be excluded from that item.

13 Q. She could not be excluded. It's a mixture of at least
14 two other people?

15 A. That's correct.

16 Q. And that mixture could not be matched to Nathaniel
17 Hunter?

18 A. No, I could not include him or exclude him.

19 Q. In fact, the -- there is a -- one of your loci is the
20 amelogenin, right?

21 A. That is correct.

22 Q. And that would determine the gender of the
23 contributor?

24 A. Yes, or contributors if it's a mixture.

25 Q. Or contributors. In that profile developed from the

1 hoodie, the -- that particular loci contained no Y
2 chromosome?

3 A. None that was typed.

4 Q. And the Y chromosome would be the -- would be the male
5 chromosome?

6 A. Yes, only males have Y chromosomes.

7 Q. So you only have an X chromosome on that profile?

8 A. Yes.

9 Q. And X is female?

10 A. Yes.

11 Q. All right. As for the cap, there was also a mixture
12 in that, correct?

13 A. That's correct.

14 Q. So there's at least one other person?

15 A. Yeah, it's a mixture of at least two individuals, one
16 being the major contributor, and then another.

17 Q. At least two individuals. And this, again, is an
18 ownership swab?

19 A. That's correct.

20 Q. There is no blood in this swab?

21 A. No.

22 Q. And there is no hair in this swab?

23 A. No, sir.

24 Q. All right. You did not see the cap; did you?

25 A. No, I did not.

1 Q. You did not see the hoodie?

2 A. I did not.

3 Q. All right. And you only test what is delivered to
4 you?

5 A. That is correct.

6 Q. You don't know how this cap was collected?

7 A. How the --

8 Q. The cap.

9 A. No, I do not.

10 Q. And you don't know where it was collected?

11 A. That's correct.

12 Q. All right. You -- let's see. You also testified to
13 receiving a -- this was called a new sample, correct?

14 A. Can you repeat that question?

15 Q. You were asked when you tested what was called a new
16 sample?

17 A. I don't know. I'm sorry, I don't know what that's
18 referring to.

19 Q. To the buccal swabs containing -- buccal swabs from
20 Mr. Hunter.

21 A. A known standard, yes.

22 Q. A new sample.

23 A. Okay.

24 Q. You had a prior sample, correct?

25 A. Not when I originally tested the evidence, no, sir.

1 Q. You subsequently had tested the evidence against a
2 known sample of Mr. Hunter?

3 A. That is correct.

4 Q. All right. And you developed -- you compared that to
5 the same items -- item of the profile from the cap in the
6 bag -- from the cap, correct?

7 A. That's correct.

8 Q. And you developed -- and you got a random match
9 probability with that?

10 A. Yes.

11 Q. And was that random match probability the same as the
12 one you just testified to?

13 A. I would have to refer my original report. Sir, are
14 you referring to the report I -- that's dated April 1,
15 2015, that comparison?

16 Q. Correct. Was that match one in 320 quintillion?

17 A. No, it was one in 23 quadrillion.

18 Q. Less than that, right?

19 A. Yes, sir.

20 Q. Significantly less than that?

21 A. Yes, sir.

22 Q. All right. You testified also that you had -- you
23 had contained known samples from both Ms. Simon and
24 Mr. Hunter?

25 A. Could you repeat that question?

1 Q. You've already testified that you had known samples
2 from Ms. Simon and Mr. Hunter?

3 A. That's correct.

4 Q. All right. And you developed profiles from those
5 samples?

6 A. That's correct.

7 Q. All right. Do those samples have any overlapping
8 alleles?

9 A. I would have to make that comparison. Normally we
10 don't compare standards to standards, so it would take me
11 a minute to do that comparison, sir.

12 Q. All right. But it's not uncommon for there to be
13 overlapping alleles between two individuals?

14 A. It's possible.

15 Q. All right. And it's not uncommon?

16 A. I don't know. Like I said, we don't do that, so I
17 don't know.

18 Q. All right. And let me kind of go into this. You're
19 saying that you were testing for fifteen loci?

20 A. Fifteen different locations. The technical term is
21 loci.

22 Q. Is loci. And the -- you're looking at -- how many
23 total locations are there?

24 A. That we test, there's fifteen.

25 Q. How many total in the human DNA?

1 A. I don't think they even have discovered all of the
2 locations. There's only fifteen at the time that we tested
3 at SLED.

4 Q. But there are -- are there millions?

5 A. I don't know. I know there's more because currently
6 we test more.

7 Q. Billions?

8 A. I don't know.

9 Q. You are actually looking at less than one percent of
10 the total DNA, aren't you?

11 A. That would be correct.

12 Q. All right. And even in that less than one percent,
13 there are millions of these base pairs or locations that
14 make us unique?

15 A. That is correct.

16 Q. All right. And so -- and you can only be -- I'm
17 sorry. All right. I want to talk about the DNA technology
18 or the technology used to develop this. It's called the
19 polymerase chain reaction; is that right?

20 A. It's polymerase chain reaction, yes, sir.

21 Q. Or it's PCR for short?

22 A. That's correct.

23 Q. Now this technology is sensitive enough that you can
24 develop a profile after only a few -- with only a few skin
25 cells?

1 A. I don't know the exact amount of skin cells, but it is
2 highly sensitive.

3 Q. It is highly sensitive and for that reason you wear
4 gloves in your laboratory?

5 A. That's correct.

6 Q. And you keep your laboratory sterile?

7 A. That's correct.

8 Q. And you change gloves in between experiments?

9 A. That is correct.

10 Q. And the reason for that is you can -- you don't want
11 to have any cross-contamination?

12 A. Yes, we don't want to -- either I don't want to get my
13 DNA into the sample or other DNA that is found within the
14 lab.

15 Q. And so -- and if you did not change gloves, there
16 would be a possibility from -- if you touched one sample
17 that you could probably transfer it to another sample?

18 A. It's possible, but we have controls in place to make
19 sure we're not doing that.

20 Q. And, again, this is done because of the sensitivity of
21 the PCR DNA technology?

22 A. Yes, sir.

23 Q. All right. A mix sample is where you find the DNA
24 profiles from more than one person or a particular
25 evidentiary sample?

1 A. Yes, a mixture of more than one person.

2 Q. And the DNA results do not indicate the race of the
3 donor?

4 A. No, sir.

5 Q. It does not indicate the age of the donor?

6 A. No, sir.

7 Q. And does not indicate when the sample got on the
8 surface of the evidence?

9 A. No, sir, my testing cannot tell you that.

10 Q. All right. In fact, just kind of for context here,
11 you cannot say when the DNA got on the sample?

12 A. I cannot.

13 Q. You cannot say for how long it has been there?

14 A. That is correct.

15 Q. And cannot say under what circumstances it got there?

16 A. No, sir.

17 Q. And, again, I would say regarding the hoodie, the DNA
18 profile indicated that the contributor was female or the
19 contributors were female?

20 A. That's correct, sir. However, the mixture, there's
21 some areas that we have to interpret with caution, so I
22 didn't specify that it was from a female, all female,
23 because there's still that unknown because there's multiple
24 contributors.

25 Q. Right. But there is no Y chromosome?

1 A. Not that was typed, no.

2 Q. And a Y chromosome would indicate a male contributor?

3 A. Mostly likely. There can be mutations on male Y
4 chromosomes where we would not pick that up that Y
5 chromosome.

6 Q. All right. But there is no Y chromosome?

7 A. Not that was typed.

8 Q. All right. And your -- again, your profile workup
9 of Item 2.1 or the swab from the hoodie indicated that
10 Ms. Simon could not be excluded from that?

11 A. Item 2.1 was the cutting from the hoodie.

12 Q. I'm sorry, was it 2.2 then?

13 A. 2.2 was the swab from the hoodie.

14 Q. All right. I meant to say 2.2, the swab from the
15 hoodie, and Ms. Simon could not be excluded from that
16 sample?

17 A. That's correct.

18 Q. And the random probability match for that sample to
19 Ms. Simon was about one in twenty-four?

20 A. That's correct.

21 Q. All right. And you would not consider these
22 evidentiary profiles to be specific to a particular person?

23 A. For that mixture, no, sir.

24 Q. Okay.

25 **MR. CHEHOSKI:** One moment, please.

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

2 **BY MR. CHEHOSKI:**

3 Q. Just a few more questions, Ms. Boehm. You only had
4 the swabs in this case; is that correct?

5 A. I had swabs and cuttings.

6 Q. And cuttings, but in reference to the cap, you only
7 had a swab?

8 A. That is correct.

9 Q. And in reference to the hoodie, you had a cutting and
10 a swab?

11 A. That's correct.

12 Q. And you tested the swabs, correct?

13 A. Yes.

14 Q. You did not test the cap or the hoodie?

15 A. No, I tested the swabs and cuttings from those items.

16 Q. And in that the swabs from the -- the swabs, there was
17 -- those swabs were not from blood?

18 A. They were not tested for blood, so --

19 Q. They were ownership swabs?

20 A. Yes, they were tried to give the ownership, but there
21 was no serology testing for blood performed on those items.

22 Q. They were not from blood and not from hair?

23 A. We can assume so.

24 **MR. CHEHOSKI:** Your Honor, no further questions at
25 this time.

1 **THE COURT:** Ms. Mayes, redirect?

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

3 REDIRECT EXAMINATION

4 BY MS. MAYES:

5 Q. So just to follow up a little bit, if you and I get
6 into a very heated struggle right now and I yank that
7 jacket off of you and you run away, does it have my DNA on
8 it?

9 A. Yes, ma'am.

10 Q. And if you're covered in clothing underneath that
11 jacket and that creates a barrier between that jacket and
12 you, after I yank it off am I necessarily gonna find your
13 DNA on it?

14 A. It's possible that you would not.

15 Q. And when we talk about the mixture on the hoodie,
16 you cannot exclude Larenda Simon from the mixture on the
17 hoodie, correct?

18 A. That is correct.

19 Q. But you also can't exclude this Defendant, Nathaniel
20 Hunter, from that mixture on the hoodie?

21 A. No, I could not include or exclude him.

22 Q. Because there's not enough there for you to work with?

23 A. That is correct.

24 Q. Now Mr. Chehoski was asking you about an earlier test
25 that you did that also included a match of a known swab

1 from Nathaniel Hunter to the known ownership collection
2 swab for that cap?

3 A. That's correct.

4 Q. And what was the number that you cited to him?

5 A. That was 1 in 23 quadrillion.

6 Q. 1 in 23 quadrillion. So it's somewhat lower, but are
7 there 23 quadrillion people in the world?

8 A. No, ma'am, there are not.

9 Q. What is the current world population?

10 A. Approximately seven billion.

11 Q. So it's still a greater probability of being Nathaniel
12 Hunter than any other person on the planet?

13 A. That's correct.

14 Q. And although you were not able to get a full DNA
15 profile from any of the swabs and cuttings on the hoodie,
16 you were able to get a full DNA profile from that cap?

17 A. Yes, ma'am.

18 Q. And that full DNA profile is Nathaniel Hunter?

19 A. That is correct, from the major contributor to that
20 cap.

21 Q. And he was the major contributor in a full DNA
22 profile?

23 A. That is correct.

24 Q. So all fifteen of those loci that Mr. Chehoski was
25 asking you about, all fifteen of those loci were analyzed

1 and a match to Nathaniel Hunter?

2 A. That is correct.

3 Q. Now is the use of those fifteen loci, is that accepted
4 as DNA -- is that accepted among peers in your field of DNA
5 science and testing?

6 A. Yes, ma'am, it is accepted and published testing.

7 Q. And why is that enough? Why is fifteen loci enough
8 for you to make a full DNA match?

9 A. Because of their rarity in the statistic.

10 Q. Among those particular loci?

11 A. Yes.

12 Q. And can you tell us whether or not that type of DNA
13 testing is also used not only by your peers but by the FBI?

14 A. Yes, ma'am.

15 **MS. MAYES:** Nothing further.

16 **THE COURT:** Thank you, Your Honor.

17 **RE CROSS EXAMINATION**

18 **BY MR. CHEHOSKI:**

19 Q. I just want to reiterate. You tested two known
20 samples on separate occasions with the same piece of
21 evidence and got different results?

22 A. That is correct.

23 **THE COURT:** And when you say different results,
24 you're talking about the difference in 320 quintillion
25 and 23 quadrillion? Is that what you're referring to?

1 **MR. CHEHOSKI:** Right. Correct, Your Honor.

2 BY MR. CHEHOSKI:

3 Q. And science advocates accuracy and consistency and
4 reliability?

5 A. Yes. I can explain those differences.

6 **THE COURT:** You can do that.

7 **THE WITNESS:** Okay. So the first time when I issued
8 the report and tested Nathaniel Hunter's standard back in
9 April of 2015, we were using a population database
10 different than the one that we used in -- February 5, 2016,
11 when I retested Nathaniel Hunter's profile. The -- that's
12 the database we currently use. It includes more locations
13 in the statistic. There was two locations in the old
14 database that we did not use back in April of 2015 and then
15 the current one and the one that I used in February of 2016
16 included all fifteen locations. That's why there's a great
17 difference between the statistics because I added two more
18 locations to that rarity.

19 BY MR. CHEHOSKI:

20 Q. The only key piece of evidence is really the swab, not
21 the cap, right?

22 A. The swab from the cap or from the hoodie?

23 Q. The swab from the cap.

24 A. Yes.

25 Q. All right. That's the only key piece of evidence that

1 connects to Mr. Hunter that you analyzed?

2 A. That would correct.

3 Q. Now a hypothetical for you since Ms. Mayes asked you
4 one, if someone was wearing a tank top with their shoulders
5 exposed, the DNA could be on the inside of the hoodie,
6 correct?

7 A. It's possible.

8 Q. All right. And if you had long dreadlocks, then there
9 could be hair inside the cap or the hoodie?

10 A. That is correct.

11 Q. And you did not analyze any hair from inside the cap
12 or the hoodie?

13 A. I did analyze three hairs.

14 Q. They were not from the cap or the hoodie.

15 A. They were -- yes, they were from the cap and the
16 hoodie that were randomly collected as a debris collection.

17 Q. And -- but they are not in evidence?

18 A. That I don't know.

19 Q. And they were not connected to Mr. Hunter?

20 A. No, sir, they were not.

21 **MR. CHEHOSKI:** All right.

22 **MS. MAYES:** Objection, Your Honor. I'm gonna have
23 to follow up on that.

24 **THE COURT:** We'll, you've got -- I assume
25 eventually we're gonna finish with the examination and

1 cross-examination and recross examination of Ms. Boehm.

2 I'll give you the last word. Okay.

3 FURTHER REDIRECT EXAMINATION

4 BY MS. MAYES:

5 Q. When he just asked you they weren't a match to
6 Mr. Hunter, can you clarify why you weren't able to match
7 those hairs to any person?

8 A. Yes, ma'am. There were three hairs that I tested.
9 One of the results there was no DNA profile developed.
10 The other two, they were very partial DNA profiles that
11 were insufficient for interpretations; meaning, I could not
12 make any comparisons to known standards submitted in the
13 case.

14 **THE COURT:** All right. Ms. Boehm, that's the last
15 word. Thank you for coming. You can be excused.

16 (Witness excused.)

17 **THE COURT:** Counsel, will you approach just a moment
18 so we can talk about a matter of scheduling.

19 (Proceedings held at the bench; not reported.)

20 **THE COURT:** Folks, this is a good stopping place for
21 today and let me -- I'm aware of your concerns about the
22 length of this trial and I was talking with the lawyers
23 over there and let me tell you that I have as good an
24 assurance as anybody can ever give me, and they have been
25 quite candid with me in that regard, this case is gonna be

1 in your hands sometime tomorrow, so don't worry about
2 having to stay overnight.

3 Now I take that back. If you choose to stay overnight
4 deciding the case, that's up to you, but it's gonna be in
5 your hands for your decision-making tomorrow if that's any
6 consolation to you, and I hope that it is.

7 And I appreciate your patience throughout the week.
8 You've seen the discussion, you've seen the extent of the
9 evidence that has been developed, you've seen the concern
10 and the very intelligent examination and cross-examination
11 that's been going on concerning all of these items, and
12 you appreciate the importance of all this. None of this
13 can be shortcut, really it can't be shortcut, and so
14 everybody's been doing what they need to do. The State and
15 the defense have done it and they've done it very well and
16 that's why it takes a long time to develop some of these
17 issues for your consideration, so there we are.

18 But I give you that assurance because I knew that you
19 had a concern and I wanted you to know we were aware of
20 that concern and I've shared it and now I have given you
21 the best response that I can give you, okay?

22 9:30 tomorrow. Remember not to talk about this case
23 among yourselves or with anybody else.

24 All right. Thank you.

25 (Whereupon, the jury was excused for the day at

1 5:03 PM.)

2 **THE COURT:** Folks, I'm gonna study this chart a
3 little bit more fully. This has got a State's exhibit
4 number on it. If somebody could give me one that doesn't
5 have an official stamp on it so that I can scratch on it,
6 if you don't mind, overnight.

7 I hesitate to ask you to do this because I know that
8 you-all have got something better to do overnight, but I
9 would need any unusual proposed charges from you by
10 tomorrow morning if I am to consider those things and if
11 we're going to the jury sometime tomorrow, and it appears
12 we will under the present circumstances.

13 Let me tell you just off the top of my head, I've not
14 written these down anywhere, but I've been gradually
15 compiling the list of charges that appear to me in this
16 particular case. Of course, my -- my standard reasonable
17 doubt charge is the one that I referred to in my opening
18 remarks to the jury; that is, the Victor versus Nebraska,
19 the State versus Darby charge. I tell folks that you-all
20 are free to use any reasonable doubt charges you want to
21 do that has been approved by our Supreme Court. I just
22 didn't want you to tell the jury that the judge is gonna
23 tell you that a reasonable doubt is the type of doubt that
24 causes a reasonable person to hesitate to act or something
25 like that because that's not what I'm gonna tell them.

1 I'm gonna tell them what I told you I'm gonna tell them.

2 Of course, the elements of all of the offenses will
3 be charged obviously. And in addition to that, a
4 circumstantial evidence charge will be given, an
5 identification charge will be given and -- oh, goodness,
6 I'm just adlibbing this thing. I haven't written them down
7 yet. I have them scattered all across my desk in there.

8 And I'll be glad to, of course, consider any
9 variations of those charges that you want to give to me.
10 I'm not saying I'll give them, but I'll be glad to look at
11 them. And any other -- our expert witness charge and
12 things of that nature. If there's anything else suggested
13 by this whole canopoly of testimony and all of these
14 exhibits that you feel is an appropriate charge, if you'll
15 send it up to me, I'll be glad to deal with it. It would
16 help me to have it first thing in the morning, but if you
17 can't get it by then, I realize you-all have got to work
18 tonight, too, so.

19 The proposed verdict form that I showed you that I was
20 gonna scratch out from has been done in rough form and I
21 think by this time my law clerk, Ms. Usry, has completed
22 it, I'm not sure, but we'll see about that, and I'll share
23 it with you as soon as I get it in final form.

24 I don't want to jump the gun in this case as I realize
25 there's much left to be done in this case, but still we're

1 not gonna have another chance to have this discussion short
2 of the formal charge conference before we go to the jury
3 and so I wanted to lay this out preliminarily for
4 your-all's consideration.

5 Ms. Mayes, have you got any questions or comments in
6 that regard?

7 **MS. MAYES:** Your Honor, we would certainly recommend
8 the Court's standard charges pursuant to the bench book.
9 We do think those are appropriate. In addition, we would
10 request a charge on intent. That may already be included,
11 but --

12 **THE COURT:** Intent, that is a part of my charge.

13 **MS. MAYES:** Thank you, Your Honor.

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

15 **MR. PHILLIPS:** As to jury instructions, day one I
16 gave you a copy of -- a copy of the State versus Beatty
17 opinion regarding the admonition because I know in the
18 standard bench it has the language of "the search for the
19 truth" and I don't know if Court Administration has sent
20 an updated bench book with that removed.

21 **THE COURT:** They haven't, but I'm not gonna -- I still
22 stay away from that.

23 **MR. PHILLIPS:** I know, Your Honor. I just wanted to
24 make sure we -- it was, you know, one of those things that
25 doesn't accidentally get left in there when it's printed

1 out.

2 **THE COURT:** Right. Okay.

3 **MR. PHILLIPS:** Also, I wanted to renew our sidebar
4 objection that we had and be able to flesh that out on the
5 record regarding confrontation clause and the chain of
6 custody. In reviewing State v. Hatcher, 392 SC 86,
7 obviously, as Your Honor knows, that the State must
8 establish chain of custody as far as practicable and this
9 determination will necessarily depend on the unique factual
10 circumstances of each case, as quoted in that case.

11 Well, under the Sixth Amendment confrontation clause,
12 of course, and under the Fourteenth Amendment and
13 Article 1, Section 10, when we're looking at the right to
14 confrontation and we're looking at Hatcher as to unique
15 factual circumstances, the defense's theory, the defense's
16 case, is all revolving around one piece of evidence. Your
17 Honor highlighted it earlier today. This case is about
18 DNA --

19 **THE COURT:** That's right.

20 **MR. PHILLIPS:** -- and we did not get a chance to
21 cross-examine the West Columbia custodian who was the first
22 person over twenty-four hours later to log this key piece
23 of evidence, as well as the first SLED person, Amy
24 Stephens, and so we needed to put that on the record to
25 preserve our issues under the confrontation clause, to our

1 right to a fair trial, the Fifth and Fourteenth Amendment,
2 Article 1, Section 3 of the South Carolina Constitution,
3 and we would believe under State v. Hatcher, which is
4 generally very limited to the defense, in this case I
5 think this falls under that very -- the determination
6 under unique factual circumstances. This is that unique
7 factual circumstances where it guts our defense. Thank
8 you, Your Honor.

9 **THE COURT:** All right. Thank you, Mr. Phillips for
10 developing that and I'll simply renew the earlier rulings
11 to the extent that I've given them in that regard.

12 No, folks, we'll start back at 9:30 tomorrow. I'll be
13 here -- I'm driving back and forth this time because,
14 frankly, it takes me as long to get here from the hotel
15 three blocks in the other direction than I'll be getting
16 here from Manning.

17 So I'll try to be here around 9:00 tomorrow and I'll
18 be in chambers. If you-all have got anything that's come
19 up overnight, just come back and let me know about it and
20 we'll try to deal with it.

21 **MR. McNAIR:** Judge, I've got a copy for you. It's not
22 a clean copy. I've already X'd out what we were planning
23 on removing.

24 **THE COURT:** Okay. That's good.

25 **MR. McNAIR:** And, of course, we'll change the XVideo

1 stuff that's not reflected on there.

2 **THE COURT:** All right. Good.

3 **MS. GILREATH:** Can I get a copy of whatever you're
4 intending to --

5 **MR. McNAIR:** That's just the cleanest copy I have.

6 **THE COURT:** I think this is similar to the copy that
7 I had earlier today and gave back.

8 **MS. GILREATH:** So that's just original copy?

9 **MR. McNAIR:** No, the original copy is right here and
10 I don't have -- our printer's down or our server's down
11 and I can't print a new --

12 **THE COURT:** Do you want to look at this, Ms. Gilreath?
13 You take a few minutes and take a look at that. I'm gonna
14 step down and if you'll drop it back by my chambers before
15 I leave here.

16 **MS. MAYES:** Your Honor, I do have one other matter I
17 just need to address before the morning regarding the
18 potential former testimony of Detective Bramlett. There
19 is no evidence in the record of this trial at least before
20 the jury to suggest that the cap came from a pocket. I
21 believe at one point Mr. Phillips posed that question to
22 Detective Neel and, of course, a question by counsel is
23 not evidence. So we just need to make sure that that
24 issue is not going to be explored any further, including
25 argument, and that's going to determine whether or not the

1 testimony of Bramlett is relevant, probative and necessary.

2 **MR. PHILLIPS:** We won't argue that, the fact that it
3 was -- the dispute between the pocket and the hood. We
4 won't argue that.

5 **THE COURT:** Okay. All right. Thank you. All right,
6 folks.

7 **MS. GILREATH:** And, Your Honor, I can go ahead and
8 hand this back to you. Our main argument would still be
9 as to the listing of the names on the phone calls and
10 additionally as to including the names of attorneys's
11 offices. I do have so some case law that I can send in
12 an e-mail to you and Mr. McNair just for simplicity's
13 sake, Your Honor.

14 **THE COURT:** Okay. Do that. Send it to me and I'll
15 look at it in the morning.

16 **MS. GILREATH:** Okay.

17 **THE COURT:** Okay. That, of course, depends on --
18 it doesn't come in unless there's some foundation as
19 Mr. Phipps related earlier today that he made the call, I
20 think. At least that -- I realize that's still another
21 argument for you to make even with that testimony.

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

23 **THE COURT:** Thank you.

24 All right, folks. 9:30 tomorrow. I'll be here at
25 9:00.

1 **MS. MAYES:** Thank you, Judge.

2 (Whereupon, the proceedings were concluded for
3 April 27, 2017, at 5:16 PM.)

4 (Whereupon, the following proceedings were held on
5 April 28, 2017, beginning at 9:22 AM.)

6 **BAILIFF:** All rise. Court's now in session.

7 **THE COURT:** Mark that as Court's exhibit next, please.

8 (Court's Exhibit Number 11 was marked for
9 identification.)

10 **THE COURT:** I have marked as Court's Exhibit Number 11
11 the redacted form, Mr. McNair, that you just handed up to
12 me and I'll refer to that in my remarks this morning.

13 Let me -- let me say that we're gonna have to get
14 going with what we've got, okay? It's 9:30 and the jury's
15 back there and some other redactions are gonna need to be
16 made and I'm want to go ahead and address these things.

17 First of all, I think that I've heard in the two hours
18 and forty-five minutes yesterday that we talked about this
19 exhibit and about this matter that I've heard almost all of
20 the legal positions that are implicit for one side or the
21 other. I realize, Mr. McNair, you didn't get a chance to
22 do a whole lot of that talking, but you did respond to
23 questions and so I'll be glad to listen to you as I go
24 through this any further. I recognize that this -- that
25 the entire exhibit and all of the entries comes in subject

1 to objection that Ms. Gilreath has adequately lodged
2 yesterday on several grounds, which need not be repeated
3 here. The record is already full of those.

4 Here's what I determined overnight. Not overnight.
5 Actually since the testimony of Mr. Watkins yesterday and
6 then Mr. Phipps's testimony as well and my further review
7 of this. I recognize that initially there were several
8 things that this exhibit was designed to elicit. One of
9 those, and I won't characterize it as being the most or
10 the least or how important it was, but certainly one of
11 the significant issues was that the timeline shown by the
12 exhibit as it was originally produced as Mr. Phipps's
13 extractions had revealed apparently showed during the
14 period of the crime -- the timing of the crime that there
15 was no activity on the phone.

16 Mr. Watkins's testimony yesterday has refuted that,
17 indicating that there was at least two activities, perhaps
18 three during this period, depending upon the actual timing
19 of it, and so it appears to me then that all of these
20 entries on this form which have no other purpose other than
21 showing activity during the period before the crime and
22 that have no other relation after the crime other than
23 showing some activity, are irrelevant to -- to this jury's
24 consideration.

25 Mr. McNair, what do you say to that?

1 **MR. McNAIR:** Your Honor, we were informed last week
2 that the defense felt some information was missing from our
3 extraction report.

4 **THE COURT:** Right.

5 **MR. McNAIR:** We were aware they had done their own
6 extraction, we inquired as to well, what information did
7 they think was missing and we requested that they provide
8 us with their extraction report so we could see. They
9 said -- I guess the response was they didn't have to under
10 Rule 5.

11 **THE COURT:** Right.

12 **MR. McNAIR:** The first time we were able to get our
13 hand on that report was yesterday. I had no idea what the
14 basis of their objection was or anything of that nature.
15 We have since reviewed their experts's report and based on
16 his timeline -- and I'll explain more about this in a
17 minute, but based on his timeline there's an incoming call
18 on the 13th at 11 -- excuse me, let me back up. There is
19 a YouTube search at 10:11 PM on April 12th. The next
20 activity reflected in his timeline report is an incoming
21 call on the 13th at 11:59 AM. What he is talking about
22 yesterday concerning the YouTube app, there must be -- my
23 understanding and I think what Investigator Phipps would
24 testify to, is that that is one of those apps that is just
25 automatically updating just because the phone is on,

1 similar to the tombstone stuff Investigator Watkins was
2 testifying to yesterday. I don't think that shows actual
3 user activity, it's just something that's automatically
4 updating because the phone is on. So the actual search
5 through YouTube was at 10:11 PM on the 12th, so actually
6 according to their timeline report there's a bigger gap in
7 activity than we're showing because their timeline does
8 not reflect the cookies that we're showing where he was
9 accessing XVideos at 1 AM.

10 So I don't think -- I don't think the activity they
11 were testifying to yesterday shows actual user activity.
12 It's just one of those things that if you have a smart
13 phone it's an application that automatically updates and as
14 a result of that it generates times and events, but it's
15 not actual user activity. So because of that I do think
16 our timeline is accurate and I do think it does show an
17 accurate break in activity.

18 **THE COURT:** I've got one expert who said specifically,
19 specifically Mr. Watkins, that the phone was being used at
20 that time. I wrote it down. That's what he said. I may
21 have asked him the question. I'm not sure. He indicated
22 the YouTube cache data indicated that the phone was being
23 used at 12:19 AM, 2:25 AM and 3:54 AM.

24 Now -- and, of course, Mr. Phipps testified shortly
25 thereafter, and I realize at that time he did not have

1 their -- their report, nor the basis of Mr. Watkins's
2 evidence in front of him.

3 **MR. McNAIR:** Your Honor, and I believe Investigator
4 Phipps and Watkins were conferring about what I just
5 mentioned just a moment ago, and I don't know if they've
6 come to a resolution of what that actually represents or
7 not.

8 **THE COURT:** Well, is Mr. Phipps in the courtroom?

9 **MR. McNAIR:** I can get him, Your Honor.

10 **THE COURT:** Get him.

11 **MR. McNAIR:** And I guess our position, Your Honor,
12 would be that, of course, that would be fodder for
13 cross-examination of Mr. Phipps on their behalf.

14 Investigator Phipps is in the courtroom, Your Honor.

15 **THE COURT:** All right. Mr. Phipps and Mr. Watkins,
16 gentlemen, you're both in the courtroom, you've testified
17 earlier, you're still under oath.

18 Mr. Phipps, you were out of the courtroom when we
19 discussed this. Mr. Watkins may have heard the end of the
20 discussion. The issue is whether or not Mr. Watkins's
21 examination and extraction of the phone in question
22 indicates that the phone was being used by someone during
23 the time of the crime. Specifically, the testimony
24 yesterday was it was being -- Mr. Watkins testified that
25 it was being used at 12:19, 2:25 and 3:54 AM on the early

1 morning hours in which the crime was committed. There's a
2 lot of activity on this report which would have no
3 relevance other than to show the fact that there was a gap
4 in the use of the phone during the time the crime was being
5 committed; however, if the evidence reveals that the phone
6 was being used in that time, then that other evidence has
7 no relevance.

8 Now Mr. Watkins said yesterday that it was being used.
9 Mr. Phipps, I understand that since that time you've had a
10 chance to review his report and you and he have discussed
11 it. Let me hear from you first if you-all's discussion
12 adds anything to the storehouse of knowledge about whether
13 the phone was being used during that critical timeframe.

14 **MR. PHIPPS:** Stand or --

15 **THE BAILIFF:** Yes, sir.

16 **MR. PHIPPS:** Yes, Judge. The -- the report that
17 Investigator Watkins prepared, I had a chance to review it.
18 The data set that's being pointed to to fill in this gap
19 is a cache file for the YouTube app itself.

20 **THE COURT:** Right. He testified about that.

21 **MR. PHIPPS:** Uh-huh. Within that cache file, looking
22 at the same data set within my software, I'm finding some
23 discrepancies; one being the time being reported, and I
24 haven't had enough time to test specifically for this app
25 and version and how this time was reported, but we're

1 having a discrepancy in the time that I see in my reporting
2 software and the time that's reported on Mr. Watkins's
3 report.

4 Furthermore, he also in his timeline report had a
5 search activity for the YouTube app itself and when you
6 look at the search activity and then you try to correlate
7 that search back to activity within the cache file itself,
8 there is no activity for those periods of time. So we
9 would assert that without some further examination or
10 testing there doesn't seem to be a correlation between the
11 activity within the cache report and actual use of the app
12 itself by the user interacting with the app.

13 **THE COURT:** All right. Mr. Watkins, let me hear from
14 you in that regard.

15 **MR. WATKINS:** All right. I met with Mr. Phipps
16 earlier before coming in here --

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

18 **MR. WATKINS:** -- and he brought to my attention that
19 he had done some testing utilizing his forensic software
20 and found the discrepancies he just mentioned based on the
21 search history and correlating that with the cache history.

22 **THE COURT:** Right.

23 **MR. WATKINS:** He has compared the search time with
24 -- or taken that search time and looked through the cache
25 history to see if it correlates to any of those times

1 and could not find the correlation. We discussed the
2 timestamps. The way that the data is stored it stores it
3 in a unique date code which has to be translated using the
4 forensic software. When the date code is converted, it's
5 converted to a UTC with no time offset, meaning it wouldn't
6 be local time. From there, which as it appears in my
7 report, was converted to the device time, which is local
8 time, and the report that was provided is based upon that.

9 I would agree that without further testing I have not
10 been able to -- I did not have an opportunity to go through
11 all of the search history and look through it the way
12 Phipps has, so I would agree that without further testing
13 that I would not be able to testify as to the correlation
14 that he's just spoken of. The only thing I can testify
15 to is what I've done within the software within the cache
16 record and that the dates and times that are shown in
17 this record reflect local time based upon the use of the
18 forensic software.

19 **THE COURT:** The local time -- when you gave me 12:19,
20 2:25 and 3:54 yesterday, were you referring to local time?

21 **MR. WATKINS:** I was.

22 **THE COURT:** All right. And what are you saying
23 Mr. Phipps's records refer to, his -- the time that his
24 research --

25 **MR. WATKINS:** So what he's done is he's looked

1 through the search history, so these -- these are two
2 different types of records. You've got the YouTube search
3 history and then the YouTube cache history. The report
4 that I provided with just the cache history is separate
5 to that. He has -- I believe he just stated that when he
6 went to look at the cache history, he doesn't see the UNIX
7 time code that I -- the time code that I just mentioned,
8 and that without further -- I believe he just said without
9 further testing he would have to do something additional,
10 I'm not sure, to verify the time on his end.

11 **THE COURT:** So you're saying you would need to do
12 further --

13 **MR. WATKINS:** I would say that -- I would agree that
14 additional testing to -- I would agree that additional
15 testing could be done to at least verify this. Now based
16 on just the cache history alone utilizing my software,
17 it does report UTC with no offset, which I then had to
18 convert to device time, which is local time, with an
19 offset of minus four hours which is what's indicated in
20 this report.

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

22 Mr. Phipps, do you agree with essentially what
23 Mr. Watkins just said?

24 **MR. PHIPPS:** Yes, sir. The main difference is my
25 forensic tool when we look at the cache history spoken of

1 it does parse out date and time that happens to match the
2 date and time in Mr. Watkins's report; however, it reports
3 it as a zero offset, meaning it's reporting it as UTC time
4 straight up, which would mean if the software that I'm
5 using is reporting it that way, it's in error versus his
6 report being four hours off if my software is correct.

7 **THE COURT:** All right.

8 **MR. McNAIR:** Judge, can I say one thing?

9 **THE COURT:** Yeah.

10 **MR. McNAIR:** This is the way I understand it, and I
11 like to dumb it down so I can understand it, but the
12 YouTube search history we agree would indicate user
13 activity, somebody accessing YouTube. The cache history
14 doesn't necessarily reflect user activity. That could be
15 activity just by virtue of the app updating itself. In
16 the records we provided, the cache history is so extensive,
17 it's so voluminous, to me indicates it's an automatic
18 update-type thing, it's not somebody constantly going on
19 YouTube, so that's kind of the point I'm trying to make.

20 **THE COURT:** I understand. Thank you. I understand
21 your point. All right.

22 **MS. GILREATH:** Your Honor, we would have a response
23 argument at the appropriate time.

24 **THE COURT:** This appears to be a battle of software
25 among other things. Cache history, cache data and activity

1 data, which can be interpreted according, I guess, to which
2 software is which. One of my tasks as a trial judge is to
3 try to prevent -- or present the evidence or have the
4 evidence presented in such a way as not to cause confusion,
5 all right, except when we've got matters of one witness
6 that says something about what that witness did or didn't
7 and the other witness says something else. That's not the
8 type of confusion that I talk about because the jury is
9 able to deal with that type of confusion and make -- and
10 to make decisions. At the end of the day, if this jury
11 listens to everything that Mr. Watkins has said and
12 everything that Mr. Phipps has said, it's gonna be left
13 with the difference that they've just cited here a minute
14 ago and that further investigation by other software may be
15 needed in order to clear up the questions that have been
16 raised by the other side.

17 That's not the sort of thing that we put in the hands
18 of a jury. I'm sure that they're -- I hope there are a lot
19 of folks on that jury who know a lot more about this stuff
20 than I do, but in the time that they're gonna have today to
21 get acquainted with this, they're still not gonna be left
22 with any more than the conclusions that were just drawn.
23 This is a critical area obviously of -- of the timing of
24 everything that was involved. I'm not prepared to let this
25 jury have to decide which of the competing experts it is

1 going to -- it is going to hear and agree with because --
2 because the ultimate result of conclusions that will be
3 reached would be so uncertain, so subjective, so capable of
4 speculating, so based perhaps on a final answer coming from
5 things that have not yet been done, by software that has
6 not yet been applied to these things. I'm not prepared and
7 I specifically grant the motion to suppress the portion of
8 the document that has to do with the timeline. It is --
9 frankly, it is too confusing for this jury to try to
10 understand in the way that it's been presented to me. The
11 jury would have to have some basis for understanding all of
12 this before they could, like I, decide how relevant it is.
13 I don't expect them to have the expertise or the time to
14 digest this and, as I've said, even if they did they would
15 still be left with questions about -- who to believe
16 between experts is always a question, who to believe, but
17 in this particular case the reasons for the conclusions of
18 the experts are things as in every case that a jury is
19 required to take into account in making their decision
20 about what expert they're gonna believe. You're entitled
21 to give it the weight of the testimony that you think it
22 should receive we tell the jury -- I will tell the jury
23 taking into account, among other things, the reasons given
24 in support of the opinion, whether they're sound or not.
25 In my view, the jury is gonna be incapable of making those

1 decisions based on the uncertainty and the differences in
2 the issue that is before us.

3 Referring to Court's Exhibit Number 11, the cookies
4 at the top of the page or the text messages at the top of
5 the page, they will be allowed to stay in. The telephone
6 calls with Nish will be allowed to stay in. The screen
7 shot will be allowed to stay in. The weather activity
8 shown in green will be out. The continuing text messages
9 between Nish and the Defendant will be allowed to remain
10 in on both Page 1 and 2.

11 Now we get to the incoming and outgoing telephone
12 calls that are reflected on Page 2 and thereafter. The
13 telephone calls to the sheriff's offices, the warrant
14 division, the South Carolina state agency, and there are
15 three of those in a row, the SLED DNA, the two calls to
16 Nish, can stay in. The call to the auction company is out
17 for reasons that I will tell you in just a moment.

18 There's a red history down here that reflects unknown
19 -- apparently looking at the television, at this point that
20 is out. The call log to the South Carolina state agency is
21 okay. Crystal Owens is okay. The SLED main laboratory is
22 okay. On the top of Page 3, Crystal Owens is okay.

23 Now following that, there's a series of telephone
24 calls to attorneys' offices. Mr. Phipps testified that he
25 got those numbers from the telephone and he simply called

1 them himself and the lawyers answered the phone and told
2 them that's who it was or their office did. . So insofar as
3 the authentication of that is concerned, that's not the
4 question. It is hearsay, of course, and it -- more than
5 that, more than being hearsay, the jury will be asked to
6 conclude after listening to all of those telephone numbers
7 that were called that because Mr. Hunter was trying to get
8 a lawyer he must have done something wrong. In other
9 words, the jury would be asked to infer guilt from the
10 fact that he's exercising a constitutional right to have a
11 lawyer represent him. There's the evidentiary issue of
12 hearsay and if Mr. Hunter took the stand and testified,
13 that would be fair game, that would be fair game for him,
14 but in his absence that amounts in my view to the attempt
15 to assert a constitutional right which like the assertion
16 of most constitutional rights cannot be used as evidence of
17 guilt.

18 The web history following that about giving back the
19 DNA and all that DNA things, that's fair game. The
20 additional calls that follow, Chris Mills and Lloyd Smith,
21 those are out. The warrant division, that's okay. There's
22 a web history there and then there's obviously also a
23 telephone call. At the bottom of Page 3, the two telephone
24 calls to the warrant division and to Crystal Owens are
25 okay. The call to Mr. Rutherford is not needed. The call

1 to the rental car is okay because he had a rental a car and
2 that's just confirming that.

3 At the top of Page 4, the call to Crystal Owens and to
4 the warrant division is okay. All of the green things that
5 have to do with testing in connection with the police
6 department, that's fair game, and that's in. The rental
7 car and Crystal Owens, that's okay.

8 From that point on there is a great deal of attention
9 attached to looking at the -- at the television. I'm not
10 gonna ask the jury to conclude that that is evidence of
11 guilt. This morning, as a matter of fact, I looked at
12 those web sites on my telephone. I would hate for a jury
13 to be given that information and assume that that's
14 evidence of guilt in this particular case. Now there is
15 other parts that might come in. The rental car is are
16 fine. The fugitive thing is fine. I'm not sure what the
17 relevance of the Town of Lexington is. I don't see it as
18 prejudicial. The Crimestoppers, I'm assuming that that
19 relevance can be established. If it is, okay. If it's
20 not, it's gonna come out. Crimestoppers is fine. The
21 Bernstein telephone call comes out for reasons that I've
22 already mentioned. The ABC Columbia comes out for reasons
23 that I've mentioned.

24 Continuing, the profile areas and the DNA database,
25 that's okay. Any inquiry that he made about the DNA

1 database, and I think that that's the great majority of
2 those things on the top of Page 5. The statutes, the South
3 Carolina Collecting DNA, Don't Delay, get it removed and so
4 forth, all of those things are fine.

5 Now we get to arrest warrant issued for a burglary
6 suspect. From that point on, the telephone -- the
7 television because more relevant, so the Columbia crime is
8 fine. The additional DNA is fine. The special SLED report
9 about backlogs is fine. The news for Columbia Now is fine,
10 the WACH News is fine. The First Cash Pawn is out. The
11 First Cash Financial Services is out. And there are two of
12 those cash searches. The rental car is okay once again.
13 All of the outgoing yellow things which seem to indicate
14 he's trying to sell something, that's out.

15 At the top of Page 6, there are three communications
16 to and from Nish. If that has some relevance, I'll be glad
17 to hear from you and leave it in. The call log showing the
18 Carolina Trader, that's out. Once again, there's a series
19 of things with Nish and Carolina Rent-A-Car, those are
20 fine. The Carolina Trader is out. The television, once
21 again, is okay. It's become relevant in my view. The
22 call to Crystal Owens is okay. The South Carolina Law
23 Enforcement Division, the marshall service, the news for
24 Columbia, the Crimestoppers, all of those things are okay.
25 The Bernstein is out. How to Delete DNA File is out --

1 excuse me, is in. I'm sorry, is in. At the top of Page 7,
2 searching for an armed and dangerous suspect is in, as are
3 the other elements on there.

4 I note exceptions, objections, constitutional,
5 evidentiary and everything else based on that analysis,
6 and I'll give you some time, if necessary, to redact in
7 order to present the testimony in a meaningful way.

8 Folks, I've tried to give as best I can my rationale
9 behind each of those deletions that I've made and each of
10 the inclusions that I have made. The record, I think,
11 indicates that. If an appellate court disagrees with me,
12 it certainly has the basis of my ruling on there and each
13 of you-all or somebody on your behalf are free to argue
14 those things to whatever extent you need to.

15 I'll give you a few minutes to redact, okay?

16 **MS. MAYES:** Yes, sir, Your Honor. I just want to ask
17 for clarification on one matter.

18 **THE COURT:** Okay. Please.

19 **MS. MAYES:** The Carolina Trader, there was a call on
20 4-17-14. That was testified to by the owner and operator
21 of the Carolina Trader, I believe his name was John
22 Gresham, and he did testify he received -- or the ad was
23 placed on that date for the vehicle.

24 **THE COURT:** I will -- I will allow that in because
25 he's testified about it and that would corroborate his

1 testimony. Which one is that?

2 **MS. MAYES:** Your Honor, that is on Page 6 of 7, and
3 that's the call to the Carolina Trader on 4-17-14 at
4 10:54 AM.

5 **THE COURT:** I see. Okay. I'll change my page to
6 indicate that.

7 All right.

8 **MS. MAYES:** If we could just get clarification. For
9 some reason you left this part blank. It's on Page 6 of 7.
10 It's the WLTX around the middle. We didn't have a note
11 whether that was in or out.

12 **THE COURT:** I'm sorry, I checked it as being in. As
13 a matter of fact, I wasn't sure exactly what it was doing
14 there, but it was -- let's see. There was a -- hold on
15 just one second..

16 What page is that on again? I'm looking, Ms. Mayes,
17 at the entry you just referred to. Is it in the middle of
18 Page 6?

19 **MS. MAYES:** It is, Your Honor. There are two -- it
20 looks like two visits to WLTX-TV at 12:21 and 12:22.

21 **THE COURT:** Okay. I'm trying to find something I
22 referred to earlier. Yes. On the top of -- excuse me,
23 close to the top of Page 5 of 7 where it says an arrest
24 warrant issued for a burglary suspect, from that point on
25 I allowed the search of the news sites and things of that

1 nature to come in. So on Page 6, the web history of WLTX,
2 if that's what you're referring to --

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

4 **THE COURT:** -- that's in.

5 All right. Does that -- does that clear up at least
6 what my ruling is?

7 **MS. MAYES:** Yes, sir, Your Honor. Would it be
8 possible for Ms. Grigsby to make a copy of your report to
9 work from?

10 **THE COURT:** To the extent it can be read.

11 **MS. MAYES:** May she approach?

12 **THE COURT:** Yes. Make sure it's clear. Okay. I
13 think that my scratches are enough for you to be able to
14 understand. Thank you.

15 **MS. GILREATH:** And, Your Honor, the remainder of the
16 report would just be subject to all of the prior objections
17 to everything in the report.

18 **THE COURT:** That's right. And this is just -- I'll
19 give that one back.

20 All right, folks. And certainly you-all can go over
21 -- well, Mr. Phipps has been in here, he's heard the
22 rulings, so he'll understand the parameters of where we
23 are staying. As soon as she's finished the redactions, if
24 you-all will let me know. At that point in time Mr. Phipps
25 will be ready to testify; is that right?

1 **MR. McNAIR:** Yes, sir.

2 **THE COURT:** Do we have any other matters that we need
3 to take care of before Mr. Phipps takes the stand other
4 than previously lodged and noted?

5 **MS. GILREATH:** Well, Your Honor, the pages with the
6 data files that I believe they were intending to introduce
7 and there were also -- I believe they were intending to get
8 in the photographs that had been previously discussed, so
9 we would just request a ruling on that. We would object to
10 this in redacted form because, of course, in the redacted
11 form that it is it certainly suggests that there is
12 something there that is -- I would just say it's something
13 that -- it's misleading. You don't know what a bunch of
14 these big black boxes mean, whether it means something that
15 would be prejudicial to him, so as it is we would object to
16 the way it is.

17 **THE COURT:** I understand. Let me -- Mr. McNair, I
18 should have inquired of you, but what is the relevance of
19 the West Columbia Police Department photos?

20 **MR. McNAIR:** Just that he's searching the West
21 Columbia Police Department days after this.

22 **THE COURT:** Okay. So these -- these photographs are
23 really a --

24 **MR. McNAIR:** They're the West Columbia Police
25 Department.

1 **THE COURT:** I understand. Is that tied to this? In
2 other words --

3 **MR. McNAIR:** No, sir, and that's why I made it
4 separate, but --

5 **THE COURT:** Okay.

6 **MS. GILREATH:** Your Honor, these are just cache files,
7 it doesn't show what the search was actually for, so these
8 could have come from one of those news sites that were kept
9 off. There's not really a basis for that.

10 **THE COURT:** Okay. I'm not gonna get bogged down in
11 cache and cookie and that stuff again. Let's stay away
12 from that. I'm trying to think about relevance. I
13 understand relevance. I don't understand cache file.

14 What would the relevance be that he was checking into
15 the police department?

16 **MR. McNAIR:** Well, that he was aware of what he had
17 done and he knew he was wanted and he was looking at a site
18 of the West Columbia Police Department.

19 **THE COURT:** Right. Well, of course, that's not gonna
20 tell a whole lot, I guess, about --

21 **MR. McNAIR:** We won't use it, Your Honor.

22 **THE COURT:** Yeah, I agree. I think it's -- it's less
23 probative than it is prejudicial, so I'll sustain the
24 objection, okay, on the basis of relevance.

25 Ms. Gilreath, I don't want anybody reading this record

1 to think I had the mistaken understanding that I knew what
2 cache files were.

3 Okay. Thank you, folks. I'll be ready when you are.

4 (Recess taken.)

5 (Court's Exhibit Number 12 was marked for
6 identification.)

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

8 **THE COURT:** Thank you, folks. You-all can be seated.
9 The redaction appears to be accurate.

10 **MR. McNAIR:** Thank you.

11 **THE COURT:** Thank you.

12 All right. Are we ready for the jury, folks?

13 **MR. McNAIR:** Yes, Your Honor.

14 **THE COURT:** Bring us the jury, please.

15 (Whereupon, the jury enter the courtroom at 10:29 AM.)

16 **THE COURT:** Folks, I'm getting better. It was only an
17 hour delay today. I will -- when you finish with this case
18 and have been discharged as jurors, I would love to have
19 the chance to explain to you what we've been doing outside
20 your presence. I can tell you that what we've been doing
21 in the hour that we've been out here -- actually an hour
22 and a half that we've been out here -- no, it's just been
23 an hour -- we have been doing some things that will
24 actually save time. It would be hard for you to believe
25 that right this minute, but it has been designed to do

1 that and will accomplish that, so it hasn't been entirely
2 wasted.

3 Ladies and gentlemen, we'll continue now. The State
4 is continuing to offer evidence and testimony in this case.

5 Mr. McNair.

6 **MR. McNAIR:** Your Honor, the State calls Investigator
7 Mike Phipps.

8 **THE COURT:** Investigator Phipps, come forward, please,
9 and be sworn.

10 (Whereupon, Michael Stewart Phipps was duly sworn by
11 the Clerk of Court.)

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

14 **THE WITNESS:** Michael Stewart Phipps, P-H-I-P-P-S.

15 MICHAEL STEWART PHIPPS,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. McNAIR:

19 Q. Mr. Phipps, where are you currently employed?

20 A. With the Lexington County Sheriff's Department.

21 Q. What is your position there?

22 A. I'm a forensic technology examiner.

23 Q. Will you give the jury a little bit of background of
24 your experience in law enforcement.

25 A. Yes. I've been in law enforcement a little over

1 nineteen years. I started out like most people on the
2 road as a regular road deputy, spent about a year as a
3 corporal supervisor on the road. At that point I
4 transferred into our crime scene unit where I worked
5 full-time as a crime scene officer for about thirteen
6 years. During the thirteen year period, we started seeing
7 the need for more and more technology-type examinations,
8 so my job duties kind of split at that point and I did
9 sort of both and for about the last year and several months
10 they've dedicated me completely to doing examinations on
11 cell phones, computers and removable media, that type of
12 thing.

13 Q. All right. And as part of your job, do you regularly
14 analyze digital devices such as cell phones and computers?

15 A. Yes, sir.

16 Q. Okay. What education and training do you have in that
17 regard?

18 A. They have sent me -- well, going back to when I first
19 started doing examinations, I've attended several classes
20 throughout that time period. Going back to 2005, a Basic
21 Data Recovery Analysis course put on by the National White
22 Collar Crime Center, an Internet Trace Evidence Course
23 that same year from the same instructors, as well as in
24 2006 Intermediate Data Recovery and Analysis Training.
25 In 2007, Core Skills for Investigation of Cellular

1 Telephones put on by Search. 2010, Basic Investigation
2 of Computers and Electronic Crimes. 2013, Basic Computer
3 Evidence Recovery Training. 2014, two classes; one being
4 Sovereign Investigations, Basic Cell Phones and Basic Data
5 Recovery and Acquisitions.

6 Q. Roughly how many examinations of cell phones do you
7 think you've done?

8 A. I don't exactly track that as a separate item, but
9 having done them since 2009 I think an extremely
10 conservative estimate is over five hundred.

11 Q. But even though you work for the Lexington County
12 Sheriff's Department, do you also do forensic examinations
13 of cell phones for other agencies?

14 A. Yes, sir. Our agency belongs to the South Carolina
15 Electronic Crimes Task Force that's administered by the
16 Secret Service. They provide us some resources as far
17 as training and equipment to do these types of
18 investigations and as part of our agreement with being a
19 member of that organization we also offer our services
20 to local jurisdictions aiding adjoining counties for
21 examinations.

22 Q. Have you testified as an expert in general sessions
23 court before?

24 A. I have.

25 Q. How many times?

1 A. Five times where it pertains to cell phones, yes.

2 **MR. McNAIR:** All right. Your Honor, at this time
3 we'd offer Investigator Phipps as an expert in forensic
4 examination of digital devices, including cell phones.

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

6 Ms. Gilreath, voir dire?

7 **MS. GILREATH:** None, Your Honor.

8 **THE COURT:** Without objection. Thank you.

9 BY MR. McNAIR:

10 Q. Investigator Phipps, would you kind of explain to the
11 jury how you do a forensic examination of the cell phones?

12 A. Obviously the cell phone is delivered to us. It's
13 usually sealed. We document all those aspects. We
14 identify the phone by serial number and identifying
15 features, record that, and it's a process of hooking it to
16 the forensic tools that we use. In this case, we use a
17 tool by a company called Cellebrite. It's a hardware-based
18 tool that allows us to communicate with the device without
19 changing the data that's on the device. So unlike hooking
20 it just to your computer where the computer may send
21 something to the phone and change settings or change
22 something on it, Cellebrite has designed this tool, in
23 this case the UFED Touch, to be forensically sound. So,
24 in other words, anything we do to it we're not altering the
25 data that's originally on the phone.

1 Q. All right. And is Cellebrite a program that's also
2 used by various Federal agencies including the FBI?

3 A. Yes, sir, it is.

4 Q. And what type of information are you able to obtain
5 from a forensic extraction?

6 A. It's very broad now as you can imagine. Your smart
7 phone contains just about everything that you can imagine
8 and when we acquire the phone through a physical
9 acquisition, in theory we have everything that's on the
10 phone at that point. It's a matter of sorting through it
11 and parsing out that data to make sense of it.

12 Q. All right. Now was a phone submitted to you in the
13 case of Nathaniel Hunter?

14 A. It was.

15 Q. I'm gonna show you State's Exhibit 70. Can you take
16 a look at that and tell me whether or not that's a phone
17 that you examined?

18 A. Yes, sir, it is.

19 Q. All right. Now when was that phone first submitted
20 to you?

21 A. The phone was first submitted back in --
22 April 28th of 2014.

23 Q. Can you tell me whether or not you were able to do an
24 extraction at that point?

25 A. We weren't able to gain access to the phone at that

1 point because the phone was PIN locked. The software we
2 use requires us to change a setting within the settings
3 portion of the phone to allow it to have access to the
4 device and not having that physical access to the operating
5 system we weren't able to get into the phone. There was a
6 removable media card, a micro SD card, and we were able to
7 image that at that time, but not any of the contents from
8 the phone itself.

9 Q. All right. At some point after that were you able,
10 in fact, to do a full extraction of that phone?

11 A. We were. . .

12 Q. What date was that?

13 A. March 10th of 2017.

14 Q. And what enabled you to do the extraction at that
15 point?

16 A. Changes in Cellebrite's ability to create a method of
17 bypassing that PIN allowing us access without knowing the
18 PIN.

19 Q. All right. Now when you do an extraction on
20 Cellebrite, are you able to generate a report based off
21 of that information?

22 A. Yes, sir.

23 Q. And does that contain the information that was on the
24 phone?

25 A. It does.

1 Q. All right. And when that report is generated, the
2 information on that phone is not manipulated in any manner,
3 correct?

4 A. It is not.

5 Q. All right. Now from the information you extracted
6 using Cellebrite -- well, were you able to generate a
7 report showing activity on that phone between April 12,
8 2014, and April --

9 MS. GILREATH: Your Honor, subject to prior
10 objections.

11 THE COURT: Yes, ma'am. Subject to objection. Thank
12 you.

13 Q. -- and April 17, 2014?

14 A. Yes, sir.

15 (State's Exhibit Number 122 was marked for
16 identification.)

17 BY MR. McNAIR:

18 Q. I'm gonna show you what's been marked as State's
19 Exhibit 122. Did you assist in the preparation of that
20 document?

21 A. Yes, sir, I did.

22 Q. And although that document does not reflect all of
23 the activity in the actual extraction report, does it
24 accurately reflect activity obtained from the extraction
25 report for the date range we just discussed?

1 A. It does.

2 MR. McNAIR: Your Honor, we offer State's 122 into
3 evidence at this time.

4 THE COURT: Over objection of defense counsel, 122
5 in evidence.

6 MS. GILREATH: Thank you, Your Honor.

7 (State's Exhibit Number 122, an color-coded extraction
8 report, was admitted into evidence.)

9 MR. McNAIR: Your Honor, permission to publish?

10 THE COURT: Yes, sir.

11 MR. McNAIR: And may the witness step down?

12 THE COURT: Investigator, if you will stand on the
13 other side where Mr. McNair is and face in this general
14 direction, I think we'll all be able to hear better.

15 (Whereupon, the witness steps down from the witness
16 stand.)

17 THE COURT: Thank you.. All right.

18 BY MR. McNAIR:

19 Q. Would you just kind of tell -- go through and tell the
20 jury what this exhibit is showing.

21 A. The spreadsheet's been prepared just to show activity
22 as far as incoming and outgoing phone calls, text messaging
23 and web activity. You can see at the top it starts off the
24 yellow items being all text messaging-type content. You
25 have both incoming and outgoing.

1 **THE COURT:** Folks, can you-all see that okay? Is
2 there anybody who's having trouble seeing it? Can it be
3 blown up any?

4 **BAILIFF:** Your Honor, can I drop the lights a little
5 bit?

6 **THE COURT:** Try that. A little bit more.
7 Can you drop these front lights up here somehow?

8 **BAILIFF:** We'll have to figure it out.

9 **THE COURT:** Okay.

10 **MR. McNAIR:** Is that any better?

11 **BAILIFF:** How's that, sir?

12 **THE COURT:** Better... Okay. Good.

13 **MR. McNAIR:** We had to cut a column off, so.

14 **THE COURT:** All right.

15 BY MR. McNAIR:

16 Q. All right. So this spreadsheet reflects text
17 messages, incoming and outgoing calls, any web activity
18 on this phone, correct?

19 A. It does.

20 Q. All right. Now, I guess, can you explain the first
21 section of this exhibit color-coded in yellow? Explain to
22 the jury what that shows.

23 A. It's a series of incoming back and forth text messages
24 between the device and someone named Nish. Nish being
25 pulled from the address book within the phone, so it

1 identifies the number for whatever was typed into the
2 address book, and starting at April 12th at 2:10 PM running
3 through 2:18 PM on the 12th, again, there's a sequence of
4 back and forth text messages.

5 Q. All right. Now, I guess, before we go any further,
6 how does a cell phone obtain date and time information?

7 A. The -- the cell phone in this instance, we verified
8 that the cell phone was set to pull its date and timestamp
9 from the cell phone provider, so the network that it's on
10 provides a date and time to the device so that it stays
11 current so that when daylight savings time hits you don't
12 have to remember to open your phone up and change the time
13 on that.

14 Q. All right. Were you able to verify the dates and
15 times on this phone were correct?

16 A. Yes, and we went an additional step in doing that by
17 having the cell phone provider's records, the call detail
18 records, and when it comes to the actual phone call itself,
19 the voice communication, we verified that all those times
20 were accurate.

21 Q. All right. So is that first block in yellow
22 indicating text messages between the Defendant and somebody
23 named Nish?

24 A. Yes, sir.

25 Q. All right. And what did they appear to talk about?

1 A. Just causal talk about what are you gonna do and
2 meeting up later.

3 Q. Okay. And that's on the 12th?

4 A. It is.

5 Q. All right. And the next section color-coded in light
6 blue?

7 A. The light blue is signifying an incoming voice
8 communication, a phone call, starting at 5:07 PM, again,
9 with Nish. Two calls back to back.

10 Q. All right. And then this last column, description,
11 what does that indicate?

12 A. The time represented in description is the duration
13 for that call that they were communicating with each other.

14 Q. All right. And the next section?

15 A. A series of outgoing phone calls, again, to Nish,
16 starting at 5:38 PM and running through 7:12 PM.

17 Q. All right. And all of those communications happened
18 on the 12th?

19 A. Yes, sir.

20 Q. All right. And this next section, yellow again, text
21 messages between this phone and Nish?

22 A. Yes, the first being specifically a multimedia
23 message, a text message, it just has an image associated
24 with it, but essentially the same thing, again, with Nish
25 and starting at 8:48 PM and at the bottom of the page at

1 1:08 PM on the 14th.

2 Q. And the next right here, can you, please, indicate who
3 that is from and what that says?

4 A. The text is on the 14th at 12:31 PM, an outgoing text
5 message to Nish. Hey, sorry if I pissed you off, just
6 morning, sorry.

7 Q. Okay. Now are you aware of the incident date in this
8 case?

9 A. Yes, sir, I am.

10 Q. That was April 13, 2014, correct?

11 A. That's correct.

12 Q. All right. Can you just show us -- and before we get
13 to this, if there's just a number on the phone and it's not
14 in the contact section and you don't have a name associated
15 with that, what steps do you take to verify the owner of
16 that phone number?

17 A. What most people would do. We use some type of web
18 search to identify it initially. Once I've identified it
19 through that method, I'll actually call the number. In
20 this instance, I called all the numbers. I spoke to the
21 party on the other line, read back the number, they
22 verified that I was calling the correct number and that
23 that number belonged to them in April of 2014 during this
24 incident.

25 Q. Real high tech stuff?

1 A. Right.

2 Q. All right. So tell me what we are seeing here at the
3 very top on April 15, 2014, at 12:00 PM.

4 A. We have an outgoing phone call to a phone number
5 [REDACTED]-3185. The preference to that is there's a Star 67
6 in front of that number. Star 67 indicates that that's
7 what was pressed on the phone when the outgoing call was
8 made and in this instance with Sprint when Star 67 is
9 pressed, that prevents any caller ID information from being
10 transmitted to the person you're calling. So if the person
11 you're calling has the caller ID feature, they will not see
12 the true identity of who's calling.

13 Q. All right. And who is Mr. Hunter calling on that
14 occasion?

15 A. It's the Richland County Sheriff's Department,
16 specifically their warrant division section.

17 Q. All right. And the next call placed was an outgoing
18 call to who?

19 A. An outgoing call, again, with Star 67 to Richland
20 County Sheriff's Department warrant division.

21 Q. All right. If you could just go through those and
22 explain to the jury what they're showing.

23 A. Yeah, at 12:30 we have another Star 67 outgoing to the
24 -- a South Carolina state agency, there's three in a row on
25 that, the last one being at 12:43 PM on the 15th. Then we

1 pick up at 12:43, again, with another Star 67 to SLED's DNA
2 section. Two outgoing calls, this time not using Star 67,
3 to Nish. Picking back up with an 11:46 outgoing call to
4 a South Carolina state agency with Star 67 and then to
5 Crystal Owens, then, again, back to SLED's main laboratory
6 number and then to Crystal Owens at 12:10.

7 Q. All right. Now can you explain what the items
8 highlighted in green are?

9 A. There was a gap in our ability to see web history on
10 this device early on, but at some point web history was
11 available to us. In this instance, the web history for the
12 browser on the phone identified that a search -- or not a
13 search, but the browser was used to navigate to a website,
14 and in this instance the header that's listed here, which
15 is Give Me Back My DNA is what would have been seen at the
16 top of that page when you navigated to it.

17 Q. That is on April 16th, correct?

18 A. April 16th at 12:50. At 12:52, the web browser was
19 used to navigate to DNA Database Brings Speedy Justice,
20 specifically the American Now News dot com site. Then at
21 12:53 navigating to a state -- South Carolina State
22 Legislature website referencing Bill 890 and then at
23 1:33 PM the Columbia Police Department warrant division
24 portion of their website.

25 Q. Okay. And then after, I guess, visiting that site,

1 what do the next items in blue represent?

2 A. We're back to an outgoing voice communication with
3 a Star 67 to the Columbia Police Department's warrant
4 division. At 1:38, star 67 to Crystal Owens and at
5 2:02 PM, a call to the Carolina Rent-A-Car where Star 67
6 was not used.

7 Q. Can you tell me whether or not [REDACTED] Apartments
8 is near the county line?

9 A. It is. It's very close. The river is just behind it.

10 Q. With Richland County being on the other side of the
11 river?

12 A. Yes, sir.

13 Q. All right. Starting at the top, please.

14 A. An outgoing voice communication on the 16th at 2:19 PM
15 with a Star 67 to Crystal Owens, a second one at 2:23, a
16 Star 67 to Columbia police warrant division, then we drop
17 back into web history at that point. The Chrome browser on
18 the cell phone was used to navigate to a website that had a
19 main page title of Rapid DNA Testing Technology to Put a
20 Faster Finger on Crime. Subsequent to that at 2:39 it
21 navigates to How Long Does Forensic DNA Testing Take at the
22 website Ask dot com.

23 Q. Are you familiar with Ask dot com?

24 A. I am. And it's a search engine where you just type in
25 the screen a question that you want a response back to.

1 Q. And that would have been a search query he would have
2 entered on that site?

3 A. Yes, sir. Then at 2:44 on the 16th, Columbia Police
4 Department, all divisions, and just a portion of their
5 website on the police department page. We go into three
6 outgoing phone calls on the 16th at 2:49 to Carolina
7 Rent-A-Car, at 4:21 PM, a Star 67 to Crystal Owens and
8 then another call to Carolina Rent-A-Car at 7:25 PM.

9 Q. I guess in reviewing these records did you notice a
10 difference when he called a state agency versus a non-state
11 agency?

12 A. It appears that he used Star 67 in communicating with
13 any type of state agency or law enforcement, correct.

14 Q. All right. Please continue.

15 A. At 7:34 PM on the 16th, we go back into the web
16 history portion of it with South Carolina Most Wanted
17 Criminals and Fugitives; then the Town of Lexington, then
18 at 7:36 PM there's a Crimestoppers specifically on WLTX's
19 website. They maintain a section specifically for
20 Crimestoppers within that website and you can navigate to
21 and find out about local events going on.

22 Q. And, I guess, under Crimestoppers are those where
23 people that are wanted typically listed?

24 A. Yes, they'll list current criminal activity, solicit
25 -- requests from law enforcement will be posted there for

1 information on crimes that have just occurred. Then at
2 7:38, Crimestoppers on WIS's website. At 8:12 PM, a
3 reference to FBI profiles on the UPI dot com website. At
4 8:14 PM, DNA forensics, the Latest National and
5 International News About DNA Databases and Forensic
6 Science. Then at 8:18, South Carolina statutes. At 8:19,
7 South Carolina to Collect DNA After Every Felony Arrest,
8 a Mobile Augusta website. At 11:08 PM, Don't Delay, Delete
9 Your DNA Today from the Register. The website being the
10 Register. At 11:09, How to Delete Your DNA Profile from
11 the same website. At 11:10, National DNA Database
12 Wikipedia reference researching the National DNA Database.
13 At 12:43 AM on the 17th, a search that has a web header of
14 Arrest Warrant Issued for Burglary Suspect. On the 17th,
15 at 12:44 AM, Columbia Crime Topix or Columbia Crime on the
16 Topix website.

17 Q. All right. Now that last item you testified to on
18 the 17th, continuing with the 17th, are these also web
19 searches?

20 A. They are. At 1:39 AM DNA Evidence Basics of
21 Identifying, Gathering and Transporting from the website
22 belonging to the National Institute of Justice. At 1:48
23 AM, again, same website DNA Evidence Basics Possible
24 Results From Testing. At 1:54 AM, DNA Basics, Samples
25 Suitable for DNA Testing: At 1:58:26, DNA Evidence Basics,

1 the National Institute of Justice. At 1:58:41, Possible
2 Results From Testing, National Institute of Justice. At
3 2 AM, it was an AP Mobile World Now dot com story
4 referencing the SLED Crime Lab Backlog Effect. At 2:04 AM,
5 Special Report, SLED Crime Log -- Lab Backlog Affect Cases,
6 Families. At 7:41 AM, a WACH dot com, the Latest Look at
7 News, Weather, High School Sports in the Midlands. At
8 7:41 AM, another WACH dot com, the latest look at the news,
9 weather, high school sports in the Midlands. Then we go to
10 an outgoing phone call to the Carolina Rent-A-Car. Two SMS
11 messages starting at 9:31 AM on the 17th to Nish. On the
12 17th at 10:54 AM, an outgoing phone call to the Carolina
13 Trader, and then at 11:23 to Nish. At 11:25 AM, an
14 incoming phone call, two of them, from Nish, at 11:25 and
15 11:33. And then at 11:38, an outgoing to Carolina
16 Rent-A-Car. Web history picks up at 12:21 on the 17th with
17 two references for WLTX-TV. At 1:28, there's a Star 67 to
18 Crystal Owens, an outgoing phone call. And then web
19 history starting at 1:49 on the 17th referencing South
20 Carolina Law Enforcement Division. And then at 1:50, U.S.
21 Marshall Service, Fifteen Most Wanted Index. At 1:51, News
22 for Columbia, WACH dot com. At 1:54 PM, Crimestoppers, the
23 WLTX website. And then finally at 1:56 WIS-TV.

24 Q. The last page. Again, more web searches on the 17th?

25 A. Correct. At 2:04 PM, South Carolina News Weather,

1 WIS-TV. 2:05, a WIS website. At 2:44, How To Delete Your
2 DNA Profile from the website the Register. 4:29 PM, CPD --
3 reference to CPD searching for dangerous suspect on the
4 State's website. At 4:40 PM, a NOVA PBS reference to
5 Forget Fingerprints, Law Enforcement DNA Database is Poised
6 to Expand. On 4:41 PM, deputies searching for man who
7 robbed TD Bank on the WIS-TV website. And, finally, 4:44,
8 a WIS-TV reference for news and weather.

9 Q. All right. Thank you very much.

10 (Whereupon, the witness returns to the witness stand.)

11 BY MR. McNAIR:

12 Q. Were you also able to verify the phone number for that
13 phone?

14 A. I was.

15 Q. What is the number to that phone?

16 A. It is area code [REDACTED]-4550.

17 Q. Okay.

18 **MR. McNAIR:** I have no further questions, Your Honor.

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

20 Ms. Gilreath, cross-examination?

21 CROSS-EXAMINATION

22 BY MS. GILREATH:

23 Q. Good morning.

24 A. Good morning.

25 Q. How are you?

1 A. I'm fine.

2 Q. Do you have the exhibit that we were just looking at
3 on the projector there?

4 A. I believe I have a copy. Yes, ma'am, I have a copy.

5 Q. I got it right here. Are you able to see it from
6 there?

7 A. I have a copy. Yes, ma'am.

8 Q. Okay. And this is the same thing we were just looking
9 at just a moment ago, correct?

10 A. Yes, ma'am.

11 Q. If I could direct your attention to Page 2, the very
12 top entry there, where it says to, who is that to?

13 A. At the very top of the page --

14 Q. Correct.

15 A. -- the outgoing call log reference?

16 Q. Correct.

17 A. It's the Richland County Sheriff's Department warrant
18 division.

19 Q. And the one below that is also Richland County?

20 A. It is.

21 Q. And then going down to the third from the bottom
22 there, that's Columbia Police Department?

23 A. The third one down?

24 Q. The third from the bottom. I'm sorry.

25 A. Oh, third from the bottom. Columbia Police

1 Department, yes, ma'am.

2 Q. And then on the following page, the second entry
3 there, that's also Columbia?

4 A. It is.

5 **MS. GILREATH:** No further questions, Your Honor.

6 **THE COURT:** Thank you.

7 Any redirect, Mr. McNair?

8 REDIRECT EXAMINATION

9 BY MR. McNAIR:

10 Q. Investigator Phipps, you did testify earlier that
11 [REDACTED] Apartments is close to the county line, correct?

12 A.. It is. Yes, sir.

13 **MR. McNAIR:** Thank you.

14 **THE COURT:** Thank you. Mr. Phipps, you can step down.
15 Thank you.

16 (Witness excused.)

17 **THE COURT:** Ms. Mayes?

18 **MS. MAYES:** Your Honor, at this time the State will
19 rest.

20 **THE COURT:** Thank you.

21 Ladies and gentlemen, that means that you have now
22 heard all of the evidence and testimony that you will hear
23 from the State in the presentation of its case in chief.
24 Necessarily, at this juncture of every trial of this nature
25 I have to send you to the jury room to deal with some

1 matters of law outside you're presence. We'll get you out
2 shortly to continue the morning's work. Please do not
3 discuss this case among yourselves while you're in the jury
4 room. Thank you.

5 (Whereupon, the jury retires to the jury room at
6 11:02 PM.).

7 **THE COURT:** I'll be glad to hear motions under Rule 19
8 or any other related motions from the defense at this time.
9 Mr. Phillips.

10 **MR. PHILLIPS:** Thank you, Your Honor. The Defendant
11 would renew all pre-trial motions, as well as motions and
12 objections that were made during the State's case during
13 the trial at this point; specifically renewing the mistrial
14 motion that occurred during opening statement under --
15 violating the Defendant's right to a fair trial under the
16 Fifth and Fourteenth amendments to the United States
17 Constitution and Article 1, Section 3 of the South Carolina
18 Constitution.

19 In the opening statement, the solicitor referred to a
20 timeline of one to five, that they could pin it down to no
21 phone activity from one to five and that there would be
22 photographs of Mr. Hunter holding a gun. Your Honor ruled
23 that that information -- or that evidence, excuse me, is
24 inadmissible. In finding that the timeline and photographs
25 were inadmissible and were not presented to the jury is

1 misleading and highly prejudicial to his right to a fair
2 trial, so we would renew the motion for the mistrial in the
3 opening.

4 **THE COURT:** All right, sir. Thank you. I'll note
5 your motions and respectfully overrule them.

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

7 And -- and we would also renew our motion for a
8 mistrial regarding the chain of custody and the right
9 to confrontation under the Sixth Amendment and the
10 Fourteenth Amendment of the United States Constitution
11 and Article 1, Section 14 of the South Carolina
12 Constitution. In referencing State v. Hatcher, the case
13 law shows essentially that we need to have the chain of
14 custody as close to practicable and that the buzzwords
15 were, you know, under the unique factual circumstances of
16 a case -- of the actual case, and I think this is the
17 specific case that that would be referring to because this
18 is a unique case because where the additional chain of
19 circumstances -- or chain witnesses are critical, in this
20 case, as Your Honor pointed out, that this case is about
21 DNA and the dispute from the defense's theory is all about
22 the collection of the evidence. The State failed to call
23 Ms. Ottenbacher from the West Columbia Police Department,
24 who was the evidence custodian, as well as Amy Stephens,
25 who was the first forensic technician at SLED to receive

1 the evidence, and the prejudice is enhanced because defense
2 counsel was unable to cross-examine Charles Bramlett, who
3 was the investigator who collected the evidence, who signed
4 the search warrant return, who signed the evidence
5 collection sheet and the chain of custody, who made the
6 report, all -- which none of it referenced the cap that's
7 the dispute of the issue.

8 Also, Your Honor, we would renew our objection to the
9 admissibility of the cell phone extraction report as a
10 whole. Specifically, the content of the text messages as
11 being hearsay, as well as excluding some of the web history
12 and allowing subsequent references of the web sites,
13 specifically the news web sites that were listed previously
14 which would limit cross-examination where we would be
15 forced to open the door on something we've argued would be
16 entirely inadmissible.

17 Further, Your Honor, just to recap the pretrial
18 motions, the motion for continuance that the trial was
19 unconstitutionally called before the Court based on the
20 holding under State v. Langford, as well as our motion to
21 suppress all evidence and related testimony to the evidence
22 collected by Charles Bramlett, and the admission -- or
23 Defendant's objection to the admission of the Dickerson
24 Center video interview under the statute; Your Honor,
25 specifically going to the primary argument that we had

1 regarding under Maryland v. Craig, the contemporaneous
2 cross-examination and the State not showing that specific
3 need. And then our very beginning motion for supplemental
4 voir dire examination. And we would make the motion for a
5 directed verdict at this time.

6 **THE COURT:** All right. Thank you. Respectfully, the
7 motions which were cited and which have been earlier argued
8 and ruled upon, I simply renew my earlier rulings in that
9 regard. As to the motion for directed verdict, of course,
10 as we all know that motion is governed by Rule 19 and the
11 rules of criminal procedure and the case law that is cited
12 thereunder. First of all, I must take all of the evidence
13 in the light most favorable to the State and if there is
14 any direct or -- unfortunately the case law still uses the
15 word "substantial" circumstantial evidence that tends to
16 prove the guilt of the accused, then the motion must
17 respectfully be denied. I find that there is evidence,
18 both direct and circumstantial, from which the jury could
19 conclude, if they chose to believe it, the Defendant's
20 guilt on any or all of the charges, and for that reason I
21 must respectfully deny the motion for directed verdict at
22 this time.

23 Mr. Phillips, would you like for me at this time to
24 inquire of Mr. Hunter his information and knowledge
25 regarding his right to testify or not to testify?

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

2 **THE COURT:** All right.

3 Mr. Hunter, if you'll stand right where you are,
4 please, and raise your right hand.

5 (Whereupon, the Defendant, Nathaniel Hunter, was duly
6 sworn by the Court.)

7 **THE DEFENDANT:** Yes, sir, Your Honor.

8 **THE COURT:** You can be seated.

9 Mr. Hunter, under our law, the United States
10 Constitution and the South Carolina Constitution, which
11 has a similar counterpart, the law provides that no
12 defendant in a criminal proceeding can be compelled or
13 forced to testify or to testify against himself. That is
14 a right which the law gives to you. You have the right to
15 remain silent, in other words. If you choose to exercise
16 that right, the jury will be told that they cannot use that
17 fact in their consideration and in their deliberation of
18 your guilt or your innocence. They will not be allowed
19 even to discuss that matter in the jury room. You have a
20 right to remain silent and if you choose to exercise that
21 right, that cannot and will not be used against you.

22 On the other hand, you have the right to testify and
23 if you choose to testify, that is if you choose to give up
24 the right to remain silent and if you choose to testify,
25 then you'll be subject to the same rules that have governed

1 every other witness that you've seen take the stand during
2 the course of this trial. Under oath you'll be asked
3 questions by your attorneys and you'll be cross-examined by
4 the State's attorneys. You can be impeached on any matter
5 which is relevant in this particular case.

6 Do you understand the rights that I've explained to
7 you concerning your right to testify and your right not to
8 testify?

9 **THE DEFENDANT:** Yes, Your Honor.

10 **THE COURT:** Do you have any questions that you want to
11 ask me about those rights?

12 **THE DEFENDANT:** No, Your Honor.

13 **THE COURT:** So then I take it I can assume that
14 whether you exercise the right to remain silent or whether
15 you choose to testify, you're doing that with the full
16 knowledge of what the rights are and you understand them;
17 is that right?

18 **THE WITNESS:** Yes, Your Honor.

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

20 Mr. Phillips, do you want me to put any more questions
21 to him?

22 **MR. PHILLIPS:** No, Your Honor, that is sufficient.
23 And we have discussed it with him. We went through that
24 colloquy.

25 **THE COURT:** I'm certain that you have. Since you've

1 already discussed it, can you let us know what the decision
2 is in that regard at this time or do you need more time?

3 **MR. PHILLIPS:** He is not gonna testify, Your Honor.

4 **THE COURT:** All right, sir. Do you anticipate
5 choosing to introduce any additional evidence?

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

7 **THE COURT:** All right. Okay. We will bring in the
8 jury momentarily. That means we've got to do some other
9 things to get ready. Probably around 11:30. At that point
10 in time I'll allow you to rest in the presence of the jury
11 and then we will, if you-all are prepared, to immediately
12 go to closing arguments. The jury will get their food.
13 It's gonna be sent in to them today, so they will not
14 leave. Depending upon the length of your arguments, I may
15 have to break them and separate them between each other or
16 I might have to separate them between the arguments and the
17 charge. That just depends on how long things are taking
18 and the tolerance of the jury, so let me -- let me explore
19 those things at this point in time.

20 Ms. Mayes, the State, of course, will open in this
21 particular case. I realize that you've got to get this
22 evidence together in some sort of a coherent fashion,
23 although it's certainly together now as it was yesterday.
24 About how long do you think the State would take in the
25 presence of its closing argument?

1 **MS. MAYES:** Less than thirty minutes, Your Honor.

2 **THE COURT:** Thank you. Will you present that
3 argument?

4 **MS. MAYES:** I will, Your Honor.

5 **THE COURT:** Okay. Mr. Phillips, about how long do you
6 think it will take the defense in the presentation of its
7 closing argument?

8 **MR. PHILLIPS:** Ms. Jael Gilreath will be giving the
9 closing argument in this case and it shouldn't be over
10 thirty minutes.

11 **THE COURT:** All right. Okay.. Good.

12 **MR. PHILLIPS:** And with that, to clarify my
13 previous -- at the beginning of the trial I was marking a
14 lot of the exhibits as defense exhibits. In a previous
15 trial, the judge got onto me for marking a lot of Court's
16 exhibits without meeting with them first, so a lot of my
17 pre-trial motions were marked as Defendant exhibits because
18 I didn't know how Your Honor would do that and I just --
19 for the record, I've provided all of the exhibits to you.
20 I just wanted to clear up that because it would look weird,
21 I know, from the appellate record.

22 **THE COURT:** As long as they're in the record, then
23 however they're there is good enough.

24 **MR. PHILLIPS:** Thank you.

25 **MS. MAYES:** And, Your Honor, I do need to clarify one

1 matter. As to the Sprint reports, there's testimony in
2 evidence from the Sprint custodian of records, which is a
3 completely separate issue, that's the -- that deals with
4 the search warrants that were issued for any cell tower
5 activity and any phone activity; so that evidence is
6 already in the record that there's no cell tower activity
7 in that timeframe.

8 **THE COURT:** Right.

9 **MS. MAYES:** So that's a separate issue than the phone
10 extraction.

11 **THE COURT:** Right.

12 **MS. MAYES:** Secondly, we had proposed the photo of
13 the abrasion on the Defendant's nose. At this time it's
14 for ID only.

15 **THE COURT:** I'm sorry, say that again. I couldn't
16 hear the first part of it.

17 **MS. MAYES:** We had originally marked for ID one photo
18 with an abrasion on the Defendant's nose. I believe
19 there was an objection. At this time I don't think it's
20 absolutely crucial to the State's case, so I'm not offering
21 it. I just want to go ahead and make everyone aware of
22 that. I know that there's one photo up there that's ID
23 only.

24 **THE COURT:** All right. And that won't go to the jury
25 anyway.

1 **MR. PHILLIPS:** Yes, sir.

2 **THE COURT:** All right.

3 Folks, very briefly regarding the charges, I went
4 over this in somewhat of a superficial fashion yesterday
5 I will sort of recount. I've got it in something of a
6 more coherent fashion. My standard charge on reasonable
7 doubt that I've told you. I will instruct the fact that
8 the Defendant did not testify. The credibility of the
9 witnesses. I will leave out the word "truthful evidence"
10 and talk about true stated facts and I do think at some
11 point in time the word "true" might slip out, but I'll try
12 to eliminate that and I certainly don't want to violate
13 Beatty, but I will use the words "true stated facts".
14 I'll charge as to expert witness testimony. I'll charge
15 identification. Of course, the elements of the offenses
16 themselves from the statute and from the hornbook. I'll
17 charge circumstantial evidence. I thought I had that one.

18 Are there any exceptions to any of those proposed
19 charges or requests for additional charges from the State
20 at this time?

21 **MS. MAYES:** No, sir, Your Honor.

22 **THE COURT:** All right. From the defense?

23 **MR. PHILLIPS:** Just a clarification. I know you said
24 yesterday you do not include that language that's in the
25 standard book about refusal to testify.

1 **THE COURT:** No, I don't use refusal or failure. I'm
2 not sure why they have that heading. It's not really
3 mentioned in the --

4 **MR. PHILLIPS:** I have an idea.

5 **THE COURT:** What, sir?

6 **MR. PHILLIPS:** Just my commentary.

7 **THE COURT:** Okay. But I don't use it. Thank you.

8 Here is the -- the verdict form in final fashion for
9 each of you to look at. You can give it whatever weight
10 or purpose you want to. You can check it just to make
11 sure that it's accurate. I recognize that one of you will
12 object to the word "guilty" and other will object to the
13 word "not guilty", but those are respectfully overruled.

14 **MR. PHILLIPS:** And as we discussed, Your Honor, this
15 is a personal preference of mine. With Mr. Hunter being
16 presumed innocent under the law, we believe that not guilty
17 should come before guilty; that the first option for the
18 jury should not be the choice of guilty when you're
19 presumed innocent. That the burden is on the State.

20 **THE COURT:** Okay. And certainly it is. And the
21 reason that I use it in that order -- and you can keep that
22 copy if you want to. The reason that I go in that order is
23 because that is the order in which I explain reasonable
24 doubt. Proof beyond a reasonable doubt is proof that
25 leaves you firmly convinced, et cetera. After considering

1 all of the evidence, if you're firmly convinced then you
2 would find him guilty. If you think there's a real
3 possibility, he's not guilty. So to maintain consistency
4 in the order in which I explain reasonable doubt and burden
5 of proof, I just use that same order in this fashion as
6 well.

7 All right, folks. Is ten minutes enough, Ms. Mayes?

8 **MS. MAYES:** Ms. Grigsby is gonna pull some items.

9 **MR. PHILLIPS:** No, Your Honor. I'm glad I did hand
10 it to Mr. Chehoski. It says charge of murder.

11 **THE COURT:** Well, that's more than a technical thing.
12 Of all of the things I looked at yesterday, I didn't even
13 look at that.

14 **MS. MAYES:** Your Honor, we can get with Ms. Usry and
15 make that correction.

16 **THE COURT:** If you can do that. I thanked her this
17 morning for that and I thought I caught the only mistake.
18 That's a pretty big deal. Thank you, folks.

19 **MS. MAYES:** All right. If we can have fifteen
20 minutes, Your Honor.

21 **THE COURT:** Fifteen minutes. As a former English
22 teacher, I should have caught that.

23 **MS. MAYES:** And for the record, I do intend to state
24 that the word "verdict" means to speak the truth.

25 **THE COURT:** Well, that's what they were told by the

1 clerk when they were sworn in, so. Thank you.

2 **MR. PHILLIPS:** And, of course, under Beatty we object
3 to any verdict seeking any truth.

4 **THE COURT:** Right. I understand.

5 (Recess taken.)

6 **BAILIFF:** All rise.

7 **THE COURT:** All right. Are both sides ready for the
8 jury?

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

10 **MR. PHILLIPS:** Yes, Your Honor. Thank you.

11 **THE COURT:** The jury will be brought in as I said. I
12 will allow you to rest in the presence of the jury and then
13 we'll proceed immediately to closing arguments, okay?

14 Bring in the jury.

15 (Whereupon, the jury returns to the courtroom at
16 11:45 AM.)

17 **THE COURT:** Ladies and gentlemen, as you know before
18 I sent you out of the courtroom a while ago, the State had
19 rested its case in chief. That means you will hear no more
20 evidence from the State in the presentation of its case.
21 The Defendant at this point has the opportunity to offer
22 evidence and testimony, but as you recall from my
23 introductory remarks he's under no obligation to offer any
24 testimony in that regard.

25 Mr. Phillips.

1 **MR. PHILLIPS:** The defense would rest at this time.

2 **THE COURT:** Thank you.

3 Ladies and gentlemen, that means that you have now
4 heard all of the evidence and testimony that you will hear
5 in the trial of this case. You have yet to hear the final
6 arguments and the charge on the law, which I will give you
7 after that has been done. The State through Ms. Mayes will
8 present the first of the final arguments and when she has
9 completed presenting the argument on behalf of the State,
10 Ms. Gilreath, on behalf of the Defendant, Mr. Hunter, will
11 present their final argument. And after that has been
12 done, we'll probably send you back for your lunch depending
13 upon whether it's here or not, and then bring you out for
14 the charge on the law. That's gonna depend on how long
15 these things take and when the lunch gets here, but that's
16 the order of things. After the arguments have been
17 presented, then I will instruct you as to the law and then
18 you will be able to go to your jury room to deliberate and
19 reach a verdict.

20 Thank you so much for your patience and your attention
21 throughout this trial. You have been very punctual. You
22 have never made us wait. We have made you wait, but you've
23 never made us wait, and you've been attentive throughout
24 this entire process and we appreciate that... I want you to
25 give that same attention now to the lawyers as they present

1 their final arguments.

2 Ms. Mayes.

3 **MS. MAYES:** May it please the Court?

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

5 **MS. MAYES:** Time will always reveal the truth. No
6 matter what means he took to conceal it, to flee the scene
7 and to get rid of evidence, time will always reveal the
8 truth. In this case, through direct evidence, forensic
9 evidence, undeniable evidence, undeniable evidence, here
10 is a story of pure evil and the very opposite of that. A
11 mother who will lay down her life to protect her child.
12 A mother who will be shot again and again and again, who
13 won't be outfought, that won't be overcome, will do
14 anything on this earth to save her child, refuses to
15 witness the sexual assault of her child. That's what's
16 brought us here today. His actions, his choices, his
17 motivation in the early morning hours of April 13, 2014,
18 right here in Lexington County, right over there by the
19 river at [REDACTED] Apartments. His actions brought us
20 here.

21 In opening arguments you heard one of his defense
22 attorneys state the Government is on trial. No, the
23 Government is not on trial. Nathaniel Hunter is on trial.

24 **MS. GILREATH:** Objection, Your Honor.

25 **THE COURT:** That's -- that's appropriate argument. I

1 note your objection, but there's nothing wrong with it.

2 Thank you.

3 **MS. MAYES:** This is the trial of the State of South
4 Carolina versus Nathaniel Hunter, and right now I want to
5 lay down exactly how this works. When you commit a crime,
6 the State has overwhelming evidence of that crime, you're
7 charged with that crime. The State has a responsibility
8 to prove that crime, yes. Law enforcement, police, do not
9 have to spend all of their time, resources and efforts
10 chasing false leads. If that were the case, no criminals
11 would ever be arrested and no cases would ever be
12 prosecuted because they'd still be out there trying to
13 chase leads about some suspect who's six-foot-one that was
14 never even in Lexington County by any physical evidence on
15 that night.

16 Who was in Apartment [REDACTED] that night? Who left their
17 stocking cap behind when Larenda Simon ripped it from his
18 head along with that hoodie? That man who sits right
19 there. That man on trial. That's why he's arrested and
20 that's what's brought us here today. Evidence lights the
21 path and the evidence leads us to the truth.

22 So let's look at what we've seen and heard throughout
23 the course of this trial. Two dozen, twenty-four,
24 witnesses, but each of them an important piece in the
25 puzzle. Again, this case isn't just circumstantial

1 evidence. It's forensic evidence, direct evidence, and
2 evidence even from Larenda Simon. She would never forget
3 his eyes. When they were fighting over that weapon, she
4 was close enough to him to get a powder burn to the chest
5 from that weapon, from the muzzle of that gun that's
6 flashing, and in the flash of that muzzle over and over
7 again, yeah, that gun's gonna have a silver gleam to it,
8 but she's not concerned about looking at the gun, she's
9 looking at him eye to eye exactly as she stated. And not
10 one time did he take both of his hands off that gun because
11 if he had done so I guarantee you she would have got that
12 weapon from him and she would have called 9-1-1 and said
13 come quick, I've just killed an intruder, but she didn't
14 get that chance because he never took both those hands off
15 that gun. He kept them on that gun and he got out of that
16 bathroom and he ran for his life knowing he left a living
17 witness behind.

18 And that sent him into frantic activity over the
19 course of the following days. His DNA has been in that
20 database for ten years, since 2004, and now all of a sudden
21 he is frantic to get it removed. He starts making those
22 calls on the 16th, the day before his arrest. He's calling
23 Crystal Owens, he's calling SLED. Hey, take my DNA out of
24 that database. What in the world? We know what's really
25 going on here because we've seen his phone searches. He's

1 been on that phone. Right in the midst of those calls to
2 Crystal Owens and SLED on the 16th, he's doing a search
3 right here on the 16th at 2:39 PM, right there in the
4 middle of the day when he's making those calls to those
5 two that you heard from. He does a search inquiry to Ask
6 dot com, an Internet site, as Detective Phipps testified
7 that allows you to enter search queries and get a result.
8 How long does forensic DNA testing take? How long does it
9 take?

10 Well, this is about more than just him wanting his
11 DNA out of that database. What he's really concerned about
12 is how long it's gonna take SLED to examine that cap that
13 he left at the crime scene and match it back to him?
14 That's what he really wants to know, how much time does he
15 have.

16 And then following that, South Carolina's Most Wanted
17 Criminals and Fugitives. He's checking the warrant
18 divisions at numerous law enforcement agencies. Is there
19 a warrant on him yet? Town of Lexington, Crimestoppers.
20 Still desperate to get his DNA out of the database because
21 he's looked it up. This one right here is Rapid DNA
22 Testing Technology Puts a Faster Finger on Crime. He knows
23 they can do a rapid DNA test. His days are numbered.

24 So one of the things he starts to do is sell that car.
25 You've heard from the Carolina Trader representative. On

1 the 17th, he's already trying to get \$10,000 for that car
2 and he's driving a rental car. In his ad he states car
3 runs really well, so we know it works. What he's really
4 worried about? Somebody saw it near the crime scene?
5 Somebody's gonna link him to that car? He needs the ten
6 grand to get out of Dodge. He's done everything possible
7 at this point to dissociate himself with that vehicle.
8 He's driving a rental car when this officer along with a
9 SLED agent and a Richland County officer activate their
10 blue lights because they've traced his phone now, they
11 know exactly where he is at. He's sitting in an apartment
12 complex over near 277 in Richland County. And when they
13 approach that white Versa, activate the blue lights,
14 what's he do? Takes off running. He hits 277 and heads
15 towards North Main. That chase extends for well over a
16 mile before they finally pull him over.

17 That night she yanks this off of him because she won't
18 let go and he takes off running, it comes straight off of
19 him. Investigator Neel and Bramlett find this stocking cap
20 right down in here. It came off with it. The difference
21 is when he's wearing that hoodie he's got it over clothing,
22 he's got it over gloves, and let's make no mistake about
23 this. There is no way, as Larenda testified how prepared
24 he was, he came in in black, in boots and he's got that
25 half ski mask over his face, he's got that hoodie pulled

1 down, he's got his dreads most likely tucked down in the
2 back of one of his shirts. He's well-prepared for this.
3 Don't think for a minute that he wouldn't come into that
4 house without gloves on. He absolutely would. Anybody,
5 anybody, knows about fingerprint evidence. There's no way
6 he goes to all that effort to conceal his identity and
7 doesn't have on gloves. Of course, he does. She yanks
8 that hoodie off. The difference is the hoodie was over
9 clothing, a barrier, and doesn't leave his DNA behind on
10 that. This was directly over his head. Skin cells, the
11 friction, all of those factors that Agent Boehm testified
12 leads to DNA evidence. All of those factors prove he was
13 wearing this cap that night.

14 Then he's arrested on the 17th after that stop turns
15 into a chase and ultimately those SLED agents track him
16 down. They find this phone on him. The same phone he's
17 still making all those frantic searches about right up
18 until the 17th. Guess what else do they find on him?
19 Does this look familiar? It came directly off his person
20 the day he was arrested on the 21st, the same identical
21 stocking cap he's wearing at the crime scene.

22 Take a look at the web history and the searches on
23 the 17th. Moving now to Columbia Crime Topix, all this
24 information about DNA testing, U.S. Marshall Service,
25 Fifteen Most Wanted and Crimestoppers...

1 Knowledge of guilt. I submit there is no other reason
2 and no other explanation for why he's suddenly so desperate
3 to get his own DNA out of that database other than he knows
4 he's left that evidence behind at the crime scene and
5 they're gonna match it.

6 With that said, let's take a look at the evidence in
7 this case. The undeniable evidence. We know that he's a
8 DNA match to the cap from the crime scene. We know that he
9 has an identical stocking cap on him when he's arrested.
10 We know that Tanisha Taylor told us, Nish in those phone
11 records, he gets home around 4 AM after this crime and does
12 the laundry. The first thing she hears is the laundry
13 going and when she sees him he's only got on a tank top and
14 boxers. Again, who is it who would come home at four in
15 the morning and their first thought is to do the laundry?

16 We see the photos of his injuries. Injuries to the
17 head, chin, here and the bruise on the shoulder. That's
18 how Tanisha Taylor finds him on the morning of the 13th.
19 She'd never seen those injuries on him before. Then
20 ultimately when he gives statements to law enforcement,
21 his statements to law enforcement, the very first one, oh,
22 my cousin did this. You know what's interesting about
23 Tanisha Taylor? Maybe initially -- maybe initially he's a
24 cousin, he's blood, maybe she was going to protect him,
25 maybe she was gonna go forward with this story, but in the

1 end no, Tanisha Taylor, being his family had no inclination
2 to come into this courtroom and take that stand and testify
3 against him but for that subpoena. Tanisha Taylor has no
4 axe to grind with him. She has no motive against him. If
5 anything, she's protected him. She's apologized to him for
6 telling the police about his gun, that 40 caliber Glock,
7 but even Tanisha Taylor takes that stand and testifies
8 under oath he came in around 4 AM and the first thing she
9 hears is the laundry machine going. Because that's his
10 only concern right then is washing his clothes and getting
11 rid of any evidence and she sees him the next morning, he's
12 got those injuries all over him. A life and death struggle
13 led to those injuries.

14 Now let's talk about his second statement to law
15 enforcement four days later on the 21st. You heard from
16 Investigator Griffin and Investigator Neel his only concern
17 in the course of that interview was wanting a deal. He
18 cited some Richland County unrelated murder case he'd heard
19 about and he wanted a deal like that guy got as they
20 stated. That's not their role, they don't cut deals, and
21 so that ended that.

22 We know from the testimony of Jill Sparks, the
23 custodian of records for the Sprint corporation, he had no
24 cell tower activity during the timeframe of this crime. No
25 ingoing, outgoing calls, no ingoing, outgoing texts. The

1 phone could not be traced by any cell tower. We know as we
2 see repeatedly through those phone searches and the calls
3 made to Crystal Owens and Theresa Hines at the State Law
4 Enforcement Division he's desperate to get his DNA out of
5 that database and we know from the phone searches exactly
6 the reason why. He's scared. He's most wanted. And,
7 yeah, he's looking at different agencies because the tricky
8 thing about [REDACTED] Apartments is it sits right there by
9 the river. The average citizen who lives in Richland
10 County isn't gonna know whose jurisdiction that is. Is it
11 Town of Lexington? Is it Columbia? It is Richland County?
12 Surprise. It's West Columbia.

13 I want to address the law because the law is actually
14 the most simple aspect of this case as Your Honor will
15 charge you momentarily. The first charge before you is
16 the charge of attempted murder. Attempted murder is an
17 attempt to kill another person with malice aforethought,
18 whether express or implied. The action occurs with the
19 intent to kill. What's significant about this charge is
20 the testimony that you heard from Larenda Simon herself.
21 His words to her "I'm gonna kill you" as he's firing that
22 weapon. That is evidence of express malice. Hatred, ill
23 will towards another, that's malice. It doesn't have to
24 be premeditated. It doesn't have to be thought out or
25 planned. Even if his original intent when he broke into

1 her home was to rape her or rape -- we know, rape Minor ,
2 the act of shooting her doesn't have to be premeditated.
3 There only needs to be malice aforethought that comes with
4 the act. It can be immediately preceding the act. At the
5 point he pulls that trigger the first time he has malice in
6 his heart, it's malice aforethought, but he doesn't just
7 pull the trigger one time. He pulls it at least five times
8 and we know we've got five casings from that residence
9 starting in the bedroom where the first shot was fired
10 and the rest of the shots fired in that bathroom. That's
11 proof beyond a reasonable doubt of malice aforethought and
12 attempted murder. The fact that she survived at all is
13 miraculous, beyond the comprehension of anyone here.

14 Burglary in the first degree. The way the South
15 Carolina statute is written, one enters a dwelling without
16 consent, and we know he did not have consent, and with the
17 intent to commit a crime in the dwelling. There's no
18 question he intended to commit a crime in there. Why else
19 did he break in in the first place in disguise? When, in
20 effecting entry or while in the dwelling or in immediate
21 flight. It could be any of these things. Here it's all of
22 them. It can be that he's armed with a deadly weapon or
23 causes physical injury or uses or threatens the use of a
24 dangerous instrument or displays what appears to be a
25 knife, pistol, revolver or other firearm, or the entering

1 or remaining occurs in the nighttime. What's significant
2 about this case? We only have to prove one of these. Here
3 he's done them all. Proof beyond a reasonable doubt of
4 burglary in the first degree.

5 Finally, criminal sexual conduct with a minor in the
6 third degree. What's it mean? It means exactly what you
7 think it does. It's when someone has lewd intent involving
8 a child. The elements are that the Defendant is over the
9 age of fourteen. We know and have proven that he is.
10 Next, that he willfully and lewdly commits or attempts a
11 lewd or lascivious act upon or with a body or its parts.
12 We know from witnesses and from Colleen Belk with the West
13 Columbia Police Department that the child was found nude
14 but for this robe that Tiffany Green, the neighbor, put on
15 her when she got there naked and she explained she didn't
16 want to her children to see **Minor** naked.

17 We know how this started out. Larenda and **Minor**
18 right there on the bed together. He has Larenda remove
19 her underwear. She's on her period. He orders **Minor** to
20 take off her clothing and she does so right here on the
21 floor by that bed. And you know that forensic interview
22 of the six-year-old that you saw, it's real hard to have
23 a conversation like this with a six-year-old I submit
24 forty-eight hours after all this happened, her mom in the
25 hospital. You saw the innocence. She's not even aware of

1 what he was doing or why he was doing it. What she said
2 was he wanted her to do exactly like my momma did, wanted
3 me to do the same thing my momma did, to take off her
4 clothes. And you heard her testimony, now a nine-year-old.
5 What does she remember about that night? Just drama and
6 chaos and the sound of that gun going off, her momma
7 bleeding on the floor. She saw a masked man with a hat
8 pulled down fleeing while she's still in the bedroom.
9 There's no way that child could ever recognize that person
10 if she ever saw him again. The lights had been shot out,
11 that breaker box. The person who would know him if she
12 saw him again is the person that looked him dead the eye,
13 Larenda Simon. Noticed the look in his eye, the sound of
14 his voice.

15 One thing **Minor** did remember is that gun was black.
16 The same black 40 caliber Glock that Tanisha Taylor told
17 the police he had when they first came and interviewed her
18 on the 21st, that same black Glock that he had gotten rid
19 of by the time they searched her apartment. And I submit
20 to you the very first thing he did was get rid of Larenda
21 Simon's phone and that Glock because those are the two
22 things he can't be caught with. So we can go around and
23 around and around about whatever happened to Larenda
24 Simon's phone, but at the end of the day it's probably at
25 the bottom of the river with that Glock. So when you look

1 at this crime, the law does not require that he ever lay a
2 hand on that child. The attempt of the lewd and lascivious
3 act under our law is the same as if it's fully committed
4 with the intent of a sexual nature. That crime has been
5 proven beyond a reasonable doubt.

6 When we talk about reasonable doubt, as Your Honor
7 will charge you momentarily, it doesn't mean we have to
8 come in here and discount every single scenario out there.
9 Proof beyond a reasonable doubt is proof that leaves you
10 firmly convinced of his guilt. Proof of his DNA at the
11 crime scene, proof of his own knowledge of his guilt in
12 all of his actions that he took thereafter. That's proof
13 beyond a reasonable doubt. It doesn't mean that we have
14 to track down every baby-sitter, every house guest, every
15 plumber, every maintenance man that's ever been in that
16 house to account for every print. As I said before,
17 there's no doubt whatsoever he went in that house with
18 gloves on. That's another false lead, that's another false
19 trail. The great thing about being members of the jury is
20 that you don't have to leave your common sense at home.
21 The same common sense that you use every single day at your
22 job and in your daily life. You get to take that back in
23 the jury room with you. You know what's real and you know
24 what makes sense.

25 You have before you the most noble of opportunities

1 to deliver a verdict that speaks the truth, a verdict that
2 is fair and just and in accordance with the law. A verdict
3 that's based on the evidence and the proof that's been
4 demonstrated abundantly to you. And the chance to send a
5 message to this Defendant, Nathaniel Hunter, if you commit
6 this crime, attempt to murder a mother and leave her child
7 orphaned, you attempt to rape that child and you come into
8 someone's home in the middle of the night armed, you will
9 meet justice. That crime will not go unpunished. Not
10 anyway. Not here in Lexington County. I submit to you
11 the correct verdict is the verdict of guilty of burglary,
12 guilty of sexual conduct with a minor and is guilty of
13 attempted murder. Thank you.

14 **THE COURT:** Thank you, Ms. Mayes.

15 Ms. Gilreath.

16 **MS. GILREATH:** Ladies and gentlemen, this case is
17 about a nightmare, of a nightmare that came true. It's
18 a nightmare a lot of people have and we're not here to
19 discount that or minimize that or make it sound like
20 something terrible didn't happen. You've clearly seen
21 that -- that Ms. Simon was shot. There was a lot blood.
22 It was a bad situation. We're not here to discount that
23 at all, but we're here to remind you that there's another
24 nightmare at stake here and that nightmare is the reason
25 that you're here. Being accused of committing what

1 happened to Ms. Simon, being a part of that nightmare,
2 that's a nightmare in and of itself. To have the
3 Government with all their resources and all their power
4 coming against you, saying that you did this, that's a
5 nightmare. If you didn't do it, that's a nightmare, and
6 that's why you're here.

7 The solicitor mentioned earlier that -- she referenced
8 when Mr. Phillips told you guys on Monday that the State is
9 also on trial here, the Government is also on trial here,
10 and she said no, it's not. That's not true. It is because
11 the State has to prove its case beyond a reasonable doubt.
12 That's what's required. The system that was set up by the
13 founders of this country and the Constitution to protect
14 its citizens from overreach by the Government from creating
15 this second nightmare, that's this. They put this system
16 in place, they put you in place, and that's what your role
17 is here.

18 Whenever we talk about these protections that are put
19 into place to protect us, in this context, in the context
20 of this nightmare, we're talking about the presumption of
21 innocence. And at this point Mr. Hunter is still presumed
22 innocent. He is still presumed innocent. This trial's not
23 over, your job's not done yet, and that's what you're here
24 for.

25 When we're talking about this presumption of

1 innocence, we drove this around a lot and I think it's
2 something that kind of gets tossed around, loses a little
3 bit of its meaning. I like to think of the presumption of
4 evidence as a wall. As a big brick wall that was put in
5 place to protect us. And when we talk about the State
6 meeting its burden and proving beyond a reasonable doubt,
7 we're talking about having to bust through the wall, to
8 tear down all the bricks. Each brick in the wall is a
9 piece of reasonable doubt. And if the State can't remove
10 all of it, they haven't met their burden, and that's what
11 you're here for.

12 Now how do they go about doing that? How do they go
13 about tearing down this wall? Every case is different in
14 terms of what reasonable doubt is, so first we have to
15 talk about what those bricks are. What are the bricks of
16 reasonable doubt in this case? It's gonna be different.
17 It's gonna be different in every case. In this case, we've
18 got a lot of testimony and we've got a lot of evidence, and
19 the reasonable doubt is before you. The reasonable doubt
20 has already been put in front of you, so what we're gonna
21 talk about is how it constructs this wall and how the State
22 has not met their burden of having to tear down this wall
23 to prove their case to you.

24 So in this case, we'll just start -- start from the
25 beginning. What are the bricks? What's the reasonable

1 doubt that we have? Ms.. Simon told you that it was dark,
2 it was nightttime, she was in bed, she was asleep. When she
3 woke up and opened her eyes, it was dark. There weren't
4 any lights on. From that point forward there weren't any
5 lights on at any point in time. She said that. It's dark.
6 Now there was talk about there being streetlights outside
7 of the apartment complex in the bedroom and the amount of
8 light that that would create. Now they're talking about
9 the amount of light that that would create. After law
10 enforcement responded to the scene, they told you that they
11 waited until it was light outside to start taking pictures,
12 to start collecting evidence. And you heard from Ms. Simon
13 that there were blinds. I'm not sure -- there's a little
14 bitty hole right there, but the first thing she said was it
15 was dark. In the middle of the night, this is -- this
16 picture, they told you this was taken after the sun had
17 come out. This was during the day.. This was not how much
18 light would have been in that room. She told you it was
19 dark.. She told you that she only saw his eyes. That was
20 it. His eyes. She said that the mask was never down, the
21 hoodie wasn't off. She couldn't see anything about his
22 eyes. She also told you that it was a struggle. That they
23 were wrestling around for this gun. She wouldn't let him
24 go. You can see from the pictures, from the walls, from
25 the floor where all the blood is. This wasn't just a

1 standing still, eye to eye, back and forth. That's not
2 what happened. That's not what she said happened. So to
3 say that from this, being able to see in the dark only this
4 person's eyes three years later, that's reasonable doubt.
5 And during this time, even after the police arrested
6 Mr. Hunter, they never gave her a photo lineup. They never
7 asked can you identify him. I would submit probably
8 because they didn't think that she could. Why would they
9 submit a photo lineup to her if they're not sure she could
10 identify him? If they had done that in 2014, back when he
11 was arrested, wouldn't she have been able to identify his
12 eyes then? If they had thought she could, wouldn't they
13 have done that?

14 Now you also heard testimony that while she was at the
15 hospital speaking with Investigator Griffin that she said
16 that she thought she had heard this voice before. There
17 was also information from another officer that said the
18 voice had sounded familiar to her. Well, you've also heard
19 testimony from her and a number of other people that no
20 connection was ever made between her and Mr. Hunter. She
21 also said that this person had a mask over his face the
22 entire time. So she's hearing this voice that sounds
23 familiar through this mask and now she's telling you that
24 three years later the voice that she heard through the
25 mask that sounded familiar at the time, but she didn't

1 know Mr. Hunter, so we know his voice wouldn't have been
2 familiar to her, she's gonna tell you now that that
3 familiar voice is someone that she still says she never
4 met.

5 And we also know that after he was arrested they never
6 obtained a recording of any of his statements. We know
7 that. They did for everybody else. Everyone else they
8 took statements from. Tanisha Taylor, Larenda Simon, they
9 recorded theirs, but they didn't record his. If they had,
10 they could have played it for her sometime in the past
11 three years. I think it's common knowledge that memories
12 get worse over time. You're more likely to remember
13 something better closer to the time it happened. Why
14 wouldn't they have recorded something and said if you
15 heard his voice that many times, can't you identify it?
16 So within the past three years they didn't -- they didn't
17 bother to do that. Why? Again, they don't think that she
18 can. Why would they do it? And, again, we had two times
19 that there was information given that the voice had sounded
20 familiar. You heard it once on the tape and you know that
21 Investigator Griffin received that information through
22 another officer, which means it had been said another time.
23 It was confirmed. The voice sounded familiar.

24 Now another thing that we know happened, we know that
25 the person that came into Larenda Simon's house took her

1 phone. We also know that law enforcement had the ability
2 to track that phone, that they told her that they were
3 tracking that phone, and they didn't bother to do it. We
4 know that when they decided they were going after
5 Mr. Hunter they did track his phone and they got him
6 immediately. If they had done that here, they could have
7 gotten him immediately. Maybe before as the solicitor
8 said it might have been discarded. Who know when it was
9 discarded. They never tracked it to see. For all we know
10 at this point it could still be in use somewhere and they
11 might still be able to track it. There's no way to know
12 because they didn't follow up on it. That's reasonable
13 doubt.

14 We also know from Larenda Simon that the person that
15 came into her house was wearing boots. You've been here
16 all week, you've seen all of this evidence that's been
17 presented to you. Not one boot. Not a single one. Not
18 a picture of a boot print, a bloody boot print, not a
19 picture of a pair of boots that were found at Tanisha
20 Taylor's house where Mr. Hunter was living, at his mother's
21 house, in the cars. No boots. None. If they had found
22 these boots surely with all this blood that's all over the
23 floor that would have been on there. They could have
24 identified these boots, said the person that has these
25 boots, the person wearing these boots, that's probably our

1 guy.. Because if it had Larenda Simon's blood on it and it
2 was being worn by someone else, it's entirely possible that
3 would have had both DNA -- both of their DNA.

4 Now I've already mentioned this before, but during
5 the course of all of this there was some mention about
6 apartment complexes and where one or the other had lived
7 at different times and you heard that that was four years
8 apart. Mr. Hunter may have -- he lived over in the West
9 Columbia area four years prior to this. What's the
10 connection there? There's four years in between that.
11 I'm gonna ask you to also use your common sense just like
12 the solicitor did. We're talking about a distance of
13 four years. It just doesn't make sense.

14 Now there's also been talk about the gun, the
15 appearance of the gun, and you heard Larenda Simon say
16 twice, once in the statement that was given to Investigator
17 Griffin and once on the stand, that the gun was silver.
18 She didn't say that it had a flash of silver or a gleam of
19 silver. She said the gun was silver. She said it twice.
20 Three years later she's still telling you the gun was
21 silver.

22 Now let's talk about **Minor** . She's young. No one
23 should ever have to go through this, much less a young
24 child, but there were a couple of things that she said that
25 were important. She told you that at one point the mask

1 was down. Larenda told you it was never down. She was
2 never able to see any of the face. She said that mask was
3 down at one point. That's -- that's a little bit different
4 than it being up the whole time and if the mask was down
5 and they're telling you that the hoodie was ripped off and
6 snatched off of him, isn't there a little bit more that we
7 would have known about that? She also said that it was a
8 black gun. She said that twice. She said it was a black
9 gun here today, she said that at the Dickerson Center.
10 And, ladies and gentlemen, this goes back to it being dark.
11 We've got two people who are able to see what happened and
12 in this darkness they saw something different.

13 Now let's talk about Tanisha Taylor. I believe that
14 the prosecutor said that Tanisha said she heard him come
15 in. What she didn't do was ever see him leave. What she
16 heard was him in her bedroom. She never saw him leave the
17 house. When she went to bed, as far as she knew she told
18 you he was at the house. She never heard him leave the
19 house just so it's clear. She had no reason to think that
20 he had ever left the house.

21 So at this point as far as we know Mr. Hunter's at
22 home. You heard that that's fifteen miles away on the
23 other side of Columbia, not in West Columbia, and the last
24 Ms. Taylor had seen of him he was at home. Nobody ever
25 heard or saw him leave.

1 Now there was talk about her talking about the gun
2 and the Glock and if you listened carefully you heard that
3 she said I think. I think it was a Glock, I think it was
4 a Glock 40. She didn't distinguish between the different
5 types of Glock 40's, whether it's a long barrel or a short
6 barrel or a medium barrel. She didn't distinguish between
7 any of that. She didn't tell you when was the last time
8 she saw it. She also told you that when she did see it,
9 when she did know that it was there, whenever it was there,
10 it was kept in her bedroom in a case beside her bed. So
11 the prosecutor would like you to believe that Ms. Taylor is
12 saying she thinks he may have had at some point a Glock 40
13 that we still don't know exactly what kind that might have
14 been that she kept in her bedroom beside her bed that
15 that's proof that he had it on this day at this time.
16 There's no connection there.

17 We also have to talk about she talks about hearing him
18 in there and then she hears the washing machine going, she
19 hears something in the bathroom, and what does she say?
20 She said I didn't think much about it. She didn't think
21 much about it. It's not unusual. She didn't think much
22 about it. This wasn't something that was weird and out of
23 the ordinary. She just happened to wake up and hear it.
24 She told you that nothing really raised any kind of a red
25 flag for her. The next time she saw him she said it wasn't

1 unusual for him to be up late at home, nothing weird about
2 that, nothing weird about him to her, the person who lives
3 with him, the person who knows him best out of anybody
4 that's testified here.

5 And when we start talking about the cut and how the
6 cut came to be, if you noticed there were a couple of
7 different stories about how that story came out, whether it
8 was Mr. Hunter that told the -- I guess, his niece, her
9 daughter, whether it was her that told the daughter. That
10 story changed a couple of times. The last one, the one
11 that was written in the letter that she read from that she
12 confirmed that she had written said that her words were
13 twisted. So even the words that she said that they're
14 trying to use against him she herself says were twisted.
15 She says she never said that you came home again. She just
16 hears him up and doesn't think there's anything unusual
17 about that. It's not like he never washed late at night.
18 Different people have different habits. Apparently he had
19 one of washing late at night. Why else would she have said
20 this?

21 **MS. MAYES:** Objection, Your Honor. Arguing evidence
22 not in the record.

23 **THE COURT:** I'll sustain the objection. It assumes
24 facts that are not in evidence. Thank you.

25 **MS. GILREATH:** Ladies and gentlemen, she read from the

1 letter "it's not like you never wash late at night". She
2 said it's not unusual for him to be up late at home, she
3 didn't think much about it, and some of her words were
4 twisted. And then what did she do? She said I'm sorry for
5 hurting you by my stupidity.

6 Sometimes there are a lot of layers to these walls.
7 There are a lot of bricks of reasonable doubt that are
8 associated with the same thing. Let's talk about what she
9 didn't see. She never saw any bloody clothes, she never
10 saw any bloody footprints, she said she saw him in a tank
11 top and boxers when he came in -- when he was in there.
12 They weren't bloody. She said she never saw him cleaning
13 the floor, never saw him cleaning blood off of anything,
14 didn't see blood all over him, all over his clothes,
15 there's no blood in the laundry room where the washing
16 machine was. She never testified there was any of that.
17 And when she was asked she said she didn't see anything
18 that made her think something bad had happened.

19 Investigator Griffin, he was the one who testified
20 about several things. He testified about speaking with
21 Larenda Simon in the beginning and what did he do? He
22 recorded it. He recorded her statement. He has a
23 recording device that's issued to him to record statements,
24 conversations, whatever you want to call it, to record
25 them when he wants to, when he decides that it should be

1 recorded. He recorded hers, he recorded Tanisha Taylor's.
2 Notice whose statement he didn't record? Nathaniel
3 Hunter's. Why? Why did he say that? He said because --
4 it was because he was not confessing. In fact, I believe
5 his words were that he does not let someone give a written
6 or recorded statement unless they are confessing. And he
7 didn't record Nathaniel Hunter's statements. He wants you
8 to believe that he goes in asking about a deal and all the
9 other things that they said. That would seem pretty
10 damning if they were said and if they're that damning, why
11 wouldn't you want them recorded? You're gonna come tell
12 everybody about them here, why not let everybody hear it
13 from his mouth so that there's no question, no question
14 whatsoever? We know that Investigator Griffin also had
15 information that the person who did this, the person who
16 went into Larenda Simon's house, was light-skinned. You've
17 seen the booking photos of Mr. Hunter. You'll have them
18 -- you'll have them with you there. I'll spare you my
19 digging through to try to find them. You'll have them and
20 you can see them sitting right there. They said he was
21 light-skinned. If you remember, that was also what **Minor**
22 said in her statement at the Dickerson Center. She said
23 he was light-skinned.

24 They knew that the church across the street, the
25 church that was pointed to you on the map that was just

1 right across the street from this apartment complex, knew
2 that it had video, they never went and watched it. What
3 if he had watched that video and he'd seen a 1968 Buick
4 Skylark? What if he'd watched that video and seen someone
5 running through the parking lot bloody, throwing off a
6 mask, whatever? Wouldn't we have more information than we
7 do now? He didn't even bother to follow up on it. He did
8 watch a gas station video and Mr. Hunter wasn't on that.
9 Again, he never tracked Ms. Simon's cell phone. He knew --
10 he knew that it had been taken by the person -- the actual
11 person who did this and if he had tracked it as quick as
12 he tracked Mr. Hunter's phone when he wanted to track him
13 down, he would have gotten him. That was a conscious
14 decision that was made. You saw that he said in his notes
15 that he contacted SLED and then he never followed up. He
16 never made it happen.

17 Now they also talked about that Ms. Simon was a
18 cabdriver. Nobody has bothered to do anything with that,
19 nobody bothered to try to follow up or get any records to
20 see whether there was anyone interesting that might have
21 ridden in a cab with her recently that lived in the area,
22 whatever. They didn't follow up on it. And in all the
23 time that was spent talking to Ms. Simon they didn't scrape
24 under her fingernails for DNA. She told them about this
25 struggle, this violent struggle, and how she never took her

1 hands off of him. You know that they're saying that
2 there's scratches on Mr. Hunter's forehead and that they're
3 trying to say that that's what this would have come from.
4 Well, if that's what they really thought, shouldn't they
5 have scraped under her fingernails? Wouldn't that have
6 told us for sure? If his DNA had been under her
7 fingernails, wouldn't that have told us? They didn't do
8 that.

9 Investigator Neel. He testified that he and
10 Mr. Bramlett when they were collecting the evidence that
11 they were meticulous, they were thorough, they left no
12 stone unturned. His words from the stand this week.
13 Meticulous, thorough, no stone unturned. And he took
14 pictures. He said that he took pictures of everything
15 -- that they took pictures of everything, him and
16 Investigator Bramlett, that they took pictures of
17 everything. We know that's not true, don't we? We know
18 that there's one thing they did not take a photo of, that
19 they did not take a photo of at the scene to show where
20 this was found, what it was in, if it was there, and that
21 thing is the one and only link to Nathaniel Hunter. And
22 that's important because there's three things that make up
23 the cornerstone of this wall, and this is one of them.
24 Where did they get it? It didn't show up in a report until
25 over twenty-four hours later and it wasn't even logged in

1 by them, it was logged in by somebody who didn't even come
2 to the stand and testify. Why didn't they want you to hear
3 from her? If that's somebody who handled it and could have
4 confirmed, yes, that's where that came from, why didn't
5 they call her to the stand? Why didn't we hear from her?
6 It didn't show up in a report from anyone who was said to
7 be involved in collecting it until much later. I believe
8 it was the 28th of April, this happened on the 13th, so
9 we're talking fifteen days before it ever shows up. It's
10 not in the returns of the search warrant that's got to be
11 sent back with the list of everything collected immediately
12 after. They're supposed to catalog everything. You heard
13 them say that they're very careful to list every single
14 thing. But it wasn't there. It wasn't in the initial
15 report saying what they found. And when asked where it was
16 found, Investigator Neel, he started out saying I believe
17 it was found and the next time it was followed up he said I
18 guess it was found and then finally Mr. Phillips asked him
19 do you know --

20 **MS. MAYES:** Objection to the mischaracterization of
21 testimony, Your Honor.

22 **THE COURT:** The jury will recall the testimony and
23 they'll go by what they heard. Thank you.

24 **MS. GILREATH:** When he was finally asked by
25 Mr. Phillips do you know, he specifically said the words

1 "I don't know". And this is key. This is one of the
2 building blocks of this wall for this case. The one and
3 only link that they're saying puts Mr. Hunter here. Not
4 one of these other things do. So it's important that it
5 was not in the search warrant return that had the list of
6 the evidence collected. It wasn't in the report that was
7 done later by the person who was said to have found it.
8 And if they did find it, whether it was there, whether it
9 was later, they didn't take any pictures of it. You didn't
10 have a way to see it until they pulled something out here
11 today. They took photos of everything else. We have
12 photos of every area of this room. We have photos of every
13 part of this bathroom. They took photos of the hoodie and
14 they say this is where this was found. No photo of it.
15 Why? If this is the key piece of evidence here, if they
16 think this was being worn by the person who did this,
17 wouldn't you want to document it, take a picture of it,
18 make sure we know exactly where it was found so that three
19 years later when somebody has to tell you where it was
20 found we don't have to wonder, we don't have to say I guess
21 or I don't know. If you had a picture, if you had it in a
22 return to a search warrant, you would be more confident
23 about that.

24 Now Investigator Neel also told you that they would
25 have looked for hair. When asked if there was any hair, he

1 said no.. He also said that there were prints, that there
2 were fingerprints, palm prints, that actually were taken
3 and were collected.

4 Mr. Phillips mentioned at the beginning of the week
5 that there's two ways that the State can present its case.
6 They can present you with everything or they can present
7 you with what they want you to hear and it's up to you to
8 determine which kind of case they presented because that's
9 important here. What didn't they show you? Where are the
10 prints? Why aren't those here? Is it because they don't
11 match Mr. Hunter? They might be of someone else?

12 When they did a search warrant -- when Investigator
13 Neel executed the search warrant and searched at Tanisha
14 Taylor's house, they didn't take any photos there. They
15 didn't take any photos of Mr. Hunter's mom's house when
16 they searched that. And what do we know about that? When
17 they don't take photos, when they don't record statements,
18 it's because it doesn't link it back to this. They don't
19 want it. When they searched Tanisha Taylor's house where
20 Mr. Hunter was living, where Ms. Taylor said that he was in
21 the laundry room, in the bathroom that night, they didn't
22 find any bloody clothes, they didn't find any bloody boot
23 prints, they didn't find any boots, they didn't find any
24 splatters of blood, they didn't find Ms. Taylor's {sic}
25 phone and they didn't find the gun. The same thing when

1 they searched Mr. Hunter's mom's house. They didn't find
2 any clothes, they didn't find any blood, they didn't find
3 any boots, no bloody boot prints, no phone, they didn't
4 find a gun.

5 Now there's been a lot of talk about the car that
6 Mr. Hunter -- that they said he was trying to sell, that
7 Buick Skylark. They showed you pictures of it and you can
8 see from the pictures that you will have with you when
9 you're considering this case this picture that they're
10 making such a big deal about him trying to sell using words
11 and phrases that were told to you from the stand were
12 perfectly normal, perfectly normal words to use if you're
13 trying to sell a car. When they searched that, they didn't
14 find any bloody clothes, they didn't find any bloody boot
15 prints, they didn't find blood, they didn't find boots,
16 they didn't find a phone that belonged to Ms. Taylor -- or
17 Ms. Simon, they didn't find a gun. So any of the places
18 that they searched that were Mr. Hunter's property, where
19 he lived, what he drove, what he was in when they arrested
20 him, the Nissan Versa, they didn't find anything. Nothing.
21 They didn't find any bloodstains on the seats of any of the
22 cars, they didn't find any bloody footprints or boot prints
23 in the floorboard of the cars, they didn't find any bloody
24 clothes, they didn't find anything from Ms. Simon's house.

25 Now they -- we mentioned earlier that Investigator

1 Neel told you they didn't find any hair. You've seen the
2 photos, the booking photos, of Mr. Hunter back at the time
3 he was arrested. You can see him sitting here today. You
4 can see that at that time just like now he had very long
5 dreads. Now the State talked about the hoodie getting
6 ripped off and the cap getting ripped off of his head.
7 Where's the hair? There was no hair of Mr. Hunter's found
8 at the scene, no hair of Mr. Hunter's found in the hoodie
9 and none found in the cap.

10 **MS. MAYES:** Objection, Your Honor.
11 Mischaracterization of testimony.

12 **MS. GILREATH:** Your Honor, I believe that was
13 something that was covered as to whether there was hair
14 found in the cap.

15 **MS. MAYES:** And the SLED agent testified that there
16 was and it was tested.

17 **THE COURT:** There was --

18 **MS. GILREATH:** Of Mr. Hunter's. There was no hair
19 that was identified to Mr. Hunter.

20 **MS. MAYES:** No hair identified to anyone.

21 **THE COURT:** That's right. There was nothing that was
22 identified. I don't think the testimony was that there was
23 no hair.

24 **MS. GILREATH:** So Investigator Neel tells you there's
25 no hair and you find out from the SLED agent there was

1 hair. They couldn't identify it to anybody, so they didn't
2 show it to you to show that there was hair there, they just
3 couldn't pin it to him.

4 And just like Investigator Griffin, he didn't -- even
5 though he also interviewed Mr. Hunter, he didn't bother to
6 record it, he didn't bother to take the audio and play it
7 for Ms. Simon to see if she could identify it, didn't show
8 him in a photo lineup. You have all these investigators
9 and not once over the course of three years do they go show
10 a photo lineup. Why?

11 And I keep mentioning them not recording his
12 statements because that's your third pillar of this case.
13 You've got the one link to him, the only thing that links
14 him to the scene and the testimony in the State's case is
15 this cap, and we've got nothing telling us where it was
16 originally found. No photos. No one that can say for sure
17 the moment it was seen, the moment it was pulled from the
18 hoodie or pulled from the floor, wherever it came from, you
19 don't have anyone that can tell you that. They didn't
20 provide you with testimony of anyone who could tell you,
21 yes, when it came to the West Columbia Police Department,
22 here's where it was, here's how it was logged. They didn't
23 present you with that and we don't have his statements.
24 Investigator Neel told you that his training is to not
25 record unless there's a confession and that they make the

1 decision.

2 He also told you that Mr. Hunter's house is about
3 fifteen minutes away. They've given you the address
4 several times. We know that it's not in West Columbia,
5 it's about fifteen minutes away. It's not right there
6 next to it, it's not across the street, it was fifteen
7 minutes away. Again, I'm asking you to use your common
8 sense here. What -- what about this makes sense? She
9 doesn't know him. She says she doesn't know him. There's
10 been no testimony presented to you that there's any kind
11 of connection that they would have ever known each other,
12 so how on earth does someone who lives fifteen minutes
13 away just randomly show up at an apartment not knowing who
14 lived there, not knowing what they're gonna find inside,
15 busting in there having planned this with no other
16 connection, and with all of that the only thing that we
17 have is the cap and we don't really know exactly where it
18 was found.

19 And there was a lot of talk about these calls to SLED
20 that were made and to Crystal Owens and they're talking
21 about him asking about the DNA and when the State first
22 presented that testimony there wasn't a word about him
23 saying I took a class, I took a class and I heard about
24 it there and I wanted to see does this apply to me. They
25 make a big deal with these phone records that have all

1 these calls and they talk about the numbers here that were
2 called and we see that it was Columbia warrant division.
3 You see the call to Crystal Owens. We know all of that.
4 That's what they're saying, that the phone did this, the
5 phone called it, and that he called and he gave his name.
6 He gave his name, he gave his phone number, he didn't try
7 to hide who he was. He said I took a class. And what was
8 he told? What did Ms. Owens tell you that she told him?
9 Call SLED, call them and ask them about it, and then he
10 calls back after he calls SLED and says did you get a call
11 from SLED? If he's calling and asking about this and he's
12 told them that there's a class and then they're gonna go
13 and arrest him, why didn't they check to see if maybe he
14 was a student? Nobody said that they checked and he wasn't
15 a student or he might not have taken an online class,
16 nobody said anything about that, but she told you upfront,
17 yeah, he says that he'd taken a class. He gave his name,
18 gave his number, both to SLED and Crystal Owens. He
19 wasn't trying to hide anything. If he was trying to hide
20 something, why would he give his name and number, the
21 same number that they've attributed to him over and over
22 that matches the phone that was on him? He's not giving
23 a fake number or somebody else's number or a fake name.
24 He's giving his own. They didn't tell you that originally.
25 They just told you that he called asking about his DNA.

1 They didn't find out whether he was a student. And on
2 April 16th of 2016, they told him to call SLED. And what
3 did he do? He called SLED where they say that he gave his
4 name and his number.

5 And then, finally, we get the DNA hit that's been
6 talked about so much. The DNA hit that prompted them to
7 track his phone. It was a rush case. They told you it
8 was a rush case. They were trying to get it out quickly.
9 They get the call from him on the 16th, then they get the
10 hit, the DNA, on the 17th.

11 Now they talked a lot about the bullets that were
12 fired, the kind of gun that could potentially fire these
13 bullets. He said these particular bullets could have been
14 fired by six different types of guns. Initially they just
15 kept saying it could have been fired by a Glock, it could
16 have been fired by a Glock, and then you found out actually
17 it could have been fired by five different guns as well.
18 They weren't telling you that. In the end, no gun was
19 analyzed, no gun was ever found. They didn't find a gun at
20 Tanisha Taylor's house or his mom's or in the either of the
21 cars.

22 They talked about these cell phone records with no
23 cell tower data, but you were also told by Ms. Sparks that
24 those records did not show you wi-fi data, that there was
25 no way to tell from the report that they sent whether or

1 not wi-fi was used. And we know we're talking about a time
2 late at night between -- I guess the cell tower hours that
3 they've mentioned are between 1 AM and 5 AM in the middle
4 of the night. We don't know whether he was based on those
5 records using wi-fi or not. That just tells you the calls.

6 And finally we're gonna talk just a little bit more
7 just briefly about the DNA because, again, it's a
8 foundation, that's a cornerstone here. Without that they
9 don't have anything linking him to being there. That one
10 thing and that hit came from one thing that was said to
11 have been found there that they don't know exactly where it
12 was found. The one thing. It's not the only thing they
13 got. They also got the hoodie and they told you this
14 hoodie -- that according to their report they could not
15 exclude Larenda Simon. They told you that they couldn't
16 include Nathaniel Hunter.

17 Now the solicitor kept talking about the wearing
18 gloves and that he was wearing gloves. You didn't hear
19 any testimony from anyone that he was seen wearing gloves
20 or that he had on all these clothes under a hoodie. Nobody
21 said that. But when the hoodie doesn't have his DNA and
22 the hoodie is what was ripped off of this person at Larenda
23 Simon's house and it doesn't include his DNA, well, that's
24 not helpful. That doesn't point to him. We still only
25 have one thing. If this hoodie had been worn by someone,

1 they told you that with ownership swabs they can check to
2 see if there was any other DNA there. They didn't find
3 any that matched Mr. Hunter who was said to have been
4 wearing this, that they couldn't identify his DNA on it.

5 The cap. The one link, the one thing that they say
6 puts him there. They talk about all this blood, Larenda
7 Simon's blood. They talk about bleeding from the head,
8 but where's the blood on the cap? This person's wearing
9 this in this violent struggle in this room with all this
10 blood everywhere, throwing around, being pinned to the
11 floor, getting pinned in between the wall and the toilet,
12 going from room to room and this is what this person's
13 wearing and this person gets a cut on their head and
14 there's not blood on it? They had a name and they have
15 this.

16 And, ladies and gentlemen, we -- we could keep going
17 because each individual thing here, each individual brick
18 in this now several layers thick wall, this is reasonable
19 doubt. The State wants you to essentially focus on one
20 thing. They want you to look at the cap, the one thing
21 that they can't tell you where it was found at the scene,
22 how it was collected, that nobody can tell you for certain.
23 They want that one thing. They don't have anything else.
24 Every single other piece of information here is reasonable
25 doubt and none of it points to Mr. Hunter? What is the

1 more likely thing here? What makes the most sense? That
2 all of these other things would be wrong, that every single
3 other piece of evidence, that nothing was found at his
4 house, at his mom's house, in his cars, on him. Nothing
5 was ever found that linked him to the scene. No bloody
6 boot print. He's never cleaning blood off of a floor. No
7 blood or DNA or bloody clothes. No nothing. All of this
8 is wrong and this one thing is right? If they had recorded
9 his statements, then you'd know. You'd know from his
10 mouth. You wouldn't have to take the investigator's word
11 for it, you didn't have to take his word for it for Tanisha
12 Taylor, you didn't have to do it for Larenda Simon, but
13 they're making you do that for Nathaniel Hunter. You've
14 got to take their word for it. You can't hear it from his
15 mouth because they didn't record it. They made a conscious
16 decision not to do that because they knew they only had one
17 thing. They only had one thing.

18 We've talked about a lot of things here. We've talked
19 about a lot of different people, a lot of different pieces
20 of evidence. What it comes down to, ladies and gentlemen,
21 we're just back to that original question, what kind of
22 case were you presented with? What were you shown? What
23 were you not shown? What do they have? What do they not
24 have? Did they show you everything or did they show you
25 what they wanted you to see? Did they show you the hair

1 that they found? Did they show you the fingerprints? Do
2 we have pictures of where the cap was found? Do we have
3 pictures of Mr. Hunter's residence or of his mom's
4 residence? No blood, no bloody footprints. Nothing. They
5 don't have any of that.

6 In order to meet their burden, in order to tear down
7 this wall, this presumption of innocence, these are all
8 pieces of reasonable doubt. In order to meet it, the
9 State has to show you that none of the rest of this stuff
10 matters, that all of these things that point to reasonable
11 doubt in this case, that they don't matter. But I'm asking
12 you to use your common sense. If you think about the three
13 pillars we talked about, the one link, the cap, we don't
14 know where it was found. The statement. If they would
15 have just recorded that statement we'd know what he said,
16 they could have played it for Ms. Simon sometime earlier
17 than three years later, we'd know what they have with this.
18 If they'd found anything at the house, that would be
19 different. We'd have something else. What they've got is
20 not enough. So at this point presumption of innocence must
21 stand. This is still presumption of innocence. They
22 haven't removed these. They haven't explained to you why
23 this one thing is more important than all of these others
24 things combined.

25 We've been talking a lot of about reasonable doubt.

1 We've been throwing that word around. For someone to prove
2 something beyond a reasonable doubt as the judge is gonna
3 tell you, as the solicitor, we're all in agreement, you
4 have to be firmly convinced. That doesn't just mean firmly
5 convinced about one thing. That doesn't mean that there's
6 just one thing that you say hum, that makes sense. You've
7 got to be firmly convinced that none of the rest of this
8 matters. These are your reasons to pause, to think, to ask
9 questions. This is the time to do that. This is time to
10 ask questions, to wonder. Ask now. Ask those questions.
11 Express your opinion. If something doesn't make sense,
12 raise it, ask about it. If you aren't firmly convinced
13 that they haven't removed every single one of these bricks,
14 then your duty, your obligation under the oath that you
15 took Monday is to find him not guilty. Thank you.

16 **THE COURT:** Thank you, Ms. Gilreath.
17 Ms. Hope, are the sandwiches back there?

18 **THE CLERK:** Yes, sir.

19 **THE COURT:** Okay. Ladies and gentlemen, we're gonna
20 take a lunch break for you-all right this minutes. Your
21 lunches are in the jury room. I have yet to charge you,
22 instruct you, as to what the law is. My instructions could
23 take from thirty-five to forty minutes. That's too long
24 for you to sit at one time without a break and without
25 eating. I'm not sure about you, but my stomach has been.