

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

V.

JUSTIN JAMAL WARNER,

APPELLANT

APPELLATE CASE NO. 2017-001313

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBIT #2 (IN-STORE BP VIDEO),
STATE'S EXHIBIT #10 (T-MOBILE CDR RECORDS),
STATE'S EXHIBITS #12A – 12D (BP VIDEO),
STATE'S EXHIBITS #14A – 14C (VIDEO STILLS),
STATE'S EXHIBIT #20 (CAST REPORT),
STATE'S EXHIBITS #23A – 23E (MAPS).**

1 State of South Carolina
2 County of Anderson In the Court of General Sessions

3
4 State of South Carolina)
5)
6 -vs-) May 22, 2017
7 Justin Jamal Warner,)
8 Defendant.) 2016-GS-04-00159;
9 -----) 2017-GS-04-00862
10) Volume 1 (pgs. 1-219)
11) Transcript of Record

12 B E F O R E:

13 The Honorable R. Lawton McIntosh, Judge;
14 and a jury.

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

16 Catherine T. Huey, Deputy Solicitor
17 Attorney for the State

18 Bruce A. Byrholdt, Esquire
19 Bruce S. Harvey, Esquire
20 Attorneys for Defendant

21
22 Reported by:
23 Diane L. Marcengill, RPR, CRR
24 Circuit Court Reporter
25 Certified Realtime Reporter

1 Honor.

2 MS. HUEY: I will also pass up the indictment for
3 murder and possession of weapon during the commission
4 of a violent crime.

5 THE COURT: Mr. Warner.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Would you stand, please, sir.

8 THE CLERK: May I ask that you raise your right
9 hand.

10 (WHEREUPON, the defendant was sworn.)

11 THE COURT: All right. Mr. Harvey, Mr. Byrholdt,
12 do you wish to have these allegations in the indictment
13 read into the record or do you waive that?

14 MR. BYRHOLDT: I would ask the allegations of the
15 attempted armed robbery be read into the record so we
16 have a record of it.

17 THE COURT: Mr. Warner, these are the charges of
18 the indictment against you dated April 18, 2017. This
19 says the defendant, Justin Jamal Warner, did on or
20 about April 30, 2015, in Anderson County, South
21 Carolina while armed with a deadly weapon or while
22 displaying what a person present during the robbery
23 would reasonably believe to be a deadly weapon attempt
24 to take by means of force, threats or intimidation
25 goods or monies from the person or presence of

1 Your Honor.

2 THE COURT: Right. And that --

3 MR. HARVEY: I assumed that.

4 MS. HUEY: And, of course, the lead investigator.

5 MR. HARVEY: They're excepted.

6 THE COURT: There are a number of matters before
7 the court, filings from the defense. I don't have any
8 particular order in which you would like to proceed in.

9 Mr. Harvey.

10 MR. HARVEY: Yes, Judge. With the court's
11 permission.

12 THE COURT: Yes, sir.

13 MR. HARVEY: I said with the court's permission --
14 I know the acoustics here are pretty bad. I'll try to
15 talk with you. If you like, I can go over what motions
16 are pending and what we have, through the parties'
17 agreement, eliminated, so there will be a number of
18 things we can pare down.

19 THE COURT: Okay. Very good.

20 MR. HARVEY: With the court's permission, I'll be
21 glad to start us that way and we can go back.

22 THE COURT: I think that's excellent. Please let
23 me know.

24 MR. HARVEY: First, with regard to the motions to
25 suppress, the omnibus motions to suppress, the first

1 portion of that talks about the seizure of palm prints.
2 That is withdrawn.

3 THE COURT: Palm prints are withdrawn.

4 MR. HARVEY: The seizure of the palm prints, yes,
5 sir. There is, on a section that deals with a motion
6 to suppress, a search of the residence. My
7 understanding is that the State does not seek to use
8 anything seized during the search of that residence, so
9 that issue is moot.

10 Am I correct?

11 MS. HUEY: That's correct, Your Honor.

12 THE COURT: All right.

13 MR. HARVEY: There is a section of that motion to
14 suppress that deals with the search, the seizure and
15 search of a Samsung phone. My understanding again, and
16 upon representation of the State, that nothing from
17 that seizure or search is going to be used and that is
18 withdrawn -- or it's moot.

19 THE COURT: Is that correct?

20 MS. HUEY: Yes, sir, Your Honor.

21 THE COURT: Okay.

22 MR. HARVEY: There were motions in limine, Judge,
23 and there were motions in limine that were directed
24 towards -- towards the -- we asked that the State not
25 be allowed to mention during the course of the trial

1 that Mr. Warner is on probation in Georgia because I
2 anticipated testimony from his probation officer at the
3 time. The State has agreed to that, so that is not an
4 issue before Your Honor.

5 THE COURT: So no reference to defendant being on
6 probation.

7 MR. HARVEY: Correct.

8 THE COURT: State's agreeable with that?

9 MS. HUEY: Yes, sir, Your Honor. We're going to
10 skirt around that.

11 MR. HARVEY: Broadly, I hope, by skirt.

12 You ready?

13 THE COURT: (Nodding.)

14 MR. HARVEY: There was also some marijuana that
15 was found in the vehicle that was searched in Georgia.
16 We move to eliminate or prohibit that from being
17 introduced into evidence, and I understand that the
18 State has agreed that that evidence, that marijuana, if
19 the search is any good, the mention of any marijuana
20 seized would not come into evidence.

21 MS. HUEY: Correct, Your Honor.

22 MR. HARVEY: There were -- there were boot or shoe
23 print impressions taken at the scene, at the BP station
24 on 153 that were mentioned in the discovery, Judge. I
25 understand that that evidence is not going to be

1 offered into evidence. So that's not at issue in our
2 motion.

3 MS. HUEY: Correct, Judge.

4 MR. HARVEY: Correct? Okay.

5 So with that paring down, we can start, I believe,
6 with the seizure and search of Mr. Warner's -- or a
7 car, a vehicle, in Georgia. That would be the first
8 thing at least chronologically, if that suits the
9 State. If the State wants to do it, because I know
10 they have witnesses from out of state.

11 MS. HUEY: Yes, sir.

12 MR. HARVEY: If they want to do it -- in whatever
13 order suits me, Judge. I'm fine with that. But that
14 would be the first, I think, in terms of the motions to
15 suppress, if the State is ready to go forward on that.

16 MS. HUEY: Yes, sir.

17 THE COURT: Okay. Call your first witness.

18 MR. HUEY: Just one second, Judge. There's some
19 overlap with witnesses, Judge.

20 THE COURT: Ma'am?

21 MS. HUEY: There may be some overlap of witnesses
22 about stuff so I'm just trying to figure out really
23 quickly.

24 THE COURT: Oh, sure.

25 MS. HUEY: Your Honor, the State calls Detective

1 Voigt to the stand.

2 MATTHEW BARNES VOIGT,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: Please state and spell your name for
5 the reporter.

6 THE WITNESS: Matthew Barnes Voigt, V-o-i-g-t.

7 DIRECT EXAMINATION

8 BY MS. HUEY:

9 Q Investigator Voigt, you were the lead investigator
10 in this case --

11 A Yes, ma'am.

12 Q -- State vs. Justin Warner. I want to draw your
13 attention to the days leading up to the defendant's
14 arrest on a probation violation in Georgia on May 7th
15 of 2015.

16 If you could, by way of background, start with the
17 Crime Stoppers tip that you received on May 4th.

18 A Okay. On the 4th, we received a Crime Stoppers
19 tip that listed Mr. Warner as a suspect in this case.
20 Immediately from looking at the tip, we noticed that
21 the date of birth was the same date of birth that
22 Ms. Patel had entered into the register during a
23 transaction of tobacco purchase prior to the incident
24 occurring.

25 Additionally, the tip listed in great detail the

1 events that occurred inside the store. That was very
2 interesting to me because we only release certain
3 sections to the media, the video surveillance. And
4 outside of watching the surveillance or someone being
5 in there, I don't see how anybody could be -- could
6 know that information.

7 One of the key examples for me was a shell casing
8 where the primer was punched as if like a firing pin
9 had stuck or whatever. Unless someone was on scene
10 when the evidence was collected, I don't see how they
11 would know that and that was listed in the tip.

12 Additionally, it described how the robbery
13 happened almost to a T and how the shooting occurred
14 almost to a T. The tip also described the vehicle that
15 Mr. Warner was in that day, which was a gray
16 Challenger, I believe. Challenger, Charger.

17 Let's see. Also in the tip it described the
18 firearm as well which we could see from the video
19 surveillance. It was silver on top, black on bottom.
20 I thought that was also very unique.

21 Q Okay. So as a result of this Crime Stoppers tip,
22 what did you then do in looking into the Crime Stoppers
23 tip?

24 A All right. From there, contact was made with
25 Goolsby, and we received information as far as palm

1 prints, some photographs of him, booking photos,
2 tattoos, other stuff like that. We got --

3 Q Let me stop you for just a second. Goolsby was
4 his probation agent, Warner's probation agent?

5 A That's correct, his probation agent at the time.
6 I believe Detective Mitchell is the one who made
7 contact with him and got that information e-mailed to
8 him. Immediately we took the palm prints and gave them
9 to our forensic division. I believe Lieutenant Chris
10 Scott is the one who looked at them obviously to begin
11 either eliminating him as a suspect or confirming him
12 as a suspect.

13 We also started looking at the surveillance
14 looking to see if there were any scars, marks, or
15 tattoos that were consistent with the information we
16 received on Mr. Warner. And there were some tattoos on
17 his arms. I'm unable to say if they were the exact
18 same tattoos, but there were tattoos on his arms that
19 were consistent with the ones we received photographs
20 of..

21 Q And in addition to that, did Goolsby make any sort
22 of identification?

23 A Yes. Detective Mitchell also sent the snippet of
24 the video down to Agent Goolsby and he was able to
25 identify the defendant, Mr. Warner, from the video,

1 said that he had been his agent for -- I'm not sure. I
2 think it had been several months, but I'm not exactly
3 sure on that, but said he recognized his mannerisms.

4 Q And was a palm print matched to the defendant?

5 A The day of the tip, the palm print was not a
6 match. It wasn't matched until several days later.
7 Chris Scott was able to locate the palm print on a
8 counter protector, I guess is the best way to put it.
9 And when we went back and watched the video
10 surveillance, the area in which the palm print was
11 located appears to be consistent with an area in which
12 you can see Mr. Warner put his hand down. So that's
13 also consistent.

14 Additionally, we went back and reviewed the
15 surveillance further back and saw that Ms. Patel had
16 wiped down the counter somewhere in the area of
17 45 minutes to an hour prior to the incident occurring,
18 so there had been a lot of other prints that would have
19 been on the mat that were eliminated.

20 Q So based on that, did you have warrants for murder
21 in hand for Mr. Warner?

22 A The day of his apprehension, I spoke with the
23 judge and he did issue warrants. He was put into NCIC,
24 and we contacted Agent Goolsby and advised him of the
25 active warrants. And I believe he contacted Mr. Warner

1 to come in and turn -- or come in for a probation
2 check-in I believe is what it was.

3 Q All right. And so were you aware of this
4 check-in, then, that was taking place on May 7th?

5 A Yes, ma'am. We were actually on our way to
6 Atlanta to try to get there 30 minutes before his
7 arranged check-in time.

8 Q But when you got to Atlanta, what happened?

9 A Approximately 30 minutes -- well, somewhere around
10 30 minutes before our arrival, I think he showed up
11 early to check in. He had already been taken into
12 custody by his probation agent on active probation
13 warrants for this incident and had already been
14 transported to their detention center. So we met with
15 the agent and went back to the probation office.

16 Q Okay. And so what was at the probation office
17 then?

18 A At the probation office was the gray Dodge that
19 was described in the Crime Stoppers tip, and the
20 probation agent was able to confirm that that was
21 Mr. Warner's vehicle or he had driven it in the past
22 and he had driven it that day.

23 Q And was -- did someone look at the tag to see who
24 the car belonged to?

25 A Yes, ma'am. The tag was ran. I can't recall if

1 we ran the tag through our dispatch. I'm wanting to
2 say either Clayton PD or the probation office had the
3 tag ran, and the tag came back to a female. I don't
4 have my notes in front of me right now, but it did not
5 come back to Mr. Warner.

6 Q Now, as a result of that, did you want to get a
7 search warrant for that silver or gray Challenger?

8 A Yes, ma'am. Obviously, it was consistent with a
9 possible vehicle involved in this crime. It had been a
10 short window. There may be some kind of evidence left
11 in the vehicle -- blood transfer, firearm, anything
12 that could be relevant to this case.

13 Q Because the incident date is April 30th of 2015?

14 A Yes, ma'am.

15 Q And then he was in the car on May 7th at his
16 probation check-in, correct?

17 A Yes, ma'am.

18 Q So, now, you were in Georgia so you can't get a
19 search warrant yourself?

20 A That's correct.

21 Q So who did you have to get help from in order to
22 do that?

23 A We got ahold of Clayton County Police Department,
24 and I believe it was Detective Brown is the one that
25 assisted us I think initially. Maybe his supervisor

1 had came over. And the decision was made to have the
2 car impounded by them to make sure that it was safe.

3 It's kind of in a public lot, didn't want to lose
4 any evidence or anything like that. And then we went
5 with Detective Brown to obtain a search warrant.

6 Q Okay. And so was the car then impounded first and
7 then you tried to get a search warrant? Do you
8 remember the time frame of that?

9 A Yes, ma'am. The vehicle was impounded first.
10 They're like most law enforcement agencies. They're
11 short on manpower. I don't think they had the
12 appropriate resources to be able to put somebody on it.
13 But they secured the vehicle in their impound lot
14 first, and then we went with Detective Brown to obtain
15 the search warrant.

16 Q And so describe the search warrant application
17 then. Were you with Detective Brown the entire time?

18 A Yes, ma'am, I was.

19 Q So describe that process then.

20 A Okay. I can back up just a little bit. We had
21 been there the day prior looking for Mr. Warner, so we
22 had already dealt with several of the Clayton PD
23 investigators. So they were somewhat familiar with the
24 case. But when the vehicle was impounded, we went back
25 to their office, and I was with the detective while he

1 typed out the search warrant including the details,
2 what we were looking for. We were kind of involved in
3 it because it's our case, but I have no jurisdiction
4 down there so they're kind of acting as an assisting
5 agency.

6 From there we went and spoke with the magistrate
7 there, and Detective Brown presented the case with the
8 information that I had conveyed to him. And then we
9 were -- the judge agreed and signed the warrant, and we
10 went and executed it on the vehicle.

11 Q So when -- were you ever asked any questions
12 regarding the probable cause?

13 A Yeah. I believe I was in the office with the
14 judge, kind of normal dialogue when you're presenting a
15 case for a warrant. Obviously, I would have more
16 detailed information regarding the case than Detective
17 Brown would have, seeing how I was the lead
18 investigator from up here in Anderson.

19 Q But Detective Brown is the one who prepared the
20 affidavit and presented the affidavit?

21 A That's correct. Yes, ma'am. Typically, if a
22 judge has any additional questions regarding, you know,
23 the warrant, he may, you know, just ask us, "Can you
24 clarify this," or, "Could you further explain that?"
25 That's fairly typical during a warrant process. I

1 would be -- probably know about that information than
2 Detective Brown would have at the time.

3 MS. HUEY: Mark this as a court's exhibit.

4 (WHEREUPON, Court's Exhibit Number 2 was marked
5 for identification.)

6 MS. HUEY: This is a copy of the original search
7 warrant from Georgia, Your Honor, in reference to the
8 car. They accidentally gave us the original. And so
9 the defense has agreed for us to make a copy of that
10 and return the original to Georgia.

11 THE COURT: What court exhibit number is that?

12 MS. HUEY: Court Exhibit 2.

13 BY MS. HUEY:

14 Q All right, Detective Voigt. I'm going to show you
15 what's been marked as Court's Exhibit 2. And do you
16 recognize that item?

17 A Yes. This is the search warrant that Detective
18 Brown obtained along with an inventory sheet of items
19 taken from the vehicle.

20 Q And that was something, again, that you were a
21 witness to the entire process?

22 A Yes, ma'am.

23 Q So what was the probable cause for that search
24 warrant, then?

25 MR. HARVEY: Judge, may I object at this point? I

1 think the four corners of the affidavit speak -- the
2 search warrants speak for themselves. I don't know
3 whether they were tendered or just identified, that
4 search warrant affidavit.

5 Were they admitted?

6 THE COURT: Do you wish to admit the court exhibit
7 for purposes of this hearing?

8 MS. HUEY: For purposes of this hearing, yes.

9 THE COURT: Then it's admitted.

10 Now, was there any additional information sworn to
11 before the magistrate in obtaining the search warrant,
12 or was it contained within the warrant itself,
13 affidavit itself?

14 MS. HUEY: Your Honor, there may have been
15 additional information, is my understanding. Whether
16 we know the specifics of that, I'm not sure. That was
17 going to be my next question.

18 THE COURT: I'm going to take your motion under
19 advisement.

20 BY MS. HUEY:

21 Q So in reference to the supporting affidavit, then,
22 what was stated?

23 A Okay. Do you want me to read it verbatim?

24 Q Just your understanding.

25 A Okay. The probable cause on that would have been

1 that on the date of the incident, obviously a robbery
2 occurred that resulted in the death of Ms. Patel.
3 Through information in the case, we were able to
4 identify Mr. Warner as the suspect in the case. The
5 probable cause would have included probably the date of
6 birth, the palm print match. There would have been
7 corroborating details of the Crime Stoppers tip at the
8 time listing out the vehicle and the details of the
9 crime, which is why the vehicle would be so important
10 to us.

11 Also as well within the crime, happening almost a
12 week to the day of when he was located in the vehicle,
13 there would be, in my opinion, a chance of evidence
14 being left in it. So that would be another good reason
15 why we would need to get into the vehicle.

16 MR. HARVEY: Once again, Judge, let me renew my
17 motion to preclude that testimony or strike that
18 testimony as it's outside the four corners of the
19 search warrant which, I guess, is now in evidence,
20 correct? It is --

21 MS. HUEY: For purposes of this hearing.

22 MR. HARVEY: Exhibit 2, for purposes of this
23 hearing, it is admitted. This is testimony that's well
24 outside the four corners and, therefore, I would
25 continue my objection.

1 THE COURT: All right. Well, Ms. Huey indicated
2 for the record, Mr. Harvey, that there may be
3 additional information that was taken at the
4 magistrate. Of course, if there was, that's not
5 improper if it's properly received.

6 MR. HARVEY: Didn't say that there was -- didn't
7 say that it was improper.

8 THE COURT: But your objection is based on the
9 four corners of the document itself.

10 MR. HARVEY: Right now, because I'm unaware of any
11 particular matters that were imparted to the magistrate
12 outside of the four corners.

13 THE COURT: Thank you, sir.

14 Go ahead.

15 BY MS. HUEY:

16 Q Do you have -- do you remember any other specifics
17 being given to the magistrate other than what's in the
18 warrant?

19 A I could not testify to that. I mean, it was over
20 two years ago or right around two years ago.

21 Again, just from my prior experience in obtaining
22 many search warrants --

23 MR. HARVEY: Let me object to that, Judge. That's
24 beyond the scope of the question. He either remembers
25 it or doesn't.

1 THE COURT: I'll sustain it.

2 MR. HARVEY: Thank you.

3 BY MS. HUEY:

4 Q Regardless, Detective Brown is the one who
5 actually got this search warrant; is that correct?

6 A Yes, ma'am. That is correct.

7 Q And did he participate in the execution of the
8 search warrant as well?

9 A Yes, ma'am.

10 Q At the -- where the car was impounded?

11 A Yes, ma'am.

12 MS. HUEY: That's all I have for this witness at
13 this time, Your Honor.

14 THE COURT: Cross-examination.

15 MR. HARVEY: Thank you, Judge. But can I -- I
16 respectfully decline at this particular point. I have
17 no questions for -- it's Detective Voigt, correct?

18 THE WITNESS: Yes, sir.

19 MR. HARVEY: -- for Detective Voigt subject to my
20 recall for cross if there is anything else that comes
21 out from other witnesses, but I've got no questions at
22 this time.

23 THE COURT: Call your next witness.

24 MS. HUEY: The State calls Agent Brown.

25 MR. BYRHOLDT: Judge, I'm going to step out for

1 just one second.

2 WAYMANDO W. BROWN,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: If you would take the witness stand
5 please, sir, and state your name and spell your last
6 name for the reporter, please.

7 THE WITNESS: Afternoon, Your Honor.

8 THE COURT: Afternoon.

9 THE WITNESS: My name is Waymando W. Brown. Last
10 name, common spelling, Brown. First name
11 W-a-y-m-a-n-d-o.

12 DIRECT EXAMINATION

13 BY MS. HUEY:

14 Q Agent Brown, where are you employed currently?

15 A Currently I work for the Bureau of Alcohol,
16 Tobacco, Firearms and Explosives.

17 Q And prior to that, where were you working?

18 A I was a detective with the Clayton County Police
19 Department.

20 Q As such, did you have an occasion to assist
21 Anderson County Sheriff's Office investigators with the
22 investigation of this particular defendant --

23 A Yes, ma'am.

24 Q -- Justin Warner?

25 Can you describe how that came about?

1 A I was working for Clayton County Police Department
2 in their criminal investigations division. We were
3 notified through my chain of command that Anderson
4 County sheriff investigators were investigating a
5 homicide that occurred in their jurisdiction with
6 reason to believe that the offender had fled to our
7 area in Clayton County. They gave me some details
8 regarding the circumstances of the homicide and why
9 they believed the suspect was a suspect involved with
10 that homicide.

11 Q As such, did you help to apply and execute a
12 search warrant on their behalf?

13 A Yes, ma'am.

14 Q And did that take place on May 7th of 2015?

15 A It did.

16 Q And this was a 2013 silver Dodge Challenger?

17 A That's correct.

18 Q Okay. And I believe this has already been
19 admitted as Court's 2 for this hearing. If you could
20 take a look at this, please.

21 A Thank you.

22 This appears to be the copy of the search warrant
23 and affidavit in which I completed in conjunction with
24 Anderson County sheriff's deputies.

25 Q So that's what you actually did?

1 A Yes, ma'am.

2 Q What is the typical process when you are getting a
3 search warrant in Georgia in your jurisdiction at that
4 time?

5 A A draft, an affidavit would be completed
6 indicating the details of -- details of the crime,
7 certain details of the crime in establishing probable
8 cause to believe we would find evidence in whatever
9 area we were searching for of that crime. We'd go
10 before a magistrate with that information. They would
11 review it, ask for any amplifying information that they
12 would want to hear regarding the particular request.
13 We'd provide that, if needed, and they would either
14 grant or deny the application for the search warrant.

15 Q Now, did you have this search warrant in hand
16 prior to the car being towed back to the police
17 department?

18 A The search warrant was -- the granted search
19 warrant was in hand prior to the search being conducted
20 on the vehicle at Clayton County Police Department.

21 Q So before you started searching the vehicle, you
22 had the search warrant in hand?

23 A Correct. The vehicle was actually seized by
24 Lieutenant Maddox of my police department while I went
25 to go get the search warrant. Once the search warrant

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Waymando W. Brown - Direct by Ms. Huey

1 was granted, I would notify the detectives that were
2 back at the CSI bay waiting with the vehicle to begin
3 executing the search.

4 Q And then upon searching this silver Challenger,
5 what items were actually taken from it?

6 A I believe a cell phone was taken -- is it okay if
7 I refer back to this, please?

8 Q You can look at that.

9 A A white Samsung cell phone, a pack of cigarettes
10 or tobacco product, a wallet. And those were the items
11 that were seized from the vehicle.

12 Q And this was done in your presence?

13 A Yes, ma'am.

14 Q As well as with the Anderson County Sheriff's
15 Office?

16 A That's correct.

17 Q Once these items were collected, were they then
18 released to the Anderson County Sheriff's Office?

19 A Yes, ma'am.

20 Q And did you have any more involvement as to this
21 particular search warrant?

22 A Processed the return of service for the search
23 warrant for our magistrate, documented the incident in
24 our own executive summary of the search warrant with
25 Clayton County, and that was pretty much it at that

1 point, ma'am.

2 Oh, we also helped facilitate the return of the
3 vehicle back to the vehicle owner.

4 Q And that was not the defendant in this case?

5 A No, ma'am.

6 Q In applying for the search warrant, Detective
7 Brown, or Agent Brown I should say, what were you aware
8 of from the incident from Anderson?

9 A Anderson had advised that they had video images of
10 the murder. They indicated that prior to the murder
11 the suspect had given the clerk their date of birth to
12 purchase a tobacco product, which is one of the
13 amplifying information that led us to believe it was
14 this suspect, it was their suspect. They had recovered
15 a palm print off of the register area of the incident
16 location, and we were able to match that back to the
17 individual as well.

18 MS. HUEY: That's all I have, Judge, at this time.

19 THE COURT: Cross-examination.

20 MR. HARVEY: Thank you, Judge. Once again, I have
21 no questions at this particular time reserving my right
22 if any additional evidence warrants the recall of this
23 particular agent, and I would assume that we would know
24 that fairly soon.

25 THE COURT: Thank you, sir. You may step down.

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1 MR. HARVEY: If that's the remaining witness.

2 THE COURT: Any further witnesses with regard to
3 the vehicle?

4 MS. HUEY: Just one minute, Judge.

5 (WHEREUPON, an off-the-record discussion was held
6 between counsel.)

7 MS. HUEY: The State calls Nathan Goolsby.

8 MR. HARVEY: Are we still on the vehicle?

9 (WHEREUPON, an off-the-record discussion was held
10 between counsel.)

11 MS. HUEY: That's all I have in reference to the
12 search warrant, Judge.

13 THE COURT: So you're not calling Mr. Goolsby?

14 MS. HUEY: No, sir, not at this point. We're
15 going to call him next for the next hearing, I suppose.

16 THE COURT: Any matters from the defense?

17 MR. HARVEY: Nothing with regard to this portion.

18 THE COURT: I'll be glad to hear your argument on
19 the motion to suppress evidence from the vehicle.

20 MR. HARVEY: All right. With regard to -- with
21 regard to -- well, I can stay right here.

22 THE COURT: Yes, sir.

23 MR. HARVEY: I hope you can hear me.

24 THE COURT: If I can't, I'll let you know. How
25 about that? At least I'll try to.

1 MR. HARVEY: I'm confident you will.

2 Can I -- let me start with the proposition that
3 this is an out-of-state, for you, search warrant.
4 Therefore, the law of the state of Georgia applies to
5 your determination of whether or not this particular
6 warrant sufficed for the search of the vehicle that
7 we're talking about. So the first point is that
8 Georgia law applies.

9 The second point is --

10 THE COURT: The first point was what, please, sir?

11 MR. HARVEY: That Georgia law applies.

12 THE COURT: I don't think anybody seriously
13 contests that.

14 MR. HARVEY: I didn't know. I just wanted to make
15 sure I'm going point by point. Georgia follows the
16 four corner rule. Unless there is some specific
17 testimony that is adduced before the issuing
18 magistrate, your job, a reviewing court, is bound by
19 the four corners of the warrant.

20 I made particular objections to the testimony of
21 Detective Voigt, and Agent Brown added nothing to that
22 equation. And I think that since we do not have any
23 particular oral representations to the issuing
24 magistrate, you are bound by the four corner rule. And
25 that's Paillette, P-a-i-l-l-e-t-t-e, State vs.

1 *Paillette*, at 232 Ga. App. 474. And you cannot
2 consider any information not presented to the issuing
3 magistrate. And that's *State vs. Lyons* at 258 Ga. App.
4 9. And I think the rule is the same in South Carolina.
5 That's *State vs. Robinson*, 335 S.C. 620. So I think
6 you're bound by the four corners, one.

7 You have the search warrant there in front of you.

8 THE COURT: I do not.

9 (WHEREUPON, document handed to the court.)

10 MR. HARVEY: Now you do.

11 THE COURT: Now I do.

12 MR. HARVEY: And as per our pleadings, the
13 totality of the affidavit, now that we're at the four
14 corners rule, is found and states as follows: On
15 April 30th, 2015, the suspect entered the BP gas
16 station located at 2900 Highway 153, Greenville, South
17 Carolina, the ZIP, in Anderson County and shot the
18 clerk, victim, Ms. Patel, in the head. Ms. Patel died
19 several days later as a result of the injuries
20 inflicted by Warner. This incident was captured on
21 video and forensic evidence was recovered -- doesn't
22 say what -- placing the defendant at the crime scene.
23 The Suspect Warner currently resides at the
24 above-described residence, and this affiant believes
25 that a further search of the grounds, vehicles, and

1 residence will produce further evidence to assist in
2 the investigation of this incident.

3 Nothing, nothing at all particularly directed to
4 the vehicle or what the vehicle had to do with anything
5 that was located in a public parking lot, impounded or
6 seized, you could use whatever adjective you want,
7 seized from a public parking lot, towed to another
8 location while awaiting this particular search warrant.
9 Nothing of any nexus between that particular vehicle in
10 the crime, nothing about what tied Mr. Warner to that
11 particular crime, nothing indicating what, if anything,
12 and why it would be found in this particular vehicle
13 that, by the way, was not at a residence. It was in
14 public. Nothing we have heard about the impoundment
15 policies of Clayton County Police Department and why it
16 may have to have been impounded as opposed to just
17 seized on scene until a search warrant was obtained.

18 So there's nothing about the impoundment policies,
19 there's nothing about any evidence tying this vehicle
20 to anything in the particular warrant. There's nothing
21 particular, no nexus drawn about why the authorities,
22 the South Carolina authorities, wanted to search this
23 particular vehicle. This in no way, shape, form, or
24 fashion provides probable cause to seize without a
25 warrant, impound with no impoundment policies, and then

1 search this particular vehicle at all. And I suggest
2 to the court that a -- that a view under any rational
3 interpretation of that affidavit does not provide
4 probable cause to search that vehicle.

5 I reserve my right to a quick rebuttal after the
6 State makes their argument.

7 THE COURT: All right.

8 Ms. Huey.

9 MS. HUEY: Your Honor, the first of the search
10 warrant refers to the car. I believe "residence" is
11 just a typo.

12 THE COURT: I'm sorry?

13 MS. HUEY: In this part of the search warrant,
14 Your Honor, if you have the exhibit in front of you, it
15 does reference the car. I believe the residence is
16 just a typo. But, regardless, Your Honor, in the
17 paragraph that was read aloud by the defense, it says
18 that there is an incident which was captured on video
19 and forensic evidence was recovered placing the
20 defendant at the crime scene. And you heard testimony
21 from Detective Voigt and Detective Brown who both said
22 that the video was captured -- that there was video
23 surveillance of it, and then the palm print was left at
24 the scene. That's the forensic evidence, as well as
25 the date of birth matching, Your Honor.

1 THE COURT: Do you place any weight on the fact
2 that this car was seized before the warrant was issued
3 at all?

4 MS. HUEY: I don't, Your Honor, because, first of
5 all, it was in a lot, but the defendant had just been
6 arrested. Secondly, the car did not belong to him so
7 it needed to be towed. Someone else could have had
8 access to that car readily, and there still could have
9 been evidence in that car from this murder that took
10 place eight days earlier. So I think it was
11 appropriate the way it was handled because the search,
12 which could have revealed blood, fibers, whatever,
13 shouldn't have been done in the middle of a public
14 parking lot anyway.

15 THE COURT: Any response to that, Mr. Harvey?

16 MR. HARVEY: Yes, sir. I'm a little bit confused.
17 The probable cause is confined to the four corners of
18 the affidavit. The four corners of that affidavit
19 don't mention a particular car. They don't mention a
20 particular car being connected with this event. It
21 does not mention any palm prints. It does not mention
22 any -- any other specific forensic evidence that may or
23 may not have tied Mr. Warner to the event but not
24 necessarily the vehicle.

25 There is no particularity whatsoever in this

1 affidavit, and I remind the court that if we're viewing
2 this under Georgia law, you cannot -- you, the court,
3 cannot consider any information that is not presented
4 to the issuing magistrate. And what I heard the State
5 argue was, Judge, you heard testimony about the video
6 and you heard testimony about the palm print. You
7 heard testimony about Crime Stoppers, and you heard
8 testimony about ballistics. You heard a lot of
9 testimony that I objected to, but under the law that
10 you are bound to use to determine the validity of this
11 warrant, you can't consider that because it was not --

12 THE COURT: I got that. Go ahead.

13 MR. HARVEY: So I'm done, then, Judge.

14 THE COURT: I'm going to deny your motion to
15 suppress. First, I put no weight whatever on the fact
16 this car was seized prior to the search warrant being
17 issued. That is of no relevance, of no cause,
18 particularly it not being owned by the defendant in
19 this matter; that, I think, the State did what it's
20 supposed to do and get access.

21 Now, I agree with Mr. Harvey that I am bound by
22 Georgia law. Looking at the totality of the affidavit
23 in this case from the four corners, although it is
24 somewhat of a paucity of it, I think it raises the
25 issue of probable cause, and there is reference to the

1 incident being captured on video and the fact that
2 there was forensic evidence placing the defendant at
3 the scene.

4 I have to say that the lack of any more
5 description on the vehicle is concerning, but that's a
6 fairly low threshold and so I'm going to deny your
7 motion as to the search of the vehicle's contents.

8 That would be a court exhibit.

9 What would be the second aspect of your -- the
10 next aspect, Mr. Harvey, of your motion?

11 MR. HARVEY: Okay. We did the search and seizure
12 of the vehicle.

13 The next, I guess, in terms of following along
14 with the warrant, Judge -- I mean, the motion, the next
15 issue would be, I guess, subsection D in the -- since
16 we're not talking about the residence and we're talking
17 about the statement that was made with regard to his
18 phone number that was taken when he was booked -- and
19 I'm sorry, that's not -- that's G. Page 10.

20 THE COURT: If I understand what your memoranda
21 says, that they offered him Miranda and he refused to
22 sign, the only thing he said in the statement in
23 booking was, "That's my phone number."

24 MR. HARVEY: "That's my phone number," yes.

25 THE COURT: Why would that be admissible?

1 MS. HUEY: Your Honor, I think he's specifically
2 referring to the audio because there was an audio --
3 when the defendant was picked up in Georgia and brought
4 to Anderson, there was an audio of this entire
5 incident. So the fact that he confirmed his phone
6 number at booking is on the audio, and I don't plan to
7 introduce that, but I do think it's admissible through
8 the booking officer because that number is the number
9 that, of course, we did get a search warrant for, and
10 that's the same number he's admitting to having used as
11 his phone number.

12 THE COURT: So do you anticipate having other
13 testimony in the record other than this audio where you
14 say that this is what he said about this?

15 MS. HUEY: Your Honor, I would intend to call the
16 detention center officer who booked Mr. Warner in and
17 admit the actual booking report that has his number on
18 it. No audios from him or anything.

19 THE COURT: Still the same thing.

20 MR. HARVEY: Yes. That's what I was going to say.

21 THE COURT: Is there any other evidence of this
22 number other than the audio of the booking?

23 MS. HUEY: Evidence of his number, Your Honor?

24 THE COURT: Yes, ma'am.

25 MS. HUEY: Well, we have subscriber information,

1 Your Honor, yes.

2 THE COURT: Ma'am?

3 MS. HUEY: We have subscriber information from
4 T-Mobile phone company that puts that as his number.

5 THE COURT: All right. Thank you.

6 Go ahead and argue your motion.

7 MR. HARVEY: Judge, it's just that that
8 information shouldn't be -- if they have other means of
9 proving the relationship between that phone and
10 Mr. Warner, they can attempt to produce and adduce that
11 evidence but not from his mouth under that statement.
12 And the booking sheet comes from his statement to them.
13 Here is what I --

14 THE COURT: Isn't there case law to the effect
15 that information contained in just casual comments in
16 booking is not considered testimony for purposes of the
17 Fifth Amendment?

18 MR. HARVEY: Judge, there is something that's
19 called the booking exception. You have been around
20 long enough to know that. But there are certain things
21 that, for example, fall outside the booking exception.

22 THE COURT: What's contained within that
23 exception?

24 MR. HARVEY: Good question, because I think it
25 necessarily varies depending upon the situation. And

1 let me give you an example.

2 For example, if somebody is arrested on a gang
3 case, one of the routine questions that I understand
4 most law enforcement asks when they are booking someone
5 is, "Are you affiliated with a gang? What gang are you
6 affiliated with?" They do that, generally speaking, to
7 determine whether or not there is -- they have maybe
8 some problems with safety or security. There may be
9 some other kinds of problems that the detention
10 facility may have to deal with. But if it's a gang
11 case and affiliation with a gang, then that's not
12 within the routine booking exception.

13 And I'll give you an exact case where they say
14 that, and that's *United States vs. Alonzo Williams*. We
15 have got copies of that. It's a Ninth Circuit decision
16 discussing the booking exception and what does not come
17 in with routine booking.

18 Now, if they're investigating, if the State is
19 investigating Mr. Warner for murder, and one of the
20 components of their investigation is a phone and a
21 phone number, calls that may have been made, then
22 asking him his phone number is the functional
23 equivalent of interrogation with regard to matters that
24 are directly related to the case and the investigation
25 of the case. He had already invoked his right to

1 remain silent and not respond after being Mirandized
2 and, therefore, this is outside the routine booking.

3 And I say that in a number of respects. First,
4 they may have other mechanisms to prove any connection
5 to the phone of Mr. -- to that phone number to
6 Mr. Warner. So this isn't the only mechanism they may
7 have or evidentiary method that they might have.

8 Two, Mr. Warner was arrested on a murder warrant
9 from Anderson County. His phone number -- he was in
10 custody. He was in custody on a probation revocation
11 warrant. He was in custody on a murder warrant. His
12 phone number is irrelevant to anything. It has nothing
13 to do with his name, his address, and any other
14 potentially relevant inquiries. So I say it's out of
15 the booking exception, and it's out of the booking
16 exception in this particular case. And I would refer
17 Your Honor to the case that we just provided.

18 THE COURT: Do you have anything that's closer to
19 home besides California? Not that I wouldn't consider
20 that.

21 MR. HARVEY: I know. Well, no, I don't. That's
22 the --

23 THE COURT: That's fine.

24 MR. HARVEY: I know. I don't. Every state
25 recognizes the booking exception, and each factual

1 scenario is different, and I do not have a South
2 Carolina case.

3 THE COURT: Is there a generalized test to
4 determine whether it's a booking exception case or
5 whether this is outside the scope of a booking
6 exception?

7 MR. HARVEY: I would suspect, Judge, that the
8 State's -- the booking exception to what may or may not
9 be routine. And I use that term in air quotes, in
10 quotes, because what's routine for one jurisdiction may
11 not be routine for another jurisdiction, and this case
12 discusses that issue.

13 And I'm sure that South Carolina would likely be
14 among the majority of jurisdictions that say, well,
15 routine questions aren't included or are included in
16 the booking procedure. But I haven't heard anything
17 about what's routine or what's not routine. I haven't
18 heard the circumstances under which the statement was
19 given. All I've heard is this number was given and it
20 came from the defendant. And I say, "Look, he's
21 already been Mirandized, he's already failed to give
22 any information," and that included his name and
23 address or birth date or any other -- his height, his
24 weight. Those are routine questions. But the phone
25 number, I fail to see how that has any relevance to his

1 detention. Height, weight, age, birth date, so they
2 can identify a particular person and those kind of
3 things I believe are routine, but I've heard nothing
4 else -- I've heard nothing that -- I'll leave it at
5 that.

6 THE COURT: Ms. Huey.

7 MS. HUEY: And, Your Honor, I would just say I
8 would elicit testimony from this detention center
9 officer who says these are the same questions she asks
10 every single time someone's booked in.

11 MR. HARVEY: We don't have that here.

12 THE COURT: Let me ask you this. I have a
13 tendency to agree with Mr. Harvey. If the focus of the
14 investigation is information being sought whether or
15 not it's routine, I mean, is there a test? Is that a
16 defined test that we use or is it a moving test? What
17 are the elements that I look at because nobody has
18 really cited me anything to look at. I haven't, quite
19 frankly, looked it up.

20 MS. HUEY: Your Honor, I don't think it's an
21 issue, and I'll just withdraw it.

22 THE COURT: I'll grant that motion to the extent
23 it's not before me.

24 All right. What's the next aspect of your motion?

25 MR. HARVEY: The next aspect of the motion to

1 suppress, Judge, is the recovery of the cell phone
2 records.

3 THE COURT: Well, didn't recovery of the cell
4 phone records take place in multiple layers? It wasn't
5 all in one fell swoop, was it?

6 MR. HARVEY: Judge, my understanding, and the
7 State can correct me if I am wrong, but there was a
8 search warrant that was issued for the cell records.

9 THE COURT: When you say "cell records," what
10 records?

11 MR. HARVEY: CSLI. And I'm going to use that as
12 an acronym, cell site location information, historical
13 cell phone records. There was a search warrant issued
14 for the -- for the obtaining of cell site records
15 associated with that cell phone. Cell phone number,
16 sorry.

17 THE COURT: Mr. Harvey?

18 MR. HARVEY: Yes, sir.

19 THE COURT: You're referring to Section H of your
20 memorandum starting at page 11 and going on; is that
21 correct?

22 MR. HARVEY: I am, Judge, yes, sir.

23 THE COURT: Tell me what your concern is with the
24 aspect that you describe on page 11.

25 Let's make a copy of that search warrant a court

1 exhibit as well.

2 MR. HARVEY: That's fine. I think it's the
3 State's burden, but I --

4 THE COURT: I'm asking. It's my burden.

5 MS. HUEY: I have a certified copy, Judge, I'll
6 pass up.

7 (WHEREUPON, Court's Exhibit Number 3 was marked
8 for identification.)

9 THE COURT: I'll be glad to hear from you.

10 MR. HARVEY: Yes, sir. Judge, I'm going to assume
11 that the State is going to admit -- the court is going
12 to admit without objection the search warrant as
13 State's Exhibit --

14 MS. HUEY: Court's Exhibit 3.

15 MR. HARVEY: Court's Exhibit Number 3 in this case
16 so we can talk about that if that's all right with the
17 court.

18 THE COURT: Sure.

19 MR. HARVEY: Thank you.

20 Once again, Judge, let me reiterate those
21 principles at least for this argument that you and I
22 and we talked about previously. That is, the court is
23 bound by the four corners even under South Carolina
24 law. And we're confined to these -- this document
25 which is Court's Exhibit Number 3.

1 First, I will state to the court that my first
2 position is as follows: This is a search warrant that
3 is directed to T-Mobile custodian of records in New
4 Jersey. I don't believe and I'd be surprised to hear,
5 Judge, that a South Carolina court has jurisdiction
6 over and can, in fact, order anybody in any other
7 jurisdiction to produce the records without following
8 the procedures of the South Carolina Uniform Act that
9 both New Jersey and South Carolina are a part of and
10 that are found in Title 19-9-10 et seq. of the South
11 Carolina code. So there is a particular procedure that
12 must be followed in order to obtain out-of-state
13 witnesses or documents. That's under the Uniform Act.

14 So, first, I say that this search warrant is null
15 and void ab initio, at the outset, because it purports
16 to require the production of documents that are held
17 out of state and issued by a court here in Anderson
18 County, South Carolina.

19 Secondly, I'm going to return to what I argued
20 previously about the quality of the probable cause
21 found within the four corners. Again, there's nothing
22 here that says the phone -- they don't even know
23 whether that phone was used. It doesn't say that we
24 think the phone was used; we have reason to believe
25 that the phone was used and we want to get records from

1 that phone. There is absolutely nothing here.

2 And again, information was received through Crime
3 Stoppers -- doesn't say what -- indicating that Justin
4 Warner is a possible suspect. All right. It doesn't
5 say what information. Crime Stoppers, of course, is
6 not inherently reliable. It's hearsay, and it might be
7 multiple levels of hearsay, but it doesn't say what
8 that information was.

9 The informant's information was corroborated.
10 What information? How was it corroborated? I mean,
11 that says absolutely nothing. It's a bare conclusory
12 statement providing no particularity whatsoever.

13 And the records search revealed that Warner has
14 this listed number to him. I don't know whether that's
15 correct or not. But let's assume that the listed --
16 that number is associated with Mr. Warner. There is
17 still nothing to indicate probable cause to determine
18 why we want to get these records.

19 Investigators believe a search of these phone
20 records will reveal important evidence in this case.
21 Okay. So? I can believe anything. The investigator's
22 belief does not rise to the level of probable cause,
23 especially given the dearth of facts in this affidavit.

24 So, one, the warrant is void ab initio. Two, I'm
25 back on the four corners, and the probable cause is not

1 established.

2 THE COURT: All right. As to the out-of-state
3 subpoena, what is your response to that?

4 MS. HUEY: Your Honor, we follow what the
5 telephone companies require of us. We do this all the
6 time. Even though they are out of state, they're
7 almost always out of state. That is what they require
8 of us. And my understanding is as long as we say that
9 you don't have to come, that it doesn't matter.

10 THE COURT: Say that again.

11 MS. HUEY: I think we can't tell them that they
12 have to come because of this subpoena. I think if I
13 wanted to mandate their attendance, then I would have
14 to come to you, as I've done before for other states,
15 and get an order from you which I would then take up to
16 a judge in that particular state.

17 THE COURT: So, in other words, you don't think
18 the statute pertains to documents, just to people?

19 MS. HUEY: The statute, I think the --

20 THE COURT: The procedure prescribed where a judge
21 asks another judge to issue a subpoena from the issuing
22 jurisdiction to get somebody's attendance at trial
23 here.

24 MS. HUEY: I think it applies to people, yes, sir,
25 and I think it applies to people who are unwilling to

1 come. I don't think you have to have a subpoena to
2 come into the courtroom and testify.

3 MR. HARVEY: Maybe I'm missing something, Judge.

4 THE COURT: Have you looked at the wording of the
5 statute? Quite frankly, I've looked at it for
6 personnel but not documents. Does it specifically --

7 MR. HARVEY: No, but it's been held to include
8 both people and documents.

9 THE COURT: It does?

10 MR. HARVEY: Yes.

11 THE COURT: What's the code section?

12 MR. HARVEY: At least the code section -- I have a
13 citation to a code section. I'm not going to represent
14 to you that that's what the code section says. But I
15 have 19-9-10.

16 THE COURT: 14-7-1700, something like that? What
17 is it?

18 MR. HARVEY: Well, no. 17-13-140 is the search
19 and seizure code section, as I understand it from
20 the --

21 THE COURT: I just want a general reference to it.

22 MR. HARVEY: But the Uniform Act is 19-9-10, at or
23 about there, et seq, but let's put that aside. There
24 was a search warrant issued. Does -- and the documents
25 were produced pursuant to this search warrant, and

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1 there is a return and a request from the sheriff's
2 office here with a fax cover sheet dated May 4th, 2015.
3 Attached with this letter is a search warrant.

4 Do you have any objection to admission of these
5 documents?

6 MS. HUEY: The fax?

7 MR. HARVEY: Judge, then I, with agreement by the
8 State -- I just didn't want to read a document to you
9 that's not in evidence -- I'm going to move this as
10 Court's Exhibit 4. Is that suitable to you?

11 THE COURT: Yes, sir. For purposes of this
12 hearing, this is going to be without prejudice to
13 either side later on.

14 (WHEREUPON, Court's Exhibit Number 4 was marked
15 for identification.)

16 MS. HUEY: I have the uniform code printed out,
17 Judge, if you would like to see it.

18 THE COURT: Yes, ma'am.

19 Mr. Harvey, under the Uniform Act to Secure
20 Attendance of Witnesses From Out of State in Criminal
21 Proceedings that was handed to me doesn't seem to
22 include documents.

23 MR. HARVEY: Well, Judge, the Uniform Act in most
24 states talks about attendance of witnesses, but it's
25 been held to include documents because the idea of

1 subpoenaing witnesses without being able to include
2 documents --

3 THE COURT: Do you have a case from South Carolina
4 that says --

5 MR. HARVEY: No, but I'd ask your indulgence --

6 THE COURT: Let me finish my question before you
7 interrupt me. I know you don't mean to, but for the
8 court reporter.

9 MR. HARVEY: I'm sorry.

10 THE COURT: It's all right.

11 You don't have a South Carolina case that holds
12 that?

13 MR. HARVEY: I do not have that now, but if you
14 would indulge me, I'll try to find that for you.

15 THE COURT: You will get me a case on that.

16 Would you identify what Court's Exhibit 4 is,
17 please.

18 MR. HARVEY: Yes, sir. Court's Exhibit Number 4
19 is the first -- it is a letter that's on the back page,
20 Judge, the way this is stapled, the letter from
21 Detective Mitchell requesting the phone records from
22 the T-Mobile custodian of records. And that's what I
23 was reading from first.

24 Secondly, there would be, I would assume with
25 that, the search warrant which has already been

1 tendered into evidence.

2 Third is the fax, facsimile cover sheet, and that
3 includes two pages, and then there is the fax, the
4 original fax cover sheet, showing a date of 5/4/15 to
5 the custodian of records. So it's a four-page
6 document, Judge, inclusive.

7 THE COURT: You're counting four pages being front
8 and back?

9 MR. HARVEY: Yes, sir. Yes, sir, I am.

10 THE COURT: Okay, sir.

11 All these are admitted for purposes of this
12 hearing.

13 MR. HARVEY: Thank you.

14 What I had been reading to the court was, attached
15 with this letter is a search warrant signed by the
16 Honorable Judge Sharp. The search warrant is
17 requesting information regarding that phone number
18 between the dates of April 26th and May 4th. The
19 information can be e-mailed back or mailed directly to
20 me through any contact information below. Thank you
21 for the help -- for all the help in this matter.

22 So, you know, Judge, the answer that this is the
23 way we always do it and in this instance it was done
24 pursuant to a search warrant, and I contend that it was
25 provided pursuant to a search warrant, the search

1 warrant not being properly issued because it was
2 without the jurisdiction of the issuing judge, and a
3 judge issuing a search warrant outside of his
4 jurisdiction is void ab initio, it's void from the
5 start, and I would contend to the court that, first,
6 the search warrant itself is void and, therefore, the
7 production of that information pursuant to that warrant
8 is void. And, secondly, the warrant itself doesn't
9 provide probable cause for the obtaining of these
10 out-of-state records.

11 THE COURT: Let me stop you right there, if I may.

12 Ms. Huey, would you agree that if Judge Sharp
13 didn't have jurisdiction to issue this warrant, that
14 anything obtained through it is void ab initio if, in
15 fact, he didn't have jurisdiction to issue it? I'm not
16 saying he didn't. I'm just saying if you take that
17 proposition as being true.

18 MS. HUEY: Is this in reference to the Uniform
19 Act, Judge?

20 THE COURT: Yeah. Under the act. If, in fact,
21 Judge Sharp did not have authority under the act to
22 issue a warrant without going through the process,
23 whether under the act or otherwise, but -- I'm not
24 saying he doesn't. I'm just saying for sake of this
25 argument, if he doesn't have jurisdiction, anything

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1 obtained would be void ab initio; would you not agree?

2 MS. HUEY: Potentially, Judge. But what is the
3 procedure to be followed?

4 THE COURT: That's not the question.

5 MS. HUEY: Well, then, I would also pass up,
6 Judge, and this is an unpublished opinion, if I may
7 add --

8 THE COURT: Sure.

9 MS. HUEY: -- and it is unpublished, but it does
10 cite *U.S. v. Graham* that says you don't even need a
11 warrant to get the cell site location information.

12 THE COURT: I'm sorry? Say that again.

13 MS. HUEY: That you don't even need a warrant to
14 get cell site location information from phone
15 companies.

16 THE COURT: Okay. Pass it forward.

17 Let me say as to the second part of your argument,
18 the sufficiency of the allegations in the affidavit,
19 although they're bare minimum, I think they're
20 sufficient, so I'm going to deny your motion in that
21 regard.

22 MR. HARVEY: That certainly takes us -- and I'm
23 not going to repeat the arguments on the second set.
24 I'm still rope-a-doping here on the first part.

25 Judge, any judge that doesn't have jurisdiction

1 can't issue a warrant of any kind whether it's under
2 the act or whether it is otherwise. And I don't think
3 there's any question but that an Anderson County judge
4 does not have jurisdiction to order a New Jersey
5 custodian to produce anything. So I think it's void ab
6 initio because the issuing magistrate did not have
7 jurisdiction at all.

8 Secondly, let me respond to the *Graham* argument.
9 I'm well aware of the split in the circuits and in the
10 district courts, and I provided a ton -- maybe too
11 much -- authority with regard to whether or not,
12 whether or not a search warrant is required for cell
13 site location information.

14 On the 18th of May, there are three cases
15 including *Graham* that are before the United States
16 Supreme Court on petition for cert. All three of those
17 cases raise the question about whether or not cell site
18 location information is subject to the Fourth
19 Amendment. That issue was first raised by Justice
20 Sotomayor in her dissenting -- in her concurring
21 opinion in *Jones* some years ago.

22 So there is a split in the circuits. There are
23 splits in the lower state court highest courts, and
24 there are splits in the district courts over whether or
25 not the Fourth Amendment applies to cell site location

1 information specifically.

2 Those -- there is a trio of cases that went to
3 conference on May 18th. It's the third recall, the
4 third reconference on this trio of cases by the U.S.
5 Supreme Court. They have not decided as of last night
6 whether to grant cert on that issue. So it's a live
7 issue. It is a very live issue, and there is a split
8 in the state courts, and there is a split in the
9 circuits. So I don't want to mislead you.

10 THE COURT: Right. I understand what you're
11 saying. Seems to me, though, my job is to apply the
12 law in its current state and not anticipate what may
13 happen on appeal. And at least, although it's
14 nonpublished opinion, as pointed out by Ms. Huey, it
15 appears that South Carolina has adopted through the
16 court of appeals the opinion that currently you don't
17 need to have a warrant to obtain this cell site, or
18 whatever this acronym is, information, because it
19 doesn't implicate the Fourth Amendment rightly or
20 wrongly.

21 MR. HARVEY: That's, I think, *United States vs.*
22 *Graham*, and that's a Fourth Circuit case.

23 THE COURT: Right.

24 MR. HARVEY: And that's South Carolina --

25 THE COURT: That is the Fourth Circuit.

1 MR. HARVEY: I understand that.

2 Now, if the South Carolina Supreme Court hasn't
3 adopted that in a published opinion, then it's still up
4 to Your Honor. I mean, you're still into the --

5 THE COURT: Well, that is some indication where
6 the thought process is at this stage. Well, you're
7 right about being unpublished opinion.

8 Okay. All right. So you're going to give me a
9 case that says the statute requires -- applies to
10 documents as well as people.

11 MR. HARVEY: Yes, sir. I'm going to try, yes,
12 sir. Yes, sir.

13 THE COURT: And your position is it applies to
14 people only, but even so, we don't need a warrant in
15 the first place?

16 MS. HUEY: Right. And I think it only applies if
17 we're not getting any cooperation from these people.

18 My understanding of that statute and when that
19 statute comes into play is when I can't make
20 communication with someone in another state and I need
21 that person here. And so then I go to another state's
22 authorities to try and do that.

23 THE COURT: Well, sure. I mean, it's like you
24 want me, and I'm a North Carolina resident, to come
25 testify for you at trial; if I said no, then you need

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1 to go through the process. If I said yes, you don't
2 necessarily need to.

3 MS. HUEY: Yes, sir. Exactly.

4 MR. HARVEY: Can I just -- one minute, 60 seconds,
5 90 great seconds. There's no showing that they
6 weren't -- that they were not cooperative, and the only
7 evidence we have is that this information was, in fact,
8 produced pursuant to a search warrant. A search
9 warrant was obtained, it was sent, and then the records
10 were sent back. So the record is devoid of any
11 evidence that it happened any other way but pursuant to
12 this particular search warrant. I know you understand
13 everything.

14 THE COURT: Let me ask you something.

15 MR. HARVEY: That was my 90 seconds.

16 Yes, sir.

17 THE COURT: Do you think it makes any difference
18 if the records belong to the company; they contain
19 confidential information about its various customers?
20 Do you disagree with that proposition?

21 MR. HARVEY: No.

22 THE COURT: So if the company wants to cooperate,
23 is there anything about them providing this information
24 of their own volition, whether it be through a search
25 warrant or otherwise, since it's their own records and

1 they do it at their own peril?

2 MR. HARVEY: I think you've asked two different
3 things, and can I answer you?

4 THE COURT: Sure.

5 MR. HARVEY: You have essentially hit the two
6 different issues that are part of the national
7 discussion at this point.

8 First, is there a privacy interest in your
9 records. That's the first question. And if the answer
10 is no, Judge, if you don't have a privacy interest in
11 them, it doesn't make any difference how you get them
12 because you can't complain about it.

13 The second issue is if you have a privacy
14 interest, does the traditional third-party doctrine
15 apply. That is, these are records, as you said, that
16 are proprietary to Verizon or Sprint or whoever it
17 might be. They're not your records anyhow. They're
18 held by a third party; and, therefore, that party can
19 do whatever it wants to with it like *U.S. vs. Miller*,
20 which was the bank record case that established the
21 third-party doctrine.

22 The cases all around the country are split on
23 these. Again, some say, look, you've got a privacy
24 interest in your cell phone because it's like the GPS
25 in the *United States vs. Jones* where you are, on a

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1 day-to-day basis --

2 THE COURT: Jones, are you talking about the
3 tracking case?

4 MR. HARVEY: Yes, sir. Yes, sir.

5 THE COURT: I thought that the Jones case was
6 issued on more notions of trespass and not from
7 privacy.

8 MR. HARVEY: Yes. I was analogizing. You're
9 absolutely correct about the facts of Jones. But the
10 cases around the country say you're able to track a
11 person's movements on a daily, almost hourly, or
12 however often that person uses their phone. If they go
13 to the doctor, if they go see -- if they're married and
14 go see a lover. It invades privacy the same way,
15 although not in the trespass classification, but that
16 there is a privacy interest. And some say, well, no,
17 it's not a privacy interest. Some cases say, well, I
18 think it's time in the digital age that the third-party
19 doctrine be vacated, that it really isn't a doctrine
20 that applies in the digital age. And that is an exact
21 quote from Justice Sotomayor in her decision that the
22 third-party doctrine should be reevaluated.

23 So two things. Is there a privacy interest, and
24 does the third-party doctrine vitiate whatever privacy
25 interest or should it be eliminated.

1 You put your finger right on those two issues.
2 And that's precisely what is in front of the U.S.
3 Supreme Court in that trilogy of cases, and it's sort
4 of bubbling up through the system now.

5 THE COURT: Ms. Huey, is there a distinction being
6 made that you can tell based on, say, for example, the
7 cell site information that's pinging off the towers
8 being not necessary to have a search warrant, at least
9 on an unpublished opinion, versus, say, text messages,
10 buddy list, phone numbers called, that kind of thing?
11 Is there a distinction being made, can you tell?

12 MS. HUEY: Yes, sir. I think potentially, because
13 that information you often have to get from the phone
14 itself where the information, cell site, is coming off
15 the towers, which is what the companies keep records
16 of. Text messages are kept for a very short amount of
17 time, if at all, with the companies.

18 THE COURT: Okay. So at this juncture I'm
19 considering, only as far as the cell phone records,
20 just the cell tower pinging information. We're not
21 into the other aspect?

22 MR. HARVEY: Yes, sir, because there wasn't any
23 text messages.

24 MS. HUEY: No, sir. We don't have any other
25 communications.

1 THE COURT: You don't have anything else?

2 MS. HUEY: No, sir. We just have the tower -- you
3 know, the records we received --

4 THE COURT: So buddy list and all this other stuff
5 is not part of it?

6 MS. HUEY: No, sir. Just the actual records from
7 the company.

8 MR. HARVEY: It's not part of it, but part of our
9 argument, you understand, is that the search warrant
10 itself is overbroad asking for texts, which is content.

11 THE COURT: Yeah, I do understand your argument.

12 MR. HARVEY: But there wasn't any produced in this
13 case.

14 THE COURT: I went to the District Court of
15 Washington, D.C., and there were a lot of those cases
16 cited -- Washington, maybe a Kansas case. Do you have
17 any Fourth Circuit cases that show a ruling one way or
18 the other on this issue?

19 MR. HARVEY: Yes, sir. I think *Graham*. There is
20 a *United States vs. Graham* that's in the Fourth
21 Circuit. The Fourth Circuit has gone with the -- it's
22 third-party records. You don't have any privacy
23 interests. And that is one of the cases that is up
24 before the U.S. Supreme Court.

25 But, yes, sir. The Fourth Circuit is contrary to

1 my position with all candor to the court.

2 THE COURT: Thank you, sir.

3 Any further motions along the lines of motions to
4 suppress? Any Franks issues as to the -- did you
5 withdraw those?

6 MR. HARVEY: Yes, sir. I'm not claiming any
7 Franks issues. I didn't -- I'm not -- anything that
8 alleged Franks, I am -- anything that relates to Franks
9 I am withdrawing.

10 THE COURT: Okay.

11 MR. HARVEY: I think we have covered the physical
12 evidence. Am I correct? Other than the I.D. and the
13 palm print, CSLI itself.

14 THE COURT: Only the I.D.?

15 MR. HARVEY: There was an I.D. by Mr. Goolsby, the
16 probation officer. And I'll just give you --

17 THE COURT: I got it. I know what you're you
18 talking about.

19 Let me ask you this. You're basically looking at,
20 what's that, the Biggers, or whatever it is,
21 identification. But don't you have to, by a
22 preponderance of the evidence, establish that the
23 process used was so -- let me just -- that there was an
24 unduly suggestive identification procedure?

25 I mean, I'm not quite sure that what occurred in

1 this case would qualify as identification procedure. I
2 mean, if I'm wrong, I'm glad to hear you tell me. It's
3 not the first time I've been wrong. It won't be the
4 last.

5 I just thought that was something that he said,
6 "That's him." But it wasn't like I called you to a
7 lineup or brought somebody to a single-person lineup
8 and said, "Is this the person?" That's not what
9 happened.

10 MR. HARVEY: Yes, it is. And I don't see any
11 substantive distinction between handing someone a
12 photograph and saying, "Is this the person," or saying,
13 "Hey, look at this one person and who is this person?"
14 It is still a showup identification. And I believe
15 that a showup identification under both the law of
16 South Carolina and the law of Georgia where this
17 identification took place is inherently --

18 THE COURT: Suggestive.

19 MR. HARVEY: -- suggestive. So if we start with
20 the proposition -- and I say "if." That's what you
21 have to rule on. If showing somebody a video clip and
22 saying, "Is this" -- you know, "Is this that person,"
23 is no different than showing somebody a single
24 photograph because you're not comparing it to anybody
25 else or comparing it to anything. It's a one-on-one,

1 essentially, showup identification. If it's inherently
2 suggestive, then, therefore, the burden shifts back to
3 the State.

4 THE COURT: Well, the way I was reading it, and
5 maybe I'm just getting it backwards, but the defendant
6 had been previously identified. The State's,
7 Georgia's, probation officer was providing photographs
8 of him, palm prints, and other information identifying
9 the defendant in this matter to the State, after which
10 they sent them a copy of these videos, "Yeah, I think
11 that's him." I just don't see it fits in the same
12 rubric that you're saying has been unduly suggestive
13 identification procedure.

14 MR. HARVEY: Well, I think you can -- then you can
15 say, Judge -- I think always there's going to be
16 somebody has been identified by other people as the
17 possible perpetrator. And then you go to somebody and
18 you say, "Here is a six-pack. Do you see that person
19 in this six-pack?" So the fact that he has already
20 been identified previously doesn't mean anything. That
21 happens in every single case where somebody is shown
22 something, or most cases where somebody is shown
23 something, so I don't think that's the determining
24 factor. I think the factor is how you do the potential
25 photographic identification, whether it's within a

1 six-pack, whether it's a single photo, or it's a video
2 that lasts 39 seconds. And that's approximately what
3 this video lasted, 39 seconds.

4 THE COURT: Ms. Huey, what's your response?

5 MS. HUEY: Your Honor, my response would be is
6 that you would not apply the Neil/Biggers standard.
7 This is -- Goolsby was not an eyewitness to the
8 incident. Goolsby knows Mr. Warner, had been his
9 probation agent for eight to nine months.

10 THE COURT: That's a good distinction. They're
11 not eyewitnesses.

12 MS. HUEY: So he's known him for eight to
13 nine months, and he would be happy to testify, Your
14 Honor. But, regardless, known him for eight to nine
15 months. His probation required face-to-face contact
16 every month in his office for ten to 15 minutes at a
17 time. So he knew him. This was as investigative tool.
18 Nathan Mitchell said, "Hey, do you think if you saw a
19 video, would you be able to recognize him?" And he
20 said, "Sure." So the purpose of that is also to say
21 maybe he wouldn't recognize him. Because you have to
22 remember, Judge, this is when the Crime Stoppers tip
23 has come in, and we're just figuring out what there is
24 to know about Mr. Warner, so it was to rule in and rule
25 out at the same time.

1 THE COURT: I don't believe, as I told you before,
2 this is a Biggers situation. You don't have
3 out-of-court identification as far as an eyewitness. I
4 just don't think it is. It is concerning, but -- and
5 you don't think Biggers is implicated whatsoever in
6 this matter?

7 MS. HUEY: I don't, Your Honor.

8 THE COURT: I don't either.

9 What's the next issue?

10 MR. HARVEY: All right. So I'm assuming, then,
11 Judge --

12 THE COURT: Sir?

13 MR. HARVEY: I'm assuming, then, that you are
14 overruling my motion, finding that --

15 THE COURT: It's unduly suggestive, yes.

16 I'm finding that a Biggers out-of-court
17 identification is not implicated in this case.

18 MR. HARVEY: All right. I understand. I
19 understand your ruling, Judge.

20 I guess the next issues are the in limine on the
21 admission of the palm print and the admission of the
22 cell site location information.

23 THE COURT: Say that again, please.

24 MR. HARVEY: The admission of palm print evidence
25 and the admission of cell site location information,

1 expert testimony with regard to those.

2 THE COURT: Palm print, and did you say cell
3 tower?

4 MR. HARVEY: Cell site. The cell site information
5 we just talked about, Judge.

6 THE COURT: Did you brief that?

7 MR. HARVEY: I did.

8 THE COURT: Okay.

9 MR. HARVEY: And --

10 THE COURT: I read it all. I mean --

11 MR. HARVEY: In the motion in limine?

12 THE COURT: Sir?

13 MR. HARVEY: In my motion in limine?

14 THE COURT: I did, both of them.

15 MR. BYRHOLDT: Your Honor, it's a short motion.

16 THE COURT: What part of the in-limine motion is
17 it, Mr. Byrholdt?

18 MR. BYRHOLDT: This is the eight-page motion.

19 There is a 56-page and a 30-page. This is a short
20 motion that was served.

21 THE COURT: I'm just asking where this discussion
22 is in the memorandum. If you don't have it, hand me
23 the motion.

24 MR. BYRHOLDT: It's in the motion. I don't know
25 if you have that one before you.

1 THE COURT: I don't have anything but your
2 memoranda.

3 (WHEREUPON, document handed to the court.)

4 THE COURT: All right. Thank you.

5 So cell site location. We've argued palm print
6 and shoe print; is that correct?

7 MR. HARVEY: Well, yes. Yes and no.

8 THE COURT: Okay.

9 MR. HARVEY: I'm giving you a lawyer answer.

10 THE COURT: I get them every day.

11 MR. HARVEY: The yes part is the gathering of the
12 information has been argued. Whether that's within the
13 Fourth Amendment or whether it was gathered, it was
14 obtained properly.

15 THE COURT: As to the cell site?

16 MR. HARVEY: As to the cell site location
17 information.

18 The second part of that is does it require expert
19 testimony? Is expert testimony admissible? Is it
20 reliable enough for expert testimony to be admissible?
21 Same thing with the palm print evidence. So we know
22 it's been gathered. The next question is, is it
23 admissible. So it's two separate columns. And now
24 we're on the is it admissible.

25 THE COURT: Well, I assume what you're saying is

1 at the time they seek to introduce their expert
2 testimony, then you will have to voir dire him and seek
3 not to have him qualified and seek to have it excluded
4 then.

5 MR. HARVEY: I do, but ordinarily that's done
6 outside the presence of the jury before --

7 THE COURT: It is. And it will be done again that
8 way.

9 MR. HARVEY: -- before opening arguments so we
10 know whether or not --

11 THE COURT: Well, voir dire of an expert normally
12 is not outside the presence of the jury, but if you or
13 the State has any issues at this trial that you think I
14 need to take up outside the presence of the jury in
15 camera, then you obviously need to let me be aware of
16 it and I'll be glad to do it. We need to protect the
17 record.

18 MR. HARVEY: That's why I filed the motion in
19 limine because I believe it needs to be taken up before
20 we argue it or before the evidence is presented because
21 I think under South Carolina law -- and I have South
22 Carolina law in there -- under 702, that you're the
23 gatekeeper of this information.

24 I will tell you that I've looked for any 702 cases
25 about the admission of palm print evidence in South

1 Carolina. I didn't find any. I found cases where they
2 talked about recovering palm print evidence.

3 THE COURT: What? Recovering?

4 MR. HARVEY: Recovering and perhaps its use at
5 trial, but I saw no South Carolina cases discussing its
6 admissibility as a scientific matter.

7 THE COURT: What would be the difference in palm
8 print and fingerprint? Is there a difference?

9 MR. HARVEY: There is a difference between palm
10 prints and fingerprints. The palm, of course, is
11 bigger. It has more areas, and it has different kinds
12 of physical ridge endings and locations, which is one
13 of the problems they have with trying to get palm
14 prints into the AFIS system because it's so big
15 compared to the small area of fingerprints that there's
16 no physical mechanism to do that at this particular
17 point. And there are different kinds of friction ridge
18 impressions that are found in the palm than there are
19 on fingers.

20 THE COURT: Well, at this juncture I can't make a
21 call based on your arguments.

22 Does anybody have an objection to, when you start
23 to have your person qualified as an expert, we do it in
24 camera? Any problem with that?

25 MS. HUEY: I don't, Your Honor. I believe he's

1 also here if you would like to go ahead and do that.

2 THE COURT: Sure. Do you want to go ahead and do
3 it today?

4 MR. HARVEY: Sure. That would be fine.

5 THE COURT: Let's do it. Let's take about a
6 five-minute break and come back and get that done.

7 (WHEREUPON, a recess was taken from 3:15 p.m. to
8 3:29 p.m.)

9 THE COURT: All right. We're back on the record
10 and with regard to cell site location, palm print, shoe
11 print information in this case. You have an expert in
12 cell site location analysis or palm print?

13 MR. HARVEY: Both of those.

14 THE COURT: Ms. Huey.

15 MS. HUEY: Yes, sir. And so at this time would
16 you like to proffer testimony regarding that?

17 THE COURT: I would.

18 MS. HUEY: Your Honor, the State calls David
19 Church from the FBI.

20 THE COURT: And particularly, we're looking at
21 qualifications of them as an expert, and I assume from
22 what I'm hearing, the qualification of him for this
23 type of evidence coming in the record in the first
24 place as being scientific.

25 MS. HUEY: Or specialized knowledge.

1 MR. HARVEY: Yes, or specialized knowledge.

2 DAVID CHURCH,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: If you would take the witness stand,
5 please, sir, and state your name and spell your last
6 name for the reporter, please.

7 THE WITNESS: My name is David Church,
8 C-h-u-r-c-h.

9 DIRECT EXAMINATION

10 BY MS. HUEY:

11 Q Agent Church, what do you do?

12 A I'm an FBI agent in Roanoke, Virginia.

13 Q How long have you been employed by the FBI?

14 A A little over 20 years now.

15 Q Prior to that, what did you do?

16 A I was a patrol officer and investigator for the
17 Greer Police Department here in South Carolina.

18 Q And where did you go to school?

19 A I went to Clemson University.

20 Q Could you please give the judge the background
21 about what you've been doing with the FBI.

22 A Yes. So when I got into the FBI ATF, after the
23 training academy, I was transferred to Brownsville,
24 Texas where I spent approximately three years. I
25 worked in primarily violent crimes. And I believe

1 1999, summer of 1999, I transferred to Quantico,
2 Virginia and worked as a full-time tactical operator on
3 the hostage rescue team.

4 One of my primary duties on that team was
5 operating, among other things, our communication
6 equipment both overseas and in the United States during
7 training and actual operational missions. Then I was
8 transferred to Roanoke, Virginia in 2007.

9 Q And so what's your current assignment?

10 A Currently, I am in the Roanoke, Virginia office,
11 which is a smaller office outside of the Richmond
12 headquarter office in Virginia. We cover about 14
13 counties in that area of Southwest Virginia. I
14 primarily worked violent crimes on a violent crime task
15 force until recently. I became a national asset for
16 the Cellular Analysis Survey Team.

17 THE COURT: What now?

18 THE WITNESS: I became a national asset. It's
19 just a full-time position within the Cellular Analysis
20 Survey Team. So now I actually answer to our unit and
21 headquarters but still reside and work out of Roanoke,
22 Virginia.

23 BY MS. HUEY:

24 Q So what are some of your duties and
25 responsibilities for the task force?

1 A Primarily working -- my day-to-day activities are
2 analyzing cell phone records. And with the
3 investigations not only in Roanoke, whatever
4 investigations that the task force may be working,
5 possibly fugitive cases, missing person cases, but also
6 for the region assisting local and state agencies
7 within our area but also in other states when needed.

8 Q So what is CAST?

9 A CAST is an acronym. It stands for the Cellular
10 Analysis Survey Team. It's a unit that was formed in
11 2010 at FBI headquarters.

12 Q And what does it do?

13 A CAST specializes in the analysis of historical
14 cellular phone records and cell site analysis. So
15 when, you know, basically, we get requests from --
16 whether it's within the FBI, our own agency, other
17 federal agencies, state and local agencies, to analyze
18 records as part -- they obtain as part of their
19 investigations.

20 Q What's the primary duty of a CAST agent?

21 A Primarily to analyze records and assist local,
22 state, and federal agencies with their investigations,
23 whether it be -- primarily violent crime
24 investigations, although I have worked on terrorism
25 cases and public corruption cases with analyzing those

1 records also. But primarily it's violent crime cases,
2 assisting those agencies, and missing persons.
3 Fugitive cases, too.

4 Q Why was CAST created or formed?

5 A In 2010 -- well, prior to 2010, there were several
6 agents that were already using analysis and techniques
7 of analyzing cell phone records to assist with
8 investigations. And in 2010 they just saw the growing
9 need of that ability to help with the investigations
10 because cell phones were becoming more prominent and
11 growing in its usage and the impact that it had for the
12 investigations. So the unit was formed to help with
13 that. You know, everyone nowadays has a cell phone.
14 Some people have two. And when those phones are used,
15 whether it's just for a text, a voice call, an e-mail,
16 it communicates with a tower. And when it does that,
17 the cell carrier creates a record, and those records
18 are what are obtained that we analyze.

19 MR. HARVEY: Excuse me. I'm sorry, Agent Church.
20 The acoustics here are somewhat difficult.

21 THE COURT: If you need to, move up.

22 MR. HARVEY: When you turn your head and talk to
23 the court, I can't hear you when you do that. Just
24 speak up a little louder. Thank you.

25 THE WITNESS: Yes, sir.

1 THE COURT: Go ahead and repeat the last thing you
2 said, please.

3 THE WITNESS: I was just explaining why CAST was
4 formed. So CAST was formed to assist state and local
5 agencies in the growing use of cell phone analysis and
6 record analysis in their investigations. I was
7 explaining that cell phones, you know, are in use very
8 prominently, as it's growing by the year by leaps and
9 bounds. Some people have one to two, maybe possibly
10 even three cell phones now. And every time a cell
11 phone is used, whether it's a text, voice call, an
12 e-mail, browsing the Internet, records are created.
13 And those records are what law enforcement can obtain
14 from the carrier, and we assist in analyzing those
15 records. And, more importantly, they provide cell
16 location, cell site locations, that we can put on a map
17 to show approximate locations of phones.

18 BY MS. HUEY:

19 Q So how many cases or requests for historical
20 record analysis has CAST performed since 2010, the
21 entire team?

22 A There's been -- we have had over 4,000 requests.
23 I think the number of actual -- for testimony is around
24 1,300 now. So well over a thousand.

25 Q How many CAST agents are there right now?

1 A There's currently 62 certified CAST agents.

2 Q So what is historical cell site analysis, then?

3 A So like I was saying earlier, when someone uses a
4 phone, when I use my phone or anyone uses their phone,
5 that creates a record within that carrier's network.
6 And those records are compiled on what we call CDRs or
7 call detail records. Those records can be obtained
8 from the cell phone company, and they contain
9 information such as the numbers that are being called,
10 who may have called a particular number, the duration
11 of those calls, the dates and times of those calls, and
12 again, more importantly, the actual cell tower, and in
13 some cases, the sector that was used during that
14 communication or particular communications.

15 Q So in speaking of the cell site and sector
16 information, what do you mean by that?

17 A So not only does the carrier have the call detail
18 record of what the activity of the phone is doing, they
19 also keep a list of their towers, the locations, the
20 address and coordinates of each tower that they have in
21 their network all throughout the United States. So
22 that list provides not only the location but the number
23 of rays or antennas that are on that particular tower,
24 whether it's three to six. Typically, there's
25 three-sided and three-sectored towers. They provide

1 the direction those antennas are pointed. And by
2 giving an azimuth or an orientation of where those
3 antennas are pointed, and with that information, we
4 match that up to the call detail record for the
5 particular phone from that particular carrier, and
6 again, we can display that on a map in relationship to
7 known or addresses that are of interest to the
8 investigation.

9 Q Now, can you pinpoint a specific person with this
10 information?

11 A No. With the historical record, all we can get
12 from that is the actual phone numbers, not who was
13 actually using the phone.

14 Q So you are a certified CAST agent, then; is that
15 correct?

16 A Yes.

17 Q What qualifications do you need to become a
18 certified CAST agent?

19 A Well, primarily to be certified and become an
20 expert, it's three things. First, knowledge of how
21 cellular networks operate that we get through our
22 experience and training, experience analyzing volumes
23 of call detail records from all the major phone
24 carriers, and then the practical experience of actually
25 applying and analyzing those records to impact cases

1 and being able to geolocate phones. And, in other
2 words, just effecting and impacting investigation by
3 using those techniques while you're analyzing the
4 record.

5 Q What training did you receive to become a CAST
6 agent?

7 A So to become a certified CAST agent, I think it's
8 a minimum of 330 hours of different specialized
9 training. Over the last three to four years, I have
10 had over 500 hours of specialized training, training in
11 radio frequency theory, training by all the major
12 carriers, their compliance personnel, along with the
13 engineers that actually set up the networks, training
14 in advanced cellular record analysis, network survey
15 tools, testimony, expert testimony.

16 Q Were you required to pass a test or an exam?

17 A Yes. All the advanced training, we're required to
18 pass, whether either written test or, in some cases,
19 also practical exercises before we can be certified.

20 Q And do you continue to receive training and
21 education?

22 A Yes. Every year we have an annual training
23 conference, and, again, we meet with the -- part of
24 that is meeting with all the carriers, compliance
25 personnel, the engineers, again to get updates on their

1 network, any changes, things that we need to be aware
2 of as we look at the different records. Sometimes
3 records change as far as the format, how they're
4 presenting them.

5 Q Do you ever provide training?

6 A Yes. I'm a certified instructor with the FBI. I
7 provide basic and advanced level classes, cellular
8 analysis, to state and local agencies and sometimes
9 federal agencies also. I also help develop training
10 plans for some of our basic classes and advanced
11 classes.

12 Q How many times have you performed historical cell
13 site analysis approximately?

14 A Consistent with being certified, I've worked over
15 150 cases and analyzed hundreds of records. Typically,
16 every case has multiple phones involved with it.

17 Q And have you testified as an expert on this topic
18 in court before?

19 A Yes, 11 previous times.

20 Q And in what courts?

21 A Several courts in Virginia, courts in North
22 Carolina, and in the federal court in District of
23 Columbia or Washington, D.C.

24 Q And is cellular telephone record analysis
25 reliable?

1 A Yes. Phone companies keep their record for a
2 number of reasons. One that's very important for them
3 is they need to make sure that their network operates
4 efficiently and that their customers are happy with the
5 service they're getting because, obviously, they're in
6 the business of making money. So they use those
7 records to make sure that their customers are getting
8 connected to the network and being able to -- and they
9 can monitor what's going on so if there are trouble
10 areas, they can improve and fix those and thereby
11 keeping their customers, gaining new customers.

12 They also do it for billing reasons. You know,
13 now you don't get billed for everything like you used
14 to when cell phones first came out, but you still pay
15 for data and things like that, so they have to keep up
16 with that.

17 The third thing is as far as like the national 911
18 system that we have in this nation, they're required --
19 the carrier is required to at least be able to provide
20 the tower and sector that a phone used when it called
21 911 so if someone called 911 and couldn't say where
22 they were, they can at least determine the approximate
23 area to get someone help if needed.

24 MS. HUEY: Your Honor, at this time, we'd offer
25 David Church as an expert in historical cellular

1 telephone record analysis.

2 THE COURT: Voir dire?

3 MR. HARVEY: Yes. Thank you, judge. I assume
4 it's okay to stand here.

5 VOIR DIRE EXAMINATION

6 BY MR. HARVEY:

7 Q Good afternoon. It's Special Agent Church,
8 correct?

9 A Yes, sir.

10 Q Good. Good afternoon. How are you?

11 A I'm good. How are you?

12 Q Good. Thank you.

13 As I understand it, you are an FBI agent currently
14 assigned to the CAST unit. And you told us that the
15 CAST unit is the Cellular Analysis Survey Team,
16 correct?

17 A Yes, sir.

18 Q And the primary function, one of the primary
19 functions of the Cellular Analysis Survey Team is to
20 analyze records, correct?

21 A Yes.

22 Q Provide assistance in analyzing those records to
23 whoever might request that assistance and to determine
24 whether you're going to provide that assistance?

25 A Correct.

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1 Q And then, perhaps, come down and testify like
2 you're doing today, correct?

3 A Correct.

4 Q And I think you told us a little bit about what
5 you do in analyzing those records. And let's at least,
6 for the court, take that one step at a time.

7 In order to analyze records, you've got to have
8 records, right?

9 A True.

10 Q Okay. Because you can't analyze nothing, right?

11 A Correct.

12 Q All right. And, secondly, you've got to get those
13 records. And when you get those records, you have to
14 determine what's on those records because different
15 carriers provide different kinds of records, correct?

16 A That's true.

17 Q And oftentimes, is it not true, along with the
18 records, the carrier provides you with a sheet that
19 says -- at least provides an explanation for what's on
20 their particular records, correct?

21 A And most of the time the carriers will provide the
22 requestor with an explanation sheet. If not, you can
23 usually call and request.

24 Q So what you get is a record provided by the
25 carrier and oftentimes a key -- I'm going to call it a

1 key -- a key to some of the, I guess, acronyms that
2 they use in their records, right?

3 A Yes. Those are available. I can't say that you
4 get it every time. I have seen cases where there's not
5 included with the request, but, again, I think you can
6 usually call and get them.

7 Q Right. And they will explain what the -- I'm
8 going to say columns -- the columns are on their
9 spreadsheet, correct?

10 A Yeah, they do. And it depends on the carrier.
11 It's very basic. And sometimes in the explanation they
12 will use terms that you would have to understand there,
13 too. So it's really dependent on the carrier and how
14 detailed they get in the explanation.

15 Q And I'm going to talk about some of that detail
16 because when you get records, you get -- generally get
17 records via a spreadsheet from the company, correct?

18 A Yes.

19 Q And that spreadsheet are records kept by the
20 company provided either pursuant to subpoena or
21 otherwise to either a federal law enforcement agency or
22 a state law enforcement agency, correct?

23 A Correct.

24 Q They -- they being the phone companies -- do not
25 release those to private individuals even through a

1 subpoena, do they, to your knowledge?

2 A I really couldn't answer that. I don't know.

3 Q Okay. But they deem it as proprietary
4 information, do they not?

5 A The actual record?

6 Q Yes.

7 A Yeah. I think for the most part they view it as
8 somewhat proprietary.

9 Q Now, those records include such things as the
10 number that the phone call generates from, right? In
11 other words, if you're looking at a 8602 number, it
12 shows that this call came from 8602?

13 A Yes. It's going to have different columns.
14 Column number, the dialed digits.

15 Q But the column number and the dialed digits, those
16 are in terms of phone numbers, correct?

17 A Correct.

18 Q All right. So it doesn't take a lot of expert
19 knowledge to see or to understand that one number
20 called another number, right? I mean, those are the
21 first few columns on any phone records that you get --
22 number, number dialed, number that it went to?

23 A Yeah. They call them -- every company calls it
24 something different, you know, the way they label the
25 headers. But you're right. Just looking at one

1 column, if there's numbers there and they're actual
2 phone numbers, then no. But there's also numbers that
3 are thrown in there that aren't actual numbers that you
4 have to be able to decipher.

5 Q And you decipher those from the key that you get
6 from the company, or you call the company and say,
7 "Hey, what are these numbers?"

8 A Yeah. A lot of times you're going to have to call
9 the company because the key may not have it there. And
10 I'm referring -- just to explain, I'm referring to
11 routing numbers that may route a particular call that
12 is an actual number or that's not assigned to a person.

13 Q Right. But the key here is that you can see the
14 number, you can see the number it calls or the number
15 that calls it?

16 A Yes.

17 Q Then the -- these records also include the time or
18 the length of the call, correct?

19 A Yeah. Usually it's called duration.

20 Q And sometimes that's in terms of precise seconds.
21 Sometimes it's in terms of, I guess, rounding it up to
22 like one minute even or whatever it might be, but it's
23 the duration of the call, correct?

24 A And that is different. That differs between
25 carrier. Just as an example to explain, the T-Mobile

1 records, it will show 60 seconds' duration for all the
2 texts. And we know that text doesn't last. A text is
3 an instant delivery of a message. That just comes back
4 from the old billing where you would be charged a
5 minute for that text so that's why it's there.

6 Q And often the records distinguish between data
7 usage and voice calls as well?

8 A If that particular -- it depends. Like for
9 T-Mobile, again using that same example, there is a
10 column that shows the call type. Sprint, for example,
11 doesn't show that. So you have to know, based on
12 several different factors as you're looking into the
13 record, whether it's a text or voice. It doesn't
14 plainly say it.

15 Q Or you can ask them or they have a key, right?

16 A Well, from my experience, depending on who you
17 ask, you get different answers just like anywhere in
18 life. But, yes, you can call and ask.

19 Q You've got phone numbers. You've got duration.
20 One of the things that you have also is, I guess, a
21 location of the tower that the call pinged from,
22 correct?

23 A Well, in the CDR, it depends on the call detail
24 record, what company, as to whether or not you get a
25 tower location.

1 Q So without a tower location, it would be pretty.
2 hard to geolocate anything, right?

3 A That's why I was saying before they have a tower
4 list also, which is a separate record, and you have to
5 be able to match the information from one to the
6 another to accurately depict it on a map.

7 Q But that matching -- look, if they say tower 1513
8 is at longitude and latitude, right, and then you go
9 back and match the phone came from 1513, you know it
10 was at that longitude and latitude, right? That's what
11 you're talking about interrelating, right?

12 A Yes, but it's not just as simple as that.

13 Q Well, what else do you do?

14 A So, again, every record is a little different. So
15 the way that Sprint provides their record and the names
16 they use for towers and switches and different things
17 are labeled differently. And then every carrier has a
18 tower list also. So, let's say the example of T-Mobile
19 and AT&T, that's two carriers that actually do provide
20 the tower location, but within that record, sometimes
21 those columns will be blank. So you have to go to the
22 tower list. So, one, you have to access the tower
23 list.

24 Q Hold on. Let me stop you there. I'm sorry if I'm
25 interrupting you.

1 If it's not on the records, you just have to get a
2 tower list which shows the longitude and latitude of
3 that particular named or numbered tower, right?

4 A That's correct. But you have to be able to
5 accurately find the proper tower in there out of the
6 thousands that they have.

7 Q Right. But they're going to have a record of
8 that?

9 A Yes.

10 Q And it's like 1513 is going to be at longitude and
11 latitude. They don't put 1513 longitude and latitude
12 in the records, right?

13 A The 1513, in the nation there could be hundreds of
14 towers that are 1513. You have to further define the
15 1513 you're looking for.

16 Q Well, you define that by the company that
17 you're -- whose records you're looking at. You're not
18 going to look at AT&T if you're looking at -- if your
19 phone is T-Mobile, right?

20 A That's correct. But within T-Mobile, they will
21 have hundreds of 1513 towers because they -- I can
22 explain if you want to know why they do.

23 Q Sure.

24 A Within the way they set up their network, it's
25 kind of like I equate it to an address. You have an

1 address, you obviously have a ZIP code which gets you
2 in a region of where that letter is going. Let's say
3 it's the ZIP code for Anderson. Within that ZIP code,
4 you can't get it to a particular person without knowing
5 the street it goes to. So there will also be multiple
6 streets. And then you need to know, obviously, the
7 street number.

8 So let's just say 100 Main Street in Anderson,
9 South Carolina. Well, it's a similar thing with these
10 records. So there's multiple towers that could be in
11 different regions, so you have to know what switch. So
12 there's other columns in the records that show you a
13 switch. They name them different things. T-Mobile and
14 AT&T call it a LAC. That's Location Area Code. So you
15 have to make sure you're looking in the proper switch
16 or LAC for those records. Verizon calls it network
17 element name. Sprint has an acronym called NEID that
18 defines that. And then even within the towers and the
19 sectors, you have to understand the manufacturer of the
20 tower because of the way they number the sectors; you
21 could get confused and map a sector that shows two and
22 it's actually one. And I can explain that if you want
23 me to.

24 Q Well, we haven't gotten to the towers.

25 A I'm sorry. I got ahead.

1 Q We're just at the information on a particular
2 record either includes a tower number or includes a
3 latitude and longitude of the particular tower,
4 correct?

5 A Sometimes, yes, and sometimes it doesn't.

6 Q All right. And if it doesn't, how do you get the
7 information?

8 A We match up what's in the call detail records. If
9 it has -- if, for a particular communication within a
10 record, if it has a -- if the record is providing a
11 tower and, obviously, the switch and a sector, we can
12 go get that tower list either from the carrier, or
13 there is a database that the carrier puts theirs in, so
14 historically we can go back and get an electronic copy
15 of the tower to match up.

16 Q Okay. So it's essentially either the latitude and
17 longitude and the tower number are there, the tower
18 number may be there, and you can go into a database and
19 try to find that tower number or location. It's
20 accessing databases is what you're doing to find the
21 information about a particular tower, correct?

22 A We're acquiring tower lists to match up. And even
23 when there's the tower information in the record, we
24 confirm that with the tower list to make sure it's
25 accurate because there could be, you know --

1 Q Sure. So you're looking at a list, and then you
2 go to another list and you say this matches up, right?
3 I mean, that's -- correct?

4 A In the case where they provided that information,
5 yeah, we would be confirming it. Or if it's not there,
6 we would go there to accurately put it on a map.

7 Q Okay. So you're taking the data and then trying
8 to accurately put it on the map. And when you can
9 accurately put it on the map, you have longitude and
10 latitude information, right?

11 A Yes.

12 Q And latitude and longitude information can be used
13 to go into, for example, Google. You put the latitude
14 and the longitude into Google, and it will show you
15 exactly where it is, right?

16 A True.

17 Q And that's how you geolocate a particular tower.
18 In fact, what you did in this case was you went to
19 Google Maps with the longitude and latitude that was
20 provided in the records, correct?

21 A In a very simplistic way, yes. We have software
22 that will automatically do it, and it loads all the
23 towers.

24 Q So you've got good software, but I or any one of
25 these people out here can get a longitude and get a

1 latitude; they could go to Google Maps and they can
2 find exactly where that tower is, right?

3 A I would -- I can't speak for everybody, but, yes,
4 it is that -- if you plug in a latitude and longitude
5 in Google Maps, it will show you the point on the map
6 where that is.

7 Q So if the records have -- if the records that you
8 get in a particular case have the number dialed, the
9 number out, the duration, the tower number, and the
10 longitude and latitude, all you've got to do is pump in
11 the longitude and latitude in Google and you will see
12 where the tower is, right?

13 A If that record provides the longitude and
14 latitude.

15 Q Yes.

16 A Which in most cases, maybe half the cases at most,
17 it does.

18 Q And if you don't, you get their records and then
19 you punch in the longitude and latitude on Google and
20 you can find out where the tower is?

21 A Yes. If you can identify properly the tower
22 that's being used, then yes, you can put in the
23 latitude and longitude and identify that on a map.

24 MR. HARVEY: Thank you. That's all I have at this
25 time, Judge.

1 THE COURT: What particular area are you asking
2 this, historical cell site analysis?

3 MS. HUEY: Historical cellular telephone record
4 analysis.

5 THE COURT: Ma'am?

6 MS. HUEY: Historical cellular telephone record
7 analysis.

8 THE COURT: May I ask a question, too, just to
9 clarify something in my mind?

10 MR. HARVEY: Only if it's a good question.

11 THE COURT: It depends.

12 MR. HARVEY: With all due respect.

13 THE COURT: Gotcha. What is the net result, end
14 result, of this information you obtain from the various
15 cell companies? What is it that you are finding out?
16 In other words, once you obtain -- you minefield this
17 data from the various records from these companies,
18 what conclusions are you able to draw?

19 THE WITNESS: Okay. So, again, just to go back to
20 help explain, the carrier provides a call detail
21 record, and they come in different shapes and sizes.

22 THE COURT: I got that.

23 THE WITNESS: So we interpret based on the
24 nomenclature they're using to identify --

25 THE COURT: Interpret, that's what I'm asking.

1 What are you concluding from your interpretations.

2 THE WITNESS: Well, the end result is we are
3 drawing conclusions of the approximate locations of
4 where a phone could be. Now, we don't do that with
5 just tower locations. We do that by identifying the
6 side of the tower that's there. And then not only do
7 you need to know where that one tower is, you need to
8 understand that and to draw that conclusion, you have
9 to know where the other towers that neighbor that
10 tower, that particular tower that was used, in order to
11 draw that conclusion. The reason being, obviously,
12 cell phones are mobile. That's why they made them, so
13 we can move around with them.

14 THE COURT: Let me ask you this. What I'm looking
15 at is when you are looking at these records, and in
16 questions from Mr. Harvey, it sounds like you're just
17 grabbing information from one set of records and then
18 plugging them into another set like Google. Or are you
19 extrapolating information you have from the records you
20 received from the phone companies and then coming up
21 with your own conclusion based on that?

22 THE WITNESS: Yes. So we are, again, having to
23 look at both sides of records, look at the -- you know,
24 in his question, yes, you can take a latitude and
25 longitude that you find in any record and put it on a

1 map. But if the phone didn't use the other towers
2 nearby, then that's not going to be in the records. So
3 you need to also be able to also load all of those in
4 there and then understand how networks work in order to
5 draw a conclusion on the approximate location, not a
6 precise location, but an approximate area where the
7 phone would be to use that side of a tower.

8 THE COURT: Have you done studies to determine how
9 accurate your conclusions are as to your approximation
10 of where the cell use is going on?

11 THE WITNESS: I guess I would have to --
12 studies --

13 THE COURT: I mean, you said to Ms. Huey, yes,
14 it's reliable. Besides the boilerplate response, how
15 do you determine that it's, in fact, reliable?

16 THE WITNESS: Well, the best way we know it's
17 reliable is because we do this on a daily basis.
18 There's 62 of us now that are doing it, and we
19 regularly find people that we are looking for, or help
20 look for, by analyzing those records. And we do that
21 by mapping, putting it on a map. But there's more to
22 it than that. We actually look at the totality of the
23 record. So it's not just grabbing a lat long and
24 throwing it on a map and guessing where a phone may be.

25 When we're looking at those records, we can do

1 things with those records to pull out phone numbers
2 that are being talked to, find out addresses for those
3 numbers, plot those against where the phone is being
4 used, and using common sense and investigative
5 knowledge and your expertise in knowing how a network
6 operates, determine where to go look for a phone. And
7 we successfully do that, you know, every week, our unit
8 does. So to me, I mean, the practical application of
9 it is the best study.

10 THE COURT: Any questions from the State as a
11 result of mine?

12 MS. HUEY: Nothing else from the State.

13 MR. HARVEY: Yes. Thank you.

14 THE COURT: Follow-up questions?

15 MR. HARVEY: Yes, sir. Thank you.

16 VOIR DIRE EXAMINATION (Resumed)

17 BY MR. HARVEY:

18 Q I'm truly confused. Here is what I understand
19 that you do. You get a longitude and latitude, whether
20 it's from the phone companies' internal records or
21 whether it is from the spreadsheet that they give you,
22 but they give you a particular tower that they claim
23 the phone used when making a call at a specific time,
24 correct?

25 A And the sector, normally.

1 Q Okay. Yeah, and the sector. But that's part of
2 the records, right --

3 A Correct.

4 Q -- what you get. Okay.

5 And when you talk about geolocating those, if you
6 have a longitude and a latitude, you plug that in, plug
7 it in on Google and find out where that tower is.

8 Have you found that they give you fake, false,
9 alternative fact longitudes and latitudes?

10 A No.

11 Q Okay. So that if they give you a longitude and
12 latitude, has there ever been an occasion where you
13 said, "This phone didn't ping off that cell tower"?

14 We're talking about -- you know, we look at more
15 of this. We're trying to find where a phone may be.
16 If you get a longitude and latitude, that's where you
17 show the phone was in that either sector or area,
18 correct?

19 A Correct.

20 Q Okay. And when you say, in looking at all the
21 circumstances, you see a call at 12 o'clock and the
22 call is at Tower X and the next call is at 12:05 and
23 it's at Tower Y, and that Tower Y is 20 miles south,
24 you draw the conclusion that the phone is moving south.
25 That's what you do, right?

1 A In that particular instance, yes.

2 Q All right. And that's all you do in that
3 particular instance, is you get a latitude and
4 longitude, you plug it into a Google Map, and get
5 another one for the next call or next five calls, and
6 you say, "Here is the direction that the phone was
7 going," right?

8 A That's not all I do, but that is part of what I
9 do.

10 Q Okay. I get that's not all you do. But if that's
11 the information you have, you're not tracking it
12 against another phone; you're not trying to locate a
13 phone; you're just trying to locate where that phone
14 was used at a certain time. You get that from the
15 information provided by the phone company, you can plug
16 it into Google, and anybody can show that course of use
17 on the phone. Anybody, any high schooler that knows
18 how to use Google?

19 A I mean, I would imagine. I can't answer that
20 question, if anybody can.

21 MR. HARVEY: That's all I have.

22 THE COURT: Follow-up?

23 MS. HUEY: Nothing further.

24 THE COURT: Thank you, sir. You may step down.

25 THE WITNESS: Thank you.

1 THE COURT: Mr. Harvey, Mr. Byrholdt, whoever.

2 MR. BYRHOLDT: Your Honor, earlier you asked about
3 the power of magistrate to issue a warrant, the
4 statute. I pulled that statute. It's 17-13-140. And
5 it's -- the second line is the pertinent part, the
6 issue of having jurisdiction over the area where the
7 property is sought. That's all they can do.

8 THE COURT: I'll be glad to hear from you with
9 regard to the expertise of this last witness and the
10 historical cell site analysis.

11 MR. HARVEY: There are, I think, two components
12 here.

13 First, I don't think this is a science. It seems
14 to me to be a skill or otherwise, and I think it is
15 likewise covered by South Carolina Rule of Evidence
16 702. I don't think that this is, what we used to say,
17 beyond the canon of an average juror. My position,
18 Judge, is that this does not require an FBI agent to
19 say, "Hey, we get the longitude and latitude from the
20 phone company. We can plug it in with our software,
21 and we can identify where a cell tower is." I can do
22 that. I promise you I can do it.

23 THE COURT: You might be able to. I couldn't.

24 MR. HARVEY: And I think anybody here can get a
25 longitude and latitude, go to Google and find out

1 precisely where that is.

2 THE COURT: Let me ask you this, Mr. Harvey.

3 According to what I heard the agent say, it's more than
4 just plugging in a longitude and latitude. You have to
5 mine this information from the various documents, know
6 where to look, know how to cross-relate them, and then
7 make your analysis based on that. So that take a
8 little more specialized knowledge than just plugging in
9 latitude and longitude, doesn't it?

10 MR. HARVEY: No. And I'll tell you why. You're
11 using the word "mine" like it's some sort of
12 sophisticated extraction procedure. It's getting the
13 company's list and matching that list to a longitude
14 and latitude and then going to Google. So I don't see
15 that as a --

16 THE COURT: He denied that. Every time you asked
17 him that question, he said, "No, that's not what we
18 do."

19 MR. HARVEY: All right. And he can deny it all he
20 wants, but that's what it is.

21 THE COURT: Are you going -- okay. I won't do
22 that to you.

23 MR. HARVEY: I know. I know. We're smiling.

24 And, secondly, Judge, I will proffer to the court
25 that in this particular case, my understanding of the

1 special agent's testimony will be: We got the records
2 that I'm complaining about, and they had the longitude
3 and latitudes on the records, and I plugged those
4 numbers into Google Maps. He's going to say that.
5 That's in his presentation in this particular case.
6 And I don't believe that his testimony in this
7 particular case of plugging in already available
8 longitude and latitudes and saying at this particular
9 time, here is where the phone -- here is the cell tower
10 that it pinged off of, and ten minutes later and
11 11 minutes later and 12 minutes later it pinged off
12 these, so, therefore, the direction of the phone was
13 going south.

14 I don't think that calls for expert testimony in
15 any way, shape, form, or fashion. You, obviously, may
16 disagree with me. But in this particular case, I think
17 anybody can do that, and it's not the subject of expert
18 testimony that's beyond the canon of the average juror.

19 THE COURT: Thank you, sir.

20 I think it does require expert testimony in this
21 particular case. He may be an expert in the area
22 testifying about something that a regular layperson can
23 do, but overall field of historical cell site analysis
24 does require some sort of specialized technical
25 knowledge or otherwise special knowledge that will be

1 helpful to the jury. It is relevant in this case,
2 apparently, and so he is going to be found to be an
3 expert in the field of historical cell site analysis.

4 Is that a correct statement of the area of his
5 expertise?

6 MS. HUEY: Yes, sir. I believe so.

7 THE COURT: He'll be allowed to give his opinion
8 in that area and the basis of his opinion.

9 All right. That being said and that being the
10 case, any additional matters from the defense?

11 MR. HARVEY: Palm prints.

12 THE COURT: We've got palm print next.

13 MS. HUEY: Yes, sir, which I believe would be
14 last.

15 THE COURT: Ma'am?

16 MS. HUEY: I believe that would be the last
17 witness.

18 THE COURT: We have palm prints and footprint
19 analysis.

20 MR. HARVEY: Footprint is out.

21 MS. HUEY: Yes, sir.

22 THE COURT: Okay. That's by stipulation with the
23 State?

24 MS. HUEY: Yes, sir.

25 THE COURT: Let's bring the palms in here, then.

1 with, Judge, I would say to you, is not a standard of
2 admissibility, is not a standard of reliability. It is
3 an ad hoc determination of something that is viewed by
4 a potential examiner and shouldn't be allowed into
5 evidence.

6 THE COURT: All right. I actually anticipated
7 hearing some distinction between evaluating palm prints
8 versus fingerprints. I didn't hear any. What your
9 argument goes to is invalidating the whole history of
10 fingerprint analysis, and I do find that it's reliable.
11 I think it's case-dependent on the examiner; although
12 the standards may be such as they are, I still don't
13 think it voids him being qualified as an expert in
14 fingerprint and palm print analysis. He will be
15 allowed to give his opinions on that.

16 For the record, on these issues, Mr. Harvey,
17 normally since we do this at the beginning of trial,
18 you don't have to reiterate your objection at the time
19 of qualification at the time of trial. Some people
20 don't feel comfortable with that. Since we didn't do
21 this two weeks ago, we're doing it at the beginning of
22 the trial.

23 MR. HARVEY: Thank you, Judge.

24 THE COURT: Now, going back, I think we covered
25 about everything except the issue -- not covered, but

1 I've ruled on everything except the issue of these
2 out-of-state subpoenas for records for the cell phone
3 towers.

4 MS. HUEY: Yes, sir.

5 THE COURT: And Mr. Byrholdt handed up 17-13-140,
6 which seems to indicate that a magistrate is limited --
7 not seem to indicate, it does indicate that a
8 magistrate is limited to issue a subpoena or search
9 warrant, excuse me, in the area of their jurisdiction.
10 In other words, he can't send a warrant out of state.

11 Mr. Harvey has given me a case that says that the
12 Uniform Act to Secure Attendance of Witnesses From Out
13 of State in Criminal Proceedings, that applies to
14 documents as well, which, again --

15 MR. HARVEY: I'm going to try.

16 THE COURT: So the question seems to be, number
17 one -- well, number one, jurisdiction; did the
18 magistrate have jurisdiction to issue the search
19 warrant.

20 Number two, is a search warrant required under the
21 *United States vs. Graham* case in the Fourth Circuit.
22 If they're voluntarily complying with whatever process
23 they were doing, I don't know that that makes a
24 difference in this case.

25 Do you see a difference? If he doesn't have

1 jurisdiction, but we're following the *Graham* analysis,
2 does it make a difference?

3 MR. HARVEY: Well --

4 THE COURT: I know you don't like the *Graham*
5 analysis. I agree.

6 MR. HARVEY: No, no, no. I recognize it, and
7 that's why I brought the split in the circuits to you
8 because that's exactly what it is, and I'm obligated to
9 tell you that and I will tell you that. But I don't
10 think it makes any difference in this case simply
11 because the only way they got it in this case was
12 through a search warrant that is void ab initio. So I
13 do say that it does make a difference in this case.

14 THE COURT: Tell me, besides just saying it in a
15 conclusionary fashion, why does it make a difference?
16 If one is not required, failure to do the extra step,
17 even though it may be potentially invalid or void
18 ab initio, why does that make a difference?

19 MR. HARVEY: Because I believe they got it
20 pursuant to a -- what they believed to be a court
21 order. And without a court order of some kind, they
22 would not provide it.

23 THE COURT: Right. Well, these -- as Ms. Huey
24 says, this is what these companies require across the
25 state on a regular basis. But all right. That may

1 make a difference.

2 Ms. Huey, anything you want to be heard on that
3 matter?

4 MS. HUEY: Your Honor, I was just going to
5 reiterate that this is what the company requests of law
6 enforcement. I'm not saying the magistrate had to
7 issue it in order for them to give the records. This
8 is what the company would like. And it is their
9 records, as I indicated before.

10 And then, ultimately, I think that's why the
11 Fourth Circuit is leaning toward warrantless searches
12 for these phone records, why there's not a warrant
13 required for these phone records.

14 THE COURT: Okay. So let me go back through and
15 make sure we're clear on the rulings in this case.

16 I denied the motion to suppress search of the
17 vehicle.

18 MR. HARVEY: Yes.

19 I don't need to take an exception to that. It's
20 just --

21 THE COURT: No. I'm just going back and recapping
22 for the record. I think once I rule on it you don't
23 need to under the rules, anyway.

24 Motion to suppress the audio and the booking
25 report that contains the defendant's number is

1 granted -- and, actually, withdrawn by the State.

2 The recovery of the CFLI is what we were just
3 talking about.

4 MR. HARVEY: Yes, sir.

5 THE COURT: So it's outstanding. The Biggers
6 issue was -- I don't find to be a Biggers issue at
7 all -- limited to out-of-court identification. This is
8 not an out-of-court identification.

9 We had an expert in the historical cell phone site
10 analysis over the objection of defendant. He's
11 qualified as an expert.

12 And then qualification of expert in finger and
13 palm print analysis.

14 Any other issues that I haven't considered or
15 written down or gone over on the record?

16 MR. HARVEY: None that I believe are outstanding,
17 Judge. I think we have covered them with stipulations
18 and with testimony and argument.

19 THE COURT: Sir?

20 MR. HARVEY: None that I understand are
21 outstanding that we haven't covered by stipulations,
22 testimony, and argument today.

23 THE COURT: All right. And just Friday I had a
24 conference call with the attorneys based on the motion
25 for a continuance which was denied. It wasn't

1 necessarily based on newly discovered information. It
2 is newly produced information --

3 MR. HARVEY: That's correct.

4 THE COURT: -- if I understand that. I denied
5 that, but I told counsel I'd give them an opportunity
6 to put that on the record.

7 MR. HARVEY: You just put it on the record. We
8 indicated to the court that because we just got the
9 palm print analysis matched up, we wanted some time to
10 be able to analyze that.

11 Yes, the fact that there was a palm print has been
12 out there, but we just this past week got a new report
13 based upon newly inked impressions taken from
14 Mr. Warner, which can be done. I'm not arguing that
15 that can't be done. And we just recently got a what I
16 believe to be a potential PowerPoint -- what I know to
17 be a PowerPoint presentation that Lieutenant Scott is
18 going to give to the jurors, so we asked the court for
19 additional time to be able to evaluate that.

20 THE COURT: Let me ask you this. You're talking
21 about the FBI special agent presentation about the cell
22 phone?

23 MR. HARVEY: No, I was talking -- Lieutenant Scott
24 who just testified on the palm print.

25 THE COURT: How much time do you think you would

1 be required to have that fully properly evaluated?

2 MR. HARVEY: Honestly, it depends on what I can
3 get from the State in order to be able to show an
4 independent expert to get that evaluated.

5 THE COURT: I thought you already had it.

6 MR. HARVEY: No. I have one color photograph and
7 that's it.

8 THE COURT: Show him -- do you have that
9 information, Ms. Huey?

10 MS. HUEY: Your Honor, I think the problem is what
11 he's saying are these are items in evidence. For
12 instance, the palm print was taken from the mat that
13 was on the counter in the gas station.

14 MR. HARVEY: I don't want the original -- well, I
15 would ask, if we can't get anything else, to have an
16 independent expert look at the original without taking
17 it anywhere under the direction of whoever, any of the
18 detectives or Lieutenant Scott.

19 THE COURT: Can you get one here this week?

20 MR. HARVEY: Or ordinarily, Judge, my
21 understanding of latent print examinations from years
22 of experience is that the crime lab or the person
23 talking it generally takes a series of photographs, and
24 those photographs are generally either blown up or
25 available in a form that can be replicated and

1 independently evaluated by another expert.

2 I don't know whether the State has those. I
3 haven't seen any. We haven't gotten any. And that's
4 why, when I got the photograph of the latent next to
5 the inked impression, I said, Well, this is the first
6 time we've seen the, quote, match. And, therefore, we
7 wanted some time to be able to either have an
8 independent expert look at the evidence itself or what
9 I always thought were going to be a series of
10 photographs, bench notes.

11 THE COURT: Let me stop you. What format do you
12 have that information in?

13 MS. HUEY: Well, we have a series of photos that
14 have been provided to you. I just don't know that
15 they're the ones you want.

16 THE COURT: Are there any others?

17 MR. HARVEY: Can I --

18 THE COURT: Why don't you y'all discuss what
19 you're talking about for a second.

20 MS. HUEY: Sure.

21 (WHEREUPON, an off-the-record discussion was held
22 between counsel.)

23 MR. HARVEY: Can we just approach and show you
24 what we're talking about?

25 THE COURT: Yes, sir.

1 (WHEREUPON, a bench conference was held off the
2 record.)

3 THE COURT: For the record, I had a bench
4 conference. Defense counsel had pointed out some of
5 the photographs of the alleged palm print from which
6 they had turned into a PowerPoint and not usable or
7 just not sufficient in quality for them to have their
8 own expert analysis.

9 They were going to have blowups available here in
10 court as well as the original on some Plexiglas. I
11 told defense counsel that if they had somebody here in
12 court, I'd let them have the opportunity to make
13 analysis, even if it were to make us play into Saturday
14 somewhat. I can't delay it indefinitely but somewhat.
15 That was the basis of their motion for continuance.
16 They had just gotten copies of photographs that, for
17 lack of a sufficient word, were insufficient for their
18 analysis.

19 Anything further from the State about our bench
20 conference that you want to put on the record?

21 MS. HUEY: No, sir, Judge.

22 THE COURT: From the defense?

23 MR. HARVEY: No, sir. Thank you, Judge.

24 THE COURT: All right, gentlemen. 9:30 in the
25 morning. Court will be open at 9 o'clock so y'all can

1 State of South Carolina
2 County of Anderson In the Court of General Sessions

3
4 State of South Carolina)
5)
6 -vs-) May 23, 2017
7 Justin Jamal Warner,) 2016-GS-04-00159;
8 Defendant.) 2017-GS-04-00862.
9 -----) Volume 2 (pgs. 220-373)
) Transcript of Record

10
11 B E F O R E:

12 The Honorable R. Lawton McIntosh, Judge;
13 and a jury.

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

15 Catherine T. Huey, Deputy Solicitor
16 Attorney for the State

17 Bruce A. Byrholdt, Esquire
18 Bruce S. Harvey, Esquire
19 Attorneys for Defendant

20
21
22 Reported by:
23 Diane L. Marcengill, RPR, CRR
24 Circuit Court Reporter
25 Certified Realtime Reporter

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:51 a.m.)

4 THE COURT: First things first. When I came in
5 this morning, Juror Number 92 had a conversation with
6 our bailiff where she said that she misunderstood or
7 forgot to tell us something yesterday in
8 qualifications. I met with Juror 92 with the State and
9 defense counsel, and apparently she relayed that she
10 had family in law enforcement; she had 44 nieces and
11 nephews, one of which was in Chicago, was a part-time
12 officer, was murdered apparently in the line of duty.
13 She never was involved in it, but she knew about it.
14 She had another family member that was in law
15 enforcement.

16 She reiterated several times -- and I gave both
17 sides a chance to question her -- that she felt like
18 she could be fair and impartial. In fact, this
19 information was in the back of her mind and not at the
20 forefront. And in conference with everyone involved in
21 this case, everybody agreed that she -- those are not
22 disqualifying grounds to discharge her from the jury.

23 If I misstated anything, please correct me from
24 the State.

25 MS. HUEY: \ Nothing from the State.

1 THE COURT: From the defense?

2 MR. HARVEY: Nothing, Your Honor.

3 THE COURT: As to the motion to suppress the CSLI,
4 I'm going to deny the motion. I need to put my reasons
5 on the record.

6 Historical cell site location information. So
7 everybody knows there's no South Carolina case on
8 point. The unpublished court of appeal case that
9 discusses CSLI, it's not on point with what this is.
10 It does reference the *United States vs. Graham* case.
11 But that South Carolina court of appeals case was
12 decided on other grounds.

13 We have no authority in South Carolina, but we do
14 have persuasive authority in the Fourth Circuit in the
15 *United States vs. Graham*, which is at 24 F.2d 421. It
16 held that there was no Fourth Amendment search or
17 violation occurred when the government obtained the
18 CSLI information on that defendant's cell phone.

19 In that case the information obtained covered
20 actually months and months of information and thousands
21 and thousands of data points. As in the *Graham* case,
22 there was no government action to get the records as
23 the defendant in this case. In other words, there was
24 no GPS devices that were placed on the vehicle; there
25 was no infrared shown to a house or other type of

1 actions by the State.

2 The State did in this case -- what the State did
3 in this case was to simply comply with the service
4 provider requirements. Now, I do think that the
5 warrant itself is not good. I think that it's beyond
6 the scope of authority of a magistrate to obtain these
7 records. But I don't think that's of any avail. In
8 this case they acted in good faith at all times, but I
9 don't think that helps the defendant because the search
10 warrant under the *Graham* case was not needed because,
11 by his conduct as evaluated by that case, he
12 voluntarily provided this information to the cell phone
13 provider, thereby losing any expectation of privacy he
14 may have had.

15 In this case the time period requested by the
16 State is substantially shorter than in the *Graham* case.
17 I find that this case is more in line with the *Pen*
18 *Register* cases. And although those happened with
19 telephones back in the day, that was the technology of
20 the day. Today it's cell phones and all the attendant
21 bells and whistles that go along with it. I think that
22 those cases are very persuasive in saying that the use
23 of the phone causes you to voluntarily disclose your
24 personal information, thereby losing any expectation of
25 privacy to it.

1 In the *Graham* case I do note that the dissent
2 refers to the vast amount of information that was being
3 transmitted and the user's probable ignorance to the
4 extent of the location of their information that's
5 being recorded or to the extent that information is
6 being recorded. But, I mean, every day we have
7 consumers who know little or very little about the vast
8 amount of information that they are transmitting out
9 there across the airwaves or otherwise. They don't
10 know the intricacies of the technology that they're
11 using.

12 I agree with the defense in this case that this
13 matter needs to be addressed. I don't think that
14 people probably knowingly consent to the losing of
15 their expectation of privacy by the mere use of a cell
16 phone.

17 But under the current state of our jurisprudence
18 as it stands now, I am inclined -- not inclined, but
19 I'm going to follow the persuasive authority we have
20 from the Fourth Circuit, and it does need to be
21 addressed by a statutory matter. But, otherwise, as of
22 today's date in this case, the CSLI is not excluded if
23 the foundation is properly laid. The motion to
24 suppress is denied.

25 With that being said, does the State have any

1 additional matters to be taken up?

2 MS. HUEY: No, sir, Your Honor.

3 THE COURT: From the defense?

4 MR. HARVEY: No, sir.

5 THE COURT: All right. Y'all need a minute before
6 we do opening statements?

7 MS. HUEY: I think I'm ready, Judge.

8 THE COURT: Ma'am?

9 MS. HUEY: I'm ready.

10 THE COURT: How long do you need?

11 MS. HUEY: Ten minutes, Judge.

12 THE COURT: We'll take a ten-minute break --

13 MS. HUEY: No, no. I said I'm ready to proceed.

14 THE COURT: Oh, speak up. I have got gray hair.
15 Is the defense ready?

16 MR. BYRHOLDT: They are, Your Honor.

17 THE COURT: Bring the jury in.

18 (WHEREUPON, the jury entered open court at
19 9:58 a.m.)

20 THE COURT: Good morning, ladies and gentlemen.

21 Before we get started, as I told you I would do, I'm
22 going to ask if any juror has read, heard, or seen
23 anything about this case during the break. If so,
24 would you raise your hand.

25 ^ Has any juror spoken with anyone, including

1 have seen or heard on the movies or on TV. Trials are
2 nothing like that. They're very slow, methodical, and
3 deliberate. They're certainly not entertainment, but
4 they are a fundamental part of our democracy.

5 Now, ladies and gentlemen, these attorneys in the
6 courtroom, as in all attorneys, when they're sworn in,
7 they take an ethical oath to zealously represent their
8 client's perspective in the courtroom and outside the
9 courtroom. And you can expect no less from these fine
10 attorneys to do that today. But they also are officers
11 of the court. What that means is that you can expect
12 they will be professional, and that they will be
13 competent, and they will be ethical in their dealings
14 with each other, with this court, and any witness that
15 may appear before these proceedings.

16 Now, ladies and gentlemen, you have just taken an
17 oath where you swore or affirmed that you would try to
18 reach a fair and just verdict. What that means is that
19 these attorneys, these parties, and the court has a
20 right to expect of you that you will be fair, that you
21 will be impartial, and you will be ethical in your
22 dealings in this matter, and you will abide by the
23 instructions from this court throughout these
24 proceedings.

25 Now, what I tell you is not the law that you will

1 statements from the State.

2 If you will go back to the jury room, please.

3 (WHEREUPON, the jury exited open court at
4 10:13 a.m.)

5 THE COURT: Any additions or exceptions from the
6 State?

7 MS. HUEY: Nothing from the State.

8 THE COURT: From the defense?

9 MR. BYRHOLDT: No, Your Honor.

10 THE COURT: Very good.

11 You ready?

12 MS. HUEY: Yes, sir.

13 THE COURT: Bring them back unless they need a
14 real quick break.

15 (WHEREUPON, the jury entered open court at
16 10:16 a.m.)

17 THE COURT: State ready to proceed with opening
18 statements?

19 MS. HUEY: Yes, sir, Your Honor.

20 May it please the court.

21 THE COURT: Yes, ma'am.

22 MS. HUEY: On April 30th of 2015, Mrs. Patel, who
23 was age 59 at the time, was working at the gas station
24 she owned with her husband, Mr. Patel. They owned the
25 BP at Highway 153 in Anderson County right there at

1 Exit 40. She and her husband both worked at this
2 store, and she had the night shift on this particular
3 night, as they shared duties at the gas station.

4 According to BP store surveillance video, an
5 African-American male enters the store around 10:15 at
6 night. He comes to the register and seems to be asking
7 for a pack of a tobacco product of some sort because
8 Ms. Patel reaches behind her to get that.

9 She rings him up in the register, but prior to
10 doing that, she seems to verify his I.D. because he
11 opens his wallet to show his I.D. to make sure he was
12 old enough to buy that tobacco product.

13 She rings him up. He pays. And then the next
14 thing that happens is a gun is in Ms. Patel's face.
15 That gun is fired into her hand because she raises her
16 hand to protect herself. The bullet goes through her
17 hand and then lodges in her brain and she crumbles to
18 the floor.

19 That same male reaches over and tries to get into
20 the register, but he can't because it's been closed.
21 So no money is actually taken. Walks out of the store
22 calmly and then seems to be wiping his arm on the
23 handle of the door and leaves.

24 Now, I would submit to you that, as you are
25 listening to the evidence of this case, there's not

1 going to be a question in your minds that an attempted
2 armed robbery and a murder occurred and that a weapon,
3 possession of weapon during the commission of violent
4 crime, also happened. That's on the video.

5 What's going to be the main question that you are
6 going to have to answer after listening to all the
7 evidence is: Did the State prove beyond a reasonable
8 doubt that this defendant, Justin Jamal Warner, is the
9 one who perpetrated those awful crimes?

10 Now, again, I have the burden in the case, as the
11 judge has already indicated to you. And it's a burden
12 I welcome. And that burden is beyond a reasonable
13 doubt. But not every doubt, just as the judge
14 indicated. There are few things in life we know with
15 absolute certainty. But I will tell you what the State
16 intends to show will be by the way of witness
17 testimony. Everything will come from that stand.

18 The first thing that you will learn is that Nathan
19 Goolsby, an acquaintance of the defendant, Justin Jamal
20 Warner, was shown a clip of this video surveillance
21 from April 30th of 2015. He knows him, and he says,
22 "Yes, that's Justin Jamal Warner."

23 Now, keep in mind, admittedly, that perpetrator on
24 that video is wearing a hat and glasses. So part of
25 his face is obscured, but his arms are -- can be seen,

1 his legs can be seen. He's seen walking in and out of
2 the video so you can see his stature, his demeanor, his
3 mannerisms as well.

4 Now, the defendant is also known to drive a 2013
5 silver Dodge Challenger, according to evidence that you
6 will hear. On the surveillance video, just moments
7 before the African-American male enters the store and
8 commits the crime, you can see a silver car drive by
9 that is consistent with that 2013 Dodge Challenger.

10 That Challenger is eventually searched, and a
11 wallet is found in that Challenger. The wallet
12 contains the driver's license of Justin Jamal Warner.
13 The wallet flips open to show the I.D. And in the
14 video, you can see that the perpetrator flips open a
15 wallet to show his I.D.

16 Now, speaking of the I.D., the date of birth for
17 Justin Jamal Warner is [REDACTED]. [REDACTED].
18 When Ms. Patel enters the tobacco transaction into the
19 register and verifies the I.D., the birth date entered
20 is [REDACTED], which matches this defendant.

21 Additionally, you're going to hear from a couple
22 of experts in this case. There's going to be an expert
23 in fingerprint and palm print identification. The
24 perpetrator of these crimes leaned over the counter,
25 put his palm, his hand, on the counter in front of the

1 register. That mat was collected and developed, and
2 from that a palm print was developed. You will hear
3 expert testimony that that palm print matches to that
4 of Justin Jamal Warner.

5 And, finally, you are going to hear from a
6 custodian of records for cell phones that will give you
7 the mobile number that was in this defendant's name,
8 Justin Jamal Warner. That number was then used to
9 obtain cell site information for communications made on
10 April 30th of 2015. And you will hear from an expert
11 that utilized all these records, analyzed all of these
12 records, and he'll tell you that the phone traveled --
13 the number traveled from Atlanta all the way up to
14 Greenville and back down to Atlanta, and that there are
15 a couple calls in particular, or communications, I
16 should say, that happened right before the incident and
17 right after the incident that pinged off of towers
18 within miles of the BP gas station.

19 And that is the evidence the State intends to
20 introduce, again, through witness testimony. I want to
21 thank you for your service, and thank you very much.

22 THE COURT: Does the defense wish to make an
23 opening statement?

24 MR. BYRHOLDT: Yes, Your Honor.

25 Mr. Harvey and I represent Justin Warner. The

1 oath you took, as the judge said, is to hold the State
2 to their burden of proof.

3 You're going to see a lot of evidence. The 12 of
4 you that deliberate have to determine what evidence is
5 believable.

6 You're going to see a picture of a palm print.
7 The State is going to say it matches. It's going to be
8 on that screen. You determine if you can see anything.
9 A latent print is if you put your hand down and it
10 leaves some moisture, you may have a partial print.
11 This is not CSI. But hold the State to that high
12 burden.

13 And you don't leave your common sense when you
14 come into this jury room. Who's going to walk in, give
15 an I.D., give your birth date, and then shoot somebody?
16 Common sense. Keep an open mind until you hear all of
17 the evidence.

18 As the judge told you at the start of this case,
19 Justin does not have to prove anything. The State has
20 to prove each and every element of their case beyond a
21 reasonable doubt.

22 We chose you as the jury to make the determination
23 on whether or not the State has met their burden of
24 proof. We look forward to working with you. It's an
25 extremely serious case for everyone involved. We ask

1 you to pay close attention and don't make a
2 determination until you've heard all of the evidence in
3 this case.

4 On Justin's behalf, we thank you. Look forward to
5 working with you the next few days.

6 THE COURT: Call your first witness, please,
7 ma'am.

8 MS. HUEY: Your Honor, the State calls Michael
9 Wheat.

10 MICHAEL STEVEN WHEAT,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 THE CLERK: If you will, take the witness stand,
13 please, sir and state your name and spell your last
14 name for the reporter, please.

15 THE WITNESS: Yeah. My name is Michael Steven
16 Wheat, W-h-e-a-t.

17 DIRECT EXAMINATION

18 BY MS. HUEY:

19 Q Mr. Wheat, what name do you actually go by?

20 A Steve.

21 Q Where do you work?

22 A Arclabs Welding School.

23 Q What is that?

24 A It's a welding school. We teach welding.

25 Q Do you do teaching?

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Michael Steven Wheat - Direct by Ms. Huey

1 A Well, I'm the operations manager now.

2 Q Have you been a customer at the BP gas station at
3 2900 Highway 153 at Exit 40 there?

4 A Yes.

5 Q How long had you been going to that store?

6 A Probably about five years.

7 Q Were you familiar with Mr. and Mrs. Patel then?

8 A Yes, ma'am.

9 Q Did you see them a lot?

10 A Yeah. Just about every day.

11 Q Now, drawing your attention to April 30th of 2015,
12 did you go to the BP gas station on this particular
13 night?

14 A Yes, I did.

15 Q Do you usually go at night, or do you usually go
16 in the daytime?

17 A No. One of my night instructors got married, and
18 he was on his honeymoon, and I was just filling in for
19 him that night.

20 Q So you usually don't go at night?

21 A No.

22 Q But you were there on that particular night?

23 A Yeah.

24 Q Now, what, if anything, did you see when you went
25 into the store that night?

1 A Well, when I walked in the store, I didn't see
2 anybody, and I began to look around the store. And I
3 was looking back towards the coolers thinking they
4 might be in the cooler, and I heard a moaning sound.
5 And I noticed it was coming from behind the counter.
6 So I lifted up and looked over the counter, and I seen
7 her laying there in a pool of blood.

8 Q And who did you see lying there?

9 A Ms. Patel.

10 Q As a result of what you saw, what did you then do,
11 Mr. Wheat?

12 A First, I ran out of the store and jumped in my
13 truck, and then I called 911. And the 911 operator
14 asked me to go back in and tell her what I seen. And I
15 did.

16 And I leaned over the counter and started
17 describing what I was seeing behind the counter. And I
18 kept asking her where the emergency was, and she said
19 they were on their way. So I just kept telling her
20 what I was seeing.

21 Q About how long did it take, do you think, for them
22 to get there?

23 A I think it took about -- it seemed like forever,
24 but the next day I looked at my phone, and it was about
25 six minutes, I think it was.

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Michael Steven Wheat - Cross by Mr. Harvey

1 Q Now, did you speak with an investigator regarding
2 what you saw on this particular night?

3 A Yes. As soon as the EMT got there and a couple
4 deputy sheriff got there, they cleared the store, and I
5 spoke to one of the deputies and told him the story.
6 And he told me that the detectives were on their way --

7 MR. HARVEY: Let me object.

8 THE WITNESS: -- to speak with me.

9 MR. HARVEY: Hearsay.

10 THE COURT: Don't say what somebody else told you,
11 please, sir. Okay, sir?

12 THE WITNESS: Okay.

13 And so I waited in my car, and it was sometime
14 later a detective came out and got my statement once
15 again.

16 BY MS. HUEY:

17 Q And you spoke with him that night, though?

18 A Yeah. I talked to him that night. I talked to
19 both the deputy and the detective that night.

20 Q Now, did you see anybody, any persons inside the
21 store other than Ms. Patel when you arrived?

22 A No.

23 MS. HUEY: That's all I have for this witness,
24 Judge.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION

1
2 BY MR. HARVEY:

3 Q Good morning, Mr. Wheat. How are you, sir?

4 A All right.

5 Q Good. The acoustics are pretty bad in this
6 courtroom, I think everybody agrees. So if you can't
7 hear me or you don't understand me, please say, "Hold
8 on. I don't understand what you said."

9 A All right.

10 Q Because I had a little difficulty hearing you over
11 there, so I want to ask you a couple more questions.

12 You are a frequent customer of that store,
13 correct?

14 A Yeah. I go in there about every day.

15 Q Okay. And --

16 A Monday through Friday.

17 Q I'm sorry?

18 A I go in about every day, Monday through Friday.

19 Q Okay. There are two doors going into the store,
20 correct?

21 A Yeah.

22 Q And on the two sides of the store, there are gas
23 pumps on one side, and there are gas pumps on the other
24 side, correct?

25 A Yeah.

1 Q So one can pull into, I guess, the front entrance
2 and get gas and go in the front door, right?

3 A Yeah.

4 Q Or one can pull around the side of the store and
5 go in the back entrance at the pumps, correct?

6 A Yeah.

7 Q Now, when you go -- when you go -- do you get gas
8 there as well?

9 A From time to time.

10 Q Okay. And much like any other gas station, can
11 you -- can you do a remote transaction at the gas
12 pumps?

13 A Yeah, I think so.

14 Q Without going inside at all, correct?

15 A Yeah.

16 Q So it's just like any other convenience store.
17 You can go up to the pump, you can even go inside and
18 pay, you can prepay, or you can pump gas outside,
19 correct?

20 A Right.

21 Q And sometimes you do that as well, right?

22 A From time to time I do. Yeah. I usually went in
23 because I chew tobacco, and that's where I got all my
24 tobacco at was from her.

25 Q So one of the things that you got was tobacco

1 products, correct?

2 A Yeah.

3 Q Well, you know, they -- they knew you at the
4 store. That's fair to say, correct?

5 A Yeah.

6 Q So every time you went in, did you have to show an
7 I.D.?

8 A No.

9 Q Or, you know, did they say, "Well, we know you.
10 We see you every day. We know," I guess -- no
11 offense -- "that you're old enough to get a tobacco
12 product," right?

13 A No. She always asked for my date of birth, either
14 one of them, every time.

15 Q Every day?

16 A Every time.

17 Q Okay. And was it on the receipt that you got,
18 your date of birth?

19 A Oh, I don't -- I usually didn't get a receipt.

20 Q Okay. And when you did, did you notice whether a
21 date of birth was on the receipt?

22 A No. I never paid it no attention.

23 Q Was it the same person working there all the time?

24 A It was either her or her husband.

25 Q Okay. And when you said, "She always took my date

1 of birth," did he always take your date of birth?

2 A Yeah. They always, actually either one of them,
3 always had.

4 Q Well, asking and inputting it is two different
5 things, right? Putting it into the machine?

6 A Yeah.

7 Q Did you notice whether they always put it into the
8 machine?

9 A I always noticed them hitting buttons. I don't
10 know if it was -- what it was for, but...

11 Q Sure. Of course. And when you went into purchase
12 tobacco products, you would order a tobacco product,
13 correct?

14 A Yeah.

15 Q And, you know, there's a mat there, usually a mat
16 right there next to the cash register, correct?

17 A I -- I don't know.

18 Q You don't remember?

19 A No.

20 Q Okay. Well, when you went in at this
21 particular -- on this particular date, April 30th of
22 2015, do you remember about what time you went in?

23 A It was around 10:30, 10:30ish, right around --

24 Q Somewhere around there?

25 A Yeah, right around 10:30.

1 Q Okay. Now, you went into the store, correct?

2 A Yeah.

3 Q Did you park in the front or the back?

4 A Well, I pulled in the road. There is a road that
5 goes down beside it that goes to the Waffle House. I
6 always pull in that road, and I always swing around the
7 store, and I come in the side where the diesel pumps
8 are.

9 Q Okay. There is a Waffle House right next door?

10 A Yeah, right behind it.

11 Q And you came in that side, swung around, and then
12 went in on the side that the diesel pumps are?

13 A Yeah.

14 Q Are they on the front side or the back side, do
15 you recall?

16 A Well, if you're looking at the store from the
17 road, it would be on the left side.

18 Q Okay. And you're talking about, I guess it's the
19 Powdersville exit, correct?

20 A Yeah, I believe it is. Exit 40.

21 Q Exit 40. And that would indicate Exit 40 being
22 the 40th mile; that's generally the way it is?

23 A Yeah, I'd say so.

24 Q And it's pretty close to the Interstate 85, right?

25 A Yeah. It's right there on it.

1 Q Doesn't take but ten, 15 seconds, 20 seconds maybe
2 to get from 85 up to the store?

3 A Yeah.

4 Q Depending upon traffic, of course?

5 A Yeah.

6 Q Okay. All right. When you got there at 10:30,
7 plus or minus, did you see any vehicle there at all?

8 A No.

9 Q When you got there, whether or not you saw any
10 vehicle at all, did you see any vehicle leaving
11 either -- from anywhere near that particular location
12 at the time?

13 A No.

14 Q All right. And when you went into the store, it
15 was empty?

16 A Yeah.

17 Q And the tobacco products are behind the counter,
18 aren't they?

19 A Yeah.

20 Q So your ordinary course of conduct would be to go
21 in the door, go up to the counter where the tobacco
22 products are because you were getting some smokeless,
23 some pack, right?

24 A Yeah, chewing tobacco.

25 Q Okay. And you walked up, didn't see anybody

1 there?

2 A No, I didn't see anybody.

3 Q So what you were thinking was, well, maybe they're
4 back in the cooler, or somebody is back in the cooler,
5 or they're taking a bathroom break or something, right?

6 A Yeah. I thought maybe they were in the cooler.

7 Q So it didn't take you very long to get in, didn't
8 take you very long to get to the counter. And then you
9 heard something at the counter, correct?

10 A Yeah, I heard --

11 Q You looked. And did you immediately leave?

12 A Oh, yeah. I darted right out of the store and
13 jumped in my truck. My truck door was right there at
14 the door.

15 Q Okay. Did you lean over the counter?

16 A Yeah.

17 Q Did you put your hand on the counter to lean over
18 the counter?

19 A I think I did.

20 Q Because that would be sort of the normal way you
21 would do things, right?

22 A Yeah.

23 Q I mean, you have to sort of lean over the -- the
24 counter is wide enough where you really couldn't see
25 behind it. And especially if someone was invisible,

1 that you would have to kind of lean over to look,
2 right?

3 A Well, I don't know I did. If I did, at first.
4 But when I went back in, I know I put my hands on the
5 counter.

6 Q Okay, great. And you went back in because you
7 called 911, right?

8 A Yeah.

9 Q And you recall that they told you to go back in?

10 A Yeah. The lady asked me to go back in.

11 Q And you were describing the situation to them?

12 A Yeah.

13 Q And it took them about six minutes --

14 A I think so, yeah.

15 Q -- for anybody to get there, approximately.

16 You said you looked at your phone, right?

17 A Yeah, approximately six minutes, yeah.

18 Q During those six minutes, did you see anybody?

19 A Yeah. There was another couple came in right
20 before the EMTs got there.

21 Q Okay. But you were already there?

22 A Yeah.

23 Q And you already knew what the situation was and
24 that the EMTs were on the way --

25 A Yeah.

1 Q -- or the emergency folks were on the way.

2 So we didn't see anybody there. We didn't see any
3 car come in. We didn't see any car leaving. You were
4 in there by yourself.

5 Do you recall how long approximately since you
6 drove up and you called 911? We know it's six minutes
7 after the 911, approximately. How long were you in
8 there to start with, do you remember?

9 A Oh, just a few -- just -- I don't know, but it
10 wasn't long.

11 Q Not long?

12 A No.

13 Q Good. Thank you, sir.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION

16 BY MS. HUEY:

17 Q Mr. Wheat, what part of the counter were you
18 looking over when you were checking on Ms. Patel?

19 A Right there at the cash register.

20 Q Okay.

21 THE COURT: May this witness be excused?

22 MR. HARVEY: Yes, sir.

23 MS. HUEY: Yes, sir.

24 THE COURT: Thank you, sir. You may be excused.

25 Call your next witness, please.

1 MS. HUEY: Your Honor, the State calls Josh Payne.

2 RICHARD JOSHUA PAYNE,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: If you would, take the witness stand,
5 please, sir, and state your name and spell your last
6 name for the reporter, please.

7 THE WITNESS: My name is Richard Joshua Payne,
8 P-a-y-n-e.

9 DIRECT EXAMINATION

10 BY MS. HUEY:

11 Q Mr. Payne, where do you work now?

12 A I work for Ballard Utility Construction. Pipeline
13 business.

14 Q How long have you been doing that?

15 A Approximately three months.

16 Q What did you do prior to that?

17 A I was a deputy sheriff with Anderson County
18 Sheriff's Office.

19 Q And how long were you a deputy sheriff?

20 A About 18 and a half years.

21 Q And what position did you hold there?

22 A I was a lieutenant when I separated from the
23 agency. I was -- prior to that I was a special
24 operations lieutenant at the time of this incident.

25 Q And when you say lieutenant, what was your

1 position as lieutenant?

2 A I was in charge of special operations, which was
3 comprised of the C.A.T.C.H. team, which was a direct
4 patrol unit, and our K9 unit.

5 Q So were you in this position, then, on April 30th
6 of 2015?

7 A Yes, ma'am.

8 Q And as such, did you have an occasion to respond
9 to 2900 Highway 153?

10 A Yes, ma'am.

11 Q Which is that BP gas station?

12 A Yes, ma'am.

13 Q Is that in Anderson County?

14 A It is. Would be on the north end of our county.

15 Q Now, how did that come about, the fact that you
16 responded to the BP on this particular night?

17 A My team was working the directed patrol in the
18 area of Piedmont, which is about the 35-mile marker on
19 the north end of our county. And we heard patrol being
20 dispatched to an armed robbery either just occurred or
21 that was in progress.

22 At that point we knew we were very close to the
23 scene, so I had my unit respond to the Interstate
24 Corridor because that would have been the route to take
25 back into our county if anybody was leaving the scene

1 there. We were also given a description of the
2 vehicle, and I sent my guys to the Interstate to see if
3 they could locate that vehicle that left the scene.

4 At that point, through the radio traffic, I
5 discovered that we were actually the closest units.
6 There wasn't any marked uniformed patrol units in the
7 area, so at that point I was the closest of my units to
8 the scene, so I responded directly to the scene.

9 Q Because you were closest?

10 A Yes, ma'am.

11 Q Okay. And when you first arrived on scene, what
12 did you do? Who did you see?

13 A I arrived on scene. I saw some Waffle House
14 employees, which Waffle House is directly behind the
15 gas station. The Waffle House employees were inside
16 the store along with a gentleman who was the actual
17 complainant who called the sheriff's office about the
18 incident.

19 Arrived there. I stepped inside the store. At
20 that point I discovered a female behind the counter.
21 She was laying in a pool of blood. Through further
22 investigation, I noticed that she had what appeared to
23 be a bullet hole in her cheek.

24 At that point, as I was calling for EMS to
25 respond, they were staging. And at that point I asked

1 all the people who were inside the store to step out to
2 the parking lot. And it was about the same time that
3 the other responding units arrived on scene.

4 Q So additional units arrived on scene from the
5 sheriff's office?

6 A Yes, ma'am. About -- between 30 seconds and a
7 minute after I arrived, I had the additional units on
8 scene with me.

9 Q And did EMS eventually arrive?

10 A Yes, ma'am. They were there moments later.

11 Q And before EMS can go into the store, what needs
12 to happen, if anything?

13 A At that point we needed to get everybody out of
14 their way so they could do their job so they could
15 render aid to the victim. We were unsure exactly what
16 had happened up to that point.

17 Like I said, it appeared she had a gunshot wound.
18 And we, once the EMS arrived on scene, we did make a
19 sweep and locked down the store and waited on them.
20 Once they got there, they rendered aid.

21 Q So you were there when EMS took her away, then?

22 A Yes, ma'am.

23 Q And then what, if anything, happened with the
24 scene itself?

25 A At that point I had Deputy Johnson, I had him

1 secure the scene. Deputy Corporal Scott and I, like I
2 said, we did a protective sweep to make sure the
3 suspect wasn't still in the building, and we held the
4 scene until investigations could arrive. And that's
5 when Investigator Voigt arrived on scene and was given
6 control of the scene.

7 Q So what was your role that evening, then?

8 A I was in charge of the scene until somebody else
9 got there. Sergeant Singleton was actually the patrol
10 supervisor that was working that night. Once he
11 arrived, I turned it over to him and we cleared up the
12 scene.

13 Q And did you make sure that the scene was secure?

14 A It was.

15 Q And, now, were you responsible for collecting any
16 evidence or anything along those lines?

17 A No, ma'am. I just observed what I saw when I got
18 on scene, got medical aid in there as quickly as we
19 could, and we locked it down until crime scene and our
20 investigations division could get there.

21 MS. HUEY: That's all I have at this time, Judge.

22 THE COURT: Cross-examination.

23 MR. HARVEY: Yes, sir. Thank you.

24 CROSS-EXAMINATION

25 BY MR. HARVEY:

1 Q Good morning, sir. How are you?

2 A Good morning, sir.

3 Q It is no longer, then, Lieutenant Payne, correct?

4 A No, sir.

5 Q But fairly recently, right?

6 A Yes, sir.

7 Q At the time it was Lieutenant Payne; is that
8 correct?

9 A Yes, sir.

10 Q All right. Lieutenant Payne, I understood that
11 you got a call, correct? You were on routine patrol?

12 A No, sir. We were working a directed patrol.

13 Q I'm sorry?

14 A We were working a directed patrol in the area of
15 Piedmont. We work off of two different channels, and
16 we were advised by our patrol channel -- by the channel
17 that our patrol division had received a call for an
18 armed robbery.

19 Q Okay. And do you recall what time that was?

20 A It was late evening, but I can't remember exactly
21 what time, no, sir.

22 Q And, by the way, Lieutenant Payne, did you have
23 the opportunity to prepare any report or supplemental
24 report with regard to this incident?

25 A Yes, sir.

1 Q All right. You have?

2 A Yes.

3 Q All right. And have you had a chance to review
4 that report?

5 A Yes, sir.

6 Q And do you have that in front of you?

7 A Yes, sir.

8 Q All right.

9 MR. HARVEY: Judge, with your permission, may I
10 look at the report that Mr. Payne has.

11 THE COURT: I'm sorry, I missed what you said.

12 MR. HARVEY: With your permission --

13 (WHEREUPON, report handed to Mr. Harvey by Ms.
14 Huey.)

15 MR. HARVEY: Thank you.

16 BY MR. HARVEY:

17 Q The report that you prepared, Lieutenant -- well,
18 sorry -- Mr. Payne -- it's hard to get used to not
19 being called lieutenant, right?

20 A Yes, sir. I was a lieutenant a good little while.

21 Q And the report that you have and that you prepared
22 didn't have a particular time noted on it, correct?

23 A Yes, sir.

24 Q Well, correct, yes?

25 A It did not have a time on it, no, sir. That would

1 have been in the original report that was --

2 Q It did not have a time. But you arrived prior
3 to -- you know, in these scenes, they do something
4 called a crime scene log, correct?

5 A Yes, sir.

6 Q You arrived prior to the crime scene log being
7 started, correct?

8 A Yes, sir. I didn't start one immediately. Once I
9 arrived on scene, no, sir. I didn't start one until
10 other deputies arrived on scene, yes, sir.

11 Q I apologize. You've got to speak up in this
12 courtroom because the acoustics are very difficult, and
13 I was having a hard time hearing you.

14 I don't know about the folks on the jury, but I
15 was.

16 A Yes, sir. I'll speak up.

17 Q That's better. Thank you.

18 But there is no time indicated on your report with
19 regard to your arrival, correct?

20 A Correct.

21 Q There is a crime scene log that does have you on
22 there starting at 2246. Are you familiar with that?

23 A Yes, sir.

24 Q All right. And is that the time -- an accurate
25 time of when the crime scene log, that is, the crime

1 scene log, the people that come in and out of the crime
2 scene, the crime scene is protected, and nobody else is
3 allowed in without being logged in on the crime scene
4 log, right?

5 A Yes, sir.

6 Q All right. But you arrived before then?

7 A Yes, sir, I did.

8 Q When you arrived, was there anybody in the store?

9 A Yes, sir. There was, as I remember, two Waffle
10 House employees and the original male complainant.

11 Q Two Waffle House employees?

12 A Yes, sir.

13 Q And the original?

14 A The original male complainant. I don't know his
15 name right offhand. I didn't get the entire report.

16 Q That male complainant, though, as far as I
17 understand, he was -- he had a truck that he was in,
18 correct?

19 A I don't recall what he was driving, no, sir.

20 Q All right. Well, you had mentioned to us earlier
21 that there had been some description of a vehicle, and
22 I want to make sure if you recall that the complainant
23 was in his own pickup truck and that was outside the --

24 A He was in a vehicle. His vehicle was outside, but
25 I don't recall the description of his vehicle.

1 Q But the vehicle that you had been advised of and
2 was on the -- the CAD detail is a truck just went by
3 southbound on the interstate. Do you recall that?

4 A Yes, sir.

5 Q All right. So when you're talking about a
6 description of the vehicle, the first description of
7 the vehicle, any vehicle, was a truck, correct?

8 A The vehicle that was BOLO'd? I'm not quite
9 understanding your question, sir.

10 Q Well, the vehicle that -- yeah, that you said you
11 were looking for down the highway.

12 And, in fact, there was a description of a
13 red-and-gray pickup going into the store now. Do you
14 remember that?

15 A The vehicle that was BOLO'd was the one we were
16 looking for on the way in.

17 Q All right. Do you recall what it was, what the
18 description of the vehicle was that you were looking
19 for? You told us it was a vehicle. Do you remember
20 what it was?

21 A I don't.

22 Q Okay. All of the vehicles that were described for
23 you were trucks. None of them was a Dodge Challenger,
24 correct?

25 A I did not get a Dodge Challenger.

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Richard Joshua Payne - Cross by Mr. Harvey

1 Q Okay. So when you tell us that you were looking
2 for a particular vehicle, it was not a Dodge
3 Challenger.

4 Would it be fair to say that you were dispatched
5 on about 10:36:45?

6 A That would have been it.

7 Q I've got the CAD if you want to look at it to
8 refresh your recollection.

9 A I would, please, sir.

10 MR. HARVEY: Can I approach?

11 THE COURT: Yes, sir.

12 MR. HARVEY: Do I need to ask every time?

13 THE COURT: No, sir, you do not.

14 MR. HARVEY: Thank you. I appreciate it.

15 Q It's right up there. That's you, right?

16 A Yes, sir.

17 Q Okay.

18 A 10:46, yeah.

19 Q Does that help refresh your recollection, sir?

20 A Yes, sir. 10:46 is when I was on scene per the
21 CAD.

22 Q Well, 10:36 is when you were dispatched. 10:36 is
23 when you were en route, and your practice was to call
24 in and say, "I'm on scene now," correct?

25 A Yes, sir.

1 Q And that was 10:46, correct?

2 A Yes, sir.

3 Q Which is 2246, right?

4 A Yes.

5 Q That's the same time that's on the crime scene
6 log. Do you want to check that to make sure that I'm
7 telling you accurate?

8 A No, sir.

9 Q All right. Good. Thank you. I appreciate it.
10 And that's the time that you said, "I got there,"
11 10:46, which is 2246, correct?

12 A Yes, sir.

13 Q All right. When you were there, there were
14 already people standing inside the store and in the
15 parking lot, correct?

16 A Yes, sir.

17 Q You went in, and I assume -- and I think you told
18 us that you wanted to clear everybody out, get
19 everybody out so that -- as best as you could at that
20 particular time, trying to preserve what was clearly a
21 potential crime scene, correct?

22 A Yes, sir.

23 Q Because that's the first thing that you do, right?
24 I mean, there, of course, is a principle that the more
25 people that are in a potential crime scene, the more it

1 gets disturbed, correct?

2 A Yes, sir.

3 Q And the whole point is trying not to disturb the
4 crime scene to preserve it in -- as best as possible
5 for later analysis, correct?

6 A Yes, sir.

7 Q All right. There had already been people in
8 there. We know that a complainant had been in there.
9 We know that there are at least two other employees
10 that had been there. You took a quick look, I guess,
11 behind the counter, right?

12 A Yes, sir.

13 Q And your observations were from in front of the
14 counter, or did you go around behind the counter?

15 A I was at the edge of the counter. It was an open
16 counter on the end at the door where I came in, and
17 that's at that point I observed a nonresponsive female.

18 Q Did you lean over the counter at all?

19 A No, sir.

20 Q It was after you had arrived, cleared the
21 building, that the EMS people entered, correct?

22 A Correct, sir.

23 Q And the EMS folks entered. Would you have any
24 disagreement with the fact that EMS was allowed to
25 enter at 10:47, which is 2247, about a minute after the

1 crime scene was --

2 A Yes, sir. They arrived within a minute, minute
3 and a half after I arrived on scene.

4 Q Pretty fast work for them?

5 A Yes, sir.

6 Q And they came in, of course?

7 A Yes, sir.

8 Q They went behind the counter?

9 A Yes, sir.

10 Q And they started administering -- doing their
11 thing, doing whatever they could, correct?

12 A Yes, sir.

13 Q Now, how many EMTs were there?

14 A I believe two.

15 Q All right. And what kind of equipment did they
16 have?

17 A That, I'm not sure.

18 Q Well, did they carry bags; did they carry packs;
19 did they --

20 A I'm sure they brought a pack in.

21 Q But they generally have equipment with them, of
22 course, right?

23 A Yes, sir.

24 Q And they have equipment to use in rendering aid,
25 correct?

1 A Correct.

2 Q They have equipment to use in taking a person whom
3 they're rendering aid to away from the scene like
4 stretchers and carrying kind of items, correct?

5 A Correct.

6 Q And they immediately start procedures of all
7 sorts. They have medications, needles, packs, blood,
8 all of the accoutrements of EMS work, right?

9 A Yes.

10 Q Okay. And they went behind the counter, and they
11 started doing their work with all those things?

12 A They did. They rendered aid.

13 Q I beg your pardon, sir?

14 A They rendered aid, yes, sir.

15 Q Yes. Okay. And that, of course, is something
16 that disturbs the scene as well, correct?

17 A It could.

18 Q Well, do you know what time the EMS folks left?

19 A It was minutes later, but I couldn't tell you
20 exact time. It should be on the crime scene log.

21 Q But they were there rendering aid, and then they
22 left as well, correct?

23 A Yes, sir.

24 Q They came in; they did their thing; they --

25 A Transported.

1 Q -- did their part to transport the person to the
2 hospital?

3 A Yes, sir.

4 Q And after -- you stayed on scene for a while. You
5 stayed on scene from 2246; you departed at 0047?

6 A Yes, sir.

7 Q Would that be correct?

8 A Yes, sir.

9 Q Again, I'll be glad to show it to you if you don't
10 have any particular recollection.

11 So you were on scene well over a couple of hours?

12 A Yes, sir. I wasn't in the building, but I was
13 there on the scene.

14 Q Okay. I think, Mr. Payne, that's all I have.

15 MR. HARVEY: One moment, please, Judge. With your
16 permission, before I conclude my cross, I'm going to
17 confer -- with your permission, I'm going to confer
18 after I conclude my crosses with Mr. Byrholdt before I
19 end. Is that all right?

20 THE COURT: Certainly.

21 MR. HARVEY: Thank you, Mr. Payne. I appreciate
22 it. Good luck with your new endeavor.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Redirect?

25 MS. HUEY: No, sir, Your Honor. May he be

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Pravinchandra Patel - Direct by Ms. Huey

1 MS. HUEY: Yes, sir.

2 THE COURT: Defense ready?

3 MR. HARVEY: Yes, sir.

4 THE COURT: Bring the jury in, please.

5 (WHEREUPON, the jury entered open court at
6 11:21 a.m.)

7 THE COURT: Call your next witness, please, ma'am.

8 MS. HUEY: Your Honor, the State calls Mr. Patel.

9 PRAVINCHANDRA PATEL,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: If you will, take the witness stand,
12 please, sir, and state your name and spell your last
13 name for the reporter, please.

14 THE WITNESS: Pravin Patel, P-a-t-e-l.

15 DIRECT EXAMINATION

16 BY MS. HUEY:

17 Q Mr. Patel, if you make sure you speak into the
18 microphone. It's hard to hear in here.

19 Mr. Patel, where are you originally from?

20 A I was born in Africa, you know. Then, from there,
21 we went for a couple of -- ten years in India. And
22 from there, India to London. And in 2004 I came to the
23 U.S.A.

24 Q And when you came to the U.S.A. in 2004, what part
25 of the U.S.A. did you come to?

1 A We came straight to Greenville.

2 Q The Greenville area?

3 A Yeah.

4 Q Now, are you a U.S. citizen, Mr. Patel?

5 A Yes, ma'am.

6 Q When you first came to the United States in the
7 Greenville area, Greenville/Anderson area, where did
8 you work?

9 A I worked in the Honda dealership on Clemson
10 Boulevard.

11 Q Honda dealership?

12 A Yes, ma'am.

13 Q Did you do that for very long?

14 A No. I worked about six, seven months.

15 Q And after that, what did you do for business?

16 A Then there was -- Highway 153, there was a
17 RaceWay. We had a lease in that one, and I run that
18 two and a half years.

19 Q That was the RaceWay on 153?

20 A Yes, ma'am.

21 Q Is that the same exit, Exit 40?

22 A Yes, ma'am.

23 Q So you ran that gas station?

24 A Yes.

25 Q And did you eventually buy that gas station?

1 A No. We can't buy it. We had to lease it from
2 that company, you know.

3 Q You leased that one?

4 A Yeah.

5 Q Did you eventually buy a gas station?

6 A We buy a gas station in 2010, the BP, which one I
7 was running.

8 Q Okay. And this was the BP again at the Exit 40?

9 A Yes, ma'am.

10 Q On Highway 153?

11 A Yes, ma'am.

12 Q And is that Anderson County?

13 A Yes, ma'am.

14 Q So I believe you said you bought that in 2010?

15 A Yes, ma'am.

16 Q And you actually owned it yourself?

17 A Yes, ma'am.

18 Q Who all worked at that BP gas station during that
19 time?

20 A It was me and my wife.

21 Q Just you and your wife?

22 A Yes, ma'am.

23 Q What if you had to go out of town or something
24 like that?

25 A Sometimes when we were to go out of town, always

1 we go one person can go and one person can stay.

2 Q So you and your wife were there almost always?

3 A Yes.

4 Q You or your wife?

5 A Yes.

6 Q And you were married?

7 A Yes, ma'am.

8 Q What was your wife's name?

9 A Mradulaben Patel.

10 Q And did y'all have children?

11 A Yes. I have two children, one boy and one girl.

12 Q How long had you been married?

13 A I married about 38, 39 years.

14 Q Now, the BP gas station that you and your wife
15 ran, what were the hours that it was generally open?

16 A We usually open between 5:30 and 6 o'clock and
17 close after 11 o'clock, between 11:00 and 12:00, you
18 know.

19 Q So 5:30 or 6 o'clock in the morning?

20 A Yeah.

21 Q To 10:30 or 11:00 at night?

22 A 11:00 to 12:00.

23 Q 11:00 to 12:00, I'm sorry. Okay. And how would
24 y'all divide those shifts up?

25 A In the shifts, like it's me and my wife. It's not

1 like, okay, I have to go at a time and she have to go
2 at a time. When she finish her work at home, then she
3 can come. Sometimes she come 2 o'clock, sometimes
4 5 o'clock, sometimes 6 o'clock. Just depends. No
5 fixed time. And when she come, I go, and she can lock
6 the store, then she can come home, you know.

7 Q So would you generally open the store, then?

8 A Yes, ma'am.

9 Q Okay. And then when she was done at home, then
10 she would come for the afternoon?

11 A Yeah.

12 Q And would she, then, close the store?

13 A Yes, ma'am.

14 Q So on April 30th of 2015, your wife was working at
15 your store on this particular night, correct?

16 A Yes, ma'am.

17 Q And your gas station, did it have surveillance
18 cameras?

19 A Yes. We had two cameras inside.

20 Q Were there any outside?

21 A There was outside, but someone broke it up and
22 messed it up, you know.

23 Q So there were some outside, but they didn't work?

24 A No.

25 Q How many did you have inside?

1 A Two.

2 Q Two cameras inside. And how did those work?

3 A They work 24 hours, you know.

4 Q Okay. And where was that -- the footage stored?

5 A Inside, in the office.

6 Q On a computer?

7 A Yes, ma'am.

8 Q In your office?

9 A Yes, ma'am.

10 Q Is that office locked?

11 A Locked all the time. Yeah, it's locked.

12 Q And you're the one who has access to that?

13 A Yeah.

14 Q Or your wife?

15 A Yeah.

16 Q Now, the footage from this particular incident,
17 Mr. Patel, did you allow law enforcement to download
18 that from your computer?

19 A Yes.

20 Q So you opened the office for them?

21 A Yeah.

22 Q Or provided the key?

23 A Provide the key.

24 Q How many registers were in your gas station?

25 A Two.

1 Q And did you use them both all the time?

2 A It depends. You know, if you go busy, then you
3 can start a second one if you have a second person
4 standing there or usually only one.

5 Q And so just depended on how busy it was?

6 A Yeah.

7 Q If it wasn't busy, which register would you use?

8 A Which one is near the window, you know.

9 Q The one closest to the window?

10 A Yeah.

11 Q So, Mr. Patel, as a transaction was happening, if
12 someone came in to buy a pack of gum, how would you
13 ring that in the register?

14 A They just scanning systems. Like any purchase you
15 do, you just scan it up and the amount come.

16 Q Okay. What if --

17 MR. HARVEY: Excuse me. I apologize.

18 THE COURT: I'm sorry?

19 MR. HARVEY: I apologize. I just could not hear.

20 THE COURT: If you would speak a little bit more
21 into the microphone.

22 MR. HARVEY: Again, I apologize.

23 THE COURT: You are welcome to move.

24 Can the jury hear the witness okay? Okay.

25 MR. HARVEY: I'm just going to stay. If you would

1 ask that question again.

2 BY MS. HUEY:

3 Q So, Mr. Patel, when someone buys something at your
4 store, how would that show in your register?

5 A When the person come in, you just scan the item
6 and they came in the registers. If you're paying by
7 cash, you put whatever dollar they give you and give
8 the change, and everything register on the roll all the
9 time.

10 Q So the register is rolling all the time?

11 A All the time, yes.

12 Q What if somebody wants a copy of their receipt?

13 A There is a button down there. You can press that
14 button and the receipt can come out, and you just give
15 it to person.

16 Q Okay. So do you have one copy of the receipt or
17 two copies of the receipt?

18 A I can get as many as we want to copy, you know.

19 Q So what if someone came in to purchase a tobacco
20 product, for instance. What is the process that you go
21 through for that?

22 A Once anyone asks for tobacco, we always ask for
23 I.D.

24 Q You ask for I.D.?

25 A Yeah. Once the person gives the I.D., you put the

1 date of the birth. And if they're underage, obviously,
2 you can't give. And if he's okay, then you just -- you
3 can purchase.

4 Q So once you get the I.D., what do you do with that
5 information?

6 A You just put the date in the computer.

7 Q The date of birth?

8 A Birth years and everything.

9 Q Into the register?

10 A Yeah.

11 Q So, Mr. Patel, did you give the register receipts
12 from your store on April 30th, did you give that to law
13 enforcement?

14 A Yeah. I didn't give it at that time, but after a
15 couple of days after officer asked us and we went down
16 there and he was there, I just give him the roll, you
17 know.

18 Q You gave him the whole roll?

19 A Yeah.

20 Q All right. Mr. Patel, I'm going to show you
21 what's been marked as State's Exhibit 5. Would you
22 take a look at this.

23 A Yeah.

24 Q Do you recognize that receipt?

25 A Yeah.

1 Q Is that the roll that you gave law enforcement --

2 A Yeah.

3 Q -- from your store?

4 A Yeah.

5 Q After April 30th of 2015?

6 A Yes, ma'am.

7 Q Has it been altered in any way?

8 A No. You can't alter, you know.

9 MS. HUEY: Your Honor, at this time we'd admit
10 State's Exhibit 5 into evidence.

11 MR. BYRHOLDT: No objection.

12 THE COURT: It will be admitted.

13 (WHEREUPON, State's Exhibit Number 5 was admitted
14 into evidence.)

15 BY MS. HUEY:

16 Q Now, Mr. Patel, I'm going to also show you what's
17 been marked as State's 1-R. If you will take a look at
18 that. Do you recognize that photo?

19 A Yeah.

20 Q And is that just a photo of the receipt --

21 A Yeah.

22 Q -- from your store?

23 A Yes, ma'am.

24 Q Has it been altered in any way?

25 A No, ma'am.

1 Q It just is a close-up of a particular day?

2 A Yeah.

3 MS. HUEY: Your Honor, at this time we admit
4 State's 1-R into evidence.

5 THE COURT: Any objection?

6 MR. BYRHOLDT: No objection.

7 THE COURT: Admitted.

8 (WHEREUPON, State's Exhibit Number 1-R was
9 admitted into evidence.)

10 BY MS. HUEY:

11 Q Mr. Patel, I'm going to let you hold on to this,
12 and I'm going to ask you a few questions about that
13 receipt.

14 So, Mr. Patel, from what register would this
15 receipt from April 30th have been?

16 A Register one.

17 Q And, again, that's the one closest to the window?

18 A Closest to the window.

19 Q And scrolling down the receipt to where it reads
20 "tobacco" and under it "customer I.D. verified"?

21 A Yeah.

22 Q Okay. What is the date of birth for customer I.D.
23 verified?

24 A [REDACTED] [REDACTED].

25 Q [REDACTED]?

1 A Yeah.

2 Q And what does that indicate to you, if anything?

3 A What do you mean?

4 Q So the fact that there's a tobacco purchase --

5 A Yeah.

6 Q -- with a customer I.D. verified, what does that
7 mean?

8 A The person, we seen the I.D.; the person has this
9 I.D., you know.

10 Q And that was the general course that you followed?

11 A Yeah. That's what we do all the time.

12 Q And, again, this receipt is from April 30th of
13 2015, correct?

14 A Yes, ma'am.

15 MS. HUEY: That's all I have for Mr. Patel, Your
16 Honor.

17 THE COURT: Cross-examination.

18 MR. HARVEY: No. Thank you.

19 THE COURT: Thank you, sir. You may step down.
20 Call your next witness, please.

21 MS. HUEY: Your Honor, the State calls Dr. Woodard
22 to the stand.

23 **BRETT HOUGHTEN WOODARD, M.D.,**

24 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

25 THE CLERK: If you would, take the stand, please,

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Brett Houghten Woodard, M.D. - Direct by Ms. Huey

1 sir, and state your name and spell your last name for
2 the reporter, please.

3 THE WITNESS: Brett Houghten Woodard,
4 W-o-o-d-a-r-d.

5 DIRECT EXAMINATION

6 BY MS. HUEY:

7 Q Dr. Woodard, what is your occupation or
8 profession?

9 A I'm a medical doctor, a pathologist by speciality
10 training, and a forensic pathologist by subspecialty
11 training.

12 Q What is a forensic pathologist?

13 A Forensic pathology is a subspecialty in pathology
14 that deals with injuries to the human body, their
15 causes and their etiologies up and to the point of
16 death.

17 Q And are you board certified in forensic pathology?

18 A Yes. I'm board certified by the American Board of
19 Pathology.

20 Q What are some of your duties as a pathologist?

21 A Currently I do autopsies for coroners in
22 Greenwood, Abbeville, Anderson, and Oconee Counties at
23 their request.

24 Q How many autopsies have you performed?

25 A We perform approximately 200 to 300 autopsies a

1 year.

2 Q And how many years have you been doing this?

3 A Since 1982.

4 Q And have you testified as an expert before?

5 A Yes, I have.

6 Q For general sessions?

7 A Yes, correct.

8 Q Do you know how many times ---

9 MR. BYRHOLDT: We'll stipulate to his
10 qualifications.

11 THE COURT: As a forensic pathologist?

12 MR. BYRHOLDT: Yes, sir.

13 THE COURT: Ladies and gentlemen of the jury,
14 normally a witness is not allowed to give their opinion
15 in court but in very limited circumstances. However,
16 if because of their education, experience or a
17 combination of that they are determined to be an expert
18 in a particular area and the area of their expertise
19 will assist you, the jury, they will be allowed to give
20 their testimony -- their opinion in the area of their
21 expertise.

22 It is stipulated by the defense that Dr. Woodard
23 is an expert in the field of forensic pathology. He
24 will be allowed to give his opinion and the reasons
25 for his opinion in this case.

1 Expert opinion is like any other opinion you will
2 hear in this trial. You may accept it or reject it or
3 give it as much weight as you think it deserves.

4 MR. BYRHOLDT: Your Honor, we'd further stipulate
5 that Ms. Patel died of a gunshot wound to the head.

6 THE COURT: Does the State wish to accept that or
7 do you wish to establish it on the record?

8 MS. HUEY: I would like to establish a few
9 questions on the record.

10 THE COURT: Very good. Go forward.

11 BY MS. HUEY:

12 Q Dr. Woodard, did you perform an autopsy on
13 Ms. Patel?

14 A Yes, I did, on May the 5th, 2015.

15 Q And what is the procedure you generally follow
16 when performing an autopsy?

17 A We receive the body and examine the body as we
18 receive it. And in Ms. Patel's case, she had undergone
19 a donation to what was then Life Point. They changed
20 their name since then. But they had donated internal
21 organs and other tissues from her body so we had no
22 clothing to examine. But we examined the outside of
23 the body to look for any signs of any injuries that may
24 have occurred to the individual so that we can then
25 look at the inside of the body and see how those

1 outside injuries translate or show us what occurred to
2 the vital organs of the body.

3 Q So starting with the outside of the body, then,
4 what, if anything, did you notice in particular in
5 reference to Ms. Patel's hands?

6 A She had two gunshot wound patterns. One was to
7 her right hand. The bullet went through the palm
8 surface of her right hand and exited the back surface
9 or, as we call it, the dorsal surface of her hand, the
10 top of her hand. As it passed through, it broke the
11 bone in the hand which is called the metacarpal. It
12 fractured that metacarpal and produced damage to the
13 soft tissues that are in the hand.

14 Also on the hand was what we refer to as
15 stippling. Stippling is caused by debris that's in the
16 barrel of a firearm also being projected forward. In
17 addition to the bullet itself, small pieces of metal
18 that are shaved off the bullet, small pieces of the
19 barrel itself, and congealed powder debris are thrown
20 forward for a certain distance. If the hand, in this
21 case the palm, was close enough to the end of the
22 firearm, it will produce little tiny injuries to the
23 hand, and we refer to those as stippling.

24 Q And that's if the gun is fired at a close range?

25 A The gun -- an average handgun would be greater

1 than six inches out to about 12 inches. Rarely it can
2 be out to 18 inches with long weapons.

3 Q After the bullet traveled through her hand, where
4 did it then go?

5 A There was a second gunshot wound pattern in her
6 face which would easily realign with her hand. This
7 went into what you refer to as the cheek area on the
8 left side. It passed through the bony structures of
9 the face to enter the skull. When it entered the
10 skull, it passed through the left side of the brain and
11 exited the back of the brain going slightly higher in
12 her head and going just a little bit more toward the
13 centerline.

14 Q So did the -- as a result of this, what happened
15 to her brain?

16 A It produced tears inside the parenchyma of her
17 brain and caused blood to leak into the brain itself
18 and also caused the brain to begin to swell.

19 While she did get neurosurgical intervention, they
20 removed a portion of her skull to try and allow for the
21 pressures that would build up to have a place to vent,
22 they were unsuccessful in being able to prevent the
23 pressure from causing so much swelling that blood no
24 longer can flow in her brain, so she had clotting of
25 the veins of her brain, and she had infarction and

1 death of the substance of her brain.

2 Q So if a person is shot in this manner, what
3 happens to the body?

4 A The person would go essentially unconscious. The
5 will and the information that's necessary to maintain
6 an erect position would no longer be transponded or
7 sent down to the muscles of your body and so,
8 literally, the muscles would begin to relax and the
9 person would fall to whatever was beneath them.

10 Q Now, when did Ms. Patel die, Dr. Woodard?

11 A She died on the 2nd of May 2015.

12 Q And in your expert opinion, Dr. Woodard, what was
13 the cause of Ms. Patel's death?

14 A Gunshot wound to her head with the resultant
15 trauma to the brain.

16 Q And as such, what do you rule her death?

17 A A homicide.

18 MS. HUEY: Nothing further, Your Honor.

19 THE COURT: Cross-examination.

20 MR. BYRHOLDT: No questions.

21 THE COURT: May this witness be excused?

22 MS. HUEY: Yes, sir.

23 MR. BYRHOLDT: Yes.

24 THE COURT: Thank you, sir.

25 Call your next witness, please, ma'am.

1 MS. HUEY: The State calls Ben Dugan.

2 THOMAS BENJAMIN DUGAN,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: If you would, take the stand, please,
5 sir, and state your name and spell your last name for
6 the reporter, please.

7 THE WITNESS: Thomas Benjamin Dugan, D-u-g-a-n.

8 DIRECT EXAMINATION

9 BY MS. HUEY:

10 Q Officer Dugan, where are you currently employed?

11 A Anderson County Sheriff's Office.

12 Q In what department?

13 A The forensics division.

14 Q And so in the forensics division, what are your
15 general responsibilities and duties?

16 A We respond to crime scenes, process them for
17 evidence.

18 Q And did you do so in this case?

19 A I did.

20 Q And is that at 2900 Highway 153 in Anderson
21 County?

22 A Yes, ma'am.

23 Q On April 30th of 2015?

24 A Yes, ma'am.

25 Q So who, if anyone, responded with you?

1 A Investigator Chris Wilson from my division. I
2 can't remember who all was up there.

3 MR. HARVEY: Excuse me. Officer, would you speak
4 up into the microphone.

5 THE COURT: Do you mind speaking into the
6 microphone.

7 MR. HARVEY: It's very difficult to hear.

8 THE WITNESS: Investigator Chris Wilson.

9 BY MS. HUEY:

10 Q And is that commonplace to respond with a partner
11 or another person from forensics?

12 A Yes. On a bigger scene, yes.

13 Q So when you first arrived on scene with
14 Investigator Wilson, what was your first steps on the
15 scene?

16 A I would have taken photographs. I took -- I
17 always take a picture of the case number and then of
18 the scene.

19 Q And when you say "taken photographs," would that
20 be of the entire scene?

21 A Yes, ma'am, starting on the outside working our
22 way in.

23 Q And did you do so in this case?

24 A Yes, ma'am.

25 Q I'm going to show you what's been marked as 1-A

1 through 1-Q. If you could please take a look at these.

2 A (Witness complies.)

3 Q Do you recognize those?

4 A Yes, ma'am.

5 Q Are those the photos you took on April 30th, 2015,
6 at the BP gas station?

7 A Yes, ma'am.

8 Q Do they fairly and accurately depict what you saw
9 on that night?

10 A Yes, ma'am.

11 Q Altered in any way?

12 A No, ma'am.

13 MS. HUEY: At this time, Your Honor, we'd admit
14 State's 1-A through Q into evidence.

15 THE COURT: Any objection?

16 MR. BYRHOLDT: No objection.

17 THE COURT: Admitted.

18 (WHEREUPON, State's Exhibit Numbers 1-A through Q
19 were admitted into evidence.)

20 BY MS. HUEY:

21 Q Investigator Dugan, so you took photos as a first
22 step?

23 A Yes, ma'am.

24 Q And then after you have taken the photos, what is
25 your next step?

1 A We were able to watch the video, the surveillance
2 footage.

3 Q From the night in question, the incident?

4 A Yes, ma'am.

5 Q And what's the purpose of you all, as forensics
6 investigators, watching the surveillance video?

7 A It gives us an idea of where the suspect might
8 have entered, where he may have touched, where he
9 walked, stood.

10 Q And once you see that, what do you then try and
11 do?

12 A Well, then we try to recover that evidence --
13 footwear from where he walked or stood, fingerprints
14 from where he might have touched, possibly DNA where he
15 might have touched.

16 Q So did you attempt to do that in this scene?

17 A Yes, ma'am.

18 Q What was your next step, then, in processing the
19 scene?

20 A I worked on the footwear. I processed the floors
21 for possible shoe wear impressions.

22 Q And that's just where you try and take a lift from
23 an impression on the floor?

24 A Yes, ma'am.

25 Q And you're not responsible for testing of that;

1 you just do the lift?

2 A That's correct.

3 Q And then what else did you collect?

4 A We collected the shell casing, the cash register
5 drawer, a mat that was on the counter, like a
6 protector, kind of protector-type thing, a couple one
7 dollar bills, some gas receipts.

8 Q Did you do any latent cards?

9 A Yes, ma'am. I processed the door that the suspect
10 entered and exited through for fingerprints.

11 Q And how do you do that? If you're processing the
12 door, how do you make a latent card?

13 A You use the fingerprint powder to -- you apply it
14 to the door, and when you develop the fingerprint, you
15 put tape over it, and you will pull the tape off and
16 apply it to like an index card, or a latent card we
17 call it. And on the back we write the description of
18 what we found, where we found it.

19 Q And so you did this in this case?

20 A Yes, ma'am.

21 Q So I believe you said you also collected the cash
22 register drawer, a casing, two one dollar bills and a
23 counter protector; is that correct?

24 A Yes, ma'am. And I think we got some receipts,
25 too, some pay-at-the-pump receipts, too.

1 Q So once you collect all of these items, what do
2 you then do with all of these items?

3 A We'll take them back to the office or our lab, and
4 we can process some of the stuff that we collected for
5 additional fingerprints with techniques that we can't
6 use on the field.

7 Q And did you do that in this case?

8 A I did.

9 Q In particular, in reference to the counter
10 protector or mat?

11 A Yes, ma'am.

12 Q And can you please describe that process.

13 A Yes, ma'am. We place the mat in what we call a
14 fuming chamber where you heat up cyanoacrylate. It's
15 basically like Super Glue. And once you heat it up, it
16 turns to fumes. The fumes attach to any moisture that
17 was left behind by latent prints.

18 Q And that's what you did from the mat collected
19 from the store in this case?

20 A Yes, ma'am.

21 Q Mr. Dugan, I'm going to ask that you step down now
22 to go through these photos.

23 A (Witness complies.)

24 Q I'm going to show you what's been marked or
25 admitted as State's 1-A. Can you tell the jury what

1 this is?

2 A That's the outside of the gas station.

3 Q And this is the BP gas station?

4 A Yes, ma'am.

5 Q All right. And 1-B?

6 A That's outside of the gas station as well.

7 Q 1-C?

8 A That's the outside as well, same gas station.

9 Q Is this the same side or are you working your way
10 around?

11 A Probably working my way around. I'd have to --
12 actually, they look like the same side.

13 Q But the purpose, you start on the outside, around,
14 and then go inside?

15 A Yes, ma'am.

16 Q And this is State's 1-D.

17 A That looks like the back side. I'm sorry. That's
18 the front side. The last one was the front side.

19 MR. HARVEY: I'm sorry. I can't hear the answers.

20 THE COURT: Would you please speak up?

21 THE WITNESS: Yes. That, I believe, is the front
22 of the gas station.

23 BY MS. HUEY:

24 Q That's 1-D.

25 And this is 1-E.

1 A That looks like the back of the gas station.

2 Q And 1-F?

3 A And that would be the other side of the gas
4 station.

5 Q 1-G?

6 A That's the gas station as well, outside.

7 Q Just a closer view?

8 A Yes, ma'am.

9 Q I'm going to show you 1-H.

10 A That was a shot from behind the counter on the
11 inside of the gas station, I believe. Yes, ma'am.
12 That's behind the counter.

13 Q And that was where Ms. Patel was located?

14 A Yes, ma'am.

15 Q And this is 1-I.

16 A That's the cash register at the gas station.

17 Q Okay. The one that she was depicted using in the
18 video?

19 A Yes, ma'am.

20 Q And this is 1-H.

21 A That's a shot of the counter where the counter mat
22 was that we collected.

23 Q So when we're talking about a counter mat that was
24 collected and then developed back at the office, is
25 this the mat in question?

1 A Yes, ma'am.

2 Q And this is State's 1-K.

3 A That's just a close-up shot of the mat that we
4 collected.

5 Q Of the same mat?

6 A Yes, ma'am.

7 Q All right. And this is State's 1-L.

8 A That's on the -- that would be from the customer
9 side of the register.

10 Q So if the customer is making a purchase, that's a
11 picture from where he's standing?

12 A Yes, ma'am.

13 Q State's 1-M?

14 A That's a shot from the side door facing the
15 counter, the door that the suspect entered.

16 Q Okay. And this is 1-N.

17 A That is the shell casing up underneath the -- I
18 guess they're like vitamins or something, pills that
19 they sell.

20 Q Right, which is hard to make out. But this is the
21 shell casing here?

22 A Yes, ma'am.

23 Q So is that the reason for State's 1-0?

24 A Yes, ma'am. It's a little closer shot of it.

25 Q Closer shot of the casing?

1 A Yes, ma'am.

2 Q What kind of casing was that?

3 A A 9mm.

4 Q And, again, this is State's 1-P. Is that an even
5 closer shot of it?

6 A Yes, ma'am.

7 Q And this is State's 1-Q.

8 A That's just a shot of the cash register.

9 MR. HARVEY: I'm sorry. That was 1-Q?

10 MS. HUEY: Yes, sir.

11 MR. HARVEY: Thank you.

12 BY MS. HUEY:

13 Q Okay. And that's the shot of the register that,
14 again, she was using, Ms. Patel was using, on that
15 night?

16 A Yes, ma'am.

17 Q Okay. You can have a seat.

18 I'm also going to show you what's been marked as
19 State's 7. If you can take a look at this entire
20 package.

21 A (Witness complies.)

22 Q And do you recognize that item?

23 A Yes, ma'am.

24 Q And what is that?

25 A That is the 9mm shell casing that I recovered from

1 the scene.

2 Q From the BP gas station on April 30th of 2015?

3 A Yes, ma'am.

4 Q Has it been altered in any way?

5 A Yes, ma'am. It's been processed in the fuming
6 tank.

7 MR. HARVEY: Again, I apologize, Judge.

8 Sir, I'm having a difficult time hearing you, if
9 you don't mind.

10 THE COURT: No, sir. You speak to me and I'll be
11 glad to address the witness.

12 You need to speak louder and we'll go from there.

13 Do not address the witness again, please.

14 MR. HARVEY: Yes, sir.

15 THE WITNESS: Can you repeat the question?

16 BY MS. HUEY:

17 Q Does it fairly and accurately depict what you
18 collected on April 30, 2015?

19 A Yes, ma'am.

20 MS. HUEY: At this time we'd move State's 7 into
21 evidence.

22 MR. BYRHOLDT: No objection.

23 THE COURT: Admitted.

24 (WHEREUPON, State's Exhibit Number 7 was admitted
25 into evidence.)

1 BY MS. HUEY:

2 Q So this is the 9mm casing.

3 All right. Mr. Dugan, I'm also going to show you
4 what's been marked as State's 6, if you can take a look
5 at this entire package.

6 And do you recognize that item?

7 A Yes, ma'am.

8 Q And is that the mat that you -- or what is it?

9 A It's the mat that I collected from the BP gas
10 station.

11 Q Is that the one you collected on April 30th of
12 2015?

13 A Yes, ma'am.

14 Q And does it fairly and accurately depict what you
15 collected on that night?

16 A Yes, ma'am.

17 Q Other than it has been processed, I believe?

18 A It has, in the fuming chamber.

19 Q And you did that back in your office?

20 A Yes, ma'am.

21 MS. HUEY: Your Honor, at this time we'd admit
22 State's 6 into evidence.

23 MR. BYRHOLDT: No objection.

24 THE COURT: Admitted.

25 (WHEREUPON, State's Exhibit Number 6 was admitted

1 into evidence.)

2 BY MS. HUEY:

3 Q Investigator Dugan, I'm going to show you State's
4 7 -- or 6, rather. And if you could explain to the
5 jury the process again of processing that mat.

6 A Okay. When we collected the mat, I brought it
7 back to the office. We put it in a fuming chamber.
8 Basically, we heat the cyanoacrylate to make it fume,
9 and then it attaches itself to moisture left behind by
10 fingerprints or palm prints, which is the white
11 substance you will see on the mat itself.

12 Q You may need to step down, if you can, to show
13 that.

14 A (Witness complies.)

15 The fumes will leave a white residue on any place
16 where it's been touched.

17 Can y'all see that? This is -- this is just
18 basically what it looks like. We put it inside this
19 Plexiglas to keep it from wiping off, to protect it.

20 Q And now you don't actually compare these prints,
21 though?

22 A I do not.

23 Q You just process it and pass it on to Lieutenant
24 Scott?

25 A Yes, ma'am.

1 Q You may have a seat.

2 I'm also going to show you 3-A through 3-D. Will
3 you take a look at those?

4 A (Witness complies.)

5 Q And do you recognize those photos?

6 A Yes, ma'am.

7 Q And what do those depict?

8 A That is the mat that we just looked at there after
9 it had been processed.

10 Q Okay.

11 MS. HUEY: At this time, Your Honor --

12 Q Have they been altered in any way?

13 A Just where I processed them in the lab.

14 Q But the pictures.

15 A I'm sorry?

16 Q Have the pictures been altered in any way?

17 A No, ma'am.

18 MS. HUEY: Your Honor, at this time we'd admit
19 State's 3-A through D into evidence.

20 MR. BYRHOLDT: No objection.

21 THE COURT: Admitted.

22 (WHEREUPON, State's Exhibit Numbers 3-A through D
23 were admitted into evidence.)

24 BY MS. HUEY:

25 Q Again, these are just close-ups of the mat,

1 correct?

2 A That's correct.

3 MS. HUEY: That's all I have for this witness,
4 Judge.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. HARVEY:

8 Q It is, am I correct, Investigator Dugan, correct?

9 A Yes, sir.

10 Q Investigator, I understand that you were a part of
11 the unit that responded or the deputies that responded
12 to this particular scene at 153 and 285, correct, on
13 April 30th of 2015?

14 A Highway 153 and Interstate 85, yes, sir.

15 Q That's what I said.

16 And do you recall about what time that you were
17 dispatched and about what time that you arrived?

18 A No, sir. I don't recall.

19 Q Can I hand you something that may refresh your
20 recollection, and if you don't mind, take a look at it?

21 A Yes, sir.

22 (Document handed to witness.)

23 A Yes, sir.

24 Q Does that help you refresh your recollection?

25 A Yes, sir.

1 Q And what time does it appear, please, sir, that
2 you, if your recollection is refreshed, that you
3 arrived or were dispatched to the scene?

4 A It shows that I was en route at 10:47 p.m. on
5 April 30th.

6 Q At 10:47?

7 A Yes, sir.

8 Q And when you got to the scene, was a crime scene
9 log already established?

10 A I can't answer. I don't know.

11 Q Well, tell us what a crime scene log is. A crime
12 scene log is a -- well, you tell us.

13 A Usually the deputy on scene will keep track of who
14 all enters and exits the crime scene.

15 Q Okay. And when you say keeps a record, there's a
16 form, correct?

17 A Yes, sir.

18 Q And there's an Office of the Sheriff, Anderson
19 County, Crime Scene Log form, correct?

20 A Yes, sir.

21 Q And that form is established in order to maintain,
22 as much as possible, the integrity of a crime scene,
23 correct?

24 A That's correct.

25 Q And it's important to maintain the integrity of a

1 crime scene, correct?

2 A Yes, sir.

3 Q And you are one of the people that has to process
4 that crime scene, and knowing who went in and out is
5 important; is that right?

6 A Yes, sir.

7 Q And that's why a crime scene log was kept?

8 A Yes, sir.

9 Q And was a crime scene log kept in this particular
10 instance?

11 A I can't answer that. I don't know.

12 Q And --

13 MR. HARVEY: With permission?

14 THE COURT: Yeah. You have it.

15 MR. HARVEY: I know that you said I can do it, but
16 it's a habit.

17 Q You were en route, or en route, at 10:47. That's
18 what you just told us. What time is your -- is your
19 login at the crime scene?

20 A Says 2320 which will be 11:20 p.m.

21 Q 2320. The 10:47 is what?

22 A 10:47 p.m. would be --

23 Q What in military time?

24 A 2247.

25 Q 2247. So it seems to me that the first thing that

1 you did when you got there is, you told us, was you
2 stayed outside, correct?

3 A Outside of the gas station, yes, sir.

4 Q Yeah. Right. Was the outside also a crime scene?

5 A What I consider a crime scene is what we rope off,
6 what they tape off.

7 Q Wasn't the outside taped off also?

8 A Yes. So, yes, the outside would have been part of
9 the crime scene.

10 Q When was the outside taped off?

11 A I can't answer that. I don't know.

12 Q Well, was it taped off when you got there?

13 A I don't recall.

14 Q Did you take pictures of the outside when it was
15 taped off? Do you recall?

16 A The pictures -- all the pictures I took from the
17 outside, if they showed the tape, then yes. But I
18 wouldn't have stood outside the crime scene and
19 photographed in. I took pictures of just the outside
20 of the building.

21 Q I'm sorry, I truly apologize. I don't mean to
22 make you repeat answers, but I just didn't hear you.
23 You're very low spoken. Would you give us that answer
24 again, please?

25 A I just took pictures of the outside of the gas

1 station. Now, whether they showed the crime scene tape
2 up or not, I don't know. I don't even know if there
3 was crime scene tape up.

4 Q Well, I guess my question is directed to this: If
5 the outside is a crime scene and the outside was taped
6 off, you arrived at the crime scene, and the crime
7 scene log should show that you were at the crime scene
8 when you started taking pictures, right?

9 A Well, yes, sir.

10 Q Okay. But it doesn't reflect that, does it?

11 A I don't know.

12 Q Well, you got it right in front of you.

13 A It says here I arrived at 2320.

14 Q Right. To the crime scene?

15 A Okay.

16 Q All right. Which was -- did it take you, let's
17 see -- 13 and 20 -- 33 minutes to get there?

18 A It's very possible.

19 Q Okay. Let me hand you what's been marked as, I
20 guess, Defendant's 1. And do we have an exhibit
21 sticker, please.

22 (WHEREUPON, Defendant's Exhibit Number 1 was
23 marked for identification.)

24 BY MR. HARVEY:

25 Q I'm going to hand you Defendant's 1. And can you

1 tell us what Defendant's 1 shows, please.

2 A It's a picture of the gas station with crime scene
3 tape up around it.

4 Q And I understood you took all the pictures that
5 night, correct?

6 A Yes, sir.

7 Q So that picture shows -- and it's a true and
8 accurate representation of the scene as you saw it on
9 that evening of April 30th, 2015, correct?

10 A On the outside of the gas station, yes, sir.

11 Q Yes. And you took that picture, correct?

12 A Yes, sir.

13 Q All right.

14 MR. HARVEY: Move admission of --

15 MR. BYRHOLDT: Bruce -- beg the court's
16 indulgence.

17 (WHEREUPON, an off-the-record discussion was held
18 between defense counsel.)

19 MR. HARVEY: Withdrawn.

20 Q But, clearly, when you arrived there, crime scene
21 tape was already up, right?

22 A Yes, sir.

23 Q Okay. And one of the things that you do and you
24 told us about was you take pictures from the outside.
25 Do you take any measurements on the outside?

1 A Only if there's something to measure.

2 Q All right. Well, one thing that you generally do
3 in processing crime scenes is establish a fixed point,
4 correct, and then you measure from that fixed point to
5 other points; is that a technique that you use all the
6 time?

7 A Not all the time. It depends on the scenario.
8 Depends on the case.

9 Q Well, you determined then in this particular
10 scenario that there was nothing to measure on the
11 outside?

12 A That's correct.

13 Q Okay. So once you have taken pictures of the
14 outside, your investigation moved then to the inside,
15 correct?

16 A Yes, sir.

17 Q All right. And when it moved to the inside, I
18 understood that the next task that you performed first
19 were photographs; then the next step was, I understood,
20 viewing of the video surveillance?

21 A Yes, sir.

22 Q That video surveillance was in a locked room,
23 correct?

24 A Yes, sir.

25 Q And who unlocked the room for you?

1 A I believe the owner did.

2 Q Okay. And had he arrived on the scene prior to
3 the time you were there or after the time you were
4 there?

5 A I don't recall.

6 Q And do you know who contacted him and when he was
7 contacted?

8 A I do not.

9 Q I understood he was there -- was he there and
10 unlocked that room when you were there?

11 A Yes, sir.

12 Q And who operated the computer?

13 A Investigator Wilson did, I believe.

14 Q Investigator Woodson?

15 A Wilson. Investigator Wilson.

16 Q Investigator Wilson was the person that was with
17 you to do the processing, right?

18 A Yes, sir.

19 Q Okay. And he arrived at the same time with you,
20 right?

21 A Yeah, roughly. I don't -- we weren't riding
22 together, but, yes, sir, about the same time. We were
23 not riding together but about the same time.

24 Q And the computer had the video surveillance in it,
25 correct?

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1 A Yes, sir.

2 Q Operated by Investigator Wilson, correct?

3 A Yes, sir.

4 Q And then downloaded onto a thumb drive or a CD?

5 A You'll have to ask Investigator Wilson, but I
6 believe it was a thumb drive.

7 Q You weren't there? You weren't present?

8 A Not while he was downloading it, no, sir.

9 Q Okay. And then when that video surveillance was
10 viewed, was it viewed on a computer there?

11 A Yes, sir, on the little screen they have there.
12 On their screen that they had there.

13 Q In the computer in the office there?

14 A Yes, sir.

15 Q All right. And do you have -- do you have any
16 indication of what time that that occurred?

17 A No, sir.

18 Q All right. Well, one of the things that you do in
19 your job is you prepare a report of the activities that
20 you undertake during an investigation, correct?

21 A Yes, sir.

22 Q And there are a number of purposes for preparing
23 that report, are there not?

24 A Yes, sir.

25 Q In preparing that report, you want to make sure

1 that you accurately reflect the activities that you
2 performed at that time, right?

3 A Yes, sir.

4 Q And you want to make sure that you highlight all
5 the important things that you have done, correct?

6 A Yes, sir.

7 Q So that if it comes down to testifying sometime
8 later, like in this instance, you can review and
9 reflect on your report and refresh your recollection,
10 correct?

11 A Yes, sir.

12 Q And one of the things that is ordinarily placed in
13 a report is time, but there's no time in your report,
14 correct?

15 A No, sir, not in my report.

16 Q Okay. And you only did one report, right?

17 A Yes, sir.

18 Q And that's a supplementary report on 5/1 of 2015,
19 correct?

20 A Yes, sir.

21 Q And that's just a one-page report?

22 A Yes, sir.

23 Q And in your one page, there is no time reflected,
24 correct?

25 A Correct.

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1 Q And on your arrival, you took the digital
2 photographs while Investigator Wilson took a video of
3 the scene --

4 A Correct.

5 Q -- is that right?

6 All right. You then watched the video, correct?

7 A Yes, sir.

8 Q All right. After reviewing the video, Wilson,
9 Investigator Wilson, copied it to a thumb drive.
10 That's in your report, right?

11 A Yes, sir.

12 Q Well, you read your report in preparing to
13 testify, correct?

14 A Yes, sir.

15 Q So it refreshed your recollection; is that right?

16 A Yes, sir.

17 Q Okay, good. You started, as you told us, by
18 processing the floor where you believed the individual,
19 the suspect, entered the store, correct?

20 A Yes, sir.

21 Q That's what you told us. There were -- and you
22 processed those for shoe impressions, correct?

23 A Correct.

24 Q All right. And you, indeed, found several shoe
25 impressions?

1 A Correct.

2 Q All right. And those were seized. And were they
3 processed in the same fashion, back at the office in
4 the fuming process where you use Super Glue?

5 A No, sir.

6 Q All right. They were just taken there,
7 photographed there?

8 A I believe we photographed them, yes, sir.

9 Q And there were multiple shoe impressions because
10 people had come in and out of the scene, correct?

11 A Correct.

12 Q And that, again, goes back to the preservation of
13 the scene because the more people that come into a
14 scene, the more type of what you call trace evidence is
15 going to be left at the scene, right?

16 A Correct.

17 Q And that can complicate the scene, itself, correct?

18 A Correct.

19 Q All right. After processing the floor, you
20 processed the doors, correct?

21 A Correct.

22 Q And you were processing the doors -- when I say
23 "processing the doors," you were processing them for
24 the development of latent prints?

25 A Yes, sir.

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1 Q Okay. Latent prints being prints that are not
2 visible to the eye?

3 A Correct.

4 Q There's latent prints; there's patent prints,
5 right?

6 A Correct.

7 Q Patent prints or patent prints, you can see like a
8 palm print or a fingerprint that's left in a substance
9 like blood or something like that?

10 A Correct.

11 Q Latent prints you can't see?

12 A Correct.

13 Q All right. And that was -- the doors were
14 processed, correct?

15 A Yes, sir.

16 Q You then you took, I think you told us, something
17 called touch DNA?

18 A Yes, sir.

19 Q Touch DNA, how is that gathered?

20 A We use swabs, distilled water, alcohol and swabs.

21 Q When you say "swabs," it's like the cotton Q-Tip
22 kind of article?

23 A That's correct.

24 Q Just like a Q-tip, in fact?

25 A Just longer.

1 Q It's longer, but it's a long Q-Tip?

2 A Correct.

3 Q And that's also an effort by you to determine
4 whether anybody or whether you could determine whether
5 anybody had touched a surface and left some sort of
6 substance there, oils from their skin, correct?

7 A Potentially DNA, yes, sir.

8 Q Yeah, potentially.

9 A Potentially, yes.

10 Q Right, because you can then do some PCR or
11 whatever the crime lab does to see if there's any DNA
12 available, correct?

13 A Correct.

14 Q That was done, right?

15 A Yes, sir. I took touch DNA, yes, sir.

16 Q You also -- you also -- not only did you take
17 pictures that you showed us of the register, but you
18 processed the register itself?

19 A Correct.

20 Q The register screen tower is what you put in your
21 report?

22 A Yes, sir.

23 Q Is that the top?

24 A Yes, sir.

25 Q You also processed the cash register where the

1 money was?

2 A Yes, sir.

3 Q You actually took it out?

4 A Yes, sir.

5 Q All right. You actually took it out and preserved
6 it and attempted to -- not attempted, you did process
7 that as well, correct?

8 A Correct.

9 Q All right. And you processed that for touch DNA
10 and latent prints?

11 A I'd have to look at my report again. I don't
12 remember, but I believe so.

13 Q Well, if you've got it there with you, you're
14 welcome to look at it.

15 A I just have what you brought me.

16 Q You didn't bring a copy of your report?

17 A I didn't bring a copy, no, sir.

18 (WHEREUPON, document shown to witness.)

19 Q And, sir?

20 A Yes, sir.

21 Q I may have an extra copy that I can let you look
22 at while I ask you some questions if that's okay.

23 Here you go, Investigator.

24 A Yeah. Looks like --

25 Q That's the report, right?

1 A Yes, sir.

2 Q Okay.

3 A Looks like Investigator Wilson did the touch DNA
4 on the screen.

5 Q I'm sorry, sir. This is your report, though,
6 right?

7 A Yes, sir.

8 Q Okay. So we've done shoe prints; we've done
9 latent prints; we've done touch DNA, right?

10 A Yes, sir.

11 Q We then seized the shell casing which you told us
12 about, correct?

13 A Correct.

14 Q All right. And a shell casing is just a cartridge
15 case, correct?

16 A Correct.

17 Q And it was -- ordinarily a cartridge case is
18 ejected from a semiautomatic weapon, correct?

19 A That's correct.

20 Q You're familiar with that, correct?

21 A Yes, sir.

22 Q And, generally speaking, in a semiautomatic
23 weapon, a cartridge case is ejected to the right and
24 maybe sometimes the rear, right rear, or at least the
25 right, correct?

1 A Correct.

2 Q Okay. And that was obtained. Were there any
3 efforts to develop latent prints from the cartridge
4 case?

5 A Yes, sir.

6 Q All right. So the cartridge case was processed.
7 Indeed, I think you also told us you collected two one
8 dollar bills from the register?

9 A Yes, sir.

10 Q Were those processed?

11 A Yes, sir.

12 Q Were those processed for latent prints?

13 A Yes, sir.

14 Q There were three printed receipts that you also
15 seized, correct?

16 A Yes, sir.

17 Q And they were for gas paid at the pump, right?

18 A Yes, sir.

19 MR. HARVEY: Judge, may I look at the photos?

20 THE COURT: What exhibit number is that, please,
21 sir?

22 MR. HARVEY: Let me make sure I have it and
23 everybody can see it and I can focus.

24 Do you have a screen up there?

25 THE COURT: No, sir, he doesn't. How about

1 identifying the exhibit number that is, please.

2 MR. HARVEY: I will.

3 MR. BYRHOLDT: 1-I.

4 MR. HARVEY: It is 1-I.

5 THE COURT: You can step down.

6 BY MR. HARVEY:

7 Q If you will come over with me right here.

8 A (Witness complies.)

9 Q Now, that's the cash register, correct?

10 A Yes, sir.

11 Q That cash register shows receipts being printed in
12 the upper right-hand corner, correct?

13 A Upper right-hand corner.

14 Q Yeah. The upper right-hand corner of the -- of
15 the exhibit?

16 A I don't know -- I'm not exactly sure where the
17 receipts get printed from.

18 Q Maybe we can do it this way. You have identified
19 1-I as the cash register. On the upper right-hand
20 portion of that, is that the receipt, the roll?

21 A No, sir. That to me looks like a note. That
22 looks to me like where the receipts are. Maybe that's
23 where they come out of.

24 Q Well, one of the things that -- go ahead. You can
25 return to the stand.

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1 A (Witness complies.)

2 Q One of the things that we have in evidence here is
3 the receipt, the roll, the actual roll of receipts --

4 A Yes, sir.

5 Q -- correct?

6 That was one of the things that wasn't seized that
7 evening, correct?

8 A That's correct. I didn't collect that, no, sir.

9 Q All right. Well, you were part of the persons
10 that were tasked with processing the scene, and you did
11 a number of items to the cash register, correct?

12 A Yes, sir.

13 Q And the owner of the cash register was, in fact,
14 there, correct?

15 A Yes, sir.

16 Q And one of the things you could have done on that
17 particular date was seize and obtain the cash register
18 roll, especially after seeing the video, correct?

19 A Could have, yes, sir.

20 Q But you didn't?

21 A No, sir.

22 Q And neither did Investigator Wilson, correct?

23 A No, sir.

24 Q And according to State's Exhibits Number 1-Q and
25 1-I, there were receipts -- there were, in fact,

1 receipts there to be seized, correct? Is that right?

2 A Yes, sir.

3 Q There were receipts there, but they weren't seized
4 or gathered at that particular time, and the owner was
5 also there?

6 A Correct.

7 Q All right. Did you ask about them?

8 A No, sir. I was informed that those are what they
9 wanted so I collected them.

10 Q I'm sorry. You didn't collect them?

11 A I collected the ones that I was told to collect.

12 Q Well, who told you?

13 A I can't remember. Investigator Voigt was there.

14 Q Was he in charge of the scene?

15 A Yes, sir. He was the detective.

16 Q Let me ask you a question. You're the crime scene
17 investigator, right?

18 A Yes, sir.

19 Q So is it my understanding that you get told what
20 to do?

21 A No, sir.

22 Q All right. Well, you weren't told how to take the
23 photographs, correct?

24 A No, sir.

25 Q All right. You weren't told what photographs to

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Thomas Benjamin Dugan - Cross by Mr. Harvey

1 take, correct?

2 A No, sir.

3 Q You weren't told where to process and how to
4 process, correct?

5 A No, sir.

6 Q But you were told whether or not to -- well, were
7 you told whether or not to seize the cash register?

8 A No, sir.

9 Q Were you told whether or not to seize the mat?

10 A No, sir.

11 Q So the one thing that you're telling us that was
12 there that wasn't seized, you were told by someone you
13 don't know not to seize it; is that it?

14 A No, sir.

15 Q Well, so --

16 A What I do is I process the scene for forensic
17 evidence. And then if there's any additional evidence
18 that the detective might want because he might have
19 further detailed information than I do, then I collect
20 that as well.

21 Q Okay. And would it then be up to the detective to
22 determine whether that's something that he was going to
23 seize or you were going to seize -- not he,
24 necessarily, but Anderson County, in furtherance of
25 this investigation, was going to seize at that time?

1 A Well, obviously, the further you go into an
2 investigation, the more and new details arrive so you
3 might need to go back and get something.

4 Q Yeah. But these weren't new, were they?

5 A I don't -- I don't understand exactly what you
6 are --

7 Q You already looked at the --

8 A You're talking about the receipts aren't new?

9 Q That's right. It wasn't new. Hold on. You
10 already looked at the video?

11 A Right.

12 Q You had already seen that something was inputted
13 into the register, correct?

14 A Correct.

15 Q So you knew at that particular time that the
16 receipts from the register, you or Investigator Voigt
17 or someone knew that, hey, this is important stuff.
18 That didn't come up later on down the road, did it?

19 A No, sir.

20 Q Okay. And in processing the inside of the store,
21 the BP gas station, did you take any measurements of
22 how far it is from the door to the counter, front door,
23 how far it is from the counter to the back?

24 A No, sir.

25 Q No -- there were no crime scene measurements?

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1 A No, sir.

2 Q There was no seizure of the receipt at that
3 particular point?

4 A There were three receipts collected.

5 Q Well, three receipts from the outside. And where
6 did you seize those from?

7 A I don't recall.

8 Q You don't recall?

9 A They were on the counter or in the drawer. I
10 can't remember.

11 Q You can't remember?

12 A No, sir.

13 Q You didn't document that in your report?

14 A No, sir.

15 Q You didn't take any photographs of those
16 particular receipts?

17 A I don't know if I took pictures of them or not. I
18 haven't seen all the pictures.

19 Q Okay. Well, you took the pictures, didn't you?

20 A Yes, sir.

21 Q And you haven't -- okay. Maybe I'm missing
22 something. You haven't seen all your own pictures?

23 A Yes, sir. I looked at the pictures when I took
24 them and entered them into our computer two years ago.
25 I haven't relooked at all the pictures, no, sir.

1 Q Okay. Well, perhaps -- nobody prohibited you from
2 doing that?

3 A No, sir.

4 Q There was no reason that you couldn't have looked
5 and refreshed your recollection of all the photographs
6 and all the reports that you did prior to the time of
7 your testimony, correct?

8 A No, sir.

9 Q Nobody told you not to do that?

10 A No, sir.

11 Q That was a choice that you made?

12 A Yes, sir.

13 Q But you're telling us now you can't recall whether
14 you took pictures of the receipts and what the receipts
15 said?

16 A That's correct.

17 Q All right. And if you don't know what the
18 receipts said, did they have time and dates on them?

19 A I don't know. I would assume so, but I don't
20 know.

21 Q I'm going to show you the photograph of the
22 receipt that you identified for us and has State's
23 Exhibit 1-R.

24 MS. HUEY: Objection, Your Honor.

25 MR. HARVEY: I'm sorry. Is that not in?

1 MS. HUEY: He did not testify that he collected
2 that.

3 THE COURT: I'm sorry. I did not hear you,
4 Ms. Huey.

5 MS. HUEY: He did not collect that item.

6 MR. HARVEY: The photograph?

7 THE COURT: Y'all step up here for a second.

8 (WHEREUPON, a bench conference was held off the
9 record in the presence of the jury, but out of the
10 hearing of the jury.)

11 BY MR. HARVEY:

12 Q The receipt identified as 1-R that is, in fact, in
13 evidence in this case, would you come down here and
14 talk to me about that receipt, Investigator, if you
15 would.

16 A (Witness complies.)

17 Q It says at the top "void ticket"?

18 A Yes, sir.

19 Q Does that mean that it was -- do you know what
20 that means about when it was printed and how it was
21 printed?

22 A No, sir.

23 Q All right. Does it have a date and time for the
24 first entry?

25 A April 30th, 2212, is the time I see.

1 Q So the answer is yes, it does have a date and time
2 for that transaction, correct?

3 A Yes, sir.

4 Q All right. The next transaction that is shown,
5 does that have a date and time as well?

6 A I would assume so.

7 Q All right. Well, you can look. You're the
8 investigator.

9 A Yeah. Couple seconds afterwards.

10 Q Okay. So there is a date and time associated with
11 each particular entry, isn't there?

12 A On several of them, yes, sir. Are you talking
13 about each line?

14 Q Yes. There's a date and time associated with each
15 one of the transactions on State's Exhibit 5 and
16 State's Exhibit 1-R?

17 A Yes, sir.

18 Q Correct?

19 A Yes, sir.

20 MR. HARVEY: Did y'all hear that? He had his back
21 to you.

22 Sorry, I don't mean to address the jury.

23 THE WITNESS: It looks on these that there's dates
24 and times.

25 BY MR. HARVEY:

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1 Q Okay. There are dates and times on every one of
2 those transactions. Is there a date and time on the
3 last one?

4 A It looks like it's cut off. Down here.

5 Q Well, there's something there. You can't tell
6 what it is, can you?

7 A No, sir.

8 Q But there is no date and time on that last
9 transaction, is there?

10 A Are you talking about the --

11 THE REPORTER: I'm sorry. I cannot hear you now
12 either.

13 THE COURT: The court reporter cannot hear you.

14 THE WITNESS: No, sir. It looks like it was torn
15 off there.

16 BY MR. HARVEY:

17 Q All right. But you weren't the individual that
18 gathered that. So there's a torn place at the bottom
19 where there may be more information but we can't see
20 it; is that right?

21 A Yes, sir.

22 Q And every other transaction, every other
23 transaction has got a date and time on it?

24 A Yes, sir.

25 Q All right. You can resume your seat.

1 A (Witness complies.)

2 MR. HARVEY: One moment, please, Judge.

3 THE COURT: Yes, sir.

4 MR. HARVEY: Judge, we're looking for a particular
5 photograph. Would this be a good time to break?

6 THE COURT: Mr. Foreman, would you take your jury
7 back to the jury room for just a few minutes, please,
8 sir.

9 (WHEREUPON, the jury exited open court at
10 12:39 p.m.)

11 THE COURT: Let's take about five minutes.

12 (WHEREUPON, a recess was taken from 12:40 p.m. to
13 12:47 p.m.)

14 THE COURT: Let me see the attorneys up here,
15 please.

16 (WHEREUPON, a bench conference was held off the
17 record.)

18 THE COURT: Buck, would you bring the jury in,
19 please.

20 (WHEREUPON, the jury entered open court at
21 12:50 p.m.)

22 THE COURT: Mr. Harvey.

23 MR. HARVEY: Thank you, Judge. I have no further
24 questions of this witness.

25 Thank you, Investigator.

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1 (WHEREUPON, the jury exited open court at
2 12:52 p.m.)

3 THE COURT: Anything from the State before we
4 break?

5 MS. HUEY: No, sir, Your Honor.

6 THE COURT: From the defense?

7 MR. BYRHOLDT: No, Your Honor.

8 THE COURT: We'll be in recess until 2:15.

9 Does anybody need to get in the courtroom over the
10 break?

11 MR. HARVEY: Maybe I'll try to take whatever we
12 need.

13 MS. HUEY: Judge, we may need to.

14 THE COURT: If you do, just talk to the clerk. He
15 never eats because he's a constant worker around here
16 so just make arrangements and he'll have somebody
17 there.

18 All right. We're in recess until 2:15.

19 (WHEREUPON, lunch recess was taken from 12:53 p.m.
20 to 2:18 p.m.)

21 THE COURT: Ms. Huey, anything from the State
22 before we proceed?

23 MS. HUEY: Your Honor, it's my understanding the
24 defense has something.

25 MR. BYRHOLDT: Your Honor, you addressed the issue

1 of the identification by Bosley (sic) from Georgia
2 based on the videotape that was sent to him. We
3 recovered a Georgia case that is on point. We'd ask
4 the court to reconsider their ruling.

5 THE COURT: Okay. Pass it forward, please.

6 Now, what issue is this on?

7 MR. BYRHOLDT: Where the defendant's probation
8 officer identifies him off a video clip that was
9 e-mailed to him.

10 THE COURT: You said -- I said it was not a
11 Biggers issue.

12 MR. BYRHOLDT: It's not. And this court in *Grimes*
13 vs. *State*, 591 Ga. App. 585, the court found trial
14 counsel ineffective for not raising this issue dealing
15 with -- it was a law enforcement officer identifying a
16 defendant off a video clip.

17 THE COURT: I was about to ask you. Give me the
18 facts of this case.

19 So law enforcement identified the defendant off a
20 videotape?

21 MR. BYRHOLDT: Yes, sir, and the court held that
22 was improper.

23 THE COURT: Did that law enforcement have any
24 prior knowledge of this same defendant?

25 MR. BYRHOLDT: Yes, somewhat. But the important

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1 part, it says, "It remains improper to allow a witness
2 to testify as to the identity of a person in a video or
3 photograph when such opinion evidence tends only to
4 establish a fact which an average juror can determine
5 themselves from the video."

6 THE COURT: Where is that? Show me where that is
7 in the case, please, sir.

8 MR. BYRHOLDT: It's quoted three times, Your
9 Honor. Page -- the pages are not numbered.

10 THE COURT: Just show me yours. Let me look at
11 it.

12 MR. BYRHOLDT: Bottom of Page 6. It says -- there
13 is a little 3 at the front of it.

14 THE COURT: Cites Carter supra and *Dawson vs.*
15 *State?*

16 MR. BYRHOLDT: Yes, sir. That section right
17 there.

18 THE COURT: Let me ask two things. One, that's a
19 little bit different than this expert opinion in the
20 case. But although we have a Georgia officer making
21 identification from a video, this is still --

22 MR. BYRHOLDT: In Georgia.

23 THE COURT: -- this is still South Carolina
24 evidence rules.

25 MR. BYRHOLDT: No. If the identification was made

1 in Georgia, Your Honor, we believe Georgia rules apply.

2 THE COURT: Why would identification in Georgia
3 apply to a South Carolina trial? I'm not saying it
4 doesn't, I'm just asking you.

5 MR. BYRHOLDT: Our position is that the
6 identification that was done in Georgia should be
7 covered by Georgia law. And there is a similar case,
8 *State vs. Fripp*.

9 THE COURT: That says that?

10 MR. BYRHOLDT: It's not as strong, Your Honor.
11 But the question is ours even goes beyond that because
12 in this case, when the e-mail is sent, the
13 identifying -- Justin Warner is the name. And they
14 say, "Is this Justin Warner?" It's not like sending a
15 video and saying, "Can you tell us who this is?"
16 They're suggesting a name. And that's why I think it's
17 better for the jury to make that determination rather
18 than somebody come up and say, "Oh, yeah" --

19 THE COURT: In this case that you handed up,
20 obviously, I haven't read it. So it appears that it
21 was an expert making an opinion as to the identity.
22 What kind of expert was it, do you know?

23 MR. BYRHOLDT: I don't think it was an expert.
24 You have got my copy.

25 THE COURT: Opinion evidence is only admissible

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Thomas Benjamin Dugan - Cross by Mr. Harvey

1 when the conclusion of the expert is one which jurors
2 could not ordinarily draw for themselves. So I take it
3 from that, there was an expert involved.

4 MR. BYRHOLDT: This was a detective.

5 THE COURT: Okay.

6 MR. BYRHOLDT: Testifying, "I had contact with
7 Mr. Grimes, and I had seen the FBI bulletin, and I've
8 seen the video." And the court there said that's
9 enough because it's something the jury can consider.
10 They can look at it and make a determination. It's
11 even worse when you suggest who it is.

12 THE COURT: I hear you on that. I'm not sold on
13 the concept that identifications are governed by
14 Georgia Law. I disagree with that right now. I'm not
15 saying I can't be convinced. I think a trial to be
16 held in this state is governed by our rules except
17 under the circumstances we've all been talking about.

18 But, Ms. Huey, have you had a chance to look at
19 this case?

20 MS. HUEY: I'm trying to look at it, but I think
21 it, obviously, can be distinguished --

22 THE COURT: Let me stop you right quick so we can
23 maybe cut to the chase a little bit.

24 When do you anticipate proffering this evidence in
25 the courtroom?

1 MS. HUEY: This afternoon, Judge. He's been here
2 since yesterday in case we needed to proffer yesterday.
3 And he's from Georgia, so I would like to get to him.

4 THE COURT: So we have got to resolve this issue
5 now.

6 Take a minute, look at it.

7 MS. HUEY: Okay.

8 THE COURT: And I'll take a quick break, and then
9 we'll come back and hear argument. I want to hear it
10 on two things: Applicability to this case and also
11 whether you think Georgia law or South Carolina law
12 would govern.

13 I kind of tipped my hand on the Georgia law thing,
14 but I'm not saying it's not right. Let's take a few
15 minutes. I'll be back up.

16 (WHEREUPON, a recess was taken from 2:25 p.m. to
17 2:37 p.m.)

18 THE COURT: I'm not asking for further argument.
19 It was my opinion when I left, and it still is, it's a
20 South Carolina issue. *State vs. Fripp*, 721 S.E.2d.
21 465, identifies that or settles that issue, and my
22 ruling will remain the same. I'll let you look it up.

23 All right. You ready to continue?

24 MS. HUEY: Yes, sir. Thank you.

25 THE COURT: Anything other than that?

1 MR. BYRHOLDT: No, Your Honor.

2 THE COURT: Please bring me the jury.

3 (WHEREUPON, the jury entered open court at
4 2:39 p.m.)

5 THE COURT: Ms. Huey.

6 MS. HUEY: State calls Chris Wilson.

7 JAMES CHRISTOPHER WILSON,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: If you will, take the witness stand,
10 please, sir, and state your name and spell your last
11 name for the reporter, please.

12 THE WITNESS: James Christopher Wilson,
13 W-i-l-s-o-n.

14 DIRECT EXAMINATION

15 BY MS. HUEY:

16 Q Investigator Wilson, where are you currently
17 employed?

18 A Anderson County Sheriff's Department.

19 Q In what department specifically?

20 A The crime scene section.

21 Q Did you have an occasion to respond to 2900
22 Highway 153 in Anderson County, the BP gas station?

23 A I did, yes, ma'am.

24 Q And did you do that on the night of the incident,
25 on April 30th of 2015?

1 A Yes, I did.

2 Q And who did you respond with on that particular
3 night?

4 A Investigator Ben Dugan.

5 Q And what was the nature of your response initially
6 when you first arrived on scene?

7 A We responded -- we got a phone call from dispatch
8 in reference to a death investigation at the BP
9 station.

10 Q And once you got there, did you collect any
11 evidence in this case?

12 A I did, yes, ma'am.

13 Q I'm going to show you what's been marked as
14 State's Exhibit 2. If you can take a look at that. Do
15 you recognize that item?

16 A Yes.

17 Q And how are you able to recognize that CD?

18 A This is the disc that I placed the video --
19 surveillance video on after I collected it from the BP
20 station. I collected it from the BP station on a thumb
21 drive. And then once I collected that, when we cleared
22 it from the scene, I brought it back to the office,
23 placed it in the computer which we have designated for
24 videos to be saved on for us to, you know, to do what
25 we need to do with them, and then I made a copy of it

1 for investigations.

2 Q And for trial purposes?

3 A For trial, yes, ma'am.

4 Q So you collected it from Mr. Patel's computer?

5 A I did, from the store.

6 Q At the BP gas station?

7 A Yes, ma'am.

8 Q But it was on a thumb drive?

9 A Right.

10 Q You then take that back to forensics and put it on
11 the computer at forensics?

12 A Right. When we bring it back, we put it on a
13 computer in the intake area that is designated nothing
14 but for the crime scene videos that we collect.

15 Q So then that is a copy of what is in the forensics
16 office?

17 A Yes, ma'am.

18 MS. HUEY: Your Honor, at this time we'd admit
19 State's 2 into evidence.

20 MR. BYRHOLDT: No objection.

21 THE COURT: Admitted.

22 (WHEREUPON, State's Exhibit Number 2 was admitted
23 into evidence.)

24 BY MS. HUEY:

25 Q Now, Investigator Wilson, did you actually watch

1 that surveillance video prior to putting it on the
2 thumb drive?

3 A I did, yes, ma'am.

4 Q And did you do that with Investigator Dugan prior
5 to processing the scene?

6 A I can't remember if Investigator Dugan was with
7 me, but I'm sure at one time we did while I was there
8 just to see the scene as far as evidence.

9 Q And was that the majority of your involvement in
10 the case, then?

11 A Yes, ma'am.

12 MS. HUEY: That's all I have, Judge.

13 THE COURT: Cross-examination.

14 MR. BYRHOLDT: No questions.

15 THE COURT: May he be excused?

16 MR. HARVEY: No objection.

17 THE COURT: Next witness, please.

18 MS. HUEY: The State calls Investigator Scotty
19 Hill.

20 SCOTTY HILL,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE CLERK: If you will, take the witness stand,
23 please, sir, and state your name and spell your last
24 name for the reporter, please.

25 THE WITNESS: All right. Scotty Hill. It's

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Scotty Hill - Direct by Ms. Huey

1 H-i-1-1.

2 DIRECT EXAMINATION

3 BY MS. HUEY:

4 Q Investigator Hill, where do you work?

5 A The Anderson County Sheriff's Office.

6 Q And what department are you in there?

7 A The criminal investigations division.

8 Q What are some of your duties as an investigator?

9 A I am primarily a property crime and death
10 investigator.

11 Q And did you become involved in this particular
12 case, State vs. Justin Warner?

13 A Yes, ma'am.

14 Q Did you have an occasion to respond to the BP gas
15 station at Exit 40 in Anderson County?

16 A Yes, ma'am, I did.

17 Q Now, did you go there the night of the incident or
18 sometime later?

19 A It was later on, yes, ma'am.

20 Q And what was the purpose of you going back to the
21 BP gas station?

22 A To obtain surveillance video.

23 Q And what surveillance video did you need to obtain
24 at this point?

25 A It was like, I think, like a 35-day window before

1 the incident occurred.

2 Q An extended video?

3 A Yes, ma'am.

4 Q And did you download that yourself from the
5 computer at the BP gas station?

6 A I did, yes, ma'am.

7 Q And how did you collect that?

8 A On a flash drive.

9 Q I'm going to show you what's been marked as
10 State's 4. Would you take a look at that?

11 A Yes, ma'am.

12 Q And do you recognize that item?

13 A Yes, ma'am.

14 Q And what is that item?

15 A It's the flash drive I obtained the video on.

16 Q From the BP gas station?

17 A From the BP, yes, ma'am.

18 Q And then what did you then do with it once you
19 collected it?

20 A I gave it to Detective Voigt, who was the lead
21 investigator on the case.

22 Q Any other involvement?

23 A No, ma'am.

24 MS. HUEY: Your Honor, at this time we'd seek to
25 admit State's 4.

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Nathan Goolsby - Direct by Ms. Huey

1 THE COURT: Any objection?

2 MR. BYRHOLDT: No, sir.

3 THE COURT: Admitted.

4 (WHEREUPON, State's Exhibit Number 4 was admitted
5 into evidence.)

6 MS. HUEY: That's all I have for this witness,
7 Judge.

8 THE COURT: Cross-examination.

9 MR. BYRHOLDT: No questions.

10 THE COURT: May he be excused?

11 MS. HUEY: Yes, sir.

12 MR. BYRHOLDT: Yes, sir.

13 THE COURT: Thank you, sir. You may be excused.
14 Next witness, please.

15 MS. HUEY: The State calls Nathan Goolsby to the
16 stand.

17 NATHAN GOOLSBY,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: If you will, take the witness stand,
20 please, sir, and state your name and spell your last
21 name for the reporter, please.

22 THE WITNESS: Nathan Goolsby, and it's
23 G-o-o-l-s-b-y.

24 DIRECT EXAMINATION

25 BY MS. HUEY:

1 Q Mr. Goolsby, where do you work right now?

2 A With the Georgia Motor Trucking Association.

3 Q And do you live in the Atlanta area?

4 A Yes, ma'am.

5 Q If you could, make sure you speak into the
6 microphone.

7 A Yes, ma'am.

8 Q Did you previously work for Clayton County?

9 A For the State of Georgia in Clayton County.

10 Q In Clayton County, yes, sir.

11 And were you familiar with the defendant in this
12 case, Justin Warner?

13 A Yes, ma'am.

14 Q What time frame did you know him?

15 A It was for probably a period of about eight to
16 nine months, from May 2014 until probably the same time
17 the following year.

18 Q And how often would you see Mr. Warner?

19 A It would be once a month.

20 Q And about how often would you see him?

21 A So it would be once a month during that period, so
22 probably eight or nine times during the course of from
23 May to May of 2014 to 2015.

24 Q And each time you would see him, about how long
25 would you see him at that time?

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Nathan Goolsby - Direct by Ms. Huey

1 A No more than 15, 20 minutes, but probably around
2 ten to 15 minutes each time.

3 Q Did an investigator from the Anderson County
4 Sheriff's Office reach out to you regarding this
5 defendant?

6 A Yes, ma'am.

7 Q Okay. And as a result, were you shown a video
8 from a BP gas station, an incident that had taken place
9 there in April of 2015?

10 A I was.

11 Q All right. I'm going to show you what's been
12 marked as State's 8. If you could take a look at that,
13 please. Do you recognize that exhibit?

14 A I do.

15 Q And how are you able to recognize it?

16 A I was -- my initials are on here on the outside on
17 the envelope and then also on the disc as well.

18 Q And what do those initials indicate?

19 A It is NG, says my name, and then the date,
20 5/23/17.

21 Q And is that something you have viewed then?

22 A Yes, ma'am.

23 Q All right. And does that accurately depict what
24 you were shown back in May of 2015?

25 A Yes, it does.

1 MS. HUEY: Your Honor, at this time we'd move
2 State's 8 into evidence.

3 MR. BYRHOLDT: No objection -- no objection.

4 THE COURT: Admitted.

5 (WHEREUPON, State's Exhibit Number 8 was admitted
6 into evidence.)

7 MS. HUEY: At this time we wish to publish to the
8 jury.

9 THE COURT: Yes, ma'am. You may.
10 Do you need him to step down or no?

11 MS. HUEY: In just a minute, Judge.

12 (WHEREUPON, State's Exhibit Number 8 is played for
13 the jury.)

14 MS. HUEY: Mr. Goolsby, if you will step down,
15 please.

16 Q All right. Mr. Goolsby, you can take a seat.

17 So, Mr. Goolsby, was that the clip that you were
18 shown?

19 A Yes, ma'am.

20 Q And based on that clip, were you able to determine
21 who was in that video?

22 A Yes, ma'am, I was.

23 Q And who was that?

24 A It was the defendant, Justin Warner.

25 Q Justin Warner. And what did you base that

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Nathan Goolsby - Cross by Mr. Byrholdt

1 decision on?

2 A You know, it was with the hat and the glasses, it
3 was hard to see the face, but monthly visits with him
4 and the time that we spent together, I was able to
5 observe the way that he walked, the way he carried
6 himself, and he exhibited the same signs. And then he
7 was the same height, same build. So everything that I
8 was able to determine by watching it and looking at it,
9 it did appear to be him.

10 Q Now, did you provide contact information for the
11 defendant to law enforcement as well?

12 A Yes, ma'am, I did. That's what we had on record.

13 Q And did you also know -- sorry. One second.

14 Did you know the defendant to drive a silver
15 Challenger?

16 A I did, yes.

17 Q I'm going to show you what's been marked as
18 State's 11-A. If you could take a look at that. Is
19 that consistent with the kind of car you've seen the
20 defendant in before?

21 A Yes, ma'am, it is.

22 Q Does it --

23 MS. HUEY: At this time we'd admit State's 11-A
24 into evidence, Your Honor.

25 MR. BYRHOLDT: No objection.

1 THE COURT: Admitted.

2 (WHEREUPON, State's Exhibit Number 11-A was
3 admitted into evidence.)

4 MS. HUEY: That's all I have for this witness,
5 Judge.

6 THE COURT: Cross-examination.

7 MR. BYRHOLDT: May it please the court.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. BYRHOLDT:

11 Q Officer Goolsby -- or Mr. Goolsby, can you tell us
12 what you saw in his walk?

13 A Yes, sir. Every time he would come into our
14 office, we would ask to make sure that he would empty
15 his pockets, empty his belongings. And then he was
16 able to walk in front of us and lead me back to my own
17 office. So I was able to observe that every time.

18 The way that he walked in, the way that he kind of
19 reached over, bent down towards his pockets, the
20 mannerisms that he was showing, it looked like the same
21 sort of way that he would walk and act when he would
22 enter into our office as well.

23 Q That's in a four-second video?

24 A Yeah. I mean, it was like 30 seconds, but...

25 Q 30 seconds?

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Nathan Goolsby - Cross by Mr. Byrholdt

1 A The one that we just watched.

2 Q Don't shake your head, Rosemary.

3 A But, I mean, it was longer than four seconds.

4 But, yes, I mean, I was able to meet with him once a
5 month for almost a year. I think it was a little bit
6 shy of that. And each time I was able to observe him,
7 see the way he acted, see the way that he walked, and
8 that's how I was able to determine that's him.

9 Q When they sent you this clip, they also sent you a
10 name, too, didn't they?

11 A What's that?

12 Q They also sent you the name Justin Warner?

13 A Yes, they did.

14 Q So you didn't just view it and say, "Well, I know
15 who it is." They provided you a name which kind of
16 gave you some information beforehand, right?

17 A Sure. They provided it, yes.

18 Q And you said you could tell from that video how
19 tall he was?

20 A I don't know the exact height, but it looked --
21 appeared to be the same build and height.

22 Q Did you do any measuring from the video?

23 A No, I didn't.

24 Q Measure the height of the counter?

25 A No.

1 Q So by looking at that, you can tell how tall the
2 person was on the video; is that what you're telling
3 the jury today?

4 A Approximately, looking at it, yes.

5 Q What mannerisms do you claim you could see on that
6 video to distinguish the person on that video is Justin
7 Warner?

8 A You know, I guess it would be his stride, the way
9 that he walked in, the way that he was able to use his
10 shoulders when he walked in, the way that he used his
11 hands. I mean, just, when he came in and he headed
12 towards the counter, it appeared to be the same way
13 that he would have walked and the way that I was able
14 to observe him in person.

15 Q And how often did you see Mr. Warner in the
16 Challenger?

17 A I would say at least once. I'm not saying it was
18 something that I saw him drive every single time that
19 he came to visit, but I know I had seen it and observed
20 him leave in it at least once from our office.

21 Q Do you know what date that was?

22 A I do not, no.

23 Q One time over a year-long period?

24 A It may have been more, but that's the one that I
25 know that stuck in my head, yes.

1 Q Where did you see the car being driven?

2 A I saw it leaving our parking lot. I don't know
3 where it went to.

4 Q And you just happened to look out the window and
5 see Mr. Warner get into the car?

6 A Because I would escort him to the door to leave,
7 yes.

8 Q To the door to leave. Then where is the parking
9 lot in relation to where he left from?

10 A I'm looking at it. We walked to the door; he
11 would leave. The parking lot is on the back of the
12 building right there, and I could observe him get in
13 and leave from there.

14 MR. BYRHOLDT: Thank you, sir.

15 THE COURT: Redirect?

16 MS. HUEY: No, sir, Your Honor.

17 THE COURT: May this officer be excused? This
18 gentleman, excuse me, I'm sorry.

19 MS. HUEY: No objection.

20 MR. HARVEY: No objection.

21 THE COURT: Thank you, Mr. Goolsby.

22 Next witness, please.

23 MS. HUEY: The State calls Susan Johnson Kania.

24 Judge, we might need just a minute. I think she
25 might be downstairs.

1 THE COURT: Okay.

2 MS. HUEY: Judge, we might need to take a short
3 break. I'm sorry.

4 THE COURT: Y'all come up here, please.

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

8 THE COURT: Let's take about a ten-minute break.

9 (WHEREUPON, the jury exited open court at
10 3:03 p.m.)

11 (WHEREUPON, a recess was taken from 3:03 p.m. to
12 3:15 p.m.)

13 MS. HUEY: Judge, may we approach?

14 THE COURT: What delays are we going to have now?

15 MS. HUEY: It's not my delay now.

16 THE COURT: I believe I'm about up to my eyebrows
17 in delays.

18 (WHEREUPON, a bench conference was held off the
19 record.)

20 THE COURT: All right. We had a bench conference
21 about scheduling. For the record, there were some
22 issues about fingerprint analysis. I told the defense
23 I was giving them the chance to have their guy evaluate
24 the -- have the chance to evaluate the photographs that
25 were, candidly, given by the State late coming.

1 They haven't had a chance to. They want to listen
2 to the State's expert testimony on fingerprints so
3 they're going to wait until tomorrow. The defense says
4 he can be here tomorrow, they think, because they have
5 been incommunicado.

6 MR. BYRHOLDT: He'll either be here or we won't
7 have anybody.

8 THE COURT: So as far as logistics of today goes,
9 we may break after the next witness depending on what
10 the State feels like?

11 MS. HUEY: Yes, sir, Judge.

12 THE COURT: Are you ready to proceed, Ms. Huey?

13 MS. HUEY: Yes, sir, Judge.

14 (WHEREUPON, the jury entered open court at
15 3:22 p.m.)

16 THE COURT: Would you call your next witness,
17 please, ma'am.

18 MS. HUEY: Yes, sir, Your Honor. The State calls
19 Susan Johnson Kania.

20 SUSAN JOHNSON,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE CLERK: If you would, take the witness stand,
23 please, ma'am, and state your name and spell your last
24 name for the reporter, please.

25 THE WITNESS: Susan Johnson, J-o-h-n-s-o-n.

DIRECT EXAMINATION

1
2 BY MS. HUEY:

3 Q Ms. Johnson, what's your occupation?

4 A I am a manager for T-Mobile within the law
5 enforcement relations group.

6 Q How long have you been with them, with T-Mobile?

7 A Almost 20 years.

8 Q What sort of duties and responsibilities do you
9 have as a manager in this position?

10 A We respond to subpoenas from various law
11 enforcement agencies across the United States and then
12 testify in court as the custodian of those records, and
13 then I oversee the trial team.

14 Q And how many times have you had to do this?

15 A Over 400.

16 Q So are you a custodian of T-Mobile's records,
17 then?

18 A Yes, I am.

19 Q As such, what does a custodian mean?

20 A A custodian is in charge of the records. We have
21 access to the computer database and retrieve the
22 information that's being requested.

23 Q How are records retained at T-Mobile?

24 A They're retained electronically.

25 Q Did you have to have any background or training

1 pertaining to your position?

2 A Everything was on-the-job training.

3 Q Again, you said that was how long?

4 A 20 years ago.

5 Q Do you keep up to date on the latest technologies?

6 A Yes.

7 Q And what is the purpose for that?

8 A We've got to change with the times, so we go
9 through engineering classes with the engineers as well
10 as the FBI task team.

11 Q Now, did T-Mobile provide records as it pertains
12 to cell number [REDACTED]-1872?

13 A Yes.

14 Q And did it do so in response to a request for
15 those records?

16 A Yes.

17 Q I'm going to show you what's been marked as
18 State's Exhibit 9. If you will take a look at those
19 records, please.

20 A I have reviewed them.

21 Q And are you familiar with those records?

22 A Yes, I am.

23 Q And how so?

24 A I work with these on a daily basis.

25 Q And are those the subscriber records that T-Mobile

1 provided to law enforcement in this case?

2 A Yes.

3 MS. HUEY: At this time we'd seek to introduce
4 State's 9 into evidence.

5 THE COURT: Subject to prior rulings?

6 MR. BYRHOLDT: Yes.

7 THE COURT: Admitted subject to prior rulings.

8 (WHEREUPON, State's Exhibit Number 9 was admitted
9 into evidence.)

10 BY MS. HUEY:

11 Q Ms. Johnson, I may have you stand down for just a
12 minute.

13 This is State's Exhibit 9, and I'm going to
14 specifically show you Page 2 from this exhibit. Can
15 you tell who this account belongs to?

16 A Yes.

17 Q From this record?

18 A Yes.

19 Q And who is that?

20 A Justin J. Warner.

21 Q And is there other identification information on
22 this --

23 A Yes.

24 Q -- subscriber information?

25 And what is that?

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Susan Johnson - Direct by Ms. Huey

1 A Date of birth, street address.

2 Q And what is his date of birth?

3 A [REDACTED].

4 Q And how do you go about opening an account with
5 T-Mobile?

6 A The individual would go into a T-Mobile store or
7 dealer and show identification, and then credit is ran
8 and then the account is opened.

9 Q And, again, this is specific to [REDACTED]-1872; is
10 that correct?

11 A Yes.

12 MS. HUEY: You may have a seat.

13 Q Now, Ms. Johnson, other than subscriber
14 information, what other records does T-Mobile maintain?

15 A We maintain subscriber information, call detail
16 records, and then cell site information.

17 Q And so regarding the call detail records, did you
18 also receive a request for that in this case?

19 A Yes, we did.

20 Q I'm showing you what's been marked as State's 10.
21 If you will take a look at this exhibit, please.

22 A I have reviewed it.

23 Q And what do your initials on that exhibit
24 indicate?

25 A That I reviewed the CD and the document on this

1 CD.

2 Q And, again, so are those the call detail records
3 for the account in question belonging to Justin Jamal
4 Warner?

5 A Yes.

6 Q And those fairly and accurately depict the records
7 that T-Mobile provided to law enforcement in reference
8 to this case?

9 A Yes.

10 MS. HUEY: At this time we'd admit State's 10 into
11 evidence, Your Honor.

12 THE COURT: Subject to prior rulings?

13 MR. BYRHOLDT: Yes, sir.

14 THE COURT: Admitted.

15 (WHEREUPON, State's Exhibit Number 10 was admitted
16 into evidence.)

17 BY MS. HUEY:

18 Q What are call detail records?

19 A The incoming and outgoing phone calls or text
20 messages made or received by the cellular telephone.

21 Q Now, why does that look different compared to
22 subscriber records?

23 A Subscriber records just tells us who the account
24 holder is, whereas the call detail records show the
25 actual transactions being placed or received by the

1 cellular telephone.

2 Q And as such, what are some of the other details
3 that are provided on those call detail records?

4 A The date, the time, the duration, and then the
5 cell site information is also included. And then the
6 phone numbers that are calling in or out to the cell
7 phone.

8 Q And when you say "cell site information," what
9 does that mean?

10 A The cell site information gives us the general
11 location area as to where the cell phone is when it
12 makes or receives the cell phone calls.

13 Q And does that also include tower information?

14 A Tower information is the cell site information,
15 yes.

16 Q So they're one and the same?

17 A Correct.

18 Q Now, on those records, is the cell tower always
19 described by actual physical address?

20 A No.

21 Q And why is that?

22 A It would depend on engineering, if they downloaded
23 the table as to where the location of the cell address
24 is. If not, we do have another master list that they
25 reference with the cell I.D. on the records.

1 Q So sometimes the physical address is not located
2 on these records, but you can still determine the
3 physical address from these other sites or keys?

4 A Correct.

5 Q Can the times be different on call detail records?

6 A Yes. So, for example, the time that the records
7 are reflected on this CD is in UTC time, which simply
8 means that whatever time that you see for the phone
9 call, you need to subtract four hours because it's
10 during Daylight Saving Time.

11 Q And what does UTC stand for?

12 A Universal Coordination Time. It's actually
13 backwards from the acronym.

14 Q And the cell sites or keys that you're referring
15 to, are those made available to other law enforcement
16 agencies such as the FBI?

17 A Yes.

18 Q And how is that made available to them?

19 A We send it to them electronically.

20 Q And what is the maximum range of a T-Mobile tower,
21 generally speaking?

22 A Generally, the rule of thumb is a mile to a mile
23 and a half.

24 Q And can it be greater than that, though?

25 A Yes. So, for example, I live in New York. In New

1 York City, you're going to find the towers every couple
2 blocks to whereas in Upstate New York, one tower can
3 cover up to 15 miles.

4 Q But, generally speaking, it's a mile to a mile and
5 a half?

6 A Generally, yes.

7 MS. HUEY: That's all I have for this witness,
8 Judge.

9 THE COURT: Cross-examination.

10 MR. BYRHOLDT: May it please the court.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. BYRHOLDT:

14 Q Ms. Johnson, can I get cell records?

15 A With a subpoena, correct.

16 Q And the subpoena has to be legal? I just can't
17 send you something and you will take it, or do you
18 check into it?

19 A Well, if it came from your law firm, yes, we would
20 handle it.

21 Q Well, would you honor a subpoena that's not
22 properly issued by a judge?

23 A A subpoena -- we would order -- we would release
24 records based on a subpoena. If cell sites were
25 requested, an order would be needed, and a judge would

1 have to sign the order.

2 Q Was an order signed in this case?

3 A Yes.

4 Q Do you have a copy of that?

5 A Not with me, no.

6 Q Do you know which judge signed it?

7 A I don't.

8 Q Was that an order or a search warrant?

9 A I believe it was a search warrant.

10 Q Do you know whether or not a South Carolina
11 magistrate could request orders or issue a subpoena for
12 New Jersey?

13 MS. HUEY: Objection, Your Honor.

14 THE COURT: Just one second.

15 Mr. Foreman, would you go back to your jury room
16 real quick.

17 (WHEREUPON, the jury exited open court at
18 3:34 p.m.)

19 THE COURT: What is your objection?

20 MS. HUEY: I think it calls for a legal
21 conclusion.

22 THE COURT: What is the relevance of this line of
23 questioning? That's my concern.

24 MR. BYRHOLDT: I just want to know what she
25 considered before sending this information out, Your

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Susan Johnson - Cross by Mr. Byrholdt

1 Honor.

2 THE COURT: I'm sorry?

3 MR. BYRHOLDT: Just what she considered, you know,
4 before she sent this information out and shared it with
5 law enforcement.

6 THE COURT: I'll give you a little leeway, but
7 let's go back into it in just a minute, sir. All
8 right?

9 Would you bring the jury back in.

10 (WHEREUPON, the jury entered open court at
11 3:35 p.m.)

12 MR. BYRHOLDT: Please the court.

13 THE COURT: Yes, sir.

14 BY MR. BYRHOLDT:

15 Q On the call detail records, you sent cell site
16 information to law enforcement?

17 A I did not, but my company.

18 Q Your company?

19 A Yes.

20 Q Did it have the -- on the information you sent,
21 did that information contain all the information needed
22 to show what site was pinged by the telephone?

23 A I don't understand what you're asking.

24 Q Assuming I made a phone call on I-85 out here and
25 I'm a T-Mobile customer and it pinged off a tower,

1 would the information you provided show what tower was
2 pinged by that call?

3 A Yes, by that phone.

4 Q And did you -- is that the information you sent to
5 law enforcement?

6 A Yes. That's the information that T-Mobile sent to
7 law enforcement.

8 Q Was there any other information needed other than
9 what you initially sent to identify the cell tower that
10 was pinged by a specific phone?

11 A No.

12 Q And if we look at those phone records that you
13 have produced on that CD, we can determine what
14 location the phone pinged, correct?

15 A Not all of the calls, but, yes, some of the calls.
16 As I explained before, the tables were not uploaded,
17 but you do have the cell I.D. listed in the records to
18 reference back to the cell site guide.

19 Q All right. You said there is a four-hour time
20 difference?

21 A Correct.

22 Q Does that take care of -- I mean, the records, is
23 it going to show the correct time, or do we have to
24 subtract four hours from the time that's on your
25 records?

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Susan Johnson - Cross by Mr. Byrholdt

1 A You have to subtract four hours that's on the
2 records.

3 Q So if a record shows, for example, 10:15 at night,
4 we would have to subtract and would it mean the call
5 was done at 6:45, four hours earlier?

6 A Well, 6:15 at night because you said 10:15.

7 Q I'm sorry. I apologize. 10:15 would really be
8 6:15?

9 A Correct.

10 Q The T-Mobile records that you sent to law
11 enforcement, did they include the latitudes and
12 longitudes of the cell sites?

13 A Yes.

14 MR. BYRHOLDT: Thank you.

15 Nothing further.

16 THE COURT: Redirect?

17 MS. HUEY: That's it, Your Honor.

18 THE COURT: May this witness be excused?

19 MS. HUEY: Please.

20 THE COURT: Thank you, ma'am. You may be excused.

21 MS. HUEY: Your Honor, this might be a good time
22 to break for the day, given our earlier discussion.

23 THE COURT: All right.

24 Mr. Foreman, ladies and gentlemen of the jury, if
25 you recall at the beginning of this case that I told

1 you trials were not like what you see on TV, and
2 sometimes they're very slow and they're very
3 methodical. Well, they also don't run necessarily
4 according to plan. That generally is my fault. It's
5 not the attorneys' fault. It's not either side's
6 fault. It's on me.

7 I am going to break today. I'm going to ask that
8 you be back in your jury room before 9:30 in the
9 morning, and we'll resume testimony at that time.

10 If you would leave your notebooks in the jury room
11 and don't take them with you. Please do not read,
12 hear, or listen to anything about this case. Also
13 don't speak with anybody about this case in any form or
14 fashion, and I'll ask you that in the morning. I hope
15 y'all have a nice evening.

16 (WHEREUPON, the jury exited open court at
17 3:40 p.m.)

18 THE COURT: Before we leave, are those T-Mobile
19 records, did you show -- I don't know if it can be
20 done, but the defendant's social security number is on
21 there.

22 MS. HUEY: I can redact that out.

23 THE COURT: Other than that, anything from the
24 State before we break for the day?

25 MS. HUEY: Nothing from the State.

1 MR. BYRHOLDT: Your Honor, I may have a problem in
2 the morning. Let me discuss with -- I've got something
3 that's been scheduled for months. Mr. Harvey is going
4 to handle the first 45 minutes. I should be here by
5 10:15 or a little after that. I just wanted to put
6 that on the record.

7 THE COURT: Is that a problem for either side?

8 MR. HARVEY: Would you inquire?

9 MR. BYRHOLDT: Please stand up.

10 THE COURT: So at this juncture, you want me to
11 give him Fifth Amendment rights? Is that what you're
12 doing?

13 MR. BYRHOLDT: If he has a problem with me being
14 absent, whether --

15 THE COURT: Oh, okay. I'm sorry, Mr. Warner.
16 Sometimes without my glasses -- and I'm not used to
17 them. You see me taking them on and off. It distracts
18 me. I can't see very well.

19 You understand Mr. Byrholdt is not going to be
20 here first thing in the morning?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you have a very able lawyer with
23 Mr. Harvey, but he's going to be here representing you.
24 Do you have an objection to Mr. Byrholdt coming a few
25 minutes late?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You're okay with that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You understand that?

5 THE DEFENDANT: (Nodding.)

6 THE COURT: Okay. I just want to make sure.

7 I think that's what y'all are asking me.

8 MR. BYRHOLDT: Yes, sir.

9 THE COURT: Thank you, guys.

10 Are we ready to break for the day?

11 MR. HARVEY: Yes, sir.

12 THE COURT: State?

13 MS. HUEY: Yes, sir.

14 THE COURT: How do we want to redact it?

15 MS. HUEY: Well, Your Honor, the subscriber

16 information that has the social is just paper, so I can

17 literally just cross it out.

18 THE COURT: Can I see you guys up here one second?

19 (WHEREUPON, a bench conference was held off the

20 record.)

21 (WHEREUPON, proceedings adjourned at 3:43 p.m.)

22

23

24

25

1 State of South Carolina
2 County of Anderson In the Court of General Sessions

3
4 State of South Carolina)
5)
6 -vs-) May 24, 2017
7 Justin Jamal Warner,)
8 Defendant.) 2016-GS-04-00159;
9 -----) 2017-GS-04-00862
Volume 3 of 4
Pages 374- 518
Transcript of Record

10
11 B E F O R E:

12 The Honorable R. Lawton McIntosh, Judge;
13 and a jury.

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

15 Catherine T. Huey, Deputy Solicitor
16 Attorney for the State

17 Bruce A. Byrholdt, Esquire
18 Bruce S. Harvey, Esquire
Attorneys for Defendant

19
20
21
22 Reported by:
Diane L. Marcengill, RPR, CRR
23 Circuit Court Reporter
Certified Realtime Reporter
24
25

1 Has anybody read, heard, or seen anything about this
2 case before we get started? If so, raise your right
3 hand.

4 Has anybody spoken with anyone about this case
5 including one another?

6 Let the record reflect that the jury didn't
7 respond positively to either one of those questions.

8 Thank you very much.

9 State ready?

10 MS. HUEY: Yes, sir, Your Honor.

11 THE COURT: Defense ready?

12 MR. HARVEY: Yes, sir.

13 THE COURT: Call your next witness.

14 MS. HUEY: Your Honor, the State calls
15 Investigator Voigt to the stand.

16 MATTHEW VOIGT,

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: If you will, take the stand and state
19 your name and spell your last name for the reporter,
20 please.

21 THE WITNESS: Matthew Voigt, V-o-i-g-t.

22 DIRECT EXAMINATION

23 BY MS. HUEY:

24 Q Investigator Voigt, where are you currently
25 employed?

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Matthew Voigt - Direct by Ms. Huey

1 A At the Anderson County Sheriff's Office.

2 Q What department are you in right now?

3 A I'm currently in the forensics division.

4 Q Is that a recent move?

5 A Yes, ma'am.

6 Q Where were you prior to that?

7 A I was assigned to the criminal investigations
8 division.

9 Q And what were some of your duties as an
10 investigator in that division?

11 A I investigated property crime, crimes against
12 persons, violent crimes, death investigations, and
13 homicides.

14 Q So in that capacity did you have an occasion to
15 respond to 2900 Highway 153 here in Anderson County?

16 A Yes, ma'am, I did.

17 Q And what is that location?

18 A That is a BP gas station on Highway 153.

19 Q Now, were you the first one on scene that night?

20 A No, ma'am, I was not.

21 Q Were you the on-call investigator?

22 A Yes, ma'am, I was. I responded to the incident as
23 a result of the units arriving on scene and then
24 requesting additional investigation.

25 Q So when you arrive on scene, other people are

1 already there then?

2 A Yes, ma'am.

3 Q From your department or from the sheriff's office?

4 A Yes, ma'am. That's correct.

5 Q So when you first arrived, do you actually go
6 inside the gas station or do you stay outside?

7 A No, ma'am. Typically on a scene like that, I'll
8 arrive on scene and kind of figure out briefly what's
9 going on from the supervisors and other folks that are
10 on scene, and then I'll let crime scene go in first to
11 make sure that no trace evidence is damaged further or
12 contaminated by people coming in and out of the store.

13 Once it gets to the point where they say you can
14 enter and you can enter using this path, I usually
15 will.

16 Q Is that what you did in this case?

17 A Yes, ma'am.

18 Q So while you're outside, what, if anything, are
19 you doing?

20 A Making initial contact with any possible witnesses
21 or complainants on the incident.

22 Q So who did you speak with that particular night?

23 A That night I spoke with Gus Jones, Michael
24 McNalley, Susan McNalley, and Mr. Wheat, Michael Wheat.

25 Q And those people were essentially on scene when

1 you arrived or shortly thereafter?

2 A Yes, ma'am. They were on scene and separated
3 by the -- road units had them separated.

4 Q Now, these were not eyewitnesses to the event,
5 though?

6 A No, ma'am, they were not. They had arrived after
7 the incident occurred.

8 Q Did you eventually go inside the BP gas station?

9 A Yes, ma'am, I did.

10 Q And what was your first step once were you inside
11 the gas station?

12 A Went inside and stepped back to view the video
13 surveillance.

14 Q And based on that video surveillance, were you
15 able to identify an initial lead or suspect?

16 A Yes, ma'am. The initial suspect was a black male
17 wearing a white or white-colored shirt, dark shorts,
18 black shoes with red or pink laces. He entered into
19 the store, made a transaction, what appeared to be a
20 tobacco transaction for like a cigar or something.
21 After the transaction occurred, he produced a weapon in
22 an attempt to rob the clerk, Ms. Patel, and during that
23 incident wound up shooting her and then fled the
24 residence -- or fled the store.

25 As he was leaving, he dropped the cigar that he

1 had purchased, picked it up and actually stopped and
2 wiped down the door handle as he was walking out,
3 walking to his vehicle.

4 Q And did he get away with any money that you could
5 tell from the video?

6 A No, not that I could tell from the video.

7 Q All right. Investigator Voigt, I'm going to show
8 you what's been marked as 12-A. If you could take a
9 look at that, please.

10 A Yes, ma'am.

11 Q Are your initials on that exhibit?

12 A They are.

13 Q And what do those initials indicate?

14 A That I have reviewed this DVD.

15 Q And in reviewing that DVD, we have heard evidence
16 that several videos were collected from the crime
17 scene, from the computer at the BP gas station?

18 A Yes, ma'am.

19 Q Is that a clip from the collections from the
20 computer?

21 A It is.

22 Q And does it fairly and accurately depict what you
23 saw the night in question?

24 A Yes, ma'am.

25 MS. HUEY: Your Honor, at this time we'd ask to

1 admit 12-A into evidence.

2 THE COURT: Any objection?

3 MR. HARVEY: Judge, I understand it is a clip from
4 evidence that's already been admitted.

5 Am I correct?

6 MS. HUEY: Yes, sir.

7 MR. HARVEY: Then no objection.

8 Thank you.

9 THE COURT: Admitted.

10 (WHEREUPON, State's Exhibit Number 12-A was
11 admitted into evidence.)

12 MS. HUEY: Investigator Voigt, would you step
13 down.

14 (Witness complies.)

15 MS. HUEY: Judge, if you don't mind, he's going to
16 sit here to play the video.

17 THE COURT: Yes, ma'am.

18 (WHEREUPON, State's Exhibit 12-A was played for
19 the jury.)

20 MS. HUEY: Okay.

21 Investigator Voigt, if you will go back to the
22 stand.

23 (Witness complies.)

24 BY MS. HUEY:

25 Q So, Investigator Voigt, that's the video clip that

1 you see initially of the incident; is that correct?

2 A Yes, ma'am, that is correct.

3 (WHEREUPON, a juror handed a note to the bailiff.)

4 THE COURT: Let's take a quick break. Somebody
5 needs to have a personal minute.

6 Mr. Foreman, take your jury to the jury room, and
7 just knock on the door when you're ready to come back.

8 JURY FOREMAN: Yes, sir.

9 (WHEREUPON, the jury exited open court at
10 10:10 a.m.)

11 THE COURT: You could step down. Just don't speak
12 with anybody about your testimony.

13 For the record, just the note just says
14 "bathroom."

15 MR. HARVEY: Can I do the same thing?

16 THE COURT: Yes, sir.

17 (WHEREUPON, a recess was taken from 10:11 a.m. to
18 10:17 a.m.)

19 (WHEREUPON, the jury entered open court at
20 10:17 a.m.)

21 MS. HUEY: May it please the court.

22 THE COURT: Yes, ma'am.

23 BY MS. HUEY:

24 Q All right. Investigator Voigt, so we've just
25 shown the video of the incident from April 30th of

1 2015?

2 A Yes, ma'am.

3 Q Now, once you are able to see this yourself that
4 night, at what point do you release that, rather, to
5 the media?

6 A Once we're able to get the video clip into a
7 usable file to make sure we don't include any relevant
8 parts of the investigation or any graphic parts, we'll
9 shorten it down and condense it and then release it to
10 the media from there, trying mainly to just show the
11 individual entering or exiting so that way people can
12 look at their mannerisms and their build and possibly
13 get an identification.

14 Q And that's an attempt to get an identification,
15 correct?

16 A Yes, ma'am, or trying to get some kind of a lead
17 or information regarding who the suspect possibly is.

18 Q Now, when you first get there -- I'm sorry.
19 Backing up, that release, was that done that
20 night, or would that have been done the next day?

21 A More than likely it would have been done the next
22 day. We get there, it's 11-something at night. We're
23 probably on scene processing for two to three, four
24 hours. I'm not sure exactly how long we were out
25 there, but by the time you get everything and get it

1 back into evidence and start trying to shorten things
2 down and edit them down so that way no critical
3 information is released, it probably takes the next
4 day. So it would have been the next day we released
5 it.

6 Q So back to the night that you were there, though,
7 when you arrived, are you aware of a BOLO that had been
8 issued?

9 A I believe prior to my arrival, there had been a
10 BOLO regarding a white truck towing a trailer, I
11 believe, possibly one of the individuals on scene had
12 witnessed leaving or in the area when they arrived on
13 scene.

14 Q Now, in watching this clip, did you also watch
15 more of the video from the gas station that night?

16 A That's correct. I watched to the point where --
17 to corroborate Mr. Wheat, both of the McNalleys, and
18 Gus's statements to figure out if what they told me was
19 actually what happened that night.

20 MR. HARVEY: Let me object to that and move to
21 strike. That would be hearsay and implicit hearsay and
22 beyond -- and irrelevant at this particular point under
23 401.

24 THE COURT: Overruled.

25 BY MS. HUEY:

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1 Q So these are the people that you spoke to outside
2 before you go into the store?

3 A That's correct.

4 Q So you watch the video to see if that's matching
5 up. And why do you do that?

6 A Make sure they're not suspects, they're not
7 possibly involved in this incident and just
8 accidentally got trapped on scene.

9 Q And they were not, in fact, suspects, correct?

10 A No, ma'am. I believe Mr. Jones arrived
11 somewhere -- I want to say around ten minutes after the
12 incident occurred.

13 Q So who is the first person to arrive on scene then
14 in terms of the witnesses after the fact?

15 A Mr. Jones is the first one to arrive. He comes
16 into the store perhaps the --

17 MR. HARVEY: Again, Judge, this is based upon
18 evidence that is something that is not in evidence. Do
19 we have the entire video?

20 MS. HUEY: We have the entire video, a flash drive
21 and a CD into evidence, Your Honor.

22 MR. HARVEY: Withdrawn.

23 THE COURT: Overruled.

24 Go ahead.

25 MS. HUEY: Thank you, Judge.

1 Q So backing up, he comes in what time, did you say?

2 A Mr. Jones comes in at 22:22 and some odd seconds
3 after that.

4 Q And that is how many minutes after the shooting
5 incident?

6 A The suspect enters in at -- the suspect is first
7 seen at 22:13 and 24 seconds. So it's close to ten
8 minutes after the suspect first arrived. The suspect
9 left at -- the exact time is going to be 22:16:50 is
10 the time in my supplemental when the suspect was last
11 seen on camera exiting.

12 Q So Mr. Jones is appearing on scene in the store
13 visible about eight minutes after, seven or
14 eight minutes later?

15 A Yes, ma'am.

16 Q So, Investigator Voigt, let's talk about the
17 releasing these clips to the media, then, the next day
18 in attempts to get some leads or tips.

19 A Yes, ma'am.

20 Q As a result of that, did you get some leads or
21 tips?

22 A Yes, ma'am. We did get several leads and
23 information regarding possible suspects.

24 Q And did you follow up on those leads?

25 A Yes, ma'am, I did.

1 Q And as a result, did you follow up on Justin Jamal
2 Warner?

3 A Yes, ma'am. He was one of the leads.

4 Q What was the first thing that was significant
5 about Justin Jamal Warner?

6 A The first thing that stood out for me was his date
7 of birth was the same date of birth that was entered
8 into the register for the tobacco purchase.

9 Q And that is significant to the video how?

10 A In the video, the suspect comes in and is engaged
11 in conversation regarding a transaction. Ms. Patel
12 goes behind her and gets a tobacco product, requests he
13 produces his I.D. He actually pulls his I.D. out. You
14 can see Ms. Patel reach out, grab the corner of his
15 wallet to look at the I.D. and then immediately punch
16 in the dates into the register to complete the
17 transaction or to allow the transaction to go through.

18 Because in my world, if I see her looking at it to
19 the point where it looks like her hand is grabbing the
20 wallet, and she's immediately --

21 MR. HARVEY: Excuse me. "In my world." We can
22 talk about specific --

23 THE COURT: State your objection.

24 MR. HARVEY: The objection is that it's -- that it
25 is in his mind, and it is an unexpressed mental

1 operation and, therefore, it's hearsay.

2 THE COURT: Overruled.

3 THE WITNESS: She is looking at that. And then
4 from there, she is instantly putting it in, which makes
5 it very reliable to me.

6 MR. HARVEY: Again, that's an expression of
7 opinion, and I object to that expression of opinion.
8 He can state a fact but not the expression of that
9 opinion whether it's reliable or unreliable.

10 By the way --

11 THE COURT: I disagree. And you are not going to
12 have any more speaking objections. Please have a seat.

13 Overruled.

14 MR. HARVEY: That's fine.

15 BY MS. HUEY:

16 Q So the date of birth is significant?

17 A Yes, ma'am.

18 Q And that matches Justin Jamal Warner?

19 A That is correct.

20 Q The date of birth that's shown on the receipt?

21 A Yes, ma'am.

22 Q Now, that's the receipt, the roll of receipt that
23 we introduced yesterday. Is that what you actually
24 collected from Mr. Patel?

25 A Yes, ma'am, I did. I collected that from

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1 Mr. Patel.

2 Q And that came from the register one in his store;
3 is that correct?

4 A Yes, ma'am.

5 Q All right. The register that Mrs. Patel would
6 have been using?

7 A Yes, ma'am.

8 Q And then we've seen a picture of the receipt which
9 has been admitted as State's 1-R. And is that a
10 picture you took of the receipt?

11 A Yes, ma'am. It's a picture I took, the date I
12 collected it, and it would have been the tail end of
13 the roll.

14 Q Okay. Now, Investigator Voigt, you did not
15 collect that particular roll of receipt on April 30th,
16 2015, correct?

17 A That is correct.

18 Q When was that collected?

19 A This would have been collected -- I apologize.
20 I'm having to refer back to the exact date. Would have
21 been May 6, 2015. That was Wednesday.

22 Q So several days after the incident?

23 A Yes, ma'am.

24 Q Almost a week after the incident?

25 A That is correct.

1 Q And was Mr. Patel's store open that week?

2 A No, ma'am.

3 Q Now, in investigating Justin Jamal Warner, did you
4 determine where he was currently living?

5 A Through my investigation, we determined that he
6 lived in a suburb of Atlanta, Georgia.

7 Q And did you become aware of a mobile phone number
8 that the defendant was known to use?

9 A Yes, I did.

10 Q And how did you become aware of that?

11 A I spoke with a Monique Williams --

12 Q This is a mobile phone number of Justin Jamal
13 Warner?

14 A Oh, I apologize. Investigator Mitchell had
15 requested records.

16 MR. HARVEY: And let me object to hearsay, please.

17 THE COURT: Be careful. I am going to wait to
18 hear what he says.

19 BY MS. HUEY:

20 Q Without saying what anyone said, were you able to
21 obtain a phone number the defendant used?

22 A Yes, ma'am. We have an investigative tool that we
23 use. Acronym is CLEAR. Through that tool we're able
24 to get information on individuals, i.e. --

25 THE COURT: Just one second.

1 MR. HARVEY: Still hearsay, Judge.

2 THE WITNESS: I.e. --

3 THE COURT: No. No, sir. Don't speak when there
4 is an objection.

5 Mr. Foreman, would you take the jury back to the
6 jury room.

7 (WHEREUPON, the jury exited open court at
8 10:28 a.m.)

9 THE COURT: All right. Mr. Harvey.

10 MR. HARVEY: Judge, this calls for hearsay under
11 Rule 801 in that it is an out-of-court oral or written
12 assertion of a fact offered for the truth of the matter
13 asserted under South Carolina Rule of Evidence 801 and,
14 therefore, it is inadmissible.

15 THE COURT: Ask your question again, please,
16 Ms. Huey.

17 BY MS. HUEY:

18 Q Did you become aware of a number that the
19 defendant used?

20 THE COURT: Go ahead.

21 THE WITNESS: Yes. There's an investigative tool
22 we use that's called CLEAR. Through that, we're able
23 to obtain information regarding a person's possible
24 addresses or account histories, i.e., cell phones,
25 water bills, power bills, additional information like

1 that on a person that's been submitted through their
2 water company or cell phone prior.

3 THE COURT: I'm going to overrule your objection.
4 It's noted for the record.

5 MR. HARVEY: Thank you.

6 THE COURT: Would you bring the jury back.

7 MR. HARVEY: And, I'm sorry, before they come
8 back --

9 THE COURT: Hold on, Buck.

10 MR. HARVEY: Does that include the testimony
11 about, "We have this, the CLEAR system, and I got
12 information from CLEAR?" Because that is precisely a
13 written assertion, an out-of-court written assertion,
14 under 801. I'm not going to argue with you anymore.

15 THE COURT: I understand. I understand.

16 MR. HARVEY: I'm trying to elicit the depths to
17 which you have overruled my objection.

18 THE COURT: Ms. Huey, what's your response to
19 information from a computer program or system not being
20 hearsay --

21 MS. HUEY: Your Honor, it's an investigative
22 tool --

23 THE COURT: I understand that.

24 MS. HUEY: -- that is used, and all he's going to
25 say is that he verified a number.

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1 MR. HARVEY: But -- a number itself is hearsay.

2 THE COURT: I do understand that. And where did
3 he learn the number? I was taking notes.

4 MS. HUEY: Well, I'm going to hopefully get to
5 that, Your Honor. Nathan Goolsby testified yesterday
6 that he provided contact information to the sheriff's
7 office.

8 THE COURT: Okay.

9 MS. HUEY: And I can skip that, Your Honor, and
10 say as a result of --

11 THE COURT: No. It's in the record. I'm going to
12 overrule it. I note your objection.

13 Any further, Mr. Harvey, before we bring the jury
14 back?

15 MR. HARVEY: Not with regard to that. Thank you,
16 Judge. And in the future I'll just try to give you a
17 one word or rule number.

18 THE COURT: Please. Thank you. That way we don't
19 have to send the jury out.

20 MR. HARVEY: If you want, we can have an
21 out-of-the-presence-of-the-jury discussion.

22 THE COURT: Right. Thank you. That would help.
23 Okay.

24 (WHEREUPON, the jury entered open court at
25 10:33 a.m.)

1 BY MS. HUEY:

2 Q Investigator Voigt, were you able to obtain a
3 contact number via CLEAR history?

4 A Yes, ma'am, I was.

5 Q And was that verified by Nathan Goolsby?

6 A Yes, ma'am, it was.

7 Q And as a result of that, did you obtain records
8 for that phone number?

9 A Yes, ma'am.

10 Q Now, did you actually review those records?

11 A I did.

12 Q And was that a full analysis or just a cursory
13 look at those records?

14 A Just a cursory look.

15 Q And based on your cursory look at those records,
16 what were you able to determine, if anything, about the
17 GPS coordinates?

18 MR. HARVEY: Excuse me, Judge. And I'm sorry. I
19 apologize. An 801 objection again. If it is not the
20 records that have been admitted at this particular
21 point, then we're talking about -- I'm sorry. 801
22 objection.

23 THE COURT: All right.

24 Mr. Foreman, go back to your jury room right
25 quick, please.

1 (WHEREUPON, the jury exited open court at
2 10:34 a.m.)

3 THE COURT: Okay, sir. 803 is what it is, but go
4 ahead.

5 MR. HARVEY: Thank you. Judge, here is the
6 testimony, as I understand it, or the testimony that's
7 being elicited. "I looked at some cell phone records,
8 and I made this conclusion based upon the looking at
9 the records."

10 One, I don't know whether those are the records
11 that have already been admitted.

12 THE COURT: Have they?

13 MS. HUEY: Yes, sir.

14 THE COURT: Okay.

15 MR. HARVEY: The big spreadsheet?

16 MS. HUEY: It's on a CD.

17 MR. HARVEY: That's what I mean. Okay.

18 And, two, if, as we indicated beforehand, if this
19 is an opinion based upon those records, it either must
20 be an expert opinion -- he hasn't been qualified to
21 give an opinion under 701, 702, or 703.

22 THE COURT: Well, 701 has to do with opinion of
23 lay witnesses.

24 MR. HARVEY: Right.

25 THE COURT: I don't know what the conclusion is.

1 Briefly elicit what you're trying to and let me listen
2 to it, please.

3 BY MS. HUEY:

4 Q Investigator Voigt, again, you did not do a full
5 analysis on these records?

6 A No, ma'am, I did not.

7 Q But a cursory glance of these records, what were
8 you able to reveal from them in terms of the tower
9 locations?

10 A The suspect, the cell phone number, was pinging
11 off of towers near the incident location during the
12 time frame in which it happened.

13 THE COURT: Let me stop you. Is there anything in
14 the records, Ms. Huey, that indicates the location of
15 the towers such that you can look at it and determine
16 where the tower location was, or does it require some
17 extrapolation? If it does, I agree with Mr. Harvey
18 because a layperson under 701 can give an opinion about
19 matters that are rationally based on their perception.
20 But if he has to go further and extrapolate information
21 from those records, I think you have to qualify him as
22 an expert in that area.

23 MS. HUEY: Two things, Judge. This is what
24 Mr. Harvey has been bringing up over and over.

25 THE COURT: I know. That's why I asked the

1 question.

2 MS. HUEY: So my point is this, is that --

3 THE COURT: No, no. If you don't mind, the
4 question is: Do the records indicate location of the
5 tower within the records?

6 MS. HUEY: Your Honor, if you actually open the
7 records, which are in evidence, you can scroll down
8 them and literally see a physical address for Piedmont,
9 South Carolina.

10 THE COURT: For the tower?

11 MS. HUEY: Yes, sir, that corresponds with the
12 tower.

13 MR. HARVEY: I beg to differ. We looked at those.
14 That's exactly what we looked at last night.

15 I will tell the court that my observation -- and I
16 looked at it this morning -- of the spreadsheet that is
17 in evidence this morning has no physical location or
18 latitude or longitude information associated with the
19 cell towers.

20 THE COURT: Hang on. I obviously haven't looked
21 through it. Can you pop it up on the screen and show
22 us what you're looking at.

23 MS. HUEY: Yes, sir. And that was the point of
24 getting the expert.

25 So if you look at the records, and I will show

1 you. You can scroll down. And the towers don't
2 necessarily match up with the time in question
3 initially.

4 THE COURT: Is that the four-hour difference?

5 MS. HUEY: Exactly, Judge. Or it's just saying he
6 could have been in the area. So let's have an expert
7 look at this and see if this matches up.

8 THE COURT: Well, the objection is that he's
9 saying that the tower -- it's pinging off this
10 particular tower. And without him being an expert to
11 explain the basis of it and why he has that opinion,
12 then it has to be, under 701, that his rational
13 perception of what he's looking at and why he makes
14 that conclusion. So, in my mind, it has to be based on
15 what he looked at that's contained in the record for
16 him to have that opinion. Otherwise, he's got to be
17 qualified.

18 So where in the record -- or can you pop it up so
19 we can look at it?

20 Do you have that in front of you, Mr. Harvey?

21 MR. HARVEY: I have the relevant sheet.

22 MS. HUEY: He didn't print all of it. Well, this
23 is the relevant sheet as to the time. I assume, right?

24 MR. HARVEY: You can check it. If I'm wrong, I'm
25 wrong. That's happened before. Not often.

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1 MS. HUEY: Correct. But then down here, this gets
2 cut off on here. It reads Piedmont, South Carolina.

3 THE COURT: While you're doing that, I'm going to
4 step back for a minute.

5 (WHEREUPON, a recess was taken from 10:40 a.m. to
6 10:50 a.m.)

7 (WHEREUPON, upon the court reporter's return from
8 recess, court was in session with the jury present and
9 testimony in progress.)

10 BY MS. HUEY:

11 Q And are you able to recognize those, Investigator
12 Voigt?

13 A I do.

14 Q And are those photos that were taken during the
15 search of the silver Challenger?

16 A Yes, ma'am, they are.

17 Q And do they fairly and accurately depict the
18 search and items found in -- as a result of that
19 search?

20 A Yes, they do.

21 MS. HUEY: Your Honor, at this time we'd admit
22 State's Exhibit 11-A through G into evidence.

23 THE COURT: Any objection?

24 MR. HARVEY: There may be an objection.

25 MR. BYRHOLDT: There may be an objection to one.

1 MS. HUEY: Excuse me, Judge. 11-A is actually
2 already admitted.

3 THE COURT: 11-A is, so it would be B through G?

4 MS. HUEY: Yes, sir.

5 MR. BYRHOLDT: No objection.

6 MR. HARVEY: No objection subject to --

7 MR. BYRHOLDT: Your prior ruling on them.

8 THE COURT: Subject to prior rulings, B through G
9 would be admitted.

10 (WHEREUPON, State's Exhibit Number 11-B through G
11 were was admitted into evidence.)

12 BY MS. HUEY:

13 Q All right. Investigator Voigt, if you could step
14 down, please.

15 A (Witness complies.)

16 Q Investigator Voigt, I'm going to show you what's
17 been marked as 11-A and already admitted into evidence
18 previously. Can you tell the jury what that is?

19 A Yes, ma'am. That is the silver Challenger that we
20 executed a search warrant on.

21 Q And this is 11-B.

22 A That's the same vehicle from the front passenger
23 side.

24 Q And 11-C?

25 A That would be the same vehicle from the front

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1 driver's side.

2 Q 11-D?

3 A Would be the same vehicle from the rear.

4 Q And this is 11-E.

5 A That would be the passenger, front passenger seat
6 of the vehicle as we're executing the search warrant.

7 Q And what is that in the passenger seat, the brown
8 thing?

9 A There is a wallet in the front seat.

10 Q And this is State's 11-F.

11 A That is a picture of the wallet opened.

12 Q Okay. And is that how it was found on this
13 particular day?

14 A Yes, ma'am. When we were executing the search
15 warrant, we would have photographed the wallet where it
16 was initially sitting, then he would have brought the
17 wallet out and took photographs of it laid out so we
18 can see what it is in the wallet, document and
19 represent what we saw.

20 Q And this is State's 11-G.

21 A That is a close-up of the I.D. that is inside the
22 clear, I guess, flip-open protector. I think it's an
23 I.D. protector for the wallet.

24 Q And whose I.D. is this?

25 A That is Mr. Warner's I.D.

1 Q What is his date of birth?

2 A Let's see if I can find it on here. It's up at
3 the top. It's [REDACTED]

4 Q Now, what was significant to you about this
5 wallet, Investigator Voigt?

6 (Witness returned to stand.)

7 A Outside of the driver's license with the date of
8 birth on it, the fact that the wallet flips open, the
9 manner in which it opens, is the same manner in which
10 the wallet that is displayed in the surveillance video
11 is opened.

12 Additionally, the orientation of the license
13 appears to be consistent. Even though the video is not
14 great and it's kind of pixelated, it does appear to be
15 consistent with the orientation of the I.D. in the
16 picture.

17 Q I'm going to show you what's been marked as
18 State's Exhibit 16. Could you take a look at that?

19 A (Witness complies.)

20 Q And do you recognize that item?

21 A Yes, ma'am, I do.

22 Q And is that the wallet that you collected from the
23 silver Challenger after the search?

24 A It is.

25 Q Has it been altered in any way?

1 A It has actually been processed after we submitted
2 it into evidence.

3 Q And so what was processed exactly?

4 A The flap cover where the wallet was open. Because
5 you could see Ms. Patel reaching up and grabbing the
6 I.D., I requested it be processed, see if they could
7 get any latent prints off of it.

8 Q Was the I.D. removed in order to do that?

9 A Yes, ma'am. They would have pulled the I.D. out
10 more than likely to get a better view of it. I can't
11 testify as to why they did that, just assuming.

12 Q But the picture indicates where the license was --

13 A That's correct.

14 Q -- when it was collected?

15 A Yes, ma'am.

16 MS. HUEY: At this time, Your Honor, we'd move
17 State's 16 into evidence.

18 MR. BYRHOLDT: Without objection.

19 MR. HARVEY: Subject --

20 MR. BYRHOLDT: Subject to your prior ruling.

21 THE COURT: Subject to prior rulings.

22 (WHEREUPON, State's Exhibit Number 16 was admitted
23 into evidence.)

24 BY MS. HUEY:

25 Q Additionally from the search of the car, what else

1 did you find?

2 A We also found some cigar wrappers --

3 MR. BYRHOLDT: Your Honor --

4 MR. HARVEY: We do have an objection to that.

5 THE COURT: Mr. Foreman.

6 (WHEREUPON, the jury exited open court at
7 10:56 a.m.)

8 THE COURT: All right. The question was anything
9 else, and cigar was mentioned and I didn't hear
10 anything else.

11 MS. HUEY: Cigar wrappers, Your Honor.

12 THE COURT: Cigar wrappers?

13 MS. HUEY: Yes, if you would like to see.

14 THE COURT: Has it been opened?

15 MS. HUEY: It's already open, Your Honor.

16 THE COURT: All right, sir. What is your
17 objection, Mr. Harvey?

18 MR. HARVEY: Judge, as a 401 relevance objection,
19 first, this is the vehicle that is not in Mr. Warner's
20 name. Second, we don't know who uses it or under what
21 circumstances anybody else might use the vehicle.
22 Third, these particular items do not necessarily have
23 any connection to Mr. Warner. Four, they were not
24 related to any items that may have occurred either
25 before or during or after this particular incident,

1 and, therefore, I don't see the relevance to the
2 admission of these items. And if -- that's the first
3 objection. Of course, I'd always have a 403 objection
4 as well.

5 I don't understand what fact of consequence, which
6 is the 401 rule, what fact of consequence is made more
7 probable by the admission of these than not.

8 THE COURT: Ms. Huey, what is the relevance of
9 these? It didn't seem like there was any actual
10 purchase of a cigar on the video. Am I incorrect in
11 that?

12 MS. HUEY: There was an actual purchase, Your
13 Honor. And if you will note on the receipt, it was a
14 tobacco product for 99 cents. The area from which
15 Ms. Patel grabbed the item was where these cigar-type
16 things are kept.

17 Additionally, these wrappers are clearly similar,
18 and they're also two for 99 cents. So I think it's
19 consistent with something from the video surveillance,
20 Your Honor. That would be my argument.

21 THE COURT: What's your response to that?

22 MR. HARVEY: Other than propensity, which is
23 prohibited by 404, and 404 does not necessarily deal
24 with prior crimes. It deals with either prior or
25 future events. I still don't see -- all this says is

1 he attempted to purchase a tobacco -- we believe he
2 attempted to purchase a tobacco product and there were
3 tobacco products in the car. Not of the same kind, not
4 that can be linked to the store, not that can be linked
5 to the time frame, the person, the event, nothing, just
6 tobacco quan tobacco. I just don't see it.

7 THE COURT: Is there testimony in the record,
8 Ms. Huey, that the location where the victim reached in
9 the store is the location where these cigars are
10 stored?

11 MS. HUEY: We haven't gotten quite that far.

12 THE COURT: Subject to that -- I'm going to
13 sustain the objection at this juncture subject to you
14 laying a foundation for it. Okay?

15 MS. HUEY: Yes, sir.

16 THE COURT: Bring the jury back in.

17 (WHEREUPON, the jury entered open court at
18 11:00 a.m.)

19 BY MS. HUEY:

20 Q Investigator Voigt, in watching the surveillance
21 video prior to the shooting incident, the tobacco sale,
22 can you describe what Ms. Patel was doing?

23 A Okay. As the individual approaches the counter,
24 he requests a product. She turns and goes to an area
25 behind the counter in which there are cigars,

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1 small-type cigars, flavored cigars and such. In that
2 general area is where she pulls the product from that
3 the individual subsequently purchases.

4 Q And so back to the search of the car, then, what
5 else did you collect from the car?

6 A We collected cigar wrappers or packages that were
7 containing small flavored cigars.

8 Q I'm going to show you what's been marked as
9 State's 17. If you can take a look at this item.

10 A (Witness complies.)

11 Q And do you recognize those?

12 A Yes, ma'am.

13 Q Are those the wrappers you collected from the 2013
14 silver Challenger?

15 A They were.

16 Q And have they been altered in any way?

17 A They don't appear to be.

18 MS. HUEY: Your Honor, at this time we'd admit
19 State's 17 into evidence.

20 THE COURT: Subject to the prior ruling, it's
21 admitted.

22 (WHEREUPON, State's Exhibit Number 17 was admitted
23 into evidence.)

24 BY MS. HUEY:

25 Q What was significant about these wrappers,

1 Investigator Voigt?

2 A Again, they were consistent with the type of
3 products that were located in the area behind the
4 register that Ms. Patel reached during the transaction
5 prior to the shooting.

6 Q If you could step down and show both of these
7 items to the jury, Investigator Voigt. This is 16, the
8 wallet.

9 A This is the wallet that we took from the vehicle.
10 Initially, the I.D. was inside the window up there.
11 And it was not this black initially. This is from the
12 processing, but this is the wallet that was left in the
13 vehicle.

14 Q And this is State's 17?

15 A Yes, ma'am. These are the three White Owl cigar
16 wrappers. These are just small flavored cigars.

17 Q And what's the price of those?

18 A I believe it's two for 99 cents.

19 Q And, again, that was collected from the 2013
20 silver Challenger?

21 A Yes, ma'am, that is correct.

22 Q Investigator Voigt, now, we watched the
23 surveillance video. Were stills also done of the
24 surveillance video?

25 A Yes, ma'am.

1 Q And what was that an effort to do?

2 A In an effort to kind of take a closer look at the
3 suspect. Through the player that the surveillance
4 footage came in, you're able to pause and step the
5 image forward in still images. And from there we
6 collected it, trying to look for distinguishing marks
7 on the individual, facial features, scars, marks,
8 tattoos, anything like that, to further help in the
9 identification of the subject.

10 Q And now what happens, though, when you try and
11 blow up these pictures, Investigator Voigt?

12 A Well, as you blow them up, they get more
13 pixelated, is how I describe it. Evidently, when
14 cameras take pictures and stuff, there's only so many
15 little squares --

16 MR. HARVEY: Excuse me. I'm sorry.

17 THE COURT: I sustain that objection.

18 BY MS. HUEY:

19 Q Regardless, when you tried to blow up the photo,
20 what happened? Did it make it clearer?

21 A No, ma'am. It makes it less clear.

22 Q Okay. And so you weren't able to make these
23 stills clearer?

24 A No, ma'am.

25 Q Just larger?

1 A Yes, ma'am.

2 Q Okay. I'm going to show you what's been marked as
3 14-A. If you could take a look at that, please.

4 A Yes, ma'am.

5 Q And do you recognize that still?

6 A Yes. This is a still captured from Camera 4
7 during the incident. I believe it's at the time the
8 I.D. is being reviewed for the tobacco purchase.

9 Q And so is that a still of the wallet being opened?

10 A That is correct.

11 Q And does it fairly and accurately depict the still
12 taken from the video surveillance?

13 A Yes, ma'am, it does.

14 MS. HUEY: Your Honor, at this time we'd admit
15 14-A into evidence.

16 THE COURT: Any objection?

17 MR. BYRHOLDT: No.

18 THE COURT: Admitted.

19 (WHEREUPON, State's Exhibit Number 14-A was
20 admitted into evidence.)

21 BY MS. HUEY:

22 Q If you could step down with the exhibit,
23 Investigator Voigt.

24 A (Witness complies.)

25 Q So, again, this is 14-A. Can you point to the

1 jury?

2 A Right there is the wallet. You can see that it is
3 a bifold wallet, brown in color, and it has a flip-out
4 I.D. window. So you can see.

5 Q And, again, this is State's 11-F.

6 A Again, this is the bifold wallet with the I.D.
7 flipping out in the same manner.

8 Q Thank you. You may have a seat.

9 A (Witness complies.)

10 Q Now, Investigator Voigt, again, in reviewing these
11 surveillance videos, what, if anything, was significant
12 about this 2013 silver Challenger that you ended up
13 searching?

14 A In reviewing the surveillance video prior to the
15 incident occurring, you can observe a silver-in-color
16 vehicle consistent -- which appears to be consistent
17 with a Challenger. It drives by the outside door on --
18 I believe it's the one side or the window side, and
19 then it comes around the other side of the building.

20 If you're facing the building from the road,
21 initially you can see the car come by on the left-hand
22 side of the building and then it drives by on the
23 right-hand side of the building.

24 Now, the video isn't great of the vehicle because
25 the camera is motion activated, and it is taking a

1 video of the inside of the store, and the vehicle is
2 traveling past the door or the window. So it's an
3 outside object that you're capturing from an inside
4 camera.

5 Q Because there are no outside cameras that are
6 working, at least?

7 A No, ma'am.

8 Q So this is an interior camera that's capturing
9 something going by the glass door?

10 A That is correct.

11 Q And were you able to get a clip of this from the
12 larger video that is in evidence?

13 A Yes, ma'am, we were.

14 Q And were you also able to slow that down so that
15 you can better see the car as it drives by?

16 A Yes, ma'am.

17 Q I'm going to show you what's been marked as
18 State's 12-D. If you'll take a look at that.

19 Are your initials on that exhibit?

20 A They are.

21 Q What does that indicate to you?

22 A Indicates I have reviewed this.

23 Q Is that a clip of the slow motion video of the car
24 driving by?

25 A It is.

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1 MS. HUEY: Your Honor, at this time I'd admit
2 State's 12-D into evidence.

3 MR. BYRHOLDT: D, as in D, dog?

4 MS. HUEY: D, dog.

5 MR. BYRHOLDT: No objection.

6 THE COURT: Admitted.

7 (WHEREUPON, State's Exhibit Number 12-D was
8 admitted into evidence.)

9 MS. HUEY: Your Honor, at this time we'd publish
10 to the jury.

11 THE COURT: Yes, ma'am.

12 THE WITNESS: I apologize. This one is kind of
13 slow to play.

14 (WHEREUPON, State's Exhibit 12-D was played for
15 the jury.)

16 BY MS. HUEY:

17 Q Is this as large as you can make it, Investigator
18 Voigt?

19 If you could tell the jury what to be looking for.

20 A Yes. If you look through this window right here,
21 you will begin to see the vehicle. Once the vehicle
22 comes through, you will kind of see the front grille of
23 the car, which is unique to me.

24 And then, additionally, you can see the rims, the
25 wheels, and the side of the vehicle along with the back

1 of it through this door. The door is probably the best
2 view. And then as it passes through, it goes on, so it
3 will be coming this way. It just takes it a few
4 minutes to load.

5 Q Is it just frozen?

6 A Yes. It will catch up. It's -- because there was
7 an attempt to slow it down; it's a lot of data in a
8 short package.

9 Q Again, this is from an interior camera looking
10 outside?

11 A That is correct. You can note there's the vehicle
12 going past. It should play full speed.

13 Q Again, that's the image of a silver car consistent
14 with the 2013 Challenger?

15 A That is correct.

16 Q Now, were you able to develop stills of this
17 particular video?

18 A Yes, ma'am, I was.

19 Q I'm going to show you what's been marked as 14-C,
20 D, E. Can you take a look at those photos?

21 A (Witness complies.)

22 Yes, ma'am.

23 Q And are those stills developed from this slow
24 motion view of the car driving by?

25 A They are.

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1 Q Have they been altered in any way?

2 A No, ma'am.

3 Q And they fairly and accurately depict this slow
4 motion video?

5 A Yes, ma'am.

6 MS. HUEY: Your Honor, at this time we'd admit
7 these exhibits into evidence.

8 MR. BYRHOLDT: Without objection.

9 THE COURT: Admitted.

10 (WHEREUPON, State's Exhibit Number 14-C, 14-D, and
11 14-E were admitted into evidence.)

12 BY MS. HUEY:

13 Q Detective Voigt, I'm going to switch back to --
14 Detective Voigt, if you can step down.

15 A (Witness complies.)

16 Q So this is 14-C?

17 A Yes, ma'am.

18 MR. BYRHOLDT: 14?

19 MS. HUEY: 14-C.

20 Q If could you point to the jury what's significant
21 about this still.

22 A For me, I'm looking at the hood of the car, the
23 shape, and kind of the color of it, the contour and
24 anything that looks familiar that I recognize.

25 Q And that's compared with State's 11-B?

1 A Yes. Again, that would be the vehicle that we
2 executed the search warrant on in Clayton County.
3 Again, the hood, the coloring, the shape, even the
4 wheels, and the other picture. It's tough to make out,
5 but in the video you can see the wheels look very
6 consistent.

7 Q All right. And so this is a still, State's 14-D.
8 Can you point to the jury?

9 A All right. Now I'm looking at the transition.
10 This is going to be the door on the passenger side.
11 Again, just the shape of the vehicle, the coloring.
12 You can barely make out orientations of features of the
13 door and everything. Like I said, I'm looking more at
14 the contour and the shape of it, keeping in mind this
15 is an inside camera capturing an outside image.

16 Q All right. And this is compared to State's 11-A?

17 A And that would be the vehicle from Clayton as
18 well. Again, the transition, the top of the vehicle,
19 the coloring, and the side and everything.

20 Q And what about the shape of the window?

21 A The shape of the window as well, correct. You can
22 see the small glass in the back.

23 Q And then this is State's 14-E.

24 A In this one, I'm also notating the way the trunk
25 comes down, the fin. And, actually, one step further,

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1 you can see more of the taillights illuminating, and
2 that helps for me to see a better image of the back end
3 of the vehicle.

4 Again, it's just looking at the back end of the
5 vehicle as it continues to pass by.

6 Q So this is State's 11-D.

7 A That's the back end of the vehicle. Note the
8 small, I guess, wing or fin -- I'm not exactly sure of
9 the exact correct nomenclature -- and the taillights
10 and the shape of the rear is, again, consistent.

11 Q You can have a seat, Detective Voigt.

12 A Yes, ma'am.

13 (Witness complies.)

14 Q Now, Detective Voigt, in reference to the video
15 again, and in reviewing it, what attempts were made to
16 enhance the video so that you could get a better look
17 at the suspect?

18 A Initially we had responded to Clemson University.
19 In years past some other investigators went up to their
20 audio and video department and got help enhancing or
21 clearing things up to get a better picture of it. So
22 we responded up there and attempted the same thing.

23 Q But were they able to help you?

24 A No, ma'am, they weren't. There were difficulties
25 with software and trying to mesh what we had and what

1 they had. And, again, we run into the pixelation
2 issue. It's either there or it's not.

3 Q Did you again try to enhance it, though, by way of
4 stills to focus in on the suspect himself?

5 A Yes, ma'am. After that did not work, we went back
6 to the sheriff's office, and actual smaller images had
7 been printed on photo paper and looked at through a
8 magnifying or forensic loop, I guess, that they look at
9 latent prints on. And from there is where I first
10 noticed some dark markings on the suspect's arm.

11 Q Showing you what's been marked as State's 14-B.

12 MR. HARVEY: G?

13 MS. HUEY: B, as in boy.

14 Q Do you recognize that item, Investigator Voigt?

15 A Yes, ma'am, I do.

16 Q And how are you able to recognize it?

17 A This is a still captured from the video
18 surveillance, Camera 4, from when the incident
19 occurred. This is the suspect as he's reaching over
20 the counter.

21 Q And the purpose of this particular still is to do
22 what?

23 A To look at his left arm. There's some dark
24 markings on his left arm that came to my attention.

25 Q Okay.

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1 MS. HUEY: Your Honor, at this time we'd admit
2 14-B into evidence.

3 MR. BYRHOLDT: Without objection.

4 THE COURT: Admitted.

5 (WHEREUPON, State's Exhibit Number 14-B was
6 admitted into evidence.)

7 MR. BYRHOLDT: Your Honor, we need an issue
8 without the jury.

9 THE COURT: Would you go back to the jury room,
10 please, sir.

11 (WHEREUPON, the jury exited open court at
12 11:22 a.m.)

13 THE COURT: What exhibit are you seeking to
14 introduce, Ms. Huey? What's that exhibit number.

15 MR. BYRHOLDT: 15.

16 THE COURT: I assume this is a picture of the left
17 arm of the defendant?

18 MS. HUEY: Yes, sir, Your Honor.

19 THE COURT: When was it taken?

20 MS. HUEY: It was recently taken. Last month,
21 Your Honor.

22 THE COURT: Okay. What's your objection?

23 MR. BYRHOLDT: Your Honor, they can't definitively
24 mask that in still photographs, and the prejudicial
25 value greatly outweighs the probative value. As the

1 detective testified, he can see dark markings. He
2 can't identify them, can't match it with that. And I
3 mean, like I say, that's extremely -- any probative
4 value is outweighed by the prejudicial value of this
5 particular photograph.

6 THE COURT: Let me see the other exhibit. Does
7 this appear to be on his shoulder?

8 MR. HUEY: It's on his bicep, Your Honor.

9 MR. BYRHOLDT: It's on the upper shoulder.

10 MS. HUEY: Well, I mean (indicating).

11 Judge, again, we are by no means saying this is
12 definitively the same. It is just another thing that
13 the investigator looked at, and you can kind of make
14 out a -- almost like a slice of pizza.

15 THE COURT: I hear you, but I agree. I think the
16 probative value is outweighed by the prejudice in this
17 case because it can't be identified clearly. He can
18 testify as to body inspections on booking, et cetera,
19 et cetera, and that he had --

20 MS. HUEY: Tattoos.

21 THE COURT: -- tattoos, et cetera, et cetera. But
22 as to this one, I'm going to make that a court exhibit,
23 and I'm going to sustain the objection under 403.

24 MS. HUEY: But just to clarify, Judge, I may ask
25 Investigator Voigt if the defendant has tattoos.

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1 THE COURT: Absolutely.

2 THE BAILIFF: They want a smoke break.

3 THE COURT: Let's take a morning break for about
4 15 minutes.

5 (WHEREUPON, a recess was taken from 11:25 a.m. to
6 11:47 a.m.)

7 MR. BYRHOLDT: Your Honor, our client was using
8 the restroom. He'll be just a minute.

9 (Pause in proceedings from 11:47 a.m. to
10 11:54 a.m.)

11 THE COURT: It has come to my attention that we
12 came in and didn't realize we didn't have the court
13 reporter, and there were some preliminary questions
14 asked.

15 And so in order to make sure we have a full
16 record, instead of doing it again for the jury, it's
17 probably more efficient for Ms. Huey to just generalize
18 the question, the response, and if the defense feels
19 like it's inappropriate, they can challenge that or
20 clarify that.

21 MS. HUEY: Yes, sir.

22 Your Honor, Investigator Voigt was on the stand,
23 and I believe we were talking about the cell phone
24 records that had been collected. He was able to
25 collect the records because he became aware of the

1 defendant's phone number by way of a CLEAR history.

2 That was also verified with Nathan Goolsby.

3 THE COURT: Verified with CLEAR and verified by
4 the probation officer.

5 MS. HUEY: Yes, sir. But we did not say
6 "probation officer" on the record.

7 THE COURT: Right. That's true.

8 MS. HUEY: At any rate, he did a cursory review of
9 those records during his investigation. And in doing
10 so, he did find a Piedmont address for a tower that was
11 around the time of the incident as far as date and
12 time.

13 THE COURT: Okay.

14 Anything further, you think?

15 MS. HUEY: I believe that's it, Your Honor.

16 THE COURT: Any objection to that?

17 MR. HARVEY: I don't have --

18 THE COURT: I mean, other than your stated
19 objections about the records in the first place.

20 MR. HARVEY: No. I have no objection to the
21 reconstruction being part of the record.

22 THE COURT: Right. Thank you.

23 Ms. Huey, You ready to proceed?

24 MS. HUEY: Yes, sir.

25 THE COURT: Defense is ready?

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1 MR. HARVEY: Yes, sir.

2 (WHEREUPON, the jury entered open court at
3 11:56 a.m.)

4 BY MS. HUEY:

5 Q Investigator Voigt, I believe we were talking
6 about State's Exhibit 14-B, which I'll publish.

7 If you could step down.

8 A (Witness complies.)

9 Q What was significant in this photo?

10 A Yes, ma'am. Although the footage is not great,
11 what stood out to me is this dark shading on his arm.
12 And, to me, that's consistent with a tattoo of some
13 sort and shaping and everything else like that.

14 Q And does the defendant, in fact, have a tattoo in
15 that area?

16 A Yes, the defendant does. And what stands out in
17 my mind is there is a triangle shape to it, and the two
18 light spots. These light spots. And that's something
19 that I observed in the tattoo on the defendant as well.
20 It's not a match; by no means can I say that is
21 guaranteed 100 percent, but it's consistent with shape.

22 And, again, the footage is pixelated and it kind
23 of is what it is, for lack of better terms.

24 Q Thank you, Investigator Voigt. You may have a
25 seat.

1 A Yes, ma'am.

2 (Witness complies.)

3 Q Now, Investigator Voigt, during the store
4 surveillance video, the short clip, what, if anything,
5 did the suspect do prior to pulling the weapon that may
6 have led to some forensic evidence?

7 A Yes, ma'am. Upon reviewing the video further, I
8 mean, there were several views done. As the defendant
9 is right before and kind of as he's in the process of
10 pulling the firearm from his pocket, he lays his hand,
11 appears to lay his hand on the mat.

12 MR. HARVEY: May I object to saying "the
13 defendant."

14 THE COURT: Yes, sir.

15 MR. HARVEY: Suspect.

16 Move to strike.

17 THE COURT: "Suspect" would be the proper term at
18 this juncture.

19 BY MS. HUEY:

20 Q Because we cannot see a face in the video, it's a
21 suspect, correct?

22 A Yes. I apologize. The suspect, see the suspect
23 place his hand onto the mat. Again, the video is not
24 the best, but in the area of the mat that it looks is
25 the same area where forensics was able to develop

1 partial latent prints.

2 Q And that's why the mat was collected and then,
3 therefore, developed, correct?

4 A Yes, ma'am. That's correct.

5 Q Now, I'm also going to show you what's been marked
6 as State's 13. If you can take a look at that.

7 A Yes, ma'am.

8 Q And are you able to recognize that?

9 A Yes. This is a Google Earth image of the BP gas
10 station at 153 and Highway 85.

11 Q And what was the purpose of pulling that image,
12 Detective Voigt?

13 A Initially, I pulled the image to label the sides
14 of the buildings and also to show that it's kind of in
15 a remote location. There's not a lot of buildings
16 around it. It's kind of off by itself. There is a
17 Waffle House behind it, and I believe a radio station
18 and a church further behind the Waffle House, but
19 there's really no buildings in the immediate next-door
20 kind of area to the location.

21 Q And is that the image you pulled from Google,
22 Investigator Voigt?

23 A Yes, ma'am, it is.

24 MS. HUEY: Your Honor, at this time we'd admit
25 State's 13 into evidence.

1 MR. BYRHOLDT: Without objection.

2 THE COURT: Admitted.

3 (WHEREUPON, State's Exhibit Number 13 was admitted
4 into evidence.)

5 BY MS. HUEY:

6 Q Investigator Voigt, if you could step down.

7 A (Witness complies.)

8 Q And tell the jury where the BP gas station is.

9 A This is the BP gas station right here. This is
10 the 85 northbound lane and then the southbound lane.
11 This is the exit ramp that was -- if you're coming
12 southbound, you would exit here, which the gas station
13 would be right immediately there. And then this would
14 be the entrance ramp for northbound. The entrance and
15 exit ramp for the southbound would be on this side over
16 here.

17 Q So you can't see where you get onto 85 South
18 toward Atlanta?

19 A That is correct.

20 Q But it's over that overpass?

21 A Yes, ma'am. You would have to pass over this
22 bridge and turn this way.

23 Q But if you're coming 85 North, the exit is where?

24 A If you're 85 North, the exit would be down here,
25 and you would come up this ramp and either have to take

1 a right -- right or left on 153.

2 Q So in terms of the silver car that we see in slow
3 motion in the video, where would it have come in on
4 this shot?

5 A Okay. Initially, it was seen on the left-hand
6 side of the building, a view from the road. And I
7 believe those cameras are 1 and 4. And that's the
8 very, very brief window. Again, that's a camera
9 capturing video outside the window. But the slow video
10 that we saw would be over here on the right-hand side
11 of the building that the vehicle came around.

12 Q Now, which side of the store did the suspect
13 enter, though?

14 A The suspect entered on the left-hand side, and
15 this would have been the front. So he entered on the
16 left-hand side.

17 Q Okay. And is that the same way he exited as well?

18 A That's correct. And this would also be referred
19 to as the window side. There is a window that's
20 directly next to the register, whereas over on this
21 side of the building, there is, I believe, fountain
22 drink machines and the like.

23 Q So, again, the register by the window, this is the
24 one that Ms. Patel was using?

25 A That is correct.

1 Q All right. Now, Investigator Voigt, in speaking
2 of the video again, again, did you develop different
3 clips from the main video that was collected?

4 A Yes, ma'am, I did.

5 Q To capture different angles within the store?

6 A That is correct.

7 Q And so is there an angle that was captured wherein
8 you can't exactly see the full shooting incident, but
9 you can see movement and then him exiting the store?

10 A Yes, ma'am.

11 Q I'm going to show you what's State's 12-B.

12 A Yes, ma'am.

13 Q And do you recognize that item?

14 A I do.

15 Q And how are you able to do so?

16 A I've initialed and the date on it.

17 Q Does that indicate that that's the clip in
18 question?

19 A It does.

20 Q Has it been altered in any way?

21 A Doesn't appear so.

22 MS. HUEY: Your Honor, at this time we'd admit
23 State's 12-B into evidence.

24 MR. BYRHOLDT: Without objection.

25 THE COURT: Admitted.

1 (WHEREUPON, State's Exhibit Number 12-B was
2 admitted into evidence.)

3 MS. HUEY: If you could publish that, please.

4 Q So this would be the defendant entering the store?

5 A Yes, ma'am.

6 MR. HARVEY: Excuse me. Let me object to "the
7 defendant" again, please, Judge.

8 MS. HUEY: I'm so sorry.

9 MR. HARVEY: I know it's a slip.

10 THE COURT: "Suspect." I sustain.

11 MR. HARVEY: Thank you.

12 Q So that clip indicates the suspect leaving the
13 store?

14 A Yes, ma'am.

15 Q So you can't actually see the shooting taking
16 place?

17 A No, ma'am, not on that angle.

18 Q And what is significant about when he exits the
19 store?

20 A For me, what is significant is he actually pauses
21 to wipe down the door. That would -- in my world,
22 trying to remove any kind of fingerprints.

23 MR. HARVEY: Again, excuse me. Let me object to
24 that, please. Speculation.

25 THE COURT: I'm sorry, Mr. Harvey. I did not hear

1 you.

2 MR. HARVEY: Speculation, Judge. I'm sorry.

3 THE COURT: Overruled. Go ahead.

4 THE WITNESS: The suspect drops his cigarillo,
5 picks it up and then is wiping the door off.

6 BY MS. HUEY:

7 Q Now, Investigator Voigt, you testified earlier
8 regarding potential forensic evidence from the counter
9 mat at the register?

10 A Yes, ma'am.

11 Q When you were reviewing the video footage, how far
12 back did you have to go or did you go in reviewing
13 footage?

14 A Okay. I went back -- let's see. I can give you
15 the exact time. I want to say it was around
16 40 minutes. At 21:34, Ms. Patel had finished waiting
17 on some customers and actually sprayed down the
18 countertop and mat with a blue liquid -- I would assume
19 Windex -- and wiped it down.

20 Q And that was at 21?

21 A 21:34.

22 Q Okay. And, again, the shooting incident takes
23 place at what time?

24 A The suspect enters in at --

25 Q Just the shooting incident.

1 A Just want to make sure I give the correct time.

2 There is a lot of times.

3 Q Let me stop you there first. Did you take a video
4 clip of Ms. Patel wiping the counter?

5 A Yes, ma'am, we did.

6 Q Again, from that main video that's in evidence?

7 A That is correct.

8 Q I'm going to show you what's been marked as
9 State's 12-C. If you can take a look at that.

10 A Yes, ma'am.

11 Q And do you recognize that item?

12 A Yes. This is the DVD marked "cleaning the
13 counter."

14 Q And what do your initials on that indicate?

15 A That I've reviewed it.

16 Q And is that the clip that was taken of Mrs. Patel
17 cleaning the counter?

18 A Yes, ma'am.

19 MS. HUEY: At this time we'd admit State's 12-C
20 into evidence, Your Honor.

21 THE COURT: Any objection?

22 MR. BYRHOLDT: Without objection.

23 THE COURT: Admitted.

24 (WHEREUPON, State's Exhibit Number 12-C was
25 admitted into evidence.)

1 MS. HUEY: Investigator Voigt, if you could step
2 down.

3 (Witness complies.)

4 MS. HUEY: This is 12-C.

5 (WHEREUPON, State's Exhibit Number 12-C is played
6 for the jury.)

7 BY MS. HUEY:

8 Q So what is the time?

9 A It did this earlier.

10 (WHEREUPON, State's Exhibit Number 12-C is played
11 for the jury.)

12 BY MS. HUEY:

13 Q And what time is Ms. Patel cleaning the counter?

14 A It's going to be 21:34. She's also cleaning the
15 counter protector or mat.

16 Q That was collected and developed for the latents?

17 A That is correct, yes, ma'am.

18 Q Now, Investigator Voigt, at this time I'd like to
19 have you play State's 12-A and walk the jury through
20 each step of this process.

21 MR. HARVEY: Which exhibit is it?

22 MS. HUEY: 12-A.

23 MR. HARVEY: Judge, can I object? It's already
24 been played for the jury -- well, I have an objection.
25 I can do it at the bench if you want to.

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1 THE COURT: Yeah. Come on up here, please.

2 (WHEREUPON, a bench conference was held off the
3 record in the presence of the jury, but out of the
4 hearing of the jury.)

5 BY MS. HUEY:

6 Q Investigator Voigt, before you play that again,
7 what I want you to do is, as the video is playing, tell
8 the jury what you are noticing and what becomes
9 significant from the video.

10 A Yes, ma'am.

11 MR. HARVEY: Can I apologize, Judge? Can we
12 approach very briefly once more?

13 THE COURT: Yes.

14 (WHEREUPON, a bench conference was held off the
15 record in the presence of the jury, but out of the
16 hearing of the jury.)

17 (WHEREUPON, State's Exhibit Number 12-A is played
18 for the jury.)

19 THE WITNESS: This is the suspect entering into
20 the store engaging with Ms. Patel in conversation. You
21 can see he has cash in hand. She is reaching -- that
22 area of the gas station is where they had the small
23 cigars and flavored cigars. She has requested or she
24 is looking at the wallet at this point right here. You
25 can see she has it in her hand. Note the orientation

1 of the I.D. in the window and again the wallet.

2 Right here is something that really concerns or
3 draws -- comes to my attention. The hand placement on
4 the mat right there. Again, the video is not the best,
5 but it appears to me as if his hand is on the counter
6 there as if he's picking something up.

7 MR. HARVEY: I'm going to object to that, please.
8 It's different than -- sorry.

9 I have an objection. It's different than what we
10 discussed previously. I don't want to --

11 THE COURT: Okay, sir.

12 Mr. Foreman.

13 Let me remind you, ladies and gentlemen. This is
14 what I talked about at the beginning of this trial.
15 Both attorneys have an obligation to object. And I
16 told you at some point you may feel like cattle going
17 in and out of the courtroom. This trial is no
18 different than others, and you may not consider
19 anything about the objections or make any inferences
20 from the objections.

21 You can go back to your jury room, please.

22 (WHEREUPON, the jury exited open court at
23 12:17 p.m.)

24 THE COURT: Okay, sir.

25 MR. HARVEY: Judge, the objection is we -- let me

1 lay the record because we were at the bench.

2 We objected previously to the replaying of this
3 video. This is State's 12-A.

4 THE COURT: And the narrative that goes along with
5 it.

6 MR. HARVEY: And the narrative because, in part,
7 that the video speaks for itself, and the jurors are
8 able to view the same things that Detective Voigt is
9 narrating.

10 Now, with his last piece of testimony with regard
11 to the still that is framed on the monitor and is being
12 shown to the jury as Exhibit 12-A at 22:16:28, and --
13 you know, that's a still. The jurors are able,
14 perfectly able, to view that still and make a
15 determination about what they see and what is on there.

16 When Detective Voigt says, "In my opinion, I think
17 he's touching the mat; there's where he touches the
18 mat," he started to say, "This is what concerned me,"
19 and he stopped, and I understand that. But that's
20 beyond mere narration. That's now opinion about what's
21 on the videotape. And that is within the ken of any
22 average juror to observe for themselves and make a
23 decision as to what, in fact, that person is doing.
24 And I would object to his opinion that --

25 THE COURT: Let me ask you this. 701 has lay

1 testimony. These are the three requirements: That
2 rationale based on perception of the witness or are
3 helpful to a clear understanding of the witness'
4 testimony or the determination of a fact in issue do
5 not require special knowledge.

6 There's no caveat in there that the jury can make
7 or draw the same conclusions or have the same opinion.
8 I don't think that's a basis to exclude it, just
9 because the jury can make their own determination of
10 that same evidence.

11 MR. HARVEY: Well, I think -- here's the problem I
12 have with that. He is being asked his opinion as, A,
13 an experienced investigator, B, as the lead
14 investigator in this case, and, C, he's being asked
15 what is of significance to him as the investigator
16 here.

17 THE COURT: Right.

18 MR. HARVEY: I think that takes it out of lay
19 opinion because he's not a layperson in that regard.
20 He's now being essentially tendered as an expert.
21 "Look, here's what I do. I'm the investigator
22 investigating" --

23 THE COURT: Hang on.

24 MR. HARVEY: Yes, sir.

25 THE COURT: Even with expert testimony, the area

1 of their opinion requires that they have some kind of
2 skill or experience or expertise that would be helpful
3 to the jury in determining the issue. So there is a
4 qualification under that rule. But under the lay
5 opinion, it doesn't have anything about the jury being
6 able to make the same distinction, and I think there is
7 a difference there.

8 MR. HARVEY: Okay. You know, the problem -- the
9 problem there is it's couched in terms of what's
10 significant to you about this. It's not just a
11 recitation of what's on there. It's, "Here is what I
12 believe I see on there, and I'm an experienced
13 investigator, and you should take my word for it.
14 Never mind what you see." I just think that takes it
15 out of lay opinion. And if it is lay opinion, we
16 essentially have an expert offering both expert
17 opinion, because what is significant to you is not --
18 he's not being asked that as a layperson. He's being
19 asked that as an experienced law enforcement officer
20 and lead investigator in this case. Then you're going
21 to have to separate the difference of when he's
22 testifying as an expert and as a lay witness.

23 THE COURT: Well, he hasn't been qualified as an
24 expert in this case so there's no expert testimony.

25 MR. HARVEY: I agree he hasn't. But this

1 testimony is, in effect, expert testimony.

2 THE COURT: I disagree.

3 MR. HARVEY: What does he know? What does he
4 know? I don't mean to argue with you.

5 THE COURT: Go ahead.

6 MR. HARVEY: And I don't want you to take --

7 THE COURT: No, no. You're fine.

8 MR. HARVEY: What does he know about viewing?
9 What is it that he can tell through some super
10 perception that any person on the jury can't tell by
11 looking at this thing?

12 THE COURT: Your argument is the same basis that I
13 denied earlier, and that is that lay testimony doesn't
14 require or doesn't have a caveat the jury not be able
15 to draw the same conclusion or it's not admissible if
16 the jury can draw the same conclusion, so I'm
17 overruling your objection on those grounds.

18 Any further grounds?

19 MR. HARVEY: No, sir.

20 THE COURT: All right. We can bring the jury
21 back.

22 (WHEREUPON, the jury entered open court at
23 12:24 p.m.)

24 BY MS. HUEY:

25 Q Investigator Voigt, I believe you were commenting

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1 on the placement of the suspect's hand.

2 A Yes, correct. The placement there is relevant as
3 far as possible latent evidence. Additionally, also,
4 this camera, I think, gives some of the best angles as
5 far as viewing the suspect's body type. He is, you
6 know, obviously, in my opinion -- correction.

7 MR. HARVEY: May I have a continuing objection?

8 THE COURT: Yes, sir. It's noted for the record.

9 THE WITNESS: The defendant appears to be of
10 muscular build -- or suspect appears to be of muscular
11 build. Also, it's very difficult again because of
12 pixelated footage, but I'm looking at the jaw line and
13 the triangular shape to it as well.

14 BY MS. HUEY:

15 Q If you could back that up just to show us the
16 time. What time does the transaction start?

17 A Appears in the 22:16.

18 Q So the whole thing lasts a minute?

19 A Approximately. And 22:16:39 appears to be the
20 last -- you can fairly see the shoulder breaking as
21 he's exiting.

22 MS. HUEY: That's all I have at this time, Judge.

23 THE COURT: Thank you, ma'am.

24 May I see the attorneys up here.

25 (WHEREUPON, a bench conference was held off the

1 record in the presence of the jury, but out of the
2 hearing of the jury.)

3 THE COURT: All right.

4 Mr. Foreman, ladies and gentlemen of the jury,
5 instead of stopping and letting the defense start,
6 cross-examination, stop in the middle of it, I'm going
7 to go ahead and take a break now. We're going to ask
8 that you be back in your jury room a few minutes before
9 2:00 -- I mean 1:45, and then we'll try to resume
10 around 1:45 as promptly as we can. Okay?

11 If you will go to lunch. Leave your pads in the
12 jury room, please.

13 (WHEREUPON, the jury exited open court at
14 12:29 p.m.)

15 THE COURT: Officer Voigt, you know during the
16 break you can't speak with anyone about your testimony.
17 Okay, sir?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: You can step down.

20 Anything from the State before we break for lunch?

21 MS. HUEY: No, sir, Your Honor.

22 THE COURT: From the defense?

23 MR. BYRHOLDT: No, sir.

24 MR. HARVEY: No, sir.

25 THE COURT: Thank you, gentlemen. We'll see you

1 at 1:45.

2 (WHEREUPON, a recess was taken from 12:30 p.m. to
3 1:47 p.m.)

4 THE COURT: Defendants ready for
5 cross-examination?

6 MR. HARVEY: Yes, sir.

7 THE COURT: Bring in the jury, please, sir.

8 (WHEREUPON, the jury entered open court at
9 1:48 p.m.)

10 MR. HARVEY: With the court's permission.

11 CROSS-EXAMINATION

12 BY MR. HARVEY:

13 Q Good afternoon, Investigator Voigt. How are you?

14 A Good, sir. How are you?

15 Q I'm doing well. Thank you.

16 If I confuse both you and I with a question, which
17 I may do, please let me know and we'll try to work our
18 way through it. Okay?

19 A Yes, sir.

20 Q I understand that you were called out sometime
21 during the evening of April 30, 2015, correct?

22 A Yes, sir.

23 Q Does your report indicate at approximately what
24 time you arrived at the location?

25 A No, sir, it does not.

1 Q Do you recall what time that you did, in fact,
2 arrive?

3 A Off the top of my head, I think it was somewhere
4 around 11:00, 11:30, 11:40, somewhere in that range.

5 Q Perhaps if I can refresh your recollection a
6 little bit, would you have signed into the -- and I
7 don't mean to talk to you with my back turned -- to the
8 crime scene log -- the crime scene log when you
9 arrived?

10 A Usually the officer that's in charge of the log
11 would just annotate my arrival.

12 Q Okay. And can I hand that to you and see if it
13 refreshes your recollection?

14 A Yes, sir.

15 Q All right.

16 A Yes, sir.

17 Q And what time does that indicate or what time does
18 your recollection reflect?

19 A The time indicated on the form is 2339. Should be
20 11:39 p.m.

21 Q Okay. 2339. And when you arrived, since a crime
22 scene log had already been set up and they were keeping
23 that crime scene log, others had already been there,
24 correct?

25 A Yes, sir.

1 Q And others had already been into the crime scene
2 per se, which is defined by the State, correct?

3 A Yes, sir.

4 Q And that tape included the crime scene -- in the
5 crime scene, the outside portions of the BP station,
6 correct?

7 A Yes, sir.

8 Q All right. And there were gas pumps on both
9 sides, correct?

10 A Yes, sir.

11 Q And I'm assuming, perhaps unjustly, but before you
12 got there, both sides and that whole area was taped off
13 because you didn't know exactly what really was the
14 crime scene, correct?

15 A Yes. The crime scene sometimes grows, so that may
16 have been the case. It's hard for me to speculate what
17 happened prior to my arrival. But when I arrived
18 there, the majority of the parking lot was taped off,
19 if I remember correctly.

20 Q Your assignment was as the lead investigator?

21 A Yes, sir.

22 Q The lead investigator gets to make some decisions
23 about what is done and how it is done, correct?

24 A Yes, sir.

25 Q And in that capacity, you exercised some of that

1 discretion, right?

2 A Correct.

3 Q And we'll talk about that in a minute. Here's the
4 way I'm going to proceed. You gave us a lot of
5 information in your direct examination. And you
6 proceeded somewhat sequentially in describing that to
7 us, so I'm going to start with the crime scene and your
8 arrival and move forward.

9 A Yes, sir.

10 Q That's why I'm at the crime scene right now.

11 A Okay.

12 Q Okay? When you arrived on the crime scene, were
13 the EMS or EMT people still there?

14 A No, sir.

15 Q All right. So at that particular time, the EMS
16 people had been in there, right? At least Lieutenant
17 Payne and others had been in there, correct?

18 A Yes, sir.

19 Q There had been several customers that had been in
20 there as well, correct?

21 A Yes, sir.

22 Q And back to the crime scene for just a moment. I
23 understood you to tell us, and you showed a video, that
24 at a particular time, and I understood the time was
25 21:34 was when Ms. Patel had cleaned -- we saw the

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1 video, and that is State's Exhibit 12-C -- cleaned the
2 mat?

3 A Double-check my time, sir. There is a lot of
4 times.

5 Q I'm going to write some times here because we have
6 gone through a lot of times, and I want to go through
7 some of those times so that we can get it in a
8 sequential order so everybody is not checking it or
9 going back and forth.

10 A Yes, sir. 21:34.

11 Q 21:34. All right. And while we're back on the
12 scene, just quickly, you looked at the video. How many
13 people came in between 21:34 and 22:16?

14 A 22 --

15 Q I'm sorry. 22 -- yeah, 22:16.

16 A To include the suspect, sir?

17 Q No. We've seen the video. And I'm going to talk
18 about the times in a minute. But 21:34 to 22:16, how
19 many people came into the store?

20 A Okay. It was six folks, and the suspect would be
21 seven.

22 Q Okay. That's fine. So there were at least six
23 people -- and I'll put that up on the board here in a
24 minute -- that came in between 21:30 -- between 21:34
25 and 22:16, correct? Right?

1 A Six individuals; and then the suspect would be
2 seven.

3 Q Right. Okay. Plus one. Well, we know the
4 suspect was in there because we saw that video.

5 A Yes, sir. I was just trying to be clear.

6 Q I know. That's fine. We didn't see the video
7 with the other six folks coming in?

8 A Yes, sir.

9 Q It may be on the long version?

10 A It is.

11 Q Did those people come up to the counter?

12 A Some of them did; some of them did not.

13 Q Were there receipts printed in the meantime?

14 A The ones that conducted transactions, I would
15 assume so, yes, sir.

16 Q I don't want you to assume so. Unless I'm asking
17 you to assume, I don't want you to assume. Okay?

18 A Okay.

19 Q Tell us, were there receipts, to your knowledge,
20 other than the master receipt that you've seen of those
21 transactions, do you know? If you don't know, just
22 say --

23 A I don't recall if I saw receipts handed to the
24 individuals. I know there was monetary exchanges.

25 Q How many people came to the counter?

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1 A To the counter? Would be five of the six, sir,
2 not including the suspect.

3 Q Okay. As I said to you, we're going to go
4 sequentially so we can get some time frame down. I'm
5 going to write this on the board on this sheet. Okay?
6 Will you correct me if I put it wrong because I want to
7 be as accurate as possible from what your testimony is
8 and what we're talking about and what was already in
9 evidence. Okay?

10 A Yes, sir.

11 Q All right. So the first thing, the first thing
12 that you told us about was at 21:34. And that is time
13 point one. Time reference --

14 MR. HARVEY: Could you ask the jury if they can
15 see this?

16 THE COURT: Can the jury see the easel?

17 Yes, sir.

18 MR. HARVEY: I've got a left-handed pen so I'm
19 doing okay.

20 Q 21:34, right? Six people entered the store
21 between then and 22:16. And I'm going to get to 22:16
22 in a few minutes. Okay? Right?

23 A Six people, yes, sir, including the suspect would
24 be seven.

25 Q Got it.

1 A I didn't see the "plus suspect." I apologize.

2 Q The third part of that, five people came to the
3 counter, right?

4 A Correct, sir.

5 Q All right. That's time number one. Time element
6 number two is, you know, you talked to us about, during
7 the course of your investigation, looking at the phone
8 records that were provided to you in the case, correct?

9 A Yes, sir. I did look at them.

10 Q All right. What number -- and that would be 10.

11 And the records that you were talking about are
12 contained on State's Exhibit 10. Do you remember
13 talking about those?

14 A Yes, I do.

15 Q And saying that you gave a cursory review of those
16 records in order to determine the location of a
17 particular phone in the Piedmont area, is what I
18 understood you to say, correct?

19 A Yes, sir.

20 Q All right. And part of your function in this
21 particular investigation was to review those records,
22 and you've testified about those, correct?

23 A Yes, sir.

24 Q Do you recall that one of the phone calls on those
25 records closest in time to the event we saw on the

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1 store video was at 22:11:07?

2 A It would be very difficult for me to recall a
3 specific phone call. There is a lot of numbers on that
4 record.

5 Q Well, sure, but you recalled this morning about
6 looking at these and using those to determine the area.
7 One of the important things, I guess, is if you are
8 investigating this case and you're investigating the
9 use of this particular phone is to determine a time
10 range during which this phone, you believe, was in the
11 area. Is there anything in your report reflecting
12 those times?

13 A As far as the cell phone stuff, sir?

14 Q Yes, sir.

15 A My examination of the cell phone stuff was -- if
16 you've never looked at it, there is a lot of numbers in
17 there, and it can get very confusing and very
18 complicated. So my initial look at it was trying to
19 find things in that time range or something in that
20 area.

21 Once I determined that there was something, I
22 requested that there be more in-depth analysis because
23 it is very complicated to look at, and I would rather
24 someone with more training and experience do that than
25 myself.

1 Q All right. So what I understand you to say is
2 either you don't remember about the 22:11:07, although
3 that would be an important part and facet of the
4 investigation, or looking at a time and a number is
5 just too complicated for you to do, right?

6 A Well, the time, the number, and the tower
7 placement, there's several different sheets. It is --

8 Q Didn't ask you about the tower placement. I asked
9 you about the times. And the times are important,
10 aren't they?

11 A Yes, sir.

12 Q All right. And the times associated with these
13 phone records and the times associated with your
14 investigation, because you testified about those on
15 direct examination, are important. And you understand
16 times, don't you?

17 A Yes, sir.

18 Q All right. So my question again is: Was it too
19 complicated for you to determine that that was the
20 closest phone call from the suspect or the subject
21 phone to the time of the event in this question -- in
22 this case? Is that too complicated for you?

23 A No, sir. I guess that would be the closest.

24 Q So would you have any disagreement with me that
25 State's Exhibit Number 10 that is in evidence and you

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1 testified about shows that the closest phone call in
2 time to this event from that phone would be at
3 22:11:07?

4 A By time-wise, yes, that would appear to be
5 correct.

6 Q Can I put that there? Is that okay? Do you have
7 any disagreement with that or any reason to disagree
8 with that?

9 A No, sir.

10 Q Great. All right. And here's what I put, closest
11 phone call that's from the subject phone to the event.
12 Do you disagree with that characterization? You're
13 lead investigator. You have had a chance to look at
14 these. You had a chance to look at the evidence in the
15 case?

16 A Yes, sir. There was a lot of phone calls and a
17 lot of times on the sheet. Without specifically
18 looking back at the call log and that range right now,
19 it would be difficult for me to say a hundred percent
20 that is the closest. There may have been another call
21 afterwards or such. I'm sure there is, sir. And what
22 I'm saying is -- I hope you can understand -- there's a
23 lot of calls being made, and it's -- to try and keep
24 all those times straight without a reference is
25 difficult for me.

1 Q That's why I'm going over it because you're the
2 guy -- you're the person, not the guy, the person, the
3 lead investigator on the stand right now. You've
4 testified about your investigation. And you testified
5 very carefully and competently when you were on direct
6 examination, and now I'm asking you about the times in
7 this case.

8 So your answer about that is you just really don't
9 know right now. Sounds good, but I don't know; is that
10 right?

11 A Correct, sir.

12 Q All right. So can I put sort of a question mark
13 in parentheses on that?

14 A Yes, sir.

15 Q In your report, your report -- the report that you
16 did does not have that time in it, correct?

17 A No, sir, it does not.

18 Q The next event time-wise prior to the event that
19 we saw in the video, although captured on the video, is
20 the Challenger, the car you've identified as the
21 Challenger, passing by the window. Do you remember
22 that?

23 A Yes, sir.

24 Q All right. That happened before the event as
25 well, correct?

1 A That is correct.

2 Q And does your -- we just saw it this morning. We
3 have some stills from that, correct?

4 A Yes, sir.

5 Q So your memory of that is fairly fresh, isn't it?

6 A Yes, sir. I remember the stills.

7 Q All right. Those stills, although they're in
8 evidence, you know the one thing they didn't have on
9 there is the time stamp. But you remember the video
10 has the time stamp on it, correct?

11 A Yes, sir.

12 Q All right. And 22:13, I'm saying 50 -- 22:13:50
13 is what it looks like to me. Do you have any
14 disagreement with that?

15 A No, sir. It sounds about right.

16 Q Because I recall your testimony from this morning
17 that you said that the suspect first appeared -- and
18 you used the word "suspect" at that particular time --
19 in the video at 22:13:52 when we played State's Exhibit
20 Number 12-D, which is the little surveillance clip of
21 the car going by the outside.

22 So you don't have any disagreement with 22:13:50,
23 the car, a car passes by the door of the BP; is that --

24 A Yes, sir.

25 Q -- correct?

1 A Yes, sir.

2 Q So there is -- well, we don't know because this is
3 a question mark. But at least at 22:13:50 a car passes
4 by, correct? And since there is parking on both sides
5 of that BP station, we don't know from where the car
6 came or where it was parked, right?

7 A That is correct, sir.

8 Q We don't know which exit it came off of, north or
9 south, really, right?

10 A No, sir. I do not know that.

11 Q Okay. And I'll get to the car a little bit later,
12 but there is nothing on the car that shows -- the
13 vehicle that shows on the surveillance video at any
14 rate -- any peculiar markings like something
15 identifying it as even a car from the state of Georgia
16 or from any particular state at all, right?

17 A That is correct, sir.

18 Q All right. There are no markings, signs,
19 painting, anything other than a fairly generic car that
20 you've identified as consistent with the car in
21 Georgia, correct?

22 A Correct, sir.

23 Q All right. Good. And we'll get back to the car
24 when we get to the searches because that's another
25 whole separate chapter that we're talking about, right?

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1 We're still leading up to the event in question
2 chronologically. That's what I told you, right?

3 A Yes, sir.

4 Q Okay. Good. All right. So 22:13:50, the car
5 passes by. But according to State's Exhibit 12-A,
6 State's Exhibit 12-A is the video clip of the incident
7 inside the BP station, right? If you don't know the
8 number, that's fine. There is a video clip that's in
9 evidence. I don't necessarily expect you to remember
10 all the exhibit numbers. Okay?

11 So for reference to the court into the record,
12 when I'm talking about State's Exhibit 12-A, okay --

13 A Yes sir.

14 Q -- and when I refer to that, I'm referring to the
15 video of the inside of the store. Okay?

16 A Okay.

17 Q Now, there are several videos, one of which shows
18 the suspect going in and coming to the counter on one
19 camera, and one shows from behind the counter on
20 another camera, right?

21 A Yes, sir.

22 Q And one shows the suspect leaving on another
23 camera, correct?

24 A Yes, sir.

25 Q So can I -- can I put -- I'm going to put the

1 event at BP, and I just want to establish a time and
2 then we'll talk about the different angles here for a
3 second. Okay?

4 The time that that -- the time was 22:16 when --
5 or maybe 22:59 -- 22:15:59 or 22:16:01 or 02 when the
6 suspect comes to the door and comes in.

7 A Yes, sir. It's right around in that --

8 Q All right. Can I just put -- I know -- okay.
9 That would be 22 -- what did I say? 22:16 pretty much
10 even, right?

11 A Yes, sir.

12 Q Is that fair?'

13 A If we're splitting hairs, I think the first time
14 you can see him is 22:15:58, is the first -- you can
15 see the movement on the camera, but -- I mean, I'm not
16 sure if we're splitting hairs here or we're just trying
17 to get a general timeline.

18 Q Well, I'm trying to get a general timeline.
19 That's why I said at the beginning you can correct me
20 if you think it's wrong because I think the timeline is
21 important.

22 A Yes, sir.

23 Q So, for ease, I'm going to say 22:16, and you're
24 saying 15:58, correct? But that's still 22, okay?

25 A Right.

1 Q All right. That is page one.

2 I'm going to page two, and I'm going to continue
3 with number four. We have -- we're talking about the
4 event, and we've got one behind-counter camera, right?

5 A Yes, sir.

6 Q And I think that is the camera from which we see
7 the 12-A, State's Exhibit 12-A, and the one that you
8 went over at the end of your testimony?

9 A Yes, sir.

10 Q All right. And would you tell us the camera
11 number? Do you remember? If you don't remember,
12 that's fine. But it's a separate camera?

13 A I'm leaning towards four.

14 Q And this is State's Exhibit 12-A. Well, that's a
15 two. A, right?

16 We have the second camera that we saw, which would
17 be the entry and exit camera, correct?

18 A There's a few that capture entry and exit.

19 Q I'm sorry?

20 A There is a few that capture entry and exit doors.

21 Q Well, we've seen a couple. Could you tell us
22 which is which, do you recall?

23 A As far as camera numbers, I can't recall those,
24 sir. There is one camera that is on, I'll call it the
25 slushy door, or it would be, if you're viewing the

1 building from the road, the right-hand side. And then
2 there are two cameras that kind of face diagonally to
3 cover the window side or the left-hand side of the
4 building if you're viewing it from the road door. And
5 then the behind-the-camera -- behind-the-counter
6 camera, which I'm pretty sure that one is four.

7 Q Okay. But there are several other cameras that
8 have entry and exit video clips from the big CD that's
9 got everything on it, correct?

10 A Yes, sir, that is correct.

11 Q So we have a couple of different angles, and we
12 are once again at 22:16, 22:15:58 right?

13 A Yes, sir.

14 Q That ends -- that ends with the suspect leaving at
15 approximately -- well, 38 or 39 seconds later, correct?

16 A 22:16:50 is what I have in the supplemental
17 report.

18 Q 22:16:50?

19 A Yes, sir.

20 Q Well, I'm going to go with, one, 22:16:50 is when
21 the suspect exits; is that right?

22 A Yes, sir.

23 Q And the events at the counter and some 38 or
24 39 seconds later, correct? Because then the suspect
25 turns and walks towards the door. I mean, there's a

1 difference between what happens at the counter and the
2 suspect leaving the building. There is a time
3 difference there, right?

4 A Could you repeat the question? I'm a little
5 confused.

6 Q All right. There is an event that occurs at the
7 counter. We all know what that is and what we're
8 talking about, and that's why we're here, right?

9 A Yes, sir.

10 Q The event at the counter starts at 22:16 plus or
11 minus 02 maybe and finishes some 38 or 39 seconds
12 later. The event at the counter before the person
13 departs the counter -- not departs the building,
14 departs the counter --

15 A Okay. I think -- yeah, I think --

16 Q Am I unclear? That's why I asked you to say,
17 "Hey, man, I don't understand what you're asking me."

18 A Are you inquiring as to the exact time as which
19 the event took place, like how many seconds?

20 Q Yeah. Yes, yes, yes.

21 A Give me one second. I can try to tabulate that.

22 Q Of course.

23 A Sir?

24 Q Yes.

25 A In my notes, I do not have play-by-play second

1 times, so I'm unable to do that. I just clocked the
2 event as the subject entering and the subject exiting.

3 Q Okay. Would you disagree that State's 12-A lasts
4 approximately 38 or 39 seconds?

5 A Without viewing it and looking at it, I can't say
6 exactly. That would sound approximately right.

7 Q So my question again: Would you disagree with me,
8 having testified about it today, having looked at it
9 today, having had it played several times for the
10 jury -- I mean, I want to put it up here. And would
11 you disagree or is that going to be a question mark?
12 I'm going to put it up.

13 A I would say question mark because if we're
14 splitting hairs and being exact, I like to refer back
15 to something exactly, sir.

16 Q You can refer back to whatever you got up there or
17 whatever you want if you'd like. Anything you want to
18 use to refresh your recollection, I'm confident that
19 the court would allow you to do that. And I will allow
20 you to do that if the court allows me to allow you.

21 A Replay the video?

22 Q 39 seconds for the event. And I have put a
23 question mark next to it.

24 A Sir, could you replay it so we can get the exact
25 time off the video?

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1 Q Well, if you want to replay it, it can be
2 replayed, but I'm asking you. You know, sir, you're
3 the witness. You're the person that is testifying
4 about it. You're the person that has authenticated it.
5 You're the person who has testified about it and each
6 aspect of it that the State wanted you to. So I'm
7 asking you questions. If you don't know the answer or
8 you disagree with me, tell me. Okay?

9 A Yes, sir.

10 Q All right. I'm going to put 39 seconds with a
11 question mark. And if you say I'm being totally
12 unfair, you let me know.

13 A I cannot tell you exact like one-second or
14 two-second difference, sir. I'm just not able to do
15 that.

16 Q Of course. I'm putting a question mark because
17 you didn't put it in your report, correct?

18 A Yes, sir.

19 Q And you clearly didn't time it today --

20 A Yes, sir.

21 Q -- when we saw the video. And the stills that are
22 in evidence don't have the times on them, correct?

23 A Yes, sir. I assume. I would have to look back at
24 them again. I apologize. I mean, you look at things.
25 I've looked at a lot of stuff this morning, sir.

1 Q I know you've looked at a lot of stuff this
2 morning. I'm going to hand you, with the court's
3 permission --

4 THE COURT: Yes, sir.

5 BY MR. HARVEY:

6 Q -- 14, State's Exhibit 14-A and 14-B, for example.
7 Those are stills, correct?

8 A Yes, sir, that's correct. There's no times
9 displayed on these stills.

10 Q There are -- there is also State's Exhibit -- what
11 are those, 14-A and 14-B, 14-C, 14-D, 14-E, correct?

12 A Yes, sir.

13 Q Now, 14-A and B are high resolution -- as high as
14 you can get color photos printed on photo paper, right?

15 A Yes, sir.

16 Q Okay. 14-C, D, and E are on regular copy paper?

17 A That is correct, sir.

18 Q And, by the way, just for everybody's
19 elucidation --

20 A And this came before.

21 Q Came before. All right. Let's put it this way:
22 None of the stills have time stamps on them like the
23 video does. And the 12-A, State's Exhibit 12-A, has on
24 it "Camera 4," right?

25 A Yes, sir. Could I glance at the car pictures

1 again, please, sir?

2 Q Of course.

3 A Thank you.

4 Q Which ones?

5 A The vehicle pictures. The ones that you said were
6 on regular printer paper.

7 Q Are you talking about these?

8 A Yes, sir. We saw 14-C --

9 Q Yes. Sure.

10 A I just wanted to glance at them.

11 Thank you, sir.

12 Q You're just writing down the numbers so if I ask
13 you about them?

14 A Yes, sir.

15 Q That's fine. Absolutely fine because I wanted the
16 record -- I want the record to be as clear as possible.
17 Okay?

18 A Uh-huh.

19 Q Now, again, I understood, and we're still
20 before -- we have -- we're talking about events leading
21 up to the time that you got there and leading up to the
22 event, right?

23 A Yes, sir.

24 Q And we're at -- we were at approximately 22:13:50
25 with the car passing by. That car has -- let's see.

1 We talked about that the vehicle had no distinctive
2 markings, like no license plate, no flames painted on
3 the side, no signs, nothing distinctive about it,
4 correct?

5 A No, sir. Just other than the similar paint job,
6 rims, and shaping, et cetera, yes, sir.

7 Q Right. I get that. A generic vehicle, but
8 nothing distinctive, right?

9 A No, sir. No big, giant dents or paint job or
10 anything like that.

11 Q And did I have -- you arrive at -- this is where
12 we started. Remember I gave that you sheet?

13 A Yes, sir.

14 Q And give us the time.

15 A 23:39.

16 Q I beg your pardon, sir?

17 A 23:39.

18 Q And so we're back to the phone records. You
19 recall that there were -- you've told us that there
20 were several calls that you believed to be from this
21 region, correct, on State's Exhibit Number 10?

22 A Yes, sir.

23 Q I asked you about the closest call beforehand --
24 not the closest, the closest in time beforehand. I'm
25 going to ask you about the closest in time afterwards.

1 Do you recall that that was at 22:19:08?

2 A No, sir, I do not.

3 Q Would you disagree with me that it was at 22:09?
4 You're the guy that introduced these -- well, that
5 talked about these.

6 I'm going to put 22:19:08. And that's a question
7 mark, right?

8 A Yes, sir.

9 Q All right. Now, we've got sort of the timeline of
10 before and immediately after and your arrival. Okay?

11 Now, let's get back to the scene itself. You
12 arrive at 23:39. It's already taped off, right?

13 A Yes, sir.

14 Q It's taped off. The EMS, EMT, already gone,
15 correct?

16 A Yes, sir.

17 Q All right. And I understood that one of the first
18 things that you did was you got a preview of what you
19 were looking at because you wanted to orient yourself
20 to what you're investigating as the lead investigator,
21 correct?

22 A Yes, sir.

23 Q And you have to get a general idea as to what
24 you're doing, correct?

25 A That is correct.

1 Q And then you have to start making some, and I'm
2 going to say, executive decisions about how to go
3 about, well, your job. You're the head investigator.
4 You're going to delegate. You're going to tell people
5 what to do, and you're going to use your training and
6 experience to determine what direction the
7 investigation is going to go?

8 A Yes, sir.

9 Q And in order to do that, you need to find out what
10 the general scene is, who has already been in there,
11 what's going on, who's talked to witnesses, or is there
12 something available. You have to assess all that
13 information and move forward, correct?

14 A That is correct.

15 Q And one of the first things that I think you said
16 you did was view the video surveillance that we've just
17 talked about?

18 A That probably wouldn't be one of the first things
19 I did. I believe I spoke with Lieutenant Murphy first.

20 Q That's why I just went through all those
21 questions.

22 After you did that, your next task inside --

23 A Inside.

24 Q -- I thought you said was to view the video
25 surveillance?

1 A Inside?

2 Q Yes.

3 A Okay. Yes. After crime scene had went in and
4 done their initial investigation, for lack of a better
5 term. I'm not sure how to exactly put that. I usually
6 say "forensicating." I know that's awful sounding, but
7 they go in there and make sure no trace evidence is
8 lost and kind of give a safe path to the video
9 surveillance. That way I can view it and kind of know
10 what we have going on.

11 Q So it was taped off. It's EMS, EMT were already
12 gone. I'm going to use the TV term "CSI" already had
13 been in, right?

14 A Yes, sir. They were in and gone. They had just
15 went in and kind of began doing what they were doing
16 and ensured that by me going in, I would not further
17 contaminate or chance destroying evidence.

18 Q Right. So they did a preliminary assessment, kind
19 of cleared the way for you to go in. And you went in,
20 and you told us you looked at the video surveillance?

21 A Yes, sir.

22 Q That video surveillance was in a locked room?

23 A Yes, sir.

24 Q How did you get in?

25 A I believe it was locked when I -- or unlocked when

1 I got in there.

2 Q All right. So to the best of your recollection,
3 right?

4 A Yes, sir. I did not unlock the door, if that's
5 what you're --

6 Q All right. And were you there when somebody
7 unlocked the door?

8 A No, sir.

9 Q Did you -- were you there when somebody retrieved
10 the video surveillance?

11 A It was on a computer in the back there. As far as
12 stuck a flash drive in the computer and pulled it off
13 of?

14 Q Or just downloaded it or went back to a particular
15 time and camera?

16 A We used it and played it back, sir.

17 Q All right. And how did you get there? How did
18 you -- you, or whoever, physically get to be able to
19 view it?

20 A I walked through the door on the right-hand side
21 of the store as viewed from the road, took a right and
22 walked down the hallway. There was a restroom directly
23 ahead, took a left and went down the hallway --

24 Q I don't mean direction-wise. I meant was it
25 already downloaded? Was it already stopped? Was it

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1 already in the thumb drive? Did another officer help
2 you access that?

3 A I believe the forensics units had already --
4 Wilson and Dugan had already been in there and accessed
5 the video surveillance software and had it up and
6 running and playing, able to assist me in replaying it
7 and all that other stuff, sir.

8 Q Okay. And once -- once you viewed that, you then
9 allowed or made some decisions as to what was going to
10 be seized at the scene?

11 A Yes, sir.

12 Q Forensics had already been in. Forensics kind of
13 does their job. And when they do their job, they make
14 certain decisions on their own, but other decisions can
15 be made by you as the lead investigator, correct?

16 A Yes, sir.

17 Q One of the decisions that you can make are what
18 items to seize and what items not to seize, correct?

19 A Yes, sir.

20 Q Forensics can point things out to you and you say,
21 "Okay. Let's seize that. I think that's important,"
22 or you make a decision to take it or not to take it,
23 correct?

24 A That's an accurate description.

25 Q That is an accurate description. Okay. All

1 right. And there are some photographs that are in
2 evidence that depict the inside when you were making
3 decisions as to what to seize. And I'm referring to
4 State's Exhibit 1-I, State's Exhibit 1-Q, for example,
5 show the cash register. I can hand them up to you.

6 A Yes, sir.

7 Q Ready?

8 A Yes, sir.

9 Q All right. Those show the cash register. And
10 it's been testified, for example, by Investigator Dugan
11 that that's the way the cash register appeared on the
12 night of April 30th, correct?

13 A That's correct.

14 Q Those photographs show the roll that has been
15 admitted into evidence in the upper right-hand portion
16 of the register, correct?

17 A I'm not sure I see what you're referring to, sir.

18 Q Well, is there --

19 A That looks like something that has been taped to
20 the register to me, sir.

21 Q Okay. Where is the roll?

22 A That looks like either this or this would be the
23 roll.

24 Q Okay. When you say "this or this," nobody knows
25 what you're talking about except for me and you.

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1 Would you come down here for us -- well, maybe I
2 can display it, would be a little bit better, but I'm
3 so inefficient at doing it.

4 A I would say --

5 Q And you're using a laser pointer to point on the
6 left-hand side where there are two receipt-looking
7 white items on the exhibit, correct?

8 A That is correct, sir.

9 Q And there is a receipt, it looks to me, like
10 coming out of the machine?

11 A May be, sir.

12 Q All right. Well, you're the guy. You're the
13 investigator. Is that a receipt or no?

14 A It appears to be so, sir.

15 Q Okay. Was that seized?

16 A I couldn't tell you, sir.

17 Q How about the other two receipts that we see
18 there, was that seized?

19 A I couldn't tell you, sir.

20 Q Well, did forensics make the decision to either
21 leave that there or seize that, or is that up to you?

22 A I believe the decision was made to obtain the
23 receipts.

24 Q Okay. But they weren't obtained that night on
25 April 30th, were they?

1 A Yes, sir. Could I explain, sir?

2 Q You can certainly explain after you answer the
3 question, but you've got to answer the question first.

4 Those receipts were not seized on April 30th,
5 correct?

6 A Yes, sir.

7 Q Yes, that they were seized on April 30th?

8 A Those receipts right there, to my knowledge, were
9 not taken on the 30th.

10 Q And we were referring to and you were pointing out
11 State's Exhibit 1-Q, right?

12 A Yes, sir. Yes, sir.

13 Q You can have a seat.

14 A Thank you.

15 (Witness complies.)

16 Q The receipt that we're talking about, for example,
17 on State's Exhibit 1-K -- I mean 1-R and the roll,
18 which is State's Exhibit 5 --

19 A I believe it's on the receipt itself, sir.

20 Q You're right.

21 -- State's Exhibit 5, they weren't seized on the
22 30th? That's all I'm asking. Correct?

23 A Correct, sir.

24 Q CSI, we heard from -- or the forensic unit from
25 Investigator Dugan, there were gel lifts with shoe

1 impressions, right?

2 A Yes, sir.

3 Q All right. Shoe impressions, there were touch DNA
4 swabs, right?

5 A Correct, sir.

6 Q And those touch DNA swabs were done in areas that
7 it appeared to either you or Investigator Dugan that
8 the suspect had touched, correct?

9 A Yes, sir.

10 Q Like the cash register drawer itself, for example?

11 A Yes, sir.

12 Q All right. There were two one dollar bills that
13 were processed or taken and processed, right?

14 A Yes, sir.

15 Q And there were some latent print cards that were
16 processed or taken, correct?

17 A Yes, sir.

18 Q All right. And as far as at least these three
19 items were concerned, there are no results relating to
20 Mr. Warner, correct?

21 A Correct, sir.

22 Q As of that particular time, there was a general
23 suspect who had been seen for approximately 38 seconds
24 on a video that we've seen, and that video, you told
25 the State, was distributed to -- at least a portion of

1 it was distributed to the media; is that correct?

2 A That is correct.

3 Q One of the things -- correct me if I'm wrong --
4 that I noticed in the video was that the suspect had a
5 hat on, correct?

6 A Yes, sir.

7 Q The suspect had -- it looked -- it appeared had
8 sunglasses on, correct?

9 A Yes, sir.

10 Q So that at no time did you -- were you able to get
11 a full frontal visual of the suspect because of the
12 hat, the sunglasses, and perhaps the quality of the
13 surveillance film? And I'm not saying that in a
14 derogatory sense, but they're not high quality
15 camera -- cameras that are generally used for
16 surveillance, correct?

17 A That is correct, sir.

18 Q Okay. So we've got suspect had hat; suspect had
19 sunglasses; no unimpeded -- is that a fair word --

20 A Yes, sir.

21 Q -- view of face.

22 What you did tell us a little bit about in some of
23 the stills -- there were stills that you identified for
24 us. There were many more still photographs that were
25 taken or stills that were made, correct?

1 A Yes, sir.

2 Q There were stills that were made when the suspect
3 came into the location, correct?

4 A Yes, sir. I captured several stills from the
5 video surveillance over the course of this
6 investigation.

7 Q Okay. And I think what you -- but there are many
8 more than the stills that we have seen here and that
9 you've identified as 14-A and 14-B, correct?

10 A Yes, sir.

11 Q Some of those stills of the suspect entering the
12 store and some of the stills of the suspect at the
13 counter had additional -- what you have identified for
14 us as, and I quote, dark shading. Dark shading?

15 A Yes, sir.

16 Q Okay. Dark shading like tattoos is what you were
17 referring to, correct?

18 A Yes, sir.

19 Q Like I got (indicating).

20 A Uh-huh.

21 Q You could not discern the actual shape of the dark
22 shadings, correct? That's what you told us; you
23 couldn't identify what the dark shadings were on the
24 video?

25 A Yes, sir. I couldn't tell you that that is a

1 tattoo of X, Y, Z or anything like that, sir.

2 Q Weren't there dark shadings on the suspect's
3 forearms in the stills that you prepared but did not
4 put into evidence?

5 A On his forearms?

6 Q Yes.

7 A Not that I recall, sir.

8 MR. HARVEY: I'm going to mark these for purposes
9 of identification as Defendant's 2, Defendant's 3, and
10 Defendant's 4. And for the record, I've shown them to
11 the State, Judge.

12 (WHEREUPON, Defendant's Exhibit Numbers 2, 3 and 4
13 were marked for identification.)

14 BY MR. HARVEY:

15 Q Just for purposes of identification of Defendant's
16 2, 3 and 4, can you take a look at those, please, sir,
17 and see if you recognize those first?

18 A Yes, sir. These are pictures of the subject
19 entering into the BP gas station.

20 Q And in order to refresh your recollection about
21 the dark shading, do you see dark shading on the
22 forearms of the suspect entering the store?

23 A Yes, sir. There does appear to be some dark
24 shading on the forearms.

25 Q Does Mr. Warner have any tattoos on his forearms?

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1 A Not that I recall.

2 Q Thank you.

3 At 22:39 -- and you and I may have disagreed about
4 that particular time frame -- the event is essentially
5 over. Do we see -- do we see a car pass by either door
6 in either of the cameras again? We don't see the same
7 vehicle passing by the doors?

8 A No, sir.

9 Q So the only view we have of the vehicle itself
10 would be that four-second video at approximately 22:13,
11 either 50 or 52, right?

12 A Yes, sir. I believe so.

13 Q All right. I think that gets us from the event.

14 You also told us, then, about the search of the
15 vehicle, correct?

16 A Yes, sir.

17 Q Now, the search of that vehicle was and the
18 seizure of that vehicle was how many days later?

19 A It was conducted on --

20 Q Was it May 7th?

21 A Thursday, May 7th.

22 Q I beg your pardon, sir?

23 A Thursday, May 7th.

24 Q 5/7/15, correct?

25 A Yes, sir.

1 Q And that was done down in Georgia. You might say
2 the great state of Georgia. That was done down in
3 Georgia. And tell us whose car that was.

4 A I believe it was Eboni Elane.

5 Q It was Eboni, E-b-o-n-i, wasn't it?

6 A Yes, sir. I believe that's correct.

7 Q Last name?

8 A I believe it's Elane.

9 Q Can you spell it for us?

10 A E-l-a-n-e.

11 Q E?

12 A L-a-n-e.

13 Q So the car was registered in the name of Eboni
14 Elane, correct?

15 A Correct.

16 Q And, indeed, after the car was seized and
17 searched, it was released to that person, correct?

18 A Yes. Georgia released it back to the owner of the
19 vehicle.

20 Q Okay. So the car was not registered to
21 Mr. Warner. We don't know -- we don't know who had the
22 car -- we actually don't even know who had the car on
23 4/30. But we don't know who had the car from 4/30 --
24 when I say 4/30, that's April 30th, '15, to 5/7/15,
25 right?

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1 A Yes, sir.

2 Q We don't know who had it. We don't know who drove
3 it. We don't know who put anything in it, right?

4 A Correct, sir.

5 Q On the day it was seized, you told us about two
6 exhibits at least from the vehicle. The first was
7 State's Exhibit 16, and that was the wallet. And you
8 told us that that was processed, correct?

9 A Yes, sir.

10 Q That was processed -- the wallet was processed?

11 A Yes, sir. After it was brought back to the
12 Anderson County Sheriff's Office and put into evidence,
13 I made a request that forensics process the wallet.

14 Q Because, based upon your observation, there may
15 have been some touch DNA on that wallet even though it
16 was some four or five or six or seven days later from
17 the event, correct?

18 A Yes, sir. I figured it was highly unlikely, but I
19 wanted to try and see if we could maybe -- we checked
20 it for a latent print.

21 Q Okay. So no latent?

22 A No, sir. No latent on it.

23 Q And no touch DNA, right?

24 A Correct, sir.

25 Q And that wallet was seized from the front seat of

1 that car, correct?

2 A Yes, sir.

3 Q All right. The second thing that I believe was
4 seized from the vehicle was the cigar wrappers that you
5 told us about, and those were State's Exhibit Number
6 17. Can I give you those?

7 A Yes, sir.

8 Q Not really a cigar, more a cigarillo, but cigar
9 wrappers?

10 A Yes, sir. Wrappers, packaging.

11 Q Now, where were they seen? Where were they in the
12 car?

13 A I'm trying to recall. I want to say they were in
14 a backpack that we found inside the vehicle, but I'm
15 not a hundred percent sure on that.

16 Q Okay. If I showed you some pictures of the
17 backpack, would that -- could that refresh your
18 recollection?

19 A It may.

20 MR. HARVEY: With the court's permission.

21 THE COURT: Yes, sir.

22 MR. HARVEY: And if you want, we have been going
23 for a little while. I wouldn't mind taking an
24 afternoon break.

25 THE COURT: Let's finish this line, and we'll do

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1 that.

2 MR. HARVEY: I beg your pardon?

3 THE COURT: Let's finish this line, and we'll go
4 ahead and take a break.

5 MR. HARVEY: Thank you.

6 (WHEREUPON, Defendant's Exhibit Number 5 was
7 marked for identification.)

8 BY MR. HARVEY:

9 Q Defendant's 5 for identification, handing it up to
10 you, Investigator, Detective.

11 A Sir.

12 Q Does that refresh your recollection?

13 A Yes, sir.

14 Q And does it look like that's where the wrappers
15 were?

16 A Yes, sir. They were pulled out of the backpack
17 that was inside the vehicle.

18 Q And was the backpack in the trunk?

19 A I -- I can't recall where the backpack was at,
20 sir, to be honest with you.

21 Q Were the cigar wrappers processed?

22 A No, sir, they were not.

23 Q Do they have any markings at all that would, for
24 example, indicate that they were purchased in South
25 Carolina? South Carolina tobacco tax stamps, any

1 receipts associated with them, anything, anything at
2 all that would relate those items to either the state
3 of South Carolina or some place in Anderson County,
4 South Carolina?

5 A No, sir, none that I'm aware of.

6 Q Okay. I'm going to put "no physical markings
7 related to South Carolina." Is that fair?

8 A Yes, sir.

9 Q Okay. We also -- and I'm not going to write all
10 this down. We don't know who bought them. We don't
11 know when they were bought -- we don't know who bought
12 them, correct?

13 A Yes.

14 Q We don't know when they were bought, correct?

15 A Yes, sir.

16 Q We don't know where they came from, correct?

17 A Yes, sir.

18 Q We don't know whether or not somebody else had
19 them in their possession, correct?

20 A Yes, sir.

21 Q And we don't have any connection for those
22 wrappers to South Carolina or events in this case,
23 correct?

24 A No, sir.

25 Q All right.

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1 MR. HARVEY: That's the end of that line, Judge.

2 Thank you.

3 THE COURT: All right.

4 Mr. Foreman, ladies and gentlemen, let's go ahead
5 and take an afternoon break. If you'll leave your pads
6 in the courtroom. If you need anything from the
7 bailiff, just ask him. Okay, sir?

8 (WHEREUPON, a note was received from the jury.)

9 THE COURT: Yes, sir.

10 They want to smoke.

11 (WHEREUPON, the jury exited open court at

12 3:08 p.m.)

13 (WHEREUPON, a recess was taken from 3:08 p.m. to

14 3:36 p.m.)

15 THE COURT: Ready to proceed?

16 MS. HUEY: Can we approach for scheduling?

17 (WHEREUPON, a bench conference was held off the
18 record.)

19 (WHEREUPON, the jury entered open court at

20 3:43 p.m.)

21 MR. HARVEY: Court's permission?

22 THE COURT: Yes, sir.

23 BY MR. HARVEY:

24 Q Investigator Voigt, I think we've taken ourselves
25 sequentially through, I would say, 99 percent of the

1 investigation that you conducted in the case, correct?

2 Sequentially, in a time-order way we have done, and the

3 way you have testified this morning -- strike that.

4 Let me start over again.

5 One of the things you told us about earlier was

6 that the video surveillance in the store was motion

7 activated, correct?

8 A Yes, sir.

9 Q So that if there was no motion in the store, there
10 would be nothing to see, correct?

11 A Correct.

12 Q It would not record?

13 A Correct.

14 Q And what you told us about the car going by was
15 because the motion was in the field of vision of the
16 camera, that motion activated the camera and that's how
17 the outside photograph through the door was obtained of
18 the vehicle, correct?

19 A That or if there was movement on the inside, that
20 would trigger the camera as well.

21 Q Right. Understood. But it was the motion that
22 triggered that, correct?

23 A I believe so. I mean, it would be kind of hard
24 to -- I'd be speculating.

25 Q There was nobody in the store at the time,

1 correct? There was nobody inside the store at the
2 time?

3 A When the car drove past?

4 Q When the car drove by, yes, sir.

5 A At one point, yes. At another point, possibly no.

6 Q When the car drove by?

7 A The car passed by the cameras more than just once.

8 There was -- it passed by cameras --

9 Q Hold on. I'm sorry. We saw one still, correct?

10 A Yes, sir.

11 Q Of a vehicle that you've identified as a silver
12 vehicle and said it was consistent with the --

13 A Yes, sir.

14 Q Did that car pass by again?

15 A Prior to it, seconds prior.

16 Q Seconds prior?

17 A Yes, sir. If I could elaborate.

18 Q Well, we haven't seen it.

19 A Okay.

20 Q Did you or were you asked to provide that clip?

21 Did you make a clip of that one, the second prior --

22 how many seconds prior?

23 A Sir, I made several different clips in preparation
24 for this. The intent was to try and expedite things.

25 By my notes, I have the car actually is on Cameras 1

1 and 4 at 22:13:51.

2 Q Okay. Can you hold on? I want to go back on my
3 chart because we talked about that, and, I'm sorry, I
4 didn't put that on the chart. It was -- all right.
5 I've got 22:13:50.

6 A Yes, sir. At that time there would have been
7 motion on Cameras 1 and 4.

8 Q Is there another time that you might have for us?

9 A I think at 22:13:24, there's motion on 3 as well.

10 Q 22:13:24?

11 A Yes, sir.

12 Q And can you see the object at 22:13:24?

13 A Yes, sir.

14 Q And is that also a vehicle?

15 A Yes, sir.

16 Q Is that the same vehicle that you've identified at
17 22:13:50?

18 A Yes, sir. The clearest camera picture of it is --
19 or the most noticeable one, you could say, would be of
20 the one that was submitted that we played in the
21 courtroom.

22 Q So the one at 22:13:24 is not as clear and you
23 can't really tell much from it?

24 A It's seconds prior, and it's on the other side of
25 the building. And it's just the cameras aren't as

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1 close to the door, so it's not as --

2 Q Well, it's 26 seconds?

3 THE COURT: Just one second. Let him finish.

4 MR. HARVEY: I'm sorry. I apologize.

5 THE WITNESS: Yes, sir. It's prior, and it's on
6 the other side of the building. The way it would
7 appear to me would be the vehicle is possibly driving
8 around the building, just by --

9 Q Okay. And --

10 A Just by that.

11 Q I'm sorry. As I said before, there are pumps on
12 both sides?

13 A Correct.

14 Q There's parking on both sides?

15 A Yes, sir.

16 Q And cars frequently circle a place looking for --
17 thinking about where they're going to park and go in.
18 But that's 26 seconds prior, correct?

19 A The difference is -- if we do the math.

20 Q My math may be old-fashioned. It's 26?

21 A Yes, sir.

22 Q Well, I mean, that changes the time dynamic just a
23 bit. But it is motion activated so that after this
24 event, the next time that the camera would be activated
25 is when either somebody drives up to an area that the

1 camera can see or comes into the store, correct?

2 A Yes. Or Ms. Patel was moving around inside the
3 store.

4 Q Okay. The next thing that we saw was somebody
5 else coming in, though, on the video?

6 A I'm kind of confused as to your question.

7 Q After the event at 22:16:39 or 22:16:50, what was
8 the next event on that surveillance video?

9 A 22:23:36. It's 22:33:36. I think that's when
10 Mr. Jones enters.

11 Q So the next thing we see is Mr. Jones coming in,
12 correct?

13 A If I remember correctly, yes, sir.

14 Q Well, I'm counting on you to remember correctly.

15 A I'm trying to remember if there was -- I don't
16 want to say motion inside the store. The cameras are
17 motion activated, but they -- I'm not saying they
18 record intermittently. I don't know if anybody has
19 ever had experience with motion cameras, but at times
20 it does appear motion is there and it's not. I don't
21 know how to explain it. I'm not a camera person, but I
22 have viewed a lot of video surveillance. Sometimes
23 there's actions when there's nothing there. But the
24 next discernible event would be when Mr. Jones had
25 entered.

1 Q Really, it was an easy question. Nothing happens
2 until Mr. Jones comes in?

3 A I'm just trying to make sure to answer the
4 question as accurately as possible.

5 Q Pretty easy. You made it difficult.

6 The next thing that happens is Mr. Jones comes in.
7 Nobody comes in the store after that?

8 A Yes, sir.

9 Q One thing that you repeatedly said, I remember on
10 direct examination, was that this wasn't the best
11 surveillance video, correct?

12 A That's correct, sir.

13 Q Thank you.

14 MR. HARVEY: That's all I have, Judge. Thank you.

15 THE COURT: Redirect?

16 MS. HUEY: No, sir, Your Honor.

17 THE COURT: None?

18 MS. HUEY: No redirect.

19 THE COURT: Thank you, sir. You may step down.

20 MS. HUEY: The State calls Lieutenant Scott to the
21 stand.

22 CHRISTOPHER WARREN SCOTT,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: If you would take the witness stand
25 please, sir, and state your name and spell your last

1 name for the reporter, please.

2 THE WITNESS: My name is Christopher Warren Scott,
3 S-c-o-t-t.

4 DIRECT EXAMINATION

5 BY MS. HUEY:

6 Q Lieutenant Scott, where do you work?

7 A I work for the Anderson County Sheriff's Office.

8 Q In what department?

9 A The forensics services department.

10 Q And what's your title there?

11 A I'm a lieutenant.

12 Q So what does that mean?

13 A That means I'm in charge of it. I supervise the
14 crime scene unit and the latent print unit and the
15 evidence control unit of the forensic services unit of
16 the sheriff's office.

17 Q And how long have you been at the sheriff's office
18 in particular?

19 A Eleven years.

20 Q And prior to that where were you?

21 A I was with the Aiken County Sheriff's Office in,
22 basically, the same capacity. I was a lieutenant there
23 and in charge of, basically, the same unit with the
24 Aiken County Sheriff's Office.

25 Q So how many years have you been in forensics

1 altogether?

2 A Thirty-one.

3 Q Do you have any specialized training and education
4 in reference to fingerprint and palm print analysis?

5 A Yes, ma'am. I started my career in law
6 enforcement in 1983, like most of us did, in uniform
7 patrol. And I went to start in the forensic unit in
8 Greenville County, right over here next door, in 1986.
9 I was hired there as a crime scene technician and a
10 latent print examiner.

11 While I was employed there, I attended the South
12 Carolina Criminal Justice Academy's basic fingerprint
13 school, and I also attended the FBI's advanced
14 fingerprint school while I was employed with the
15 Greenville County Department of Public Safety as a
16 crime scene tech and a latent print examiner.

17 I worked there until 1995, left there and went to
18 Charleston Police Department, took a job with the
19 Charleston Police Department as their senior latent
20 examiner.

21 While I was with the Charleston Police Department,
22 I attended the FBI's administrative advanced latent
23 fingerprint school. That school was taught by Robert
24 Hayden, who was the director of the latent print
25 section for the FBI at the time. And I also became a

1 certified latent print examiner while I was at
2 Charleston Police Department. That's through the
3 International Association for Identification.

4 And what that means is, basically, you have to --
5 basically, you have to study for a test. You have to
6 sit for a test, and it's based on your education,
7 experience, and training. The IAI will allow you to
8 sit for a test and certify you as a latent print
9 examiner. It's an eight-hour test. It's in three or
10 four or five parts -- comparison part, classification
11 part -- and if you pass all of the steps that they
12 require, they will certify you as a latent print
13 examiner. And I've been a certified latent print
14 examiner since 1997.

15 MR. BYRHOLDT: Your Honor, we'd stipulate he is a
16 fingerprint expert.

17 THE COURT: Do you accept the stipulation?

18 MS. HUEY: Yes, sir.

19 THE COURT: What is the particular area, please?

20 MS. HUEY: In fingerprint and palm print analysis.

21 THE COURT: On a forensic basis?

22 MS. HUEY: Yes, sir.

23 THE COURT: All right.

24 Ladies and gentlemen, if you recall, earlier in
25 the trial I told you that usually people are not

1 allowed to give their opinion but in very limited
2 situations. However, if you're an expert and qualified
3 as such, you're allowed to give your opinion and the
4 basis of your opinion.

5 In this case it is stipulated that this witness is
6 an expert in the field of forensic fingerprint and palm
7 print analysis. He will be allowed to give his opinion
8 in that area and the basis for his opinion. I'll tell
9 you that expert opinion is like anything else -- any
10 other testimony you will hear in this trial. You may
11 accept it, you may reject it, or give it as much weight
12 as you think it deserves.

13 MS. HUEY: Your Honor, may I add -- I meant to add
14 identification and comparison as well.

15 THE COURT: Do you stipulate to that as well?

16 MR. BYRHOLDT: Yes, sir.

17 THE COURT: So he'll be an expert in forensic
18 fingerprint and palm print analysis and --

19 MS. HUEY: Comparison and identification.

20 THE COURT: Okay. Very good.

21 BY MS. HUEY:

22 Q Lieutenant Scott, what is an inked print?

23 A Well, I'm sure most of you guys have seen
24 somebody's fingerprint card. It's a person's hands,
25 palms, fingers are rolled in ink and placed onto a

1 piece of paper, and it makes basically a recording of
2 all the friction skin on the palm of your hands or the
3 soles of your feet. It's in ink. So it's a recording
4 of the friction skin of the palms of your hands.

5 Q And is that also known as a known print?

6 A Yes, it is. It's called a known print because you
7 know who it belongs to because you're standing there
8 and you're doing it. That's why it's a known print.

9 Q What is a latent print?

10 A Well, on -- we probably need to explain where a
11 latent print comes from first. On the palms of your
12 hands and on the soles of your feet, you have skin that
13 is unlike any other skin on your body. It's called
14 friction skin. It's basically a series of raised
15 ridges. And this skin is on the palms of your hands
16 and the soles of your feet for a reason. It's so that
17 you can grip things. Obviously, a rough surface and a
18 moist surface grips better than a smooth, dry surface,
19 and these raised ridges develop on your hands and feet
20 during fetal life, and they are unique to you.

21 When you touch an item or pick up an item or step
22 on an item, a recording of that friction skin is left
23 behind on the item that you touch. That skin is unique
24 to you and you alone. All of your fingers are
25 different from each other, and all of yours are

1 different from everyone else, including the palms of
2 your hands and the soles of your feet.

3 But a latent print is, basically, when you touch
4 an item, a recording of that friction skin -- this
5 friction skin is a raised ridge, and it has pores.
6 There's like 2,700 pores per square inch on the palm of
7 your hands. That's why your hands sweat so much and
8 your feet sweat so much. There's more pores on the
9 palms of your hands and on the soles of your feet than
10 anywhere else on your body, 2,700 per square inch.

11 When you touch an item and -- your sweaty palm or
12 your sweaty foot leaves an impression of these raised
13 ridges, kind of like an ink stamp. You know, if you
14 got a stamp that says your name and you put it in ink
15 and you stamp it down on paper, the raised part touches
16 the paper and it makes an impression of your name on a
17 paper. It's the only part that touches.

18 Your fingerprints are basically the same way.
19 It's the only part that touches. So it makes a
20 recording of that friction ridge skin, that raised
21 skin. And your fingers are kind of like a self-inking
22 stamp, if you understand what I'm saying. The sweat
23 inks up the ridges, and when you touch it, touch an
24 item, it leaves a recording of that.

25 Now, latent means hidden, invisible. So what we

1 would have to do is make that print visible. You know,
2 it's really all we do. If we think that somebody has
3 touched this desk or this glass or something, we use
4 techniques to make those prints where we can see them.
5 A lot of the processes are very simple. We're just
6 making something that's there visible. It's there, we
7 just can't see it, so we use powders, chemicals,
8 lights, so we can see them.

9 So a latent print, to answer your question, is a
10 print that's there, but it's just kind of invisible,
11 and we use techniques to make them visible so that we
12 can compare them to known prints that we talked about
13 before, ink prints.

14 Q Now, are palm prints and fingerprints the same,
15 the analysis the same?

16 A Yes. It's all friction skin. It's all the same
17 type of skin. It's just on a different part of your
18 hand. Palm print, second joints, third joints, end of
19 your fingers, palms, soles of your feet, it's all
20 friction skin, and it's all unique to you. But it's
21 all the same type of comparison, yes, ma'am.

22 Q Now, just because a person touches something, does
23 that mean they're going to leave a fingerprint or palm
24 print?

25 A No, not necessarily. There is a lot of variables.

1 I mean, it depends on the type of surface they touch,
2 the condition of their hands, the temperature of the
3 surface even. If you go outside and it's 100 degrees
4 and you touch a hot car, if you left anything behind,
5 it wouldn't last very long. Obviously, it would just
6 sizzle it right off there. So there is a lot of
7 variables that come into play. And, plus, you know, I
8 mean, your skin is pliable, so if you move them, you
9 know, you may leave some moisture behind, you know,
10 that's on your fingers, but it may not be enough for us
11 to tell that it's actually a fingerprint. It just
12 might be a smudge mark. You can see smudge marks on
13 your refrigerator at home where your kids go like that,
14 and you can tell where they touched it, but not
15 necessarily know -- you know it's a fingerprint or a
16 handprint. But it's not comparable or anything. It's
17 just where the kid touched.

18 So there is a lot of variables involved in whether
19 fingerprints are comparable or not or whether it will
20 actually be left because they're pretty fragile.

21 Q So that was going to be my next question. They
22 are fragile, can be wiped away?

23 A Yes. You know, you can wipe the refrigerator off
24 with a squirt of Windex and off they go. They can be
25 pretty fragile sometimes. And sometimes they can last

1 for a long time. Just depends on the situation and the
2 environment.

3 Q But two persons cannot have the same fingerprint
4 or palm print?

5 A No, ma'am, they cannot.

6 Q Now, Lieutenant Scott, I'm going to show you
7 what's been marked and admitted as State's 6. Do you
8 recognize that item?

9 A Yes, sir.

10 Q And how are you able to recognize that?

11 A Well, I was the one that put it in this Plexiglas
12 at the office, and I've looked at it a number of times.

13 Q Is that the mat that you examined for a potential
14 latent palm print?

15 A Yes, ma'am, it is.

16 Q Now, in order to do that, did you enlarge any
17 photographs as well that would aid in your testimony
18 today?

19 A I did.

20 Q And did you also have known palm prints?

21 A I did.

22 Q For Justin Jamal Warner?

23 A Yes, ma'am.

24 Q As to the known prints, I'm going to show you
25 what's been marked as State's 21-A through D. If you

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1 could take a look at those, please.

2 A Yes, ma'am. I recognize those. I rolled these
3 myself. They have my signature on them.

4 Q And those are the prints belonging to Justin Jamal
5 Warner, known prints?

6 A Yes, ma'am.

7 Q Have they been altered in any way?

8 A No, ma'am.

9 MS. HUEY: Your Honor, at this time we'd move
10 these exhibits into evidence, State's --

11 MR. BYRHOLDT: No objection. 21-A through D.

12 THE COURT: Any objection?

13 MR. BYRHOLDT: No objection.

14 THE COURT: Admitted.

15 (WHEREUPON, State's Exhibit Numbers 21-A through D
16 were admitted into evidence.)

17 BY MS. HUEY:

18 Q Lieutenant Scott, I believe you said you enlarged
19 some photos as well to prepare for your testimony?

20 A Yes, ma'am.

21 Q I'm going to show you what's been marked as
22 State's 22-A through F. If you could take a look at
23 all of those, please.

24 A Yes, ma'am. These are the ones that I made.

25 Q And is that what you used in order to help prepare

1 your testimony in terms of your comparison analysis for
2 Justin Jamal Warner and the latent palm print from the
3 mat?

4 A Yes.

5 MS. HUEY: Your Honor, at this time we'd move
6 these exhibits into evidence as well.

7 MR. BYRHOLDT: No objection.

8 THE COURT: Okay. 22-A through F admitted.

9 (WHEREUPON, State's Exhibit Numbers 22-A through F
10 were admitted into evidence.)

11 BY MS. HUEY:

12 Q So, Lieutenant Scott, if you could step down with
13 each of these and explain each exhibit to the jury,
14 please. Just make sure you state the number first,
15 please.

16 A (Witness complies.)

17 This is a -- this is 22-C. This is 22-C. This is
18 just an enlargement of one of the photos taken at the
19 center of the counter protector, that mat that was on
20 the counter. You guys have seen it before. It's just
21 an enlargement of the counter protector as it was seen
22 at the store before we collected it and processed it.
23 That's 22-C.

24 There is the same counter protector, as you can
25 see. This is 22-B after it was processed. You can see

1 it's got some white residue on it. You guys see that
2 all right? This is the photograph we took in the lab
3 after it was processed, and I think one of the guys
4 that works for me told you about how it was processed
5 or whatever it was processed with, Super Glue. This
6 was after it was processed.

7 This is 22-E. This is just a little closer view
8 of the area that I prepared. It's the same as 22-D but
9 just closer. You can see the writing right there where
10 it says "sweets" right there. Just a little closer
11 view of the area that I compared, this area right here,
12 just a little bit closer. The same mat, just a larger
13 picture of the same area. Same mat. This is 22-B.

14 MR. HARVEY: B, as in boy?

15 THE WITNESS: Yes.

16 MR. HARVEY: Thank you.

17 THE WITNESS: This is the same. This is the mat
18 real close. This is where I charted out, and we'll
19 talk about it later, some of the points of comparison
20 that I charted in this particular palm print. This is
21 really close and really big of the same area.

22 And then this is the known print. This is this
23 latent print on the mat. This is the known print of
24 Mr. Warner where the same area was charted down here.
25 These points correspond with these. That's what this

1 is. That's 22-A. This is 22-A.

2 BY MS. HUEY:

3 Q And in doing your comparison, did you reach an
4 opinion regarding whether the latent print, palm print
5 found on the counter mat at the BP gas station matches
6 the defendant, Justin Jamal Warner?

7 A Yes, ma'am, I did.

8 Q And what was that conclusion?

9 A It does. It matches Mr. Warner's left hand, the
10 thinner area of his left hand, about right there.

11 Q And is there a larger? I think it's been
12 admitted.

13 A Yeah. This is 22-F. This is a real big -- this
14 is a real big blow-up area of the same thing I just
15 showed you. This is Mr. Warner's palm on the left.
16 This is the enlargement of the mat, right. This is
17 Mr. Warner's palm. This is the BP mat on the left.

18 I did this so you guys can see kind of how it's
19 done, the markings, the dots, show the corresponding
20 characteristics between the two. That's what the dots
21 are. See these dots. These are dots.

22 Q Are those dots -- I'm sorry. Are those dots what
23 people may call points of identification?

24 A Yes. That's what they are. This is the matching
25 characteristics that I found on the palm print on the

1 mat of Mr. Warner's palm on the ink impression that I
2 rolled. This is an enlargement of the ones that we
3 just entered into evidence that I rolled myself. This
4 is what this is. This is from the mat.

5 Q Now, does there have to be a certain number of
6 points of identification in order for there to be a
7 match?

8 A No, there does not. I mean, some countries
9 require that, but the United States does not. It's
10 whatever the examiner that's looking at the evidence is
11 comfortable with, and that's based on years of
12 experience, training, education. It's based on all
13 that stuff. And, you know, we don't count points here
14 because there's so much more about looking at a latent
15 fingerprint than point counting. I mean, there is a
16 lot of things that you have to consider when you're
17 doing comparisons like this. And a lot of it has to do
18 with ridge flow and, you know, knowing what you're
19 looking at to start with.

20 You know, I mean, I've looked at thousands of
21 these things in my career, thousands of them, and once
22 you know what part of the hand you're looking at and
23 then go to that portion of the hand, and when you start
24 seeing this is, basically, second-level detail, is what
25 we'd call it, and you find this many characteristics in

1 common, there's absolutely no question that this palm
2 print belongs to Mr. Warner. No question. No
3 question.

4 Q How long did your comparison take? Is that
5 something that you can just look at for a few minutes
6 and decide?

7 A No, not a situation like this. This takes hours.
8 This takes hours to do. This takes hours to get to
9 this point, this particular point. But there is a lot
10 of information here and a lot of quantity here. So the
11 quality is not great in some areas of it, but there is
12 a lot of quantity here. So as far as I'm concerned,
13 there's absolutely no question it belongs to
14 Mr. Warner. Absolutely no question.

15 Q Thank you, Lieutenant Scott. Please have a seat.

16 A (Witness complies.)

17 Q Now, Lieutenant Scott, if other people have
18 touched this mat, potentially, how, if at all, does
19 that affect your opinion regarding the palm print?

20 A I don't quite understand what you're asking me.

21 Q If -- there's been some testimony that other
22 people may have touched this counter mat that was at or
23 near the register at the BP gas station. Were there
24 other prints on this mat?

25 A Oh, I'm sorry, yes. Yes. There was one other

1 portion of a palm print, kind of bottom left corner
2 below the portion that I I.D.'d, bottom left corner,
3 that was comparable. And we attempted to I.D. that, as
4 we do everything. I mean, if there was anything on
5 that, any evidence in this case, anything on that mat
6 that was comparable, anything, I mean, our job is to
7 identify every latent fingerprint in this case, every
8 one, and it doesn't really matter who they belong to.
9 We want to identify or eliminate everything that
10 belongs to this case. So that's what we're going to
11 try to do.

12 We would use -- if we don't have someone to
13 compare it to, I compared that portion of the palm to
14 Mr. Warner also and anybody else that the detective may
15 ask me to. They didn't ask me to compare it to anyone
16 else that I recall, but we would use a computer to try
17 to identify that if there was fingers. Anything that
18 was left behind, we would try to identify that. I
19 mean, that's what our job is, eliminate everything we
20 can, and that's what we tried to do in this case, but,
21 you know.

22 Q Does that take away from the fact that you found
23 Justin Warner's palm print on the mat?

24 A Oh, no. No, it doesn't take away from it at all.

25 MS. HUEY: That's all I have for this witness,

1 Judge.

2 THE COURT: All right. Cross-examination.

3 MR. BYRHOLDT: Please the court.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. BYRHOLDT:

7 Q Lieutenant Scott, you ever made a mistake?

8 A Sir?

9 Q Have you ever made a mistake in doing
10 fingerprints?

11 A No, sir.

12 Q No one in the history of fingerprints has ever
13 made a mistake?

14 A You asked me if I made a mistake?

15 Q No. You said you haven't. Has anybody?

16 A Yes, sir. Human beings have made mistakes, yes,
17 sir, they have.

18 Q But you never have?

19 A No, sir.

20 Q How many partial latent prints did you find on
21 that mat?

22 A One other. One other partial palm is what was on
23 the mat.

24 Q How about any latent prints at all on that mat,
25 how many did you find?

1 A One other partial palm. That is a latent print.

2 All prints are latent prints.

3 Q So you found no fingerprints at all?

4 A No, nothing that was comparable.

5 Q Nowhere on the mat?

6 A No, sir.

7 Q And you said you tried to match the other print
8 but you couldn't?

9 A Right.

10 Q Now, there were -- if I asked you to -- the
11 testimony has shown there were six other people that
12 came into that store between a period of time before
13 the incident. If you had known prints from those
14 people, could you have tried to identify that stuff?

15 A Yes.

16 Q We know at least two people, Mr. Wheat and
17 Mr. Jones, came in there. Were you provided their
18 prints?

19 A No.

20 Q Well, you told this jury that your job is to
21 identify everything?

22 A Yes, it is.

23 Q But you weren't given all the tools to do it in
24 this case, were you?

25 A I was not asked to identify -- I was not asked to

1 compare that palm to anyone else. No, sir, I was not.

2 Q And we're supposed to -- I guess the jury is
3 supposed to take this back and look at it and say this
4 is a match, correct? That's your testimony?

5 A Yes, sir. They're supposed to believe that I'm
6 qualified to say that, yes.

7 Q What do we call these items here where there's no
8 ridges?

9 A Creases.

10 Q And where are the creases on this picture?

11 A Mr. Warner probably put so much pressure in that
12 particular area. If you look at the area --

13 Q My question was: Where are the creases? Not what
14 happened. I'm asking: Where are the creases in the
15 blue picture on 22-F?

16 A I'll be glad to answer the question if you let me,
17 Mr. Byrholdt. I will be glad to answer the question.

18 If you will look at the area that you're speaking
19 of, the crease that you pointed out, the crease that
20 you pointed out is in an area of that latent print
21 that's in very poor shape on the very right side of
22 that print. This crease over here that you're talking
23 about in the ink print, the one that you pointed out --

24 Q How about this one right here?

25 A Right. If you look at the minutiae that's to the

1 left of that, the blue dots that are to the left of it,
2 that's the minutiae.

3 Q Yes, sir.

4 A Do you want me to point it out for you?

5 Q I'm just asking. Are you telling this jury here
6 that the ridges here that conform with the brown print,
7 the known print versus the latent print, are all there?

8 A I'm sorry, Mr. Byrholdt. Ask me the question one
9 more time, please, sir.

10 Q Are you telling the jury today, your testimony,
11 that the ridges shown in the known print on 22-F, those
12 ridges, and the latent print on 22-F --

13 A The ridges or the creases?

14 Q The creases.

15 A Yes. The creases that are in the areas that are
16 comparable, yes, sir. And I'll be glad to point them
17 out to you if you like.

18 Q I'm just asking if they are.

19 A Yes, they are. Yes, they are.

20 Q Now, they also got some latent prints off or said
21 they found latent prints on money that was seized?

22 A No, sir. I think they attempted to process some
23 money that was seized, but we did not.

24 Q Did you do the processing of that money or did
25 somebody else?

1 A Somebody else.

2 Q Did you examine them?

3 A I don't think anything was developed to examine.

4 Q Well, if you're the expert, why wouldn't you be
5 the person making the decision of what's on there or
6 not?

7 A Well, the guys that work for me are certainly
8 qualified to determine whether or not a print is of
9 value.

10 Q But you're the man in charge.

11 A Yeah, but my people are qualified to determine
12 whether a print is of value or not.

13 Q Do you do just fingerprints or other stuff in
14 forensics?

15 A I do practically everything there. Or I can do
16 everything there.

17 Q DNA?

18 A Well, we don't do DNA in our office, no, sir.

19 Q Are you familiar with it?

20 A Yes.

21 Q Is DNA reliable?

22 A To --

23 Q Establish the identify of somebody, somebody left
24 some DNA at a certain spot.

25 A To a particular piece of evidence in this case or

State of South Carolina v. Justin Jamal Warher 2016-GS-04-159 & 2017-GS-04-862
Christopher Warren Scott - Cross by Mr. Byrholdt

1 just --

2 Q In general, sir.

3 A -- in general? It's possible. I think we swabbed
4 the cash register in this case for DNA, if I'm not
5 mistaken.

6 Q Have there ever been mistakes made in DNA
7 analysis? People have said DNA matches and later on
8 they come back and people say that was a wrong
9 conviction because there was a mistake?

10 A Mr. Byrholdt, I'm not an expert in DNA so I really
11 can't --

12 Q You're in law enforcement for 30-something years,
13 sir. Are you aware that that's happened?

14 A I have read about it, yes, sir, some mixtures and
15 things like that, but I really don't know enough to
16 speak on it.

17 Q And the quality of this print, the latent print in
18 your opinion was not good?

19 A It was good enough.

20 Q State's Exhibit 22-F. This is the best exhibit
21 you could bring here today, correct? Closest you could
22 get it, the best example you could provide the jury in
23 this case, correct?

24 A Mr. Byrholdt, I really don't know how to answer
25 that question. I really don't know what you're asking

1 me. Is that the best I can do? I mean, I tried to do
2 my best, yes, sir. I try to do my best.

3 Q Is this the best -- I mean, you brought it to
4 court?

5 A Yes, sir.

6 Q You made this?

7 A Yes, I did. I mean, I did my best to try to
8 explain to them how this process works, yes, sir.

9 Q All right. But, essentially, what the jury has to
10 do is look at this and take it based on faith on what
11 you said it is, correct?

12 A And 30 years of experience, yes, sir.

13 Q And never make a mistake?

14 A Not me, no, sir.

15 Q Of course not.

16 Thank you, sir.

17 THE COURT: Redirect?

18 MS. HUEY: Just a few questions, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. HUEY:

21 Q When we're talking about the quality of this
22 latent print, Lieutenant Scott, if you could step back
23 down --

24 A (Witness complies.)

25 Q -- what affects the quality of the latent print?

1 A Well, a lot of things do. I mean, the shape of
2 the person's hand. I'm not talking about the actual
3 shape of it. I'm talking about people's hands wear as
4 they get older and the kind of work they do. The shape
5 of the surface. Obviously, if you put your hand down
6 in dirt, you're not going to leave a very good
7 fingerprint. If the surface is dirt, dusty, if your
8 hands are extremely dry, if the surface is very hot. I
9 mean, there is a lot of different things. This is a
10 mouse pad kind of, basically, type of situation so it's
11 not like a smooth piece of glass. So, obviously, it's
12 not going to leave as good a fingerprint as the top of
13 this desk; it's nice and smooth.

14 So this is exactly what I would expect to find. I
15 mean, it's exactly what I would expect to find on a
16 surface like this.

17 The thing about this is it's a piece of palm, and
18 the quality is not as good as it would be on some other
19 things, but it's what I would expect. The quantity is
20 there. There's plenty of minutiae to make this
21 fingerprint match. Obviously, I would love to have
22 quality and quantity, lots of minutiae, lots of
23 characteristics, and lots of quality. Great-looking
24 print and lots of minutiae, that would be great, but
25 you're not going to always get both.

1 You know, the quality is fine. The quantity is
2 great. So there's plenty of minutiae here to satisfy
3 me.

4 As a matter of fact, somebody told me -- I marked
5 this thing up so you guys could see it, and somebody
6 had to tell me how many are on it because I didn't
7 really count them. I got to the point where I said,
8 well, I said, that should show the jury what we do here
9 and didn't count because it doesn't matter to me
10 because when I was satisfied that the identification
11 was made, I stopped. And, you know, I could probably
12 find more if I spent some more time on it. I could
13 probably find more. I mean, there's just no question
14 about it.

15 Q Thank you. You may have a seat.

16 A (Witness complies.)

17 Q I just have one more follow-up question. You were
18 asked about touch DNA, I believe?

19 A Yes, ma'am.

20 Q And in your experience, in your line of work, can
21 you often find touch DNA that can be compared?

22 A Well, I mean, we try to find it. You know, it
23 just kind of depends on the circumstances. We do try
24 to find it. I mean, a lot of times it's kind of an
25 either/or situation. If you have an item that we think

1 is touched by a person and we say, "Well, do we want to
2 process this item for fingerprints or do you want to
3 try to get touch DNA?" Well, obviously, if you take a
4 swab and you swab an item for touch DNA, I mean you can
5 imagine what you're doing to a fingerprint, you know.

6 So a lot of times we have to say either/or. We
7 have to decide. And sometimes -- now, if it's a
8 Coca-Cola bottle and you're drinking from it, we may
9 swab the top of the bottle for touch DNA -- for DNA
10 from the top of the bottle because we're not likely to
11 get a fingerprint where their lips go. And we may
12 process the bottle itself for fingerprints. So that's
13 a pretty easy decision. But sometimes, if it's -- you
14 know, it's not that easy of a decision.

15 So sometimes we have to make choices, you know,
16 which is our best evidence, what's our best bet, you
17 know. And we just have to do it every day, just about.
18 We have to make choices like that.

19 Q Just when you touch something and don't
20 necessarily leave a fingerprint, can the same be said
21 with touch DNA? Can you touch something and not
22 necessarily leave your DNA?

23 A Yes, you could.

24 MS. HUEY: That's all I have, Judge.

25 THE COURT: All right. Thank you, sir. You may

1 State of South Carolina
2 County of Anderson In the Court of General Sessions

3
4 State of South Carolina)
5)
6 -vs-) May 25, 2017
7 Justin Jamal Warner,)
8 Defendant.) 2016-GS-04-00159;
9 -----) 2017-GS-04-00862
10) Volume 4 of 4
11) Pages 519 - 691
12) Transcript of Record

11 B E F O R E:

12 The Honorable R. Lawton McIntosh, Judge;
13 and a jury.

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

15 Catherine T. Huey, Deputy Solicitor
16 Attorney for the State

17 Bruce A. Byrholdt, Esquire
18 Bruce S. Harvey, Esquire
19 Attorneys for Defendant

20
21
22 Reported by:
23 Diane L. Marcengill, RPR, CRR
24 Circuit Court Reporter
25 Certified Realtime Reporter

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 10:04 a.m.)

4 THE COURT: As to that dismissed juror, normally
5 what I do is put the first alternate in their stead.
6 The other one is put the alternates into a hat and draw
7 out one.

8 MR. BYRHOLDT: First alternate.

9 THE COURT: Does the State agree with that?

10 MS. HUEY: Yes, sir.

11 THE COURT: So that means Juror Number 21 would go
12 into the primary jury.

13 Mr. Harvey, you mentioned in the hallway that you
14 have a legal matter that you need to bring up?

15 MR. HARVEY: I do have an issue. Can you hear me?

16 Judge, can I hand up what I understand the State
17 will tender with its next witness as State's Exhibit
18 Number 20?

19 MS. HUEY: Yes, sir.

20 MR. HARVEY: And it's with your permission I
21 approach.

22 THE COURT: Absolutely.

23 MR. HARVEY: It's a CAST report. You heard a
24 little bit of that on Monday. But this is his, the
25 agent's, PowerPoint presentation.

1 THE COURT: Yes, sir.

2 MR. HARVEY: There are -- well, let me articulate
3 my objection first and then give you my reasons.

4 My objection is to its admission as an exhibit
5 into evidence to go back with the jury. There are two
6 ways I think that this evidence may come in. If you're
7 going to let it in, he can testify about it, but I'm
8 talking about the physical report that is going to be
9 tendered, I understand, as Government's Exhibit number
10 20.

11 It can come in as a summary under Rule 1006 of the
12 Evidence Code. Or it can come in -- and I'll wait
13 until you flip. And that's a summary exhibit. And a
14 summary exhibit comes into evidence. It is admitted
15 into evidence.

16 It can come in under 611(a) as a demonstrative
17 device. The word that is used most often is a
18 pedagogical device, p-e-d-a-g-o --

19 THE COURT: 611(a)?

20 MR. HARVEY: 611(a), yes.

21 THE COURT: It may be a different rule. It's --

22 MR. HARVEY: Yes, yes. That's what all the cases
23 say. I'm going to refer you to a discussion in a
24 federal case elucidating the difference between a
25 summary exhibit. A summary exhibit takes evidence

1 that's already in, admitted into evidence, and puts
2 those into sort of a summary chart.

3 THE COURT: Under Rule 1006, is that a requirement
4 or requisite that they already be in evidence, or can
5 you summarize a voluminous, say, a book and just
6 summarize parts of it --

7 MR. HARVEY: Well --

8 THE COURT: -- and do both at the same time?

9 MR. HARVEY: Yes. An expert, of course, can use
10 information that is not in evidence, but a summary
11 chart has to be evidence.

12 THE COURT: Has to be admissible?

13 MR. HARVEY: Yes. That's already in. And I think
14 the State is going to tender and has already tendered
15 State's Exhibit Number 10, which is the phone
16 information.

17 There is another exhibit, and I'm sorry, Judge, I
18 don't know the number. It's probably 9 with the phone
19 records. But 10 is that big spreadsheet we argued
20 about yesterday.

21 THE COURT: Right.

22 MR. HARVEY: So that's in evidence. And a summary
23 of that would simply say, you know, phone at this time,
24 this time, and then this tower and the location of the
25 tower. I think that would be a simple summary.

1 But a demonstrative device is allowed to be a
2 little bit looser because it's within the discretion of
3 the court, and, therefore, it can contain information
4 that is not necessarily contained in the evidence
5 that's admitted. And for that reason I handed up what
6 is I believe to be State's Exhibit Number 20. It has a
7 cover sheet that says, "FBI Cellular Analysis Survey
8 Team." It's got, "Intellectual property of the FBI
9 Cellular Analysis Survey Team; reproduction in whole or
10 part is prohibited." It's got -- on Page 2 it's got,
11 "Intellectual property of the FBI Cellular Analysis
12 Survey Team." Same thing, "Reproduction in whole or in
13 part is prohibited." It's got background. It's got
14 methodology. It's got cell site locations. It's got
15 conclusions. It's got examples.

16 Page 3, cellular tower example, three-sided. Each
17 cell site orientation can vary. In other words, it's
18 got other matters than a simple summary of admitted
19 evidence. It also talks about four-sector
20 orientations.

21 THE COURT: Page 4 of what?

22 MR. HARVEY: Page 4 of this exhibit.

23 Now, I may have given you the two-sided --

24 THE COURT: Example only, okay. I see it.

25 MR. HARVEY: So it's got examples. It's got --

1 Page 5 is maps. T-Mobile towers. I don't know whether
2 State's Exhibit Number 19 has all these T-Mobile sites
3 on it. I just don't know.

4 THE COURT: Say that again, please, sir. I missed
5 that last part.

6 MR. HARVEY: On Page 5, it's got T-Mobile towers,
7 Georgia and South Carolina area. I don't know whether
8 all of those are contained in State's Exhibit Number
9 19. I just simply don't know. Page 7 has got sector
10 illustrations. Page 8 has, "Arrow indicates direction
11 of travel." In other words, it's got a ton of
12 information and projected testimony about certain
13 things that are not contained within the records.

14 In my opinion -- the argument I'm making to Your
15 Honor is that it's not a 1006 summary. It should not
16 come in evidence. It's a 611 demonstrative device that
17 the State can certainly use to elucidate the testimony
18 of their expert and the expert can use it, but it
19 doesn't go into evidence and out with the jury. That's
20 my argument.

21 THE COURT: Let me ask one question as to Number
22 8. Says, "The direction of travel." Is that the
23 direction that's going to be shown by the location of
24 the pings from the cell towers?

25 MS. HUEY: Yes, sir.

1 THE COURT: Okay. That part of it doesn't
2 necessarily concern me. But I agree a lot of this
3 extraneous information certainly is not evidence.

4 MS. HUEY: Yes, sir. So, in preparation of that,
5 Your Honor, what I have done is I have printed in color
6 just the pages that summarize the calls and
7 coordinates. That would be Pages 8, 9, 10, 11 and 12.
8 I have also removed the conclusion that's at the top,
9 Your Honor. The only thing that is left is "arrow
10 indicates travel," which again --

11 THE COURT: So make sure I understand. Specify
12 what exhibits -- I mean page numbers from the
13 Exhibit 20 that you are wanting to admit.

14 MS. HUEY: Yes, sir. So the State's plan is to
15 use 20 in its entirety with the testimony as
16 demonstrative evidence. But what I would like to
17 introduce so the jury may view it would be State's
18 Pages 8 from that --

19 THE COURT: 9, 10, 11, and 12?

20 MS. HUEY: Yes, sir, which I'll pass up if you
21 would like to see it.

22 THE COURT: I've got it.

23 THE COURT: Assuming she lays the proper
24 foundation for it, I don't see any problems with it
25 unless there's some language on there that needs to be

1 redacted.

2 MR. HARVEY: I was going to ask about the
3 language. I understood the language was being taken
4 out.

5 MS. HUEY: The language at the top; the
6 conclusion, has been taken out.

7 MR. HARVEY: What about language at the bottom?

8 MS. HUEY: That has not been removed.

9 MR. HARVEY: "Arrow indicates direction of
10 travel"?,

11 MS. HUEY: Again, because that depends on the GPS.

12 THE COURT: Well, if that is part of the
13 testimony, it comes in based on the telephone records.

14 MS. HUEY: Yes, sir.

15 THE COURT: Then I don't find that to be too
16 offensive, but the other stuff I agree with you.

17 MR. HARVEY: I'm going to still maintain my
18 objection.

19 THE COURT: Sure.

20 MR. HARVEY: Especially with the direction of
21 travel. I think, you know, back in the common law days
22 it used to be called a continuing witness, a continuing
23 witness rule. In other words, if you have "arrow
24 indicates direction of travel," that's part of the
25 testimony that is coming in, so you have a testimonial

1 document, essentially, back to the jury, so I would
2 object to that.

3 THE COURT: Sure.

4 MR. HARVEY: But --

5 THE COURT: I overrule your objection on that
6 basis.

7 MR. HARVEY: Good. Then that's all I had to
8 raise.

9 THE COURT: So we're clear, assuming you lay the
10 foundation and the testimony supports it, 8, 9 10, 11
11 12 would be admitted as exhibits. The remainder of the
12 presentation would be for demonstration only.

13 MS. HUEY: Yes, sir.

14 MR. HARVEY: And how are we going to do that?
15 Does State's Exhibit Number 20, is it similarly
16 redacted as you just said, or does that contain the
17 full --

18 MS. HUEY: 20 contains the whole thing for
19 demonstrative purposes. And I'm not offering this.
20 It's marked, Your Honor.

21 THE COURT: Subject to your objection to letting
22 it in evidence. Any problem with that for
23 demonstrative purposes?

24 MR. HARVEY: No.

25 THE COURT: Very good.

1 MS. HUEY: If I may mark these, Your Honor.

2 THE COURT: Yes, ma'am.

3 (WHEREUPON, State's Exhibit Numbers 23-A through E
4 were marked for identification.)

5 MR. HARVEY: And, Judge, just for the record,
6 before --

7 THE COURT: Yes, sir.

8 MR. HARVEY: -- the witness comes in, I'm
9 objecting to his testimony in whole based upon our
10 motion.

11 THE COURT: Right.

12 MR. HARVEY: So I don't have to say it.

13 THE COURT: I would add to the record, though,
14 even yesterday some of your arguments seemed to
15 indicate they needed expert testimony in regard to this
16 so -- I know. I just want to point that out on the
17 record.

18 State ready to proceed?

19 MS. HUEY: Yes, sir, Your Honor.

20 THE COURT: Is the defense ready to proceed?

21 MR. HARVEY: Yes, sir.

22 MR. BYRHOLDT: Yes, sir.

23 THE COURT: Bring the jury in, please.

24 (WHEREUPON, the jury entered open court at
25 10:22 a.m.)

1 THE COURT: Good morning, ladies and gentlemen.
2 Before we get started, let me ask if anyone has read,
3 heard, or seen anything about this case during the
4 break. If so, raise your hand.

5 Has anybody spoken with anybody about this case
6 including amongst yourselves? If so, raise your hand.

7 Very good. Let the record reflect that no one
8 responded in the positive.

9 Ladies and gentlemen, I have excused one of your
10 jurors due to an illness in the family. He wanted me
11 to let y'all know that's what it was.

12 Juror Number 21, raise your hand. You are now
13 part of the primary jury, and you will take part in the
14 deliberations. Okay? Just to let you know.

15 State ready to proceed?

16 MS. HUEY: Yes, sir, Your Honor.

17 THE COURT: Defense ready?

18 MR. BYRHOLDT: Yes, sir.

19 THE COURT: Would you call your next witness,
20 please, ma'am.

21 MS. HUEY: Your Honor, the State calls Special
22 Agent David Church.

23 DAVID CHURCH,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: If you would take the witness stand,

1 please, sir, and state your name, spell your last name
2 for the reporter, please.

3 THE WITNESS: My name is David Church. Last name
4 C-h-u-r-c-h.

5 DIRECT EXAMINATION

6 BY MS. HUEY:

7 Q Agent Church, where are you employed?

8 A I'm currently employed with the FBI in Roanoke,
9 Virginia.

10 Q And how long have you been with the FBI?

11 A I've been with them just over 20 years now.

12 Q Could you give the jury some background about what
13 you've been doing with the FBI for the last 20 years.

14 A So I started out in 1996, I went to the academy.
15 After I graduated there, I started -- my first office
16 was in Brownsville, Texas, where I primarily worked
17 violent crime matters on the Texas-Mexico border.

18 I transferred from there in '99 up to Quantico,
19 Virginia where I was a full-time tactical operator for
20 the FBI's hostage rescue team. I had many duties while
21 I was on that team. One of my primary duties was
22 handling the communications for our particular site
23 team, both overseas and in the United States.

24 Q What is your current assignment?

25 A I'm currently in the Roanoke, Virginia FBI office,

1 which is a small office that's part of our Richmond
2 headquarter office in Virginia, and I am assigned to
3 the violent crimes task force there. And primarily
4 now, for the last three or so years, full-time, for the
5 most part, conducting historical cellular phone
6 analysis for investigations.

7 Q What is CAST?

8 A CAST is an acronym that stands for the Cellular
9 Analysis Survey Team. It's a unit that was formed in
10 2010 in FBI headquarters.

11 Q And are you a member of that?

12 A Yes. I was certified almost two years ago.

13 Q What is the primary duty of a CAST agent?

14 A We work on a day-to-day basis with local and state
15 agencies and also within our own agency, the FBI, and
16 other federal agencies to assist in analyzing
17 historical call detail records or cellular records that
18 are provided from the companies as part of
19 investigations, investigations from violent crime
20 investigations, I've worked on some public corruption
21 matters where I've helped with this analysis and also
22 terrorism cases.

23 Q Why was the CAST team formed?

24 A The FBI saw the growing need of analyzing records
25 in a more detailed manner than we had before to assist

1 the agencies in their investigations. Obviously, phone
2 usage has grown exponentially in the last ten-plus
3 years. Everybody's got a phone. Some people have two
4 or more, and the use of those phones, you know, we use
5 them in our everyday lives. You can typically view
6 somebody's life almost through their cell phone. A
7 phone is not just used for talking anymore, as we all
8 know, whether it's text or e-mail.

9 So the growing use of these techniques to analyze
10 the records in investigations prompted the FBI to,
11 again, form the unit so we could provide that expert
12 assistance.

13 Q Now, do these records actually tell where a person
14 is?

15 A No. The record can only show where -- or in this
16 case, a historical record can only show where the
17 approximate location of a phone is. The record itself
18 does not show the actual person that would be using the
19 phone at a particular time.

20 Q How many cases or requests for historical record
21 analysis has CAST performed since 2010 when it was
22 started?

23 A It's over 4,000 cases so far since 2010, and it's
24 testified in, I think the number is close to 1,300 but
25 well over one thousand times provided testimony, expert

1 testimony.

2 Q So what is historical cell site analysis?

3 A As I said earlier, phones are being used, you
4 know, by everyone. Everyone has one. Even, you know,
5 I've seen kids that are eight years old or younger that
6 have phones now or some type of device they can
7 communicate on.

8 When we're making these communications, whether
9 it's a call, a text, maybe an e-mail, we have to
10 communicate with the network for the carrier that we
11 have the phone, whether it be Verizon or T-Mobile,
12 AT&T, whomever it is. That network is made up of
13 thousands of towers around the country.

14 So in order for you to communicate on that phone,
15 you have to use those towers, a tower or multiple
16 towers if your phone is mobile, to communicate. Well,
17 when that happens, the carrier creates a record of that
18 transaction, date and time of when it happens, who's
19 calling who maybe, if it's a call, and that's recorded.
20 And those records we can use to -- more importantly, if
21 they provide cell site location or tower locations and
22 maybe even a sector or the side of the tower that was
23 used, we can show approximate locations of where a
24 phone would be around the date and time of that
25 communication.

1 Q So what are CDRs, then?

2 A So CDRs are call detail records. That's that
3 record, that detailed record that the carrier creates
4 as you're communicating with your phone.

5 Q Now, in order to become a CAST agent, what
6 qualifications or training did you have?

7 A At a minimum, CAST agents who are certified have
8 to have approximately 330 hours of specialized
9 training. To date I've had a little over 500 hours in
10 different things to include training in radio frequency
11 theory, basic and advanced cellular record analysis,
12 the tools, training in the tools that we use to conduct
13 that analysis, survey tools to survey networks or
14 carriers' networks out there in the field, cell phone
15 tracking equipment that we can use. We also get
16 training from the actual carriers themselves. Their
17 compliance personnel who provide these records and also
18 the engineers that set up the networks, we train with
19 them. We get specialized training from them so we can
20 get updates on what they're doing, how they're
21 presenting their records so that better helps us to
22 interpret what's in there, and then how their networks
23 and towers are set up.

24 Q And do you continue to get this training?

25 A Yes. We -- every year we have a training

1 conference for our group. And, again, we get updates
2 from the carriers on their network from the compliance
3 personnel and the engineers, and we also get updates to
4 new equipment that we may be using, new softwares and
5 the like.

6 Q And do you provide training yourself?

7 A Yes. I'm an FBI certified instructor. In regards
8 to the cellular analysis, I provide -- conduct
9 training, basic and advanced classes for state and
10 local and other federal investigators and agencies and
11 also help develop training plans in those areas, too.

12 Q How many times have you performed historical cell
13 site analysis?

14 A Since being certified a few years ago, I've worked
15 over 150 cases. Most of those cases involve -- most
16 cases tend to involve multiple cell phones so I've
17 analyzed hundreds of records in that time frame.

18 Q And have you testified as an expert on this topic
19 in court before?

20 A I have. I've been --- or testified as an expert
21 11 previous times.

22 Q And in your training and experience, is this
23 cellular telephone record analysis reliable?

24 A Yes.

25 MR. HARVEY: Let me object to the conclusion, that

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1 conclusion. That's something that the court or the
2 jury --

3 THE COURT: I'll sustain.

4 Reference that question, please.

5 MS. HUEY: Well, Your Honor, I'll back up and
6 offer him as an expert at this time, Your Honor.

7 THE COURT: Any defense voir dire?

8 MR. HARVEY: Subject to previous rulings by the
9 court.

10 THE COURT: Subject to previous rulings, he'll be
11 deemed an expert.

12 Give me the exact area of his expertise.

13 MS. HUEY: Your Honor, it would be in
14 historical --

15 THE COURT: Analysis survey.

16 MS. HUEY: -- cell site analysis.

17 THE COURT: Historical cell site analysis.

18 MS. HUEY: Record and cell site analysis.

19 THE COURT: Ladies and gentlemen, as I've told you
20 previously in this case, normally people are not
21 allowed to give their opinion but in very limited
22 circumstances.

23 In this case I have determined that this witness
24 is an expert in the field of historical cell site
25 analysis.

1 Any other area?

2 MS. HUEY: Cellular telephone record analysis,

3 Judge.

4 THE COURT: Telephone record analysis.

5 He'll be allowed to give his opinion in that area
6 and state his reasons for that opinion. I'll remind
7 you that expert testimony is just like any other
8 testimony you will hear in this case. You may accept
9 it, you may reject it or give it as much weight as you
10 think it deserves.

11 Ms. Huey.

12 BY MS. HUEY:

13 Q Agent Church, did you prepare a report in the form
14 of a PowerPoint presentation for trial today?

15 A Yes, I did.

16 Q And what is that report based on?

17 A It's based on the records that I was provided to
18 analyze.

19 Q I'm going to show you what's been previously
20 admitted as State's 10. If you will take a look at
21 that exhibit. Do you recognize that exhibit?

22 A I do.

23 Q And what do your initials on that exhibit
24 indicate?

25 A I've reviewed this disc, and it contained the call

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1 detail records from T-Mobile that I was provided to
2 analyze.

3 Q Now, in analyzing these particular records, did
4 you find that some of the information was not printed
5 on those particular records?

6 A So every carrier has a different format that they
7 provide their records. In this case I was provided
8 T-Mobile records for one telephone number. T-Mobile
9 provides a lot of the same information, the calls that
10 are being -- or the numbers that the -- the target
11 number or the number of focus that's being called from
12 or to or texted to and from, the dates and times when
13 that occurs. And then again, like I said earlier, the
14 cell site information, the tower and/or sector.

15 T-Mobile is one of the carriers in their current
16 format that provides the tower information also within
17 the actual record, the location of the tower. Some of
18 the carriers you don't get that. So carriers also have
19 a tower list that we can access that we match up that
20 information so we can accurately show on a map or plot
21 where the tower that was used, you know, in a
22 geographical area.

23 In this case, for some of the calls in the time
24 frame that I was analyzing, the information was
25 provided, but some of the calls it was not, so I have

1 to refer in those cases to the actual tower list.

2 Q And where did you access that?

3 A The carriers provide that list to a database, and
4 then we have access through the Web to go download
5 those historically.

6 Q As an FBI agent?

7 A Yes.

8 Q I'm going to show you what's been marked as
9 State's 19. If you could take a look at that exhibit.
10 And do you recognize that?

11 A Yes. This was -- this is the actual tower list
12 that I used to match up with the call detail records
13 and confirm the tower's location so I could map where
14 certain calls took place.

15 Q And again, you used this as well for your report?

16 A Yes.

17 Q And do those fairly and accurately depict the
18 tower list as you know it?

19 A Yes.

20 MS. HUEY: At this time we'd admit State's 19 into
21 evidence.

22 MR. HARVEY: No objection other than --

23 THE COURT: Subject to prior rulings, it's
24 admitted.

25 (WHEREUPON, State's Exhibit Number 19 was admitted

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1 into evidence.)

2 BY MS. HUEY:

3 Q So, Agent Church, I'm going to have you step down,
4 and we're going to look at the call detail records
5 first.

6 This is State's 10.

7 Can you see that, Mr. Church?

8 A Yes, I think so.

9 Q Here is a pointer for you to use.

10 So this is State's 10, the CDR records that you
11 reviewed; is that correct, Agent Church?

12 A Yes, ma'am.

13 Q So if you could explain to the jury right off the
14 bat, I believe this is in coordinated universal time,
15 UTC. What does that mean?

16 A So the first two columns you can see, I don't
17 think -- it's hard to see, but the date and time, the
18 first two columns down here, starts on Row 12 in the
19 records. This is just information about what was being
20 provided, phone number. So the date and the time, like
21 it says above, is provided in UTC or Coordinated
22 Universal Time. That is a standard of time. It's not
23 an actual time zone, but it's a standard of time a
24 24-hour clock is based on. So if you're familiar with,
25 possibly, whether military -- they call it Zulu time or

1 Greenwich Mean Time, which is over in near London,
2 England, that's what the time is based off of. So they
3 do that so they can normalize the records into one
4 time, and then the person analyzing it or just looking
5 at the records just has to know that they do provide it
6 in that time, and you have to subtract or add,
7 depending on where the phone is being used, the amount
8 of time to make it -- to normalize it to, in our case,
9 Eastern time.

10 So in this case the phone records, I think,
11 encompass basically April 30th to May -- it was a few
12 days, as I recall, of records. And during that time
13 where there's observance of Daylight Saving Time, so
14 we're subtracting four hours from the time they
15 provided to show -- to get the correct time in Eastern
16 Daylight Saving Time.

17 Q So a time on here, you would have to subtract four
18 hours, and that would be the actual time it was on
19 April 30th or May 1st of 2015?

20 A That's correct.

21 Q So, in analyzing these records, does this actually
22 print off if you were to print it out on a large
23 spreadsheet?

24 A Yes. You could print it out. You may have to do
25 some formatting.

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1 Q So there are many columns going this way and many
2 rows going this way?

3 A Yes.

4 Q Indicating the communications?

5 A Yes.

6 Q So the communications, on that note, these can be
7 text messages or phone calls; is that correct?

8 A Yes. It provides text message and voice calls.
9 And it provides cell site information for either or, if
10 the network captured it.

11 Q And so when you are looking at -- so where are you
12 looking for the tower information Agent Church?

13 A If you scroll over -- well, scroll up where you
14 can see the headers to Row 12.

15 So up here, you have -- it starts here where it
16 says, "First LTE site, first LTE sector I.D., first
17 LAC, first cell I.D.," that's T-Mobile's naming
18 convention for those sites. The LAC is Location Area
19 Code. It's just a grouping of towers. You can think
20 of that like your ZIP code. You send a letter, you
21 have a ZIP code, but you have to have further
22 information to actually get it to where you need to go.

23 The cell I.D. would be the address information.
24 That would be the tower number within that grouping of
25 towers. And within that same number, the last digit of

1 that cell I.D. number is the sector that the phone
2 used.

3 Q So I'm also seeing some blanks for some
4 communications. Is this why you have to refer to the
5 tower list that you mentioned?

6 A Yes. And then if you look over, it will provide a
7 tower address, latitude and longitude of the tower, the
8 first tower used, and sometimes that information will
9 not be provided for a tower that's in the first LAC and
10 first cell I.D. columns, and sometimes it is. Either
11 way, we always go back to the tower list that the
12 company keeps as part of their records of where their
13 towers are located and confirm those locations.

14 Q So even if you have the information printed on
15 this, you still go back to that list and confirm it?

16 A Yes.

17 Q All right. Agent Church, now, if we can, this is
18 going to be State's 19.

19 (WHEREUPON, State's Exhibit Number 19 was marked
20 for identification.)

21 BY MS. HUEY:

22 Q So, Agent Church, if you can describe what this
23 is, then.

24 A T-Mobile provides their tower list all in one
25 record. It's the whole nation, which is hundreds of

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1 thousands of towers. So, typically, to make it more
2 manageable for us, we'll sort that down to the area we
3 need. So this is the South region of T-Mobile's tower
4 list.

5 And, again, it's got a lot of different
6 information on it. The important things for us that we
7 match up to the record are -- I don't know if this is
8 working too well, but in Column D you see LAC. That
9 matches up to the LAC, first LAC used in the call
10 detail record. Then Column E, you see cell I.D.
11 Again, that matches up. Somewhere in there would be
12 that matching cell I.D. that's provided in the call
13 detail record for a particular communication. Then you
14 have the -- more importantly, you have the orientation,
15 which is the azimuth or the direction that that
16 particular sector, those radio frequency antennas are
17 pointed so you know what side of the tower is being
18 used. Then you have the latitude and longitude in
19 Column H and I, and that's what we used to plot or map
20 the exact location where the tower is located. It
21 provides you with the street address, too, but we use
22 the latitude and longitude because it's a more precise
23 location of where the tower is.

24 Q So you use the CDRs and then this tower list in
25 order to prepare your report and a PowerPoint; is that

1 correct?

2 A Correct.

3 (WHEREUPON, State's Exhibit Number 20 was marked
4 for identification.)

5 BY MS. HUEY:

6 Q All right. Agent Church, I'm going to show you
7 what's been marked for identification Exhibit 20. If
8 you could take a look at that. And do you recognize
9 that exhibit?

10 A I do.

11 Q And is that the report you prepared for your
12 testimony today?

13 A It is.

14 Q And would it aid in your testimony today?

15 A Yes.

16 MS. HUEY: At this time, Your Honor, we'd ask to
17 publish for demonstrative purposes only.

18 THE COURT: Demonstrative purposes only?

19 MS. HUEY: Yes, sir.

20 THE COURT: Granted. Subject to prior ruling.

21 (WHEREUPON, State's Exhibit Number 20 was admitted
22 into evidence for demonstrative purposes.)

23 THE COURT: While you're doing that, ladies and
24 gentlemen, she said "demonstrative purposes only."

25 It's not presented to you as a fact. This is their

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1 contention of what the facts are in this case, but it
2 will not go back to you in the jury room and will not
3 be an exhibit for you to look at when you go back and
4 begin your deliberations.

5 MS. HUEY: So this would be State's 20, Your
6 Honor.

7 THE COURT: Yes, ma'am.

8 BY MS. HUEY:

9 Q So, Agent Church, actually, this is just the cover
10 page for your report; is that correct?

11 A Yeah. This is the first page or first slide of
12 the report showing, obviously, my name, the date of the
13 report, and the phone number that I was asked to
14 analyze.

15 Q And is that [REDACTED] -1872?

16 A Yes. And it's a T-Mobile phone, as we already
17 discussed.

18 Q Is there anything regarding your Slide 2?

19 A This, again, just gives the background and summary
20 of the phone number I was asked to look at and the date
21 and time that I was asked to look surrounding, which
22 was April 30th, 2015, 10:16 p.m.

23 Methodology is just a summary of what I've already
24 explained, how we use the call detail record and for
25 whatever time frame we're looking at, gathering that

1 information whether from the LAC and the CID, again the
2 tower, and then match that up to the tower list to be
3 able to graphically show that on a map. And then the
4 conclusions on the following pages.

5 So this slide shows, obviously, a depiction from
6 an overhead view of a typical three-sided tower. And
7 this shows some different sectors off of that tower.
8 So towers are typically three-sided, although there
9 could be reasons for the network or the carriers to
10 have towers that have more sides, maybe up to six or
11 maybe even just one. Or it could be what we call
12 omnidirectional where it's just many frequencies and a
13 360-degree circle as opposed to being sectorized.

14 All the towers that were involved in my analysis
15 were three-sided sectors, and that's typically -- the
16 three-sided tower is typically what we run into
17 predominantly, so --

18 THE COURT: I'm sorry. I don't mean to interrupt
19 you. Just one second. I think they have an issue from
20 the jury. I apologize.

21 JURY FOREMAN: Just need some water.

22 THE COURT: I'm sorry. Go ahead.

23 THE WITNESS: That's okay.

24 So one of the main reasons that phone companies
25 set up their towers to be sectorized or have three

1 sectors is because they have a limited amount of
2 frequencies they can use, and they need to provide
3 service to all of their customers. So in order to
4 increase the capacity of what they can do with one
5 tower, they divide it up to threes, three sectors in
6 this case. So in a 360-degree circle, it would be
7 divided up into 120 degrees for each sector. Just as
8 a, you know, just evenly divided up.

9 And, you know, they do this so -- you can think of
10 it like a pie. If you had a pie to share with someone
11 and you wanted to share it with more than just yourself
12 and two other people, you would divide it up into
13 three, possibly three equal slices. Or if you had six,
14 you could divide it more, and you would be able to
15 provide it to more people. It's the same concept.
16 They're increasing the capacity of what they consider
17 their customers.

18 So in this case, and this is just an example,
19 every tower, Sector 1, 2, or 3, can point in a
20 different direction, but typically the Sector 1, for
21 the most part, points northern direction and everything
22 kind of goes counterclockwise off of that. But it
23 could be exactly at zero degrees or north or be pointed
24 at 2 o'clock.

25 In this case I'm just showing an example of, you

1 know, the northern, you know, with north being up on
2 this slide and Sector 1, Sector 2, and Sector 3, how it
3 would be divided up. And then sometimes some of the
4 companies will refer to them as Alpha, Beta, and Gamma.
5 It's just another way engineers and stuff like to talk.

6 So this further explains the actual sector
7 orientations and how we can take information from the
8 call detail record and display it graphically on a map.
9 Like I said in the previous slide, they're divided
10 typically in three-sided sectors. So can you think of
11 that in terms of a clock as far as the orientation or
12 the direction that a sector or a side of a tower is
13 pointed.

14 So in this case, zero degrees being north would be
15 12 o'clock on a clock, and then going -- then from that
16 midpoint, that's the midpoint of that radio frequency
17 energy. And from zero degrees you get 120-degree side
18 of a tower, go 60 degrees on each, so from 10 to
19 2 o'clock basically would be that sector orientation.

20 And then, likewise, you can go around through the
21 others. Sometimes they're divided up exactly like that
22 by 120 degrees, but sometimes there's overlap provided,
23 which I'll explain here in a second. But this gives
24 you an idea of how the orientation is used to show --
25 to depict the sectors.

1 So this slide depicts the T-Mobile towers in
2 April of 2015 that were in the Atlanta and Greenville,
3 that region, in that area.

4 Q Are those all the towers, Agent Church?

5 A For T-Mobile, yes.

6 So sometimes carriers will, if you've ever seen a
7 tower driving down the road on the side of the
8 highway -- you see a lot of them on the highway,
9 obviously, because that's where we travel. And you
10 notice them on major roads here. You see the dots are
11 along those roads. Sometimes carriers will stack or
12 just one location will have multiple carriers, but all
13 that's showing here are the locations of the T-Mobile
14 ones for this region in April of 2015.

15 So a couple things of note on this slide. The
16 towers, as you can see, in the more populated areas,
17 there's more density of towers. There's more towers,
18 and they're closer together. Going back to what I said
19 about capacity and why they sectorize the towers,
20 there's more people, so they need provide more service
21 so they have to have more equipment out there to
22 provide the radio frequency. When you get into the
23 more rural areas, then you have less towers, and they
24 can provide more service or the same amount of service
25 to the same amount of people in the larger area because

1 there's less dense of a population.

2 So when -- and they do this in a lot of different
3 ways. They can, you know, based on the antenna height,
4 what it's on if it's on an actual pole or a building
5 like in a downtown metropolitan area. They use church
6 steeples sometimes. They can mount the equipment --
7 when we talk about a tower, we're actually talking not
8 necessarily about the structure, but where the
9 equipment is located as far as providing the radio
10 frequency for you to use for your phone.

11 Also the antennas, they tilt down so they're only
12 broadcasting the radio frequency to a certain area
13 because they want to tightly control the coverage area,
14 those sectors, based on what they need in that area so
15 it doesn't interfere with other sectors. And to make
16 sure that their customers can continue to get service
17 as you travel, say, up and down 85 or wherever it is,
18 in your neighborhood or wherever, and when you're
19 moving from sector to sector, they want you to be able
20 to transition to and keep connectivity. We all know
21 that's not a perfect world because we have all lost
22 signal before, but they want to minimize that because
23 they want to keep you as a customer. They don't want
24 to lose you because for them it's about making money.
25 So they have overlap. The radio frequency that's

1 provided out there for you to use overlaps with the
2 other neighboring towers and sectors, so we call them
3 transition areas. So your phone can effectively, as
4 you move to that next -- move up the road a mile, two
5 miles, whatever the case may be, the network knows
6 what's going on and it can send you to another sector
7 so you can maintain service if you're in a car.

8 So a phone, when it's moving around the area, it's
9 always on in idle mode and not doing anything. It's
10 constantly searching for that signal that these towers
11 are providing. So it's always surveying the network
12 and determining what's my best and strongest signal,
13 and that's the one the phone is going to use.

14 So, you know, that's what determines -- that's
15 what makes that record, this initial call, when it
16 comes in or when it's sent out or the text that comes
17 in or out, that's the phone is deciding that's the
18 tower that's the best for me to use. It's the best,
19 clearest signal, strongest and clearest signal.

20 Q So it's not necessarily the closest tower, it's
21 the one with the best signal?

22 A In most cases, radio frequency is a line of sight
23 thing, but that doesn't mean that you can always see
24 the tower you're using. And, typically, it will be --
25 in most cases it will be the closest, but it doesn't

1 have to be. There are other factors out there that
2 determine how your phone can see the towers, how clear
3 they can see them.

4 So this is just a legend showing the location I
5 was provided. So when we get a request, we get,
6 obviously, the records, and we get a date and time
7 frame, a range where they want us to look at to analyze
8 the records. And then we get an address, maybe two,
9 maybe three, maybe a lot more addresses that are
10 important to the investigation.

11 In this case, I was provided, from my
12 understanding, a homicide location, the BP gas station
13 located on 153 in Powdersville. And then the little
14 green dots, as you saw on the previous slide, all those
15 little green dots just represent the location of a
16 tower.

17 Q So the red is the actual BP gas station with "DS"
18 on it?

19 A Yes.

20 Q And then the other green dots are the towers?

21 A Correct.

22 Q T-Mobile towers?

23 A Correct.

24 So this defines how we depict the sectors, how we
25 illustrate the sector that was being used. Like I

1 said, from a historical record, all we can do is show
2 the side of the tower, the sector that was being used
3 at a given time.

4 For a three-sided tower, that's going to be a
5 120-degree what we refer to usually as a pie wedge. So
6 this is the graphic representation you'll see on the
7 preceding slides for the phone activity.

8 Of note, the arc within that pie wedge is not a
9 representation of coverage area. It's just simply
10 showing the direction that the radio frequency is
11 emitting from that side of the tower. So it's
12 depicting two things -- again, the side of the sector
13 that's being used, the side of the tower, and the
14 direction the radio frequency would be emitting off
15 that side of the tower.

16 So this is the beginning of the analysis. This
17 map depicts the tower usage. As you can see first, the
18 only thing on here I have depicted are the towers being
19 used. I'm not depicting all the other towers that are
20 in the network that you saw on the previous slide.
21 Main reason for that is it would be so cluttered, it
22 would be hard to see the towers that were used. As you
23 can see, there are a lot of towers out there,
24 especially in the Atlanta/Greenville area.

25 So this is showing the towers that were being

1 used. And, again, that's represented by the green
2 circle. That's not a coverage area. It's just simply
3 showing so you could see the towers that were being
4 used.

5 The larger circles are larger, so the -- they
6 correspond to the nearby box with the date and time of
7 the call and the tower that was used or the tower
8 identifier, which is the CID, "CID," cell site I.D.

9 Q So, Agent Church, again, the calls, then, that you
10 have on this particular slide, these have been adjusted
11 from the UTC time, correct?

12 A Yes. Yes. These are in Eastern Standard Time.

13 Q And is it in military time, then?

14 A Yes. It's -- I've noted regular time up top of
15 the time frame, but in the boxes, it is military time,
16 straight from what the record shows.

17 So in this case, the analysis was between
18 7:53 p.m. and 9:45 p.m. As you can see, the phone used
19 towers beginning at 7:53 p.m. in the Atlanta area --
20 you can see that red dot there -- and then uses towers
21 indicating travel from the Atlanta area to just north
22 of the crime scene area on April 30th, 2015, between
23 7:53 and 9:45.

24 Q And are those along 85?

25 A Yes. Those towers would be somewhere along that

1 I-85 there.

2 Q And so it's heading north?

3 A Yes. Generally north. And the black arrow is
4 just the indicator of the direction of travel of the
5 phone for this time period.

6 Q Based on the tower locations that were hit?

7 A Yes. Based on the phone activity and the usage
8 through that time frame. This is analysis on the same
9 date -- all of this is -- well, not all of it, but
10 April 30th, 2015, between 9:41 and 9:57 p.m. This,
11 again, is just showing the tower usage. In this case,
12 I'm also showing the other towers that are in the area.

13 Again, to point out, just to make sure, the green
14 circle is indicating -- the larger green circles that
15 are indicating what the phone used but are not coverage
16 areas. It's just they're bigger so you can see what
17 tower is being used.

18 So in this case, the first towers used are down
19 here. There is a tower located approximately half a
20 mile south of the crime scene along 85 there that used
21 that tower at 9:41, 9:42:08, 9:42:19, and then
22 continues to use towers -- and I'm only noting a few of
23 them just to show the direction of travel and the
24 overall time frame.

25 So the phone in this case, the arrow again shows

1 direction of travel, so the phone traveled from the
2 vicinity of the crime scene area up toward the Pelham
3 Road area off 85 in Greenville County during this time
4 frame.

5 Q So passing the incident location and heading
6 toward Greenville?

7 A Yes. This would be north of that location.

8 Q Okay.

9 A This slide shows the phone traveling back in a
10 southern direction on April 30th between 10:00 p.m. and
11 10:21 p.m. Again, larger circles representing the
12 towers that were actually used by the phone. The ones
13 that are the largest correspond with the dates and
14 times in the boxes that are closest. So between,
15 again, 10:00 p.m. and 10:21, the phone travels from
16 that area, that area of Pelham Road, back in a southern
17 direction to south of the crime scene location.

18 Q And that's between 10 o'clock p.m. and 10:21 p.m.?

19 A Correct.

20 Q On April 30th?

21 A Yes.

22 So this is a closer-up view showing the two towers
23 that were used right before and right after the time
24 frame that I was provided for the crime. So -- and
25 this shows, obviously, the sector, again, like I

1 explained before, that was used on the side of the
2 tower that was used at these specific times.

3 So at 10:11 p.m. the phone used this Tower 5,
4 5713, and Sector 9 is the tower. The reason it's 9, we
5 talked about 1, 2, 3. Some of the carriers, when they
6 have to increase capacity, they have to add more radio
7 frequency antennas to give you more channels to operate
8 on or frequencies to operate with, so they will stack
9 them, and then they just keep numbering them. So you
10 can think of it like a parking garage. If you have a
11 one-level parking garage and you needed to be able to
12 put more cars, you would put a second level and a third
13 level. In this case, they number them 1, 2, 3, and
14 they typically start over, 4, 5, 6, 7, 8, 9. That's in
15 the sector listed at 9.

16 So at 10:11, again the phone is used at the Tower
17 5713. That's located there. That's south of 85 and
18 near 25, and used the Sector 9 again, but it would be
19 the northwest side of that tower.

20 And then the next call in the record that I could
21 actually map, the next communication, was at 10:19:08,
22 and it used 1066 Sector 1 which faces north there along
23 -- alongside 81.

24 Q So, Agent Church, if the incident happened at
25 10:16, how many miles is that tower that's hit at

1 22:11, how many miles is that to the incident location?

2 A So from the actual tower location, straight line
3 distance to the crime scene would be approximately
4 three and a half miles. That's straight line. That's
5 not traveling by road. And that's from the base of the
6 tower.

7 Q And, generally, what's the strength of a tower?

8 A Strength or coverage area of towers are all
9 dependent on the neighboring towers in the network.

10 Going back earlier, as I explained how they set up
11 the network and how your phone operates within that
12 network, again, they want to tightly control where the
13 coverage area is for a tower. So given a specific
14 area, they set up the towers for each sector to have a
15 certain coverage area. And so you have to take into
16 account the neighboring towers around it.

17 Now, we're unable to say from the actual
18 historical record what the exact coverage area is. We
19 can look at the surrounding network and get somewhat of
20 an idea of where it may be, but we can also tell, more
21 importantly, where the phone couldn't be if it was
22 using this side of the tower.

23 So every tower is not the same. Some towers in
24 small metropolitan areas may only cover a few blocks.
25 Out in rural areas -- again, I'm from Roanoke,

1 Southwest Virginia, we have towers that cover miles
2 because they don't need much equipment. They have less
3 people. So it's dependent on a lot of factors.

4 Q So, but, this particular tower for the 10:11 call
5 is, you said, three and a half miles?

6 A Yeah. The distance to -- yes.

7 Q Physical distance?

8 A Yes.

9 Q And so then the second communication or the next
10 communication would have been at 10:19?

11 A Yes.

12 Q And how far is that tower?

13 A That -- from the tower to the crime scene is
14 approximately two and a half miles, straight line
15 distance.

16 Q And what does the sector indicate to you there?

17 A That the phone used the north side of that tower.
18 To do that, the phone would have to be -- this tower
19 would provide service in a northerly direction. The
20 phone could be anywhere right here near the tower. It
21 could be just on the other side, realizing that the
22 straight, linear arms of this wedge are not how radio
23 frequency travels, so it kind of goes out in more of a
24 V shape. But if the phone was on this side, it would
25 be fairly close to the tower. The further it gets

1 away --

2 MR. HARVEY: Let me object to the speculation.

3 This is speculation. It is unknown and it has not been
4 provided --

5 THE COURT: Just one second.

6 Would you go back to your jury room, please, sir.

7 (WHEREUPON, the jury exited open court at
8 11:10 a.m.)

9 THE COURT: All right. What was your question?

10 MS. HUEY: I believe I was asking about the
11 sectors, Your Honor, compared to the incident location
12 and the phone.

13 MR. HARVEY: Where I believe it was, "Where could
14 the phone have been?" And the agent was talking about
15 the sectors not necessarily conforming to that V shape
16 on the report. Hence, it was about to be engaged some
17 speculation as to where the phone may or may not --
18 could be located. None of which was provided in any
19 report. You see the report. This is the totality of
20 the report that without speculation, no analysis,
21 nothing about where the phone might have been so I'm
22 objecting to that.

23 THE COURT: All right. Ask your question. Let me
24 listen to his answer, please.

25 BY MS. HUEY:

1 Q Agent Church, what, if anything, can you tell
2 about the phone from this slide?

3 A So the usage of this particular -- at this
4 particular time with the phone is from the north side
5 of the north facing sector, faces zero degrees. So
6 based on that, and I can't say exactly where within
7 that coverage area of the sector the phone is, but I
8 can point to possible locations that the phone could
9 be, whether it be --

10 THE COURT: By possible locations, what are you
11 referring to? Are you talking about a defined area or
12 specified place within that area? In other words,
13 between the first pie shape and the second pie shape
14 going north, anywhere in between those two, or are you
15 trying to say a specific address?

16 THE WITNESS: No. Just area. Just between those
17 two. I could never say a specific point on a map as
18 far as, you know, an address or a latitude and
19 longitude point. Just the phone could be in this area,
20 but it wouldn't be in this area.

21 THE COURT: Gotcha. I'm going to overrule the
22 objection. I note it for the record. I think it's
23 consistent with his qualifications and his prior
24 testimony, but if you have any other objections. I
25 know you said you weren't provided that, but --

1 MR. HARVEY: That's the only objection I have. We
2 weren't provided with any speculation about where a
3 phone may or may not --

4 THE COURT: If I understood his response, he said
5 between the tower here and the tower here, showing
6 that. So that's a pretty broad area, and that's kind
7 of consistent with what he's been saying all along in
8 his testimony.

9 MR. HARVEY: I understand that.

10 THE COURT: It's not speculation.

11 MR. HARVEY: Well, it sure is speculation because
12 he doesn't know.

13 THE COURT: No. To say he was at ABC address
14 would be speculation. But to say he's between this
15 towers and this tower is not speculation based on the
16 records. I don't think it is.

17 MR. HARVEY: I think it is.

18 THE COURT: Okay.

19 MR. HARVEY: Because he also testified, and he's
20 correct, that these pie shapes are not necessarily
21 representative of the actual coverage area.

22 Would that be correct?

23 THE WITNESS: Yes. It's showing the side of the
24 tower that was used, not the exact coverage area.

25 MR. HARVEY: So I do think it's speculation,

1 Judge.

2 THE COURT: Let me ask another question, if I may.

3 MR. HARVEY: Yes, sir.

4 THE COURT: How do you know factually that that
5 phone was in the area that you just described between
6 those two towers?

7 THE WITNESS: Because from our training and
8 experience, we know that the -- the radio frequency is
9 emitting from that side of the tower, so that radio
10 frequency provides service in that direction mainly.

11 But we also know that the way radio frequency
12 works, it is also -- there would be some usable radio
13 frequency around the tower and, actually, you know, a
14 little bit behind it. And we know that the radio
15 frequency is, again, like I was saying, tightly managed
16 to a certain extent so they provide those overlap areas
17 so a phone can move around but not interfere too much
18 with other towers.

19 So going back overall, you know, again, we can't
20 say where -- definitively where all the usable signal
21 is, but, in a general sense, we can estimate where a
22 phone could be within that side of the tower.

23 THE COURT: Could be or is? I'm not saying a
24 specific location, but do you know, based on what
25 you're saying, it's between these two towers?

1 THE WITNESS: I can't say for sure that it's
2 between those two towers. I mean, for a definite -- it
3 could be a little bit past the next tower. There could
4 be some usable signal past that tower next to it.

5 THE COURT: I think you're going to have to
6 rephrase your question.

7 I'm going to sustain the objection that it's
8 speculation, but you can, based on his opinion and
9 based on his expertise and his analysis, this is where
10 he found the phone to be but not state it as a fact.

11 MS. HUEY: Yes, sir.

12 MR. HARVEY: While the jury is out, can we take
13 a --

14 THE COURT: Sure. Let's go ahead and do that.
15 You can step down, just don't talk to anybody.
16 Take ten minutes.

17 (WHEREUPON, a recess was taken from 11:16 a.m. to
18 11:32 a.m.)

19 THE COURT: Ms. Huey, you ready?

20 MS. HUEY: Yes, sir.

21 THE COURT: Mr. Harvey, you ready?

22 MR. HARVEY: Yes, sir.

23 (WHEREUPON, the jury entered open court at
24 11:32 a.m.)

25 THE COURT: All right.

1 Ms. Huey.

2 BY MS. HUEY:

3 Q Agent Church, if you could step back down, please.

4 A (Witness complies.)

5 Q Agent Church, based on your training and
6 expertise, were you able to develop an opinion
7 regarding where the phone was on this particular night
8 at that particular time?

9 A Not exactly where the phone was but a general
10 area, approximate area.

11 Q Okay. And what was that general or approximate
12 area?

13 A So if we're talking about the southern tower,
14 Tower 1066, again, the radio frequency emitting from
15 that sector used is to the north and the direction of
16 the crime scene along 85 there. So the phone could be
17 anywhere, you know, in this approximate area.

18 As I stated earlier, radio frequency is not
19 linear. It's not a straight line necessarily. So it
20 could also be, you know, on the southern side to some
21 extent of those lines and the tower.

22 But, in my opinion, it would not be -- you go
23 Southbound 85 in this direction, the phone would not be
24 down in here.

25 Q Then your final slide, Agent Church?

1 A This slide depicts the travel of the phone, again,
2 just showing the towers that were used, travel of the
3 phone from just south of that same tower from the
4 previous slide just south of the crime scene toward
5 Atlanta. And the last tower being, that I'm depicting
6 here, being at 12:07 a.m. down in the metropolitan
7 Atlanta area. Again, the black line arrow showing --
8 indicating the movement of the phone or the travel of
9 the phone during this time frame.

10 Q So based on your training and expertise, were you
11 able to develop an opinion about these phone records as
12 a whole?

13 A Yes. The evening of the 30th, I believe, you
14 know, around 7:53 p.m. to roughly after 9:00 p.m., the
15 phone traveled from the area of the metropolitan
16 Atlanta up to the Greenville/Anderson County areas, and
17 then as depicted on two previous slides, the phone
18 traveled within Anderson and Greenville County up
19 toward the Pelham Road area back down to the area of
20 the crime scene and utilized the two sectors shown in
21 Slide 11, I believe. One call before the time I was
22 provided for the time of the crime and one call after
23 the southern tower, putting the phone in that general
24 vicinity along the 85 Corridor area within Greenville
25 and Spartanburg -- sorry, Greenville and Anderson

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1 County during that time frame.

2 Q You can have a seat.

3 A (Witness complies.)

4 Q Agent Church, I'm now going to show you State's
5 23-A, B, C, D, and E. If you could take a look at
6 these.

7 MR. HARVEY: Sorry. Could you repeat those
8 numbers again, please.

9 THE COURT: 23-A through E.

10 MR. HARVEY: Thank you.

11 BY MS. HUEY:

12 Q And do you recognize those maps, Agent Church?

13 A Yes, I do.

14 Q And are those the maps from your report that
15 indicate the direction of travel of the phone

16 [REDACTED] -1872 between 4/30 and 5/1 of 2015?

17 A Yes.

18 MS. HUEY: Your Honor, at this time --

19 Q Have they been altered in any way?

20 A No, not that I can tell.

21 Q And do they fairly and accurately depict the
22 records as you analyzed them?

23 A Yes.

24 MS. HUEY: Your Honor, at this time we'd admit
25 these exhibits into evidence.

1 THE COURT: Subject to prior rulings, they will be
2 admitted.

3 MR. HARVEY: Yes.

4 (WHEREUPON, State's Exhibit Numbers 23-A through E
5 were admitted into evidence.)

6 MS. HUEY: That's all I have for this witness,
7 Judge.

8 THE COURT: Cross-examination.

9 MR. HARVEY: Yes, sir. Thank you.
10 With the court's permission.

11 CROSS-EXAMINATION

12 BY MR. HARVEY:

13 Q Good afternoon -- morning.

14 A Good morning.

15 Q Feels like afternoon.

16 I understand it's Special Agent Church, correct?

17 A Yes, sir.

18 Q Special Agent, I understand that you are with this
19 CAST unit, correct?

20 A Yes.

21 Q And the CAST unit is a unit that -- CAST being the
22 acronym that stands for Cellular Analysis Survey Team;
23 correct?

24 A Correct.

25 Q And in that regard, what the Cellular Analysis

1 Survey Team does, among other things, is to get records
2 from cell service providers, correct?

3 A Yes. Normally, we're provided them. We're
4 provided the record from the agency we're assisting,
5 but they, obviously, obtain those from the carrier.

6 Q Well, I meant -- when I say "get," you obtain
7 somehow. You are provided or --

8 A Yes.

9 Q -- get records, generally speaking, from a
10 cellular service provider, and you have those records.
11 And an agency says, "Would you analyze those for us,"
12 correct?

13 A Correct.

14 Q And in this particular instance, you were provided
15 records from T-Mobile, correct?

16 A Correct.

17 Q And those records were obtained first. They were
18 obtained by the State of South Carolina, Anderson
19 County, South Carolina, correct?

20 A Correct.

21 Q And you understood that they were obtained by
22 Anderson County, South Carolina through a legal
23 process, correct?

24 A Yeah. I would imagine so, yes.

25 Q Okay. And the records that you got were the big

1 printouts that we saw like on State's Exhibit Number
2 10, correct?

3 A Yes. I get them electronically.

4 Q But you were provided those from the State,
5 correct?

6 A Correct.

7 Q The State being Anderson County, South Carolina,
8 right?

9 A Correct.

10 Q Those records are held up in New York, right?

11 A Yeah. That's where T-Mobile's compliance people
12 are where they generate -- where all the requests go to
13 and they generate those. The actual records are pulled
14 from the different switches, but that's where the
15 record is generated from to be provided.

16 Q Okay. And, in fact, on the bottom of State's
17 Exhibit Number 10, it says, "Information provided by
18 T-Mobile US, Inc., law enforcement relations, 4 Sylvan
19 Way, Parsippany, New Jersey," right?

20 A Correct.

21 Q You also have some documents that were previously,
22 I guess, provided by T-Mobile as well, not particularly
23 in this case to Anderson County, but were provided to
24 the FBI by the provider themselves, correct?

25 A If you're referring to the tower list --

1 Q Yes.

2 A Yes.

3 Q So, in this particular instance, the analysis that
4 you used was information from Anderson County, South
5 Carolina plus the FBI's, I don't know if it's a
6 proprietary database, but it's proprietary information
7 from T-Mobile, correct?

8 A Yes. T-Mobile or all the carriers provide their
9 updated tower lists to --

10 Q Law enforcement?

11 A -- an organization run by the FBI so they're
12 available to all of law enforcement, those tower lists,
13 through that database.

14 Q Right. To law enforcement?

15 A Correct.

16 Q Okay. And that database is held by the FBI at FBI
17 headquarters. Where is that?

18 A It's actually run from Fredericksburg, Virginia.

19 Q So in Virginia?

20 A Yes.

21 Q So we've got New Jersey records and Virginia
22 records being used, correct?

23 A Well, they're T-Mobile records being used.

24 Q But they're held in Virginia right now?

25 A Yeah -- yeah. That's the organization that houses

1 them. I couldn't say with certainty that the actual
2 record resides in Virginia. It could be on a server
3 somewhere else than Fredericksburg. I'm not sure about
4 that.

5 Q It ain't -- it's not in South Carolina?

6 A I don't think so, no.

7 Q And it's not held by South Carolina. It's held by
8 the United States government, correct? The Department
9 of Justice is part of the executive branch of the
10 United States government, correct?

11 A That's correct.

12 Q Okay. All right. And I guess one of the or some
13 of the starting points I want to go over with you is
14 that, first, as I understand your testimony to the
15 ladies and gentlemen of the jury, the circles that you
16 use and that you used to illustrate your points are not
17 actual, you know, like the pie charts and the pie
18 wedges, they are not actual coverage maps, correct?

19 A Exactly. Like I said before, they do not depict
20 the actual coverage area of that sector or that tower.

21 Q And, I guess, the point being is that cell towers
22 are, in fact, sectorized, correct?

23 A Correct.

24 Q Meaning that -- correct?

25 A Correct.

1 Q Meaning that a cell tower has more than one
2 antenna associated even with a single carrier, correct?

3 A It can, yes.

4 Q Well, and what we have talked about in your
5 illustrations talk about a cell tower that has more
6 than one antenna because it is, in fact, sectorized,
7 right?

8 A Yes.

9 Q In that each of the antennas point in a different
10 direction, correct?

11 A Yes.

12 Q Defined in degrees, is what you were saying?

13 A Yes.

14 Q Okay. One of the things that is not provided on
15 those two records is any information, any data that
16 allows you to determine the actual coverage of the cell
17 tower, correct?

18 A That's correct.

19 Q There is no data that is provided about why a
20 particular cell tower was being used, correct?

21 A You said why?

22 Q Why.

23 A Well, in this case, and T-Mobile, they do list
24 whether it was a voice or a text, so I guess that would
25 be a why. Maybe I misunderstood.

1 Q No, sir. About why that particular tower was used
2 for that particular call. You understand what I'm
3 saying?

4 A So why the phone selected that sector over
5 another?

6 Q Yes.

7 A That's correct.

8 Q My poor question.

9 A That's correct.

10 Q Okay. So there's no data about the actual
11 coverage, there's no data about why that particular
12 tower was selected, right?

13 A In the record, no.

14 Q Okay. Yeah, in the records.

15 A Correct.

16 Q The -- there is -- there are, and I think you told
17 us, you told us that, in general, that there were a
18 number of factors that determine why a particular cell
19 tower was selected, correct?

20 A Yes.

21 Q And that it's not always a function only of
22 distance, correct?

23 A That's correct.

24 Q All right. Some of the cell -- the factors that
25 can be used to determine why a particular or how a

1 particular cell tower is used includes some of the
2 following, and I'm going to ask you about each -- well,
3 some of them. Okay?

4 A Okay.

5 Q All right. First, the make and the model of the
6 cell phone, correct?

7 A That could have an impact based on mainly on power
8 of the phone.

9 Q Okay. And that's exactly what my next question
10 was. The wattage output of the cellular phone,
11 correct?

12 A That would, yes. That would be a factor.

13 Q And in this particular instance, do we know the
14 make and model of the cellular phone that was used?

15 A I do not know.

16 Q Do we know the wattage output of the cellular
17 phone that was used?

18 A I do not know.

19 Q And the next factor being the generation of the
20 phone do you know what I'm talking about?

21 A Like the model, that particular -- the generation
22 of -- no, I don't think I follow.

23 Q Well, the generation being, you know, there's 3G,
24 there's 4G. The generation, the specificity of the
25 phone in its sophistication, correct?

1 A Correct.

2 Q So we've got make and model, wattage output, we've
3 got generation. Do we know what generation the phone
4 in this case was?

5 A I do not.

6 Q The bandwidth of the cellular phone, correct?

7 A I don't think the bandwidth would really play into
8 how it would select or see the environment. That may
9 have more of an impact on how it could communicate once
10 it was connected. In other words --

11 Q What is bandwidth?

12 A The available -- let's see the best way to put it.
13 The available size of the -- the frequency band. So
14 he's talking about the frequency band. The width of
15 it, the larger width, the more data would be moved
16 through it, I guess would be the best way to put that.

17 Q Could you analogize for that? You know, you
18 analogized to a pie shape. Can you analogize being
19 with like a flashlight, you can narrow the focus of a
20 flashlight, it can show a certain portion or it could
21 show a wider portion?

22 A Yes.

23 Q By change, you talking about changing the width of
24 the band?

25 A Yes.

1 Q Is that an analogy that you would agree?

2 A As far as what bandwidth is, yes.

3 Q Okay. But we don't know the bandwidth of the
4 cellular phone, correct?

5 A No.

6 Q We don't know whether the phone call was made from
7 inside or outside, correct?

8 A No.

9 Q And that would have some bearing on the selection
10 of the tower also, would it not?

11 A It could be a factor, yes.

12 Q Okay. Well, the topography of the area, correct?

13 A Correct.

14 Q Whether the cell tower is located in urban or
15 rural, and we know that it's semi-urban but not
16 particularly as rural as, for example, Wyoming?

17 A Correct.

18 Q Do we know the number of the antennas on the cell
19 tower? Do we know how many antennas there were on the
20 cell tower?

21 A Well, I drove by the two cell towers that were
22 used before and after in Site 11. The one south had
23 one set of equipment, so three sectors with two
24 antennas per sector. The other one had multiple. I
25 think it had three stacks of equipment.

1 Q Okay. And that's -- that is a factor as well,
2 correct?

3 A A factor of?

4 Q Of why a phone selects a certain tower.

5 A I would not say that would be -- that would play
6 into how the phone would select.

7 Q How about the height of the antenna?

8 A I would say overall that would not -- I mean, they
9 all kind of go together, but the actual height, you
10 know, the engineers are setting up the tower, the
11 equipment to cover a specific area, and they set that
12 as best they can to get adequate coverage based on what
13 they need. But the actual height I don't think would
14 play into how the phone would select.

15 Q Well, does it not have something to do with the
16 radius of the -- the ability to get the RF signal?

17 A I don't know.

18 Q Likewise, with the location of the antennas on the
19 cell phone -- on the cell tower?

20 A Ask that again. I'm sorry, I'm a little confused.

21 Q Well, you got the height of the antennas, the
22 location of the antennas, the direction of the
23 antennas. Your PowerPoint to the ladies and gentlemen
24 of the jury was just sort of a -- it was, "Here is
25 generally the way I can describe it," correct? You

1 know, "It's pie shaped, which does not -- or circles
2 which does not demonstrate the coverage area in
3 actuality, and here's the general way it is," correct?

4 A Yes, in regards to how I can depict it.

5 Q But, in reality, doesn't the height, the location,
6 and the direction of the actual antennas make a
7 difference?

8 A What makes a difference for coverage area in that
9 particular, how they want to set up the coverage or the
10 engineers for the networks, but not necessarily -- not
11 for how the phone is going to select it. The phone,
12 again, is out there surveying the environment for
13 usable radio frequency and picking the best one that's
14 available.

15 Q Well, picking the best one has to do with some of
16 these factors?

17 A Some of them, yes.

18 Q How about the number of cones on the cell tower
19 and the height of the cones or the direction of the
20 cones?

21 A I'm not sure I understand what you mean by
22 "cones."

23 Q The antennas.

24 A Okay. Again, I think that goes back to your
25 previous question where it would not affect what the

1 phone -- the phone is just looking for usable signal
2 where it is at that particular time.

3 Q I also understood that you told us that the
4 antennas are be pointed or can be moved in an
5 up-and-down fashion?

6 A Yeah. They can tilt.

7 Q So the angle of the antennas would make some
8 difference in selection, correct?

9 A Not -- I don't think in selection, but in the
10 coverage area, it would.

11 Q In the coverage area?

12 A Yeah.

13 Q All right. How about the number of cellular
14 services using the cell tower?

15 A You're referring to multiple carriers using the
16 same equipment to put --

17 Q Yes.

18 A No.

19 Q How about the watt and output of the cellular
20 tower?

21 A Again, that would go back to coverage area, how
22 much coverage area they were trying to accomplish.

23 Q And other -- there are still more factors like
24 topography, correct --

25 A Yes.

1 Q -- I didn't ask you about?

2 A Yeah. Topography would.

3 Q All of these factors -- well, some of those you
4 identified for us will determine in some part why a
5 phone selects a particular tower, correct?

6 A It will affect the environment. It will affect
7 the selection, but what the phone -- how a phone
8 selects is by identifying the best usable signal out of
9 all the signals it's surveying out there. So a phone
10 is seeing multiple towers. It's not just seeing one at
11 a time.

12 Q Sure. But its selection does not necessarily
13 equate with distance. It equates with a number of
14 factors, correct?

15 A Correct.

16 Q Okay. So we have a number of factors to be taken
17 into consideration in these particular instances, but
18 we can't and we don't have the data to determine what
19 kind of phone, the generation of the phone, the wattage
20 of the phone, the actual coverage area, or the data to
21 determine the actual coverage area, correct?

22 A From the records that I analyzed, no.

23 Q Right. Also, I understand, and perhaps I'm wrong
24 and you can tell me, that the CAST unit, the CAST unit
25 is equipped -- has equipment to be able to go out and

1 chart the actual coverage area?

2 A Yes. We can conduct drive tests to try to
3 determine the actual coverage area of a particular
4 sector or sectors.

5 Q All right. That's called JDSU?

6 A That was the older equipment. We have newer
7 equipment, but yes, that's one of the forms.

8 Q And that's a drive test to actually drive,
9 physically drive with equipment, to determine the
10 actual coverage area of a particular tower, correct?

11 A Correct.

12 Q All right. Did you, one, were you asked to do
13 that in this case?

14 A No.

15 Q So did you not, obviously, do it in this case?

16 A Well, typically, we make the determination based
17 on our analysis in looking at the records whether or
18 not it's warranted for each case.

19 Q So I guess the answer is you weren't asked to do
20 it and you didn't do it?

21 A Correct.

22 Q That's simple. All right. Great. Thank you.

23 Now, I understand that the first thing that you
24 used was State's Exhibit Number 10, and that's the long
25 spreadsheet that you told us about?

1 A The call detail records.

2 Q The call detail records from T-Mobile, right?

3 A Yes. That's the activity for the particular
4 phone.

5 Q Okay. Were you asked to look at activity from any
6 other phones?

7 A No.

8 Q Just that particular phone, correct?

9 A Yes.

10 Q The phone number associated with that -- well, the
11 phone records associated with one particular phone
12 number, correct?

13 A Correct.

14 Q And as I understood it, ultimately the phone call
15 from that particular phone closest in time to when you
16 understood that the event occurred was 22:11:07,
17 correct?

18 A Yeah, that was --

19 Q You can look at your --

20 A Yeah. I believe that was the closest one prior to
21 the 10:16 p.m. time. 22:11. Yes, sir.

22 Q I had some question mark next to that yesterday.
23 Can you confirm that that's, what I put yesterday,
24 22:11:07, is correct?

25 A Confirm how, that it's correct --

1 Q Closest phone call before you understood the event
2 in question?

3 A Yes, sir.

4 Q Okay. Now, I understood that you drove up and
5 looked at the tower, correct?

6 A Yeah. I looked at the two, those two towers.

7 Q Sure. That's what I'm talking about. So you went
8 up 85, did you?

9 A Yes.

10 Q You went up 85, and that's north, correct?

11 A Yes.

12 Q And when you went up 85 North, you, in order to
13 get to the actual tower, you have to get off of 85.
14 It's not right on 85. It's at a particular address,
15 correct?

16 A Yes.

17 Q It is at -- I'm sorry.

18 A Correct.

19 Q It is at 220 Whitmire Drive, the address being
20 Greenville, South Carolina, correct?

21 A I believe that's the address. We map it by
22 lat/long, and I knew the general area where it was, but
23 Whitmire does sound like the right road.

24 Q Okay. Lat/long is 34.787222, right?

25 A I'd have to look at the record to verify that. I

1 don't have that memorized.

2 Q Okay. If I -- do I have one that's clean? I
3 don't. But I've got the latitude and longitude off
4 State's Exhibit, I think, 19, the T-Mobile records.

5 A Yes, sir, from the tower list.

6 Q Tower list. And you put in a latitude and
7 longitude from a list, right?

8 A Yes.

9 Q So here's the way I understand that this process
10 goes. You get the T-Mobile records. And if the
11 T-Mobile records show a latitude and longitude, you go
12 to Google and you put on the -- put in the latitude and
13 longitude, and it will give you an address, right?

14 A Well, you can do that. That's not the process
15 that we necessarily use, but, I mean, that's --

16 Q Maybe I missed it. In order to map the cell sites
17 associated with the subject cell phone, the call detail
18 records and cell site locations were imported into
19 Google Maps for visualization. So --

20 A So we import all the towers in there and then
21 identify the ones if they were used from the CDRs
22 within the pertinent time to map and show which ones
23 were used.

24 Q Well, you can certainly take the T-Mobile tower
25 records if it doesn't have a street address with the

1 longitude and latitude, put them into Google, and
2 Google will give you a street address. And you can
3 even get a Google Earth picture, right?

4 A Yeah. You can do all those things with Google
5 Earth.

6 Q So if you go to the T-Mobile records first, they
7 are either going to have the latitude and longitude and
8 an address. And, for example, when you told us about
9 the T-Mobile records in this case, the phone call in
10 UTC time was 2:11:07 on 5/1/15, correct?

11 A I think it was 22:11:07.

12 Q No. In UTC.

13 A I'm sorry. Yes, I believe that would be right,
14 2:11.

15 Q Right. I'm just talking about the T-Mobile
16 records right now.

17 A Okay.

18 Q 2:11:07. It was an outgoing call, and it used
19 LAC. And you told us that that meant?

20 A The Location Area Code or the regional grouping of
21 towers.

22 Q 7498?

23 A Yes.

24 Q All right. And 57139, right --

25 A Yes.

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David Church - Cross by Mr. Harvey

1 Q -- is the CDI. So, number one, with regard to
2 cell phone records, the circles do not equal actual
3 coverage, correct?

4 A Correct.

5 Q Number two, you get the TMO -- I was going to put
6 TMO -- TMO records in this case for the call first and
7 the call after did not have -- the T-Mobile records for
8 those two calls did not have the latitude and longitude
9 or the street?

10 A That's correct. And the CDR, they were not there.

11 Q Okay. So that, three, you went to the FBI
12 database, right? Can I put database?

13 A That's fine, yes.

14 Q So went to the FBI database for the TMO, tower
15 information? That's actually "INFO."

16 A Correct.

17 Q The T-Mobile information had an LAC of 7498 and
18 a -- what is it, CDI?

19 A CID.

20 Q CID of 57139. And the 9 is the sector?

21 A Correct.

22 Q And I think what you told us was when you went out
23 to look at it, it had three stacks, and that's why it's
24 up to 9?

25 A Correct.

1 Q All right. Which stack was the T-Mobile, bottom?

2 A Well, by just driving up to it, I can't tell if
3 there's any other carriers, but there were three
4 stacks. I think it was all T-Mobile, but I can't be
5 sure that there wasn't Verizon or some other equipment
6 on there.

7 Q Okay. There was no actual data to determine why
8 that tower was selected, right?

9 A No, not in the CDRs or the tower list, no.

10 Q Okay. And that tower, I believe, and you're
11 welcome to check your records at any time. I can put
12 latitude and longitude, but I'm just not going to do
13 that. I believe it shows -- and you can correct me if
14 I'm wrong -- I think it was 220 Whitmire Drive? I just
15 want to make sure that you can confirm that.

16 A It was on Whitmire Drive. I can't remember the
17 number, but that does sound correct.

18 Q How far is Whitmire Drive from or 220 Whitmire
19 Drive from 85?

20 A It's south of 85. In a straight line distance, it
21 was maybe a third of a mile roughly, estimate.

22 Q .3 miles?

23 A Yeah. That would be an estimate, yes.

24 Q I put "APROX."

25 A Yes.

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David Church - Cross by Mr. Harvey

1 Q In the closest point, the direct line from 220
2 Whitmire Drive, Greenville, is that somewhere
3 approximately Exit 44?

4 A So you're asking the closest point on 85 to the
5 tower, is that somewhere near exit -- yeah. That would
6 be, I believe, south -- I believe that's Exit 44 where
7 25 comes in. It would be actually east of Exit 44
8 along 85, would be the northern closest point to that
9 tower.

10 Q Right. Right. Would it be approximately Exit 44
11 which denotes a mile? Exit 44 is at Mile 44, right?

12 A Yes.

13 Q Okay. 44. The BP gas station is off of Exit 40,
14 right?

15 A Yes, I believe so.

16 Q And that would denote Mile Marker 40, correct?

17 A Correct.

18 Q So if one were traveling on 85, one would be going
19 approximately from 44 to 40, correct?

20 A Yeah. I mean, the way the mile markers on the
21 highways are set up is, you know, it's within that mile
22 marker. So it could be on the, you know, at Mile 40.1
23 or 40.9 or, you know, vice versa, so it's --

24 Q Or 45.9 or 39.9 it could be longer?

25 A Correct. Correct. That's what I'm -- yeah.

1 Q You don't know, but I'm using a generalization,
2 kind of like you used the pie charts, because we're
3 going from around 44 to 40, right?

4 A Yes.

5 Q Okay. Good.

6 And on the back side, in UTC time, which is
7 2:19:08, that was still LAC 7498 and Tower 10661,
8 right?

9 A Correct.

10 Q 22:19:08 is the second one you told us about.
11 That was the first one afterwards, right?

12 A Yes, sir.

13 Q So you can confirm for us and I can take the
14 question mark off of that, that the first call after
15 the event was at 22:19:08, correct?

16 A Correct.

17 Q And that's in Eastern time, not T-Mobile time?

18 A UTC, yes.

19 Q On the T-Mobile records, that was LAC 7498 and CID
20 10661, right?

21 A That's correct.

22 Q And approximately what mile marker, if you can
23 tell us, is that tower associated with?

24 A It's south of 39. That's about all I could really
25 say. Probably -- I mean, based on the mapping and the

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David Church - Cross by Mr. Harvey

1 scale, I would say --

2 Q Well --

3 A I'm sorry?

4 Q No. I apologize. I didn't mean to interrupt you.

5 Did you get a particular address for that?

6 A Well, I don't believe a particular address was in
7 the record, but it's in the tower list. But, again, we
8 map it on the latitude and longitude.

9 Q I understand that. Did you get a street address,
10 though? Remember we said Whitmire Drive on the first
11 one. Was there a street address on this one?

12 A I'd have to refer back to the tower list to see.
13 I believe there was, but I can't be sure without
14 looking back to see if there was.

15 Q Okay. But you didn't get that. You don't know
16 that, is what you're telling us right now, right?

17 A Didn't get it from where? I guess --

18 Q Well, wherever you're going to get it from. You
19 get it from your FBI database, but I'm just trying to
20 see how far down 85. You said the tower directly was
21 approximately two and a half miles, right?

22 A From the BP, yes.

23 Q That's direct?

24 A Yes.

25 Q How far is it down 285? What's the closest direct

1 point to -- not to 285. I'm still in traffic, in the
2 bypass traffic in Atlanta, but 85?

3 A Okay. So you're asking a similar question as
4 before.

5 Q Yes. Yes, sir.

6 A So this tower is east of 85.

7 Q Mile marker?

8 A Well, it sits -- the location is east of 85. It's
9 below Mile Marker 39, south of Mile Marker 39, I would
10 approximate, about a mile to a mile and a quarter. The
11 closest point to 85, if that's what you're asking --

12 Q Yes.

13 A Direct line to 85 going west from the tower would
14 be a matter of probably three to 500 feet.

15 Q To 85?

16 A Yes, sir.

17 Q And on some mile and a quarter, you said, on 85?

18 A South of Exit 39.

19 Q Okay. South of Exit 39. So it's one mile plus
20 1.25 miles. That's 2.25 miles, approximately?

21 A Say that again. I'm sorry.

22 Q If it's south of 30, 39 is one mile away from Exit
23 40?

24 A Okay.

25 Q And if it's another 1.25 miles, that's one plus

1 1.25 is 2.25, right?

2 A That's correct.

3 Q Now, you also understand that, according to what
4 you told us, you're using a general -- well, a
5 methodology that will give you a general location of
6 the phone, not a specific location of the phone,
7 correct?

8 A Correct.

9 Q And, likewise, when you have those pie shapes on
10 North 85 and south of 85, they don't represent the
11 actual coverage zones. The phone could be inside, the
12 phone could be outside those pie-shaped charts,
13 correct?

14 A Correct.

15 Q So, indeed, perhaps we can say it may be closer,
16 but it may be further, right?

17 A From?

18 Q From wherever these cell towers actually were to
19 the scene.

20 A Correct.

21 Q Okay. But you can't view, you can't say where?

22 A Not a precise location, no.

23 Q Okay. Also, in the exemplars that you have given
24 us in the PowerPoint, one of the things that you have
25 said is each cell site orientation can vary, correct?

1 A Yes.

2 Q Same thing with the little clock and the pie chart
3 with the three sectors, each sector being, I guess,
4 120 degrees, right?

5 A Correct.

6 Q If we were -- if we were using a circular
7 representation, you know, each sector, you can sort of
8 figure out a general coverage area by using a formula
9 for the circumference of a circle, right?

10 A Correct.

11 Q And you know what the formula for a circumference
12 of a circle is, right?

13 A Yes.

14 Q And what is that?

15 A Pi r squared.

16 Q Pi r squared, exactly. And you can use similar
17 mathematical distributions and formulas to determine
18 how big the sector itself may be, correct?

19 A Yes. Going by -- within limitations because we
20 don't know the exact coverage area, so that would be an
21 estimate.

22 Q That's one of the problems. We don't know what
23 that is. And each particular, you've told us, each
24 particular sector, if the circumference of the circle,
25 for example, is, it could be three miles, it could be

1 ten miles, it could be a number of miles depending upon
2 the urbanity and this number of towers, correct?

3 A Yes. It would be the radius from the tower that
4 you would be using, yes.

5 Q And each one of the sectors can be a number of
6 miles, then, as well, correct?

7 A I think I'm misunderstanding the number. I'm
8 sorry. Ask that again.

9 Q Each one of the sectors can encompass a number of
10 miles?

11 A Correct.

12 Q Okay. Thank you.

13 And, finally, what that analysis can't tell us is
14 who had the phone?

15 A Correct.

16 Q Or who may have used the phone?

17 A Correct.

18 MR. HARVEY: One moment, please.

19 Thank you, Judge. That's all I have.

20 THE COURT: Thank you.

21 MR. HARVEY: One more question.

22 THE COURT: Sir?

23 MR. HARVEY: Can I ask -- well --

24 THE COURT: Yes, sir. You're still up. You can
25 ask another question, if you like.

1 MR. HARVEY: I hate to say the traditional
2 lawyer's "one more question." I apologize to the
3 court.

4 Q Special Agent Church, I just wanted to ask: Here
5 is a circle kind of like one of your representations.
6 And you have four towers equidistant around a circle.
7 If a phone is in the middle, equidistant from other
8 towers, can you tell which tower it's going to use?

9 A In that case, when a phone -- it would be in those
10 transition areas or overlap areas like I talked about
11 earlier, so the phone would possibly see numerous -- at
12 any time, and this happens, the phone can see more than
13 one tower at similar quality.

14 Q So you can't. The answer is you can't. Can't
15 tell?

16 A Can't tell what, which --

17 Q Which phone it's going to select. I mean which
18 tower it's going to select.

19 A Well, we know what tower it selected from the
20 records.

21 Q But I'm talking about a prediction here. You
22 know, if a phone is equidistant from a number of
23 towers, the phone -- the tower that it selects
24 ultimately can't be predicted because it could select
25 any one of those four?

1 A Oh, yeah. And even if it wasn't dead center, I
2 still can't predict the tower it's going to use before
3 the network records the tower it uses.

4 MR. HARVEY: That's all I have.

5 Pass the witness.

6 THE COURT: Redirect?

7 MS. HUEY: Just a couple questions.

8 REDIRECT EXAMINATION

9 BY MS. HUEY:

10 Q There is a lot of questioning regarding mile
11 markers and exits and that sort of thing. Is that how
12 a signal travels? Does it take an exit?

13 A No.

14 Q And so how does that work?

15 A Well, radio frequency, you know, emits, you know,
16 in a direction. It can contour to the terrain, it can
17 be absorbed by objects, it can go through objects. So
18 it can -- there is multi-paths. So it can bounce off
19 things. So when it's emitted out in that direction,
20 depends on what it does. Depends on what is in its
21 path.

22 Q So it doesn't necessarily have to follow the path
23 that a car would take to drive to that particular
24 tower?

25 A Correct.

1 MS. HUEY: That's all I have, Judge.

2 THE COURT: May this witness be excused?

3 MR. HARVEY: Yes.

4 MS. HUEY: Yes, please.

5 THE COURT: Thank you, sir.

6 Call your next witness, please, ma'am.

7 MS. HUEY: Your Honor, the State rests.

8 THE COURT: Mr. Foreman, ladies and gentlemen of
9 the jury, the State has advised me it rests, which
10 means it has presented its case-in-chief. I have some
11 administrative matters to take up and then we'll bring
12 you back out here. But if you will go to your jury
13 room now, please.

14 (WHEREUPON, the jury exited open court at
15 12:29 p.m.)

16 THE COURT: Motions?

17 MR. HARVEY: Judge, at this particular time, we
18 move under South Carolina Rule of Criminal Procedure 19
19 for a directed verdict, and it's our position without
20 further argument to submit that there is a failure of
21 competent evidence tending to prove the charges, which
22 I think is the Rule 19 standard. We'll submit.

23 THE COURT: Thank you, sir. I'm going to deny
24 that motion.

25 Mr. Warner, would you please stand up.

1 in this trial.

2 State ready to proceed?

3 MS. HUEY: Yes, sir. May it please the court.

4 THE COURT: Yes, ma'am.

5 Defense ready to proceed?

6 MR. BYRHOLDT: Yes, sir.

7 THE COURT: Very good.

8 MS. HUEY: Ladies and gentlemen, when we started
9 this case, I told you that there would be no question
10 that Mrs. Patel was the victim of an attempted armed
11 robbery and ultimately a murder at the BP gas station
12 on April 30th of 2015. So the only question before you
13 today as you go start your deliberations is did the
14 State prove beyond a reasonable doubt that this
15 defendant, Justin Jamal Warner, is, in fact, guilty of
16 all of those charges. And I submit to you that we
17 have.

18 Now, there is a surveillance video of this entire
19 incident. And while the suspect's face may be covered
20 and not revealed, the evidence in this case certainly
21 reveals his identity.

22 I'm going to show you a few clips. And you're
23 going to have all of this in evidence. There are lots
24 of clips and stills and videos and short videos and
25 extended videos, and you'll have access to all of that.

1 And I will tell you when you are looking through some
2 of that stuff, remember that this is not the best
3 quality video surveillance video, and that stills,
4 especially when they're enlarged, they make things
5 grainy, and so that can make things appear darker or
6 whatever the case may be. So just keep that in mind as
7 you're looking through these videos and stills.

8 So I want to start you at 21:34 on April 30th of
9 2015. So what's significant about this particular
10 image is that Mrs. Patel is wiping that counter mat at
11 her counter by her register that she's using. Now,
12 that's significant not because no one else could have
13 touched that mat thereafter, because there's been
14 testimony that some people came in before, but the
15 important thing to note is that it was cleaned
16 recently. Gas stations get a lot of traffic. There
17 could have been way more prints and that sort of thing
18 on it, but she cleans it just 45 minutes prior to the
19 incident.

20 The next thing you're going to see is a video of a
21 silver car driving by the door to the BP. And this is
22 a slow motion video of it, and you can see it up there..
23 It goes by. The odd-shaped windows and wheels and that
24 fin.

25 Now, this is significant because the defendant,

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Closing Argument by the State

1 Justin Jamal Warner, was known to drive a car such as
2 this, a 2013 Dodge Challenger, which is consistent with
3 what we see driving by that BP gas station. You can
4 see the windows, the wheels, and that fin that looks
5 similar. And Nathan Goolsby told you all that he knew
6 the defendant to drive a car such as this.

7 Speaking of Nathan Goolsby, you also heard from
8 him he was shown a clip of a media release, and it was
9 his opinion that it was Justin Jamal Warner in that
10 video by his gait, his mannerisms, his walk, that sort
11 of thing, having known him eight or nine months.

12 Now, I want to show you in just a second the video
13 of the entire incident. And it lasts less than a
14 minute. It happened so quickly. But there was talk
15 yesterday about the defendant -- or, excuse me, the
16 suspect having tattoos or markings maybe on his
17 forearms. And you'll be able to see in this clip that
18 when he leans over, you can tell on both forearms there
19 are no tattoos. Again, I want to remind you about poor
20 quality of stills or other video clips and that sort of
21 thing.

22 You can see Ms. Patel is getting the tobacco
23 product. She's asking for his I.D. The wallet flips
24 open. She enters the birth date in the register. He
25 puts his palm on the counter. No tattoos. No tattoos.

1 On the forearms, at least. And he exits.

2 Now, in one of the other stills that's in
3 evidence, you can see some marking on his upper arm
4 which Investigator Voigt said was consistent with or
5 was similar to the tattoo the defendant does have.

6 And, now, what this depicts is a still. I know
7 it's hard to tell. I'm going to try to use this
8 pointer. This is the wallet being flipped open with
9 the I.D. And, again, this is the wallet belonging to
10 Justin Jamal Warner that was collected from that 2013
11 Dodge Challenger. And, again, you can see it flips
12 open as well.

13 Now, here is a still. And I mentioned it earlier
14 in the incident. This is him resting his palm on the
15 mat. And, of course, you heard testimony -- this is a
16 close-up of that matter. You heard testimony from
17 Lieutenant Scott, an expert in fingerprint and palm
18 print analysis and identification. He's been doing it
19 for over 30 years, analyzed thousands of prints, no two
20 prints are the same, and that is Justin Jamal Warner's
21 palm print, left palm print.

22 Now, this, again, is a close-up of the I.D. that
23 was found in the brown wallet from the Dodge Challenger
24 that was silver. And what's important to note is that
25 date of birth, [REDACTED]. That is extremely

1 significant in that that is the last date of birth on a
2 verified I.D. on that BP gas station receipt. You will
3 see right here [REDACTED]. You will also notice that this
4 is a receipt for a tobacco purchase costing 99 cents.

5 Collected from that Dodge Challenger silver are
6 similar-type things also costing 99 cents, cigarillos.
7 You heard testimony that Mrs. Patel grabbed an item
8 costing, we know, 99 cents from an area where those
9 kind of things were kept in her store.

10 Finally, we get to the phone records. So here you
11 will see this is subscriber information which is going
12 to be State's 9 on Page 2, and that is the phone number
13 that is registered or assigned, it's in his name, to
14 Justin Jamal Warner. [REDACTED]-1872. That was found
15 using the CLEAR history, which is a tool law
16 enforcement uses. It was also verified contact
17 information by Nathan Goolsby. That is a number that
18 he uses.

19 And then, finally, you have today's testimony from
20 Special Agent, CAST Agent David Church, who talked to
21 you about how he analyzed the CDRs or call detail
22 records belonging to this particular phone number. And
23 what's important to note are these two times, keeping
24 in mind that those call detail records, those are
25 voluminous, and y'all will have that CD as well. It's

1 over 700 rows and 40 columns, so it would print out on
2 a really large Excel sheet. But those are the call
3 records belonging to the defendant's phone number.
4 And, remember, you have to subtract the four hours time
5 because of the UTC. They want it on normalized time.

6 So all that has been adjusted for you and admitted
7 into evidence in these exhibits, State's 23-A through
8 23-E. But it was in Special Agent David Church's
9 expert opinion that the defendant's phone was in the
10 area of the crime scene just before the incident and
11 just after the incident took place. Not to mention it
12 had traveled from Atlanta all the way up to Greenville
13 and then back through and back to Atlanta.

14 Ladies and gentlemen, the judge is going to charge
15 you about reasonable doubt. And reasonable doubt does
16 not mean that I have to prove to you beyond every doubt
17 because there are few things in life that we know with
18 absolute certainty. But I submit to you that in order
19 for you to believe that the defendant is not guilty, we
20 would have to have a person of the same race, same sex,
21 same build, similar markings from that tattoo, the same
22 date of birth, same palm print, smoked similar-type
23 cigars, had a similar wallet, drove a similar car, all
24 while his phone number is driving from Atlanta up near
25 the crime scene location and then back down.

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Closing Argument by the Defense

1 You do use your common sense when you go back in
2 that jury room. This defendant is guilty beyond a
3 reasonable doubt. Find him guilty.

4 THE COURT: Closing argument?

5 MR. HARVEY: Please the court.

6 THE COURT: Yes, sir.

7 MR. HARVEY: Ms. Huey.

8 Thank you for performing your civic obligations in
9 reporting for jury duty and being selected. I know
10 that you -- we all know and we all thank you for being
11 here and performing your duty and listening and paying
12 attention like I know you have, and we all appreciate
13 it and thank you for that service.

14 You know, we are not here -- we are not here
15 because indictments were handed up against Justin Jamal
16 Warner. That's not the reason we're here. The reason
17 we're here is because to those indictments, to those
18 indictments Justin Warner says to you, he says, "Ladies
19 and gentlemen, I didn't do it. I am pleading not
20 guilty to those charges," and it is the burden of the
21 State of South Carolina to prove each and every element
22 of those charges beyond a reasonable doubt. So make no
23 mistake about it. We're not here because charges have
24 been returned. We're here because Mr. Warner says,
25 "I'm not guilty of those charges."

1 So we start with the presumption that every person
2 that comes into this courtroom, every person that sits
3 in that seat and that the State of South Carolina
4 charges is not guilty. Is not guilty. And that
5 carries with it the corollary principle, and the judge
6 is going to tell you about these principles, that the
7 State carries the burden to prove each and every
8 element of the charges. And those charges must be
9 proven beyond a reasonable doubt. So it's three
10 things, at least three things, the presumption of
11 innocence, the burden of proof is on the State, and
12 what that burden of proof is.

13 Now, Ms. Huey is correct. She's absolutely
14 correct. The State doesn't have to prove Mr. Warner's
15 guilt to a mathematical certainty. To a certainty.
16 But, you know, what is that reasonable doubt that needs
17 to be -- that can't be overcome?

18 For example -- let me give you an example. A
19 number of years ago when I was younger, there was a
20 Tylenol scare. Remember? They had bottles of Tylenol
21 that they had found poisoned pills, poisoned Tylenol
22 pills in some of the bottles.

23 Now, if you go into a store and you heard, "Oh,
24 some of these bottles, they found poisoned pills in
25 Tylenol bottles." And you get a bottle of one hundred

1 pills, right, because they come in 50s, they come in
2 little ones if you're traveling. They come in
3 hundreds.

4 Now, you just heard that there were some poison
5 pills in Tylenol bottles. Not all of them, but some of
6 them. So you're going to buy a bottle of one hundred.
7 Are you going to take them? Are you going to take
8 them? Are you going to buy them and take them? That
9 could be one pill out of one hundred. Is that
10 reasonable doubt? Yes. So it can be that one chance
11 out of one hundred. That is reasonable doubt.

12 For example, is -- another example. You leave the
13 house in the morning. You made a pot of coffee or
14 you've cooked some breakfast, and you get a little ways
15 down the road and you think to yourself, "Did I leave
16 the oven on? Did I leave the coffee pot on? Did I
17 leave something cooking on the stove?" How many of us
18 haven't done that. You don't know whether you did or
19 not, but that's reasonable doubt as well. That's what
20 the State has to overcome, something that you can give
21 a reason for and understand as a matter of just the
22 course of living.

23 So what do we have? What do we have in this
24 particular case? Well, you know, you're looking at me,
25 and you said, "Mr. Harvey, you spent an awful lot of

1 time going through in pretty much detail on this board
2 some of the time frames." And I did. I spent some
3 time going through those, going through what happened
4 beforehand up to the event and after the event. And I
5 think that's important. And why do I think that's
6 important? The 21:34 time frame that was mentioned by
7 Ms. Huey in her closing, that's the start time. I
8 don't think there's any question that the mat was wiped
9 clean.

10 But what we have and what you did not see, what
11 you didn't see, what the State didn't show you were the
12 six people plus Mr. Warner they say -- they say -- came
13 into the store, entered the store, and five people came
14 to the counter. All right. Let's see that. Let's see
15 that. It's on the video. Why weren't you shown that?
16 Why weren't you shown other people at the counter and
17 how those people at the counter interacted with the mat
18 that was cleaned at 21:34.

19 One. That's one portion of any reasonable doubt
20 that you may have. The closest phone call, the next
21 event, 22:11:07. That's pretty much established at
22 least by the phone records that came from T-Mobile and
23 that are on the -- on State's Exhibit Number 10.

24 I invite you to look at State's Exhibit 9, which
25 are not in UTC. That is in time other than standard

1 time, and that at 22:11 -- and they're in military
2 time -- on 4/30/2015 there is no entry. There is no
3 entry on the kind of T-Mobile records that you get or
4 that you can get on your phone, there is no entry at
5 22:11:07 for that phone. There is no entry on the
6 phone records from T-Mobile, the regular phone records,
7 at 22:19:08 on State's Exhibit Number 9. Where are
8 they? Why are the phone records from T-Mobile that the
9 young lady who said, "I'm from T-Mobile. I provide the
10 record. I provided these records." Where are they?

11 That is on Page 20 of State's Exhibit Number 9.
12 So we have records that don't reflect those phone
13 calls, and we have records purporting to reflect those
14 phone calls. Let's put that into the equation.

15 But the second part of 22:11:07 is that, even
16 though we have the ability to know the cell coverage of
17 a cell tower, we don't have any data that we can
18 determine the coverage of that tower, none of that data
19 was provided. And although we have the mechanism to
20 find that out, we didn't do it because the FBI decided
21 we didn't need to do it in this particular instance.

22 But what do we know? We know it's at Exit 40.
23 The tower is -- excuse me -- Exit 44. And that, as the
24 crow flies, it's at least three and a half miles away
25 but probably more on 85. Right? So if we're at

1 22:11:07, and he said -- he, Special Agent Church, said
2 could be more like five miles up the road or four and a
3 half miles up the road before we get to Exit 40, we
4 first see that -- whatever vehicle it is -- at
5 22:13:50. How long is that? Two minutes? Two minutes
6 and 17 seconds before you first see the vehicle. So
7 the vehicle had to be there earlier than that. It had
8 to pull off the road earlier than that, pull into Exit
9 40 at the BP. And tell me in your using your common
10 sense whether or not you can travel four miles in two
11 minutes and 17 seconds. I don't think so. Not unless
12 you're going 120-plus miles an hour.

13 So just using the figures that we have and
14 comparing them to the evidence in the case, which is
15 precisely why I went step by step by step in order to
16 try to show you that if you're up the road at 44 and
17 you're coming down to 40, you can't do it in that time
18 frame. You can't do it in that time frame.

19 Reasonable doubt? Absolutely. So you first see
20 the vehicle that they contend -- they, the State,
21 contend is the vehicle connected to Mr. Warner at
22 22:13:24. So the vehicle, that vehicle, is at the BP
23 at 153 and 85 at 22:13:24, but the event doesn't start
24 until 22:16 approximately. It's a three-minute gap.
25 What's going on there? What's happening in the three

1 minutes? Why is there a three-minute gap? Anybody
2 come in during that three-minute gap and leave? We
3 don't know unless you look at the video that they
4 didn't show you. They just showed you what they wanted
5 you to see.

6 So we've got a three-minute gap between when the
7 first car -- when you first see the car and when the
8 event happens. Again, exactly why I was going through
9 the flip chart and making sure that everybody agreed to
10 the time sequence in this particular case.

11 Now, we are here at 22:16. And remember the car.
12 First place, we know the car is not registered. It's
13 not his car. It's not Justin Jamal Warner's car. It
14 is not his car. We don't know how often he uses it
15 if -- if ever going out of state or out of town or
16 whatever. We don't know who had the car or the car
17 that they seized that day down in Georgia. We don't
18 know if it's the same car. There's nothing
19 distinctive. And Investigator Voigt told you nothing
20 distinctive about the vehicle that passes that door in
21 that four-second clip. Nobody got a license plate.
22 Nobody got the state of the license plate. There's
23 nothing distinctive about it at all.

24 The event, you see the individual coming in 22:16
25 or 22:15:58. You could look at it and make the precise

1 distinctions as to the time, if you like. But we know
2 two things about the video that we saw, and the State
3 acknowledges those and, candidly, they should. The
4 suspect's face was covered.

5 Remember, I asked questions about that to
6 Investigator Voigt. There was a hat. There were
7 sunglasses. The video itself, according to the State
8 and according to the witnesses, is not of good quality.
9 And, indeed, I want you and invite you to look at those
10 stills because Investigator Voigt said, "Well, it looks
11 like he's got some markings on his arm, but I can't
12 tell what they are." But also those dark shadows, the
13 same kind of dark shadows that Investigator Voigt
14 mentioned as being tattoos, he saw on the forearms of
15 the suspect when he came into the store. Same thing.
16 I wrote that down. I asked him, in quotes, dark
17 shadows. Same thing. Does Justin Warner have tattoos
18 on his forearms? No, he doesn't. Look at those. Stop
19 those videos and see if you see what looks to be
20 tattoos on the forearms of the suspect in the store.
21 See if you see them. Because it looks exactly like
22 what Investigator Voigt indicated were tattoos on
23 Mr. Warner. But he does not have them below his elbow.
24 So we have the still frames from the event.

25 Secondly, look at that and see if that suspect

1 puts his palm down on the mat. You can't tell. You
2 can't tell that. Look at it. You don't have to accept
3 the theory of the case or the theory of the State, and
4 you get to decide and look at that video and look at it
5 frame by frame and see if you see the suspect put his
6 palm down on the mat. You make that decision. That's
7 a decision that you have to make. Because I challenge
8 you to do that.

9 So we have that particular incident. That ends in
10 39 seconds. Essentially, you will see, and you saw
11 just a minute ago, in approximately 39 seconds he is
12 out of the frame. He being whoever it is that the
13 suspect is.

14 I mentioned that the vehicle has no distinct
15 markings, and that 22:19:08 was the first call after
16 the event on the T-Mobile records that went to the FBI
17 but not the T-Mobile records that were introduced by
18 the T-Mobile representative. It's not on there at all.
19 Detective Voigt arrives at 22:39. And I went through
20 some of the times with the other officers just to set
21 the -- again, set the framework. It's already taped
22 off. The EMS and EMTs have already gone in and out.
23 They were gone. That scene had been trampled upon.

24 The CSI had already been there, and they started
25 it. But here's what they got. They got some shoe

1 impressions. Nothing related to Mr. Warner. They got
2 some touch DNA swabs. Nothing. No results related to
3 Mr. Warner. There were allegedly two dollar bills that
4 the suspect paid for these cigars or a tobacco product.
5 We don't know what it was. They were processed with
6 nothing physical related to Mr. Warner at all either.

7 What physical relationship we do have is testimony
8 about an alleged palm print right there. That's it.
9 That's the comparison. There you have it. Look at it.
10 I get it. You're not experts, and you heard from
11 Lieutenant Scott who says, "I'm an expert. I've done
12 thousands of these. Believe me when I tell you that
13 these match." How come? Did you hear the how come?
14 He said, "I've done this for a million years. I'm
15 certified to do it. I never make a mistake. I'm
16 great." How come they match? I didn't hear any how
17 come other than, "Trust me. I'm from the government."

18 And, by the way, if you look at -- I guess it is a
19 known print and points -- dots on the latent print, the
20 unidentified print, look where the dots are. See if
21 the dots are even in the same place. If you look at
22 this constellation of dots right here -- one, two,
23 three, four, dot in the middle. On this side the top,
24 one, two, three, four -- one, two, three, four, dot in
25 the middle. Did you see that over here? Did you see

1 it on the other side? No. No, you don't.

2 You know, you do not have to blindly accept the
3 word of someone who has a dog in this fight. You are
4 the judges of the facts. Look at it and make a
5 judgment for yourself. You don't have to be an expert
6 to say even the dots don't match up, and we haven't
7 heard a reason that they should. That's the physical
8 evidence. That's the totality of the physical evidence
9 that the State says connects Mr. Warner to this crime.

10 Now we're at the crime scene. We're still talking
11 about those things. And one thing that is there but
12 wasn't seized was this receipt. Apparently there were
13 receipts that were seized, but not this receipt. The
14 receipt that's in evidence. And I missed it. Perhaps
15 maybe you got it. Was there an explanation? Did they
16 tell you why they didn't seize it that day if they
17 thought it was such a critical piece of evidence? Why
18 wasn't it seized that day? And when it was seized, it
19 was torn off at the bottom. It was torn off at the
20 bottom, and you can't see -- you can't see what's on
21 the bottom.

22 Every single other event that day, every single
23 other event that day has got a time and date associated
24 with it. And the one thing, the one receipt, the one
25 item that's most important to their case is ripped off

1 at the bottom. That's the one most important thing.
2 That's the other thing they say connects Mr. Warner to
3 this particular event.

4 Another thing that Ms. Huey mentioned to you were
5 the cigar wrappers that were found in the vehicle in
6 Georgia. I think I went through it fairly carefully to
7 you, maybe ad nauseam. One, is there -- we don't know
8 who had the car in the interim period. We don't know
9 where the car had been. We know it's not Mr. Warner's
10 car. We know that those wrappers have no -- they
11 weren't processed.

12 Do they have Mr. Warner's fingerprints on them?
13 Do we know he even touched them? Do we know that he
14 purchased them? Do we know that he used them? We know
15 that they're not -- that they can't be connected to
16 Anderson County, South Carolina. They can't be
17 connected to the state of South Carolina. I don't know
18 whether they can be connected to anywhere in particular
19 in the United States other than their point of
20 manufacture. And I went through that very carefully
21 with Investigator Voigt. So don't -- you know the
22 State is very sophisticated. Ms. Huey is an excellent
23 lawyer, but they're asking you to make a very
24 sophisticated argument. "We can't prove any
25 connection. We can't prove any connection between

1 these and Mr. Warner. So we're asking you to
2 speculate, to leap, to take a leap of faith and make
3 that connection that we can't prove because we can
4 prove the evidence up and make the connection to
5 Mr. Warner."

6 But, you know something, we don't speculate about
7 whether or not people can be proven guilty beyond a
8 reasonable doubt. We don't -- we don't convict on the
9 clouds and the fog of suspicion but on the bedrock of
10 fact. There are no facts connecting those cigar
11 wrappers with Mr. Warner, just the clouds and fog of
12 suspicion.

13 We talked a little bit before at the beginning the
14 suspect had a hat, had sunglasses, no unimpeded view of
15 his face. The car search was at least seven days later
16 in Georgia. The car was registered to someone else who
17 had the car. We've got no answers for that. Who had
18 it? Who drove it? Who put anything in it? The wallet
19 was processed. There was no latents. There was no
20 touch DNA. The cigar wrappers I just talked about.

21 Now, the phone records. I truly want you to look,
22 if you can, at the T-Mobile records the FBI special
23 agent used and the T-Mobile records that, I guess, were
24 provided by T-Mobile as well. Because they are
25 different. There were phone calls on the big

1 spreadsheet that aren't on the T-Mobile billing
2 records. Not only that, we know -- we know that what
3 Special Agent Church told us is they don't have a
4 particular area of coverage. And, ultimately, what we
5 do know, we talked about the distances. We don't know
6 who had the phone associated with that number. We
7 don't know who used the phone associated with that
8 number.

9 And, by the way, there's been no analysis done as
10 to whom the calls came from or who the calls went to.
11 You know, if the calls were associated with Mr. Warner,
12 don't you think they would tell you, "Oh, this went to
13 his mother. This went to his brother. This went to
14 his fiancée. This went to his baby's mother." Don't
15 you think that if they could direct these phone calls
16 and narrow it down and say, "Look, not only we don't
17 know who had the phone or who used the phone, but,
18 look, all these phone calls went to somebody connected
19 with Mr. Warner." They didn't do that.

20 You know, reasonable doubt can arise from the
21 evidence or the lack of evidence. So when you start
22 going through each piece of evidence that the State has
23 brought to you and you analyze it like I have just gone
24 through with you, there is enough reasonable doubt to
25 drive that veritable truck through.

1 I think that a careful analysis of what you have
2 been shown and what you have not been shown leads
3 directly to the conclusion, directly to the conclusion
4 that the State simply has not met their burden of proof
5 to prove beyond a reasonable doubt that that young man
6 sitting there committed the offense that he is on trial
7 for. That's your only job. This is not a who done it.
8 It's their burden to prove to you beyond a reasonable
9 doubt that it was him and nobody else, and they simply
10 have failed to do it.

11 Analyze the evidence carefully, and after you do,
12 return a verdict of not guilty as to each one of the
13 charges, the same plea that Mr. Warner entered before
14 you to bring you here to challenge that evidence.
15 Thank you.

16 THE COURT: All right.

17 Mr. Foreman, ladies and gentlemen of the jury, you
18 have been going for about 50 minutes. If you want me
19 to continue, I will, with my charge on the law. I
20 anticipate it will be roughly 25, 30 minutes. If you
21 would like to take a minute and have a break, it's up
22 to the jury.

23 Mr. Foreman, would you check with your jury and
24 see what they would like to do, please, sir.

25 THE FOREMAN: If it pleases the court, we'd like

1 to take a break at this time.

2 THE COURT: Okay. Let's take a ten-minute break,
3 and we'll come back with the charge.

4 (WHEREUPON, the jury exited open court at
5 2:51 p.m.)

6 (WHEREUPON, a recess was taken from 2:25 p.m.
7 to 3:06 p.m.)

8 (WHEREUPON, the jury entered open court at
9 3:06 p.m.)

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen of the jury, we're now at the fourth phase of
12 the trial where I charge you on the law. Let me point
13 out a few things about that.

14 Number one, frequently in trials juries ask for
15 additional evidence to be presented. No more evidence.
16 All the evidence that is going to be presented has been
17 presented. It will be up to you to make your decision
18 based on the evidence that's before you.

19 Now, some of the videos, we don't have a clean
20 computer. In other words, it may have some other stuff
21 on it that you shouldn't be before you to see. So if
22 the jury wants to watch anything on the videos or all
23 the videos, we'll bring you out here and we'll watch it
24 as many times and as long as you want to. Okay?

25 Remember that the demonstrative evidence will not

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1 be back there. That was just demonstrative only. Also
2 the indictments in this case will not go back with the
3 jury.

4 Now, ladies and gentlemen, my charge is in three
5 parts. And it's my duty as the trial judge to charge
6 you on the law that you must apply.

7 The first part of my charge will be the
8 instructions on the general rules that define and
9 control your duties as jurors. Quite frankly, it's the
10 longest aspect of my charge.

11 The next will be the substantive law that applies
12 to this case. In other words, what the State must make
13 out in order to prove this case against the defendant,
14 and that will be the substantive law on the charge of
15 murder, on the charge of possession of a weapon during
16 the commission of a crime as it relates to murder only,
17 and also the law of attempted murder. After that --

18 THE REPORTER: Attempted what?

19 THE COURT: Excuse me. I apologize. Attempted
20 armed robbery. Thank you so much. Murder, possession
21 of a weapon during the commission of a crime that
22 relates to murder only, and then attempted armed
23 robbery.

24 Thank you, ma'am.

25 Now, after that, I will give you some

1 considerations about your deliberations.

2 Mr. Foreman, I will go over the verdict form with
3 you and explain to you how to fill it out. I'll then
4 release you back to the jury room after consultation
5 with the attorneys to make sure that I didn't make a
6 mistake, and if not, we'll send word back to you with
7 the exhibits to begin your deliberations. If not,
8 we'll bring you out and correct it.

9 Now, ladies and gentlemen, some of these parts of
10 my charge are to be read to you. They are very
11 important principles of law, and I don't trust my
12 memory enough to make sure I cover all of them so
13 please bear with me and I'll try to minimize as much as
14 I can.

15 If you recall, at the beginning of this case I
16 told you that it is your duty to find the facts from
17 the evidence that's been presented in this case. Now,
18 to the facts as you find them to be, you must and you
19 shall apply the law as I give it to you now. You shall
20 not be concerned with what you think it should be but
21 only what it is.

22 Also, ladies and gentlemen, you may not and should
23 not be influenced by any personal likes or dislikes,
24 opinions, prejudice, or undue sympathy that you may
25 have for one side of the case or the other. You have

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1 no one to reward and no one to punish. And what that
2 simply means is that you would make any decision based
3 on this case based on the evidence before you and
4 according to the law as I give it to you now. And if
5 you recall, when you took your oath, you swore or
6 affirmed to do just that.

7 And following these instructions as I give them to
8 you, it's important to follow everything, not just pick
9 out the parts that you like and apply those and
10 disregard some that you may not like so much.

11 Also, ladies and gentlemen, if I have done
12 anything, said anything, made a gesture throughout the
13 course of this trial that suggests to you how you are
14 to find facts, in other words, the verdicts you are to
15 reach in this matter, I'm going to instruct you and
16 require that you disregard that. I will assure you I
17 have no opinion. I'm not allowed to have an opinion,
18 and I may not express an opinion. It's for you and you
19 alone to make the decision because you and you alone
20 are the sole judge of the facts in this matter.

21 And you will determine what the facts are by
22 evaluating and weighing the evidence in this matter.
23 When we say "weighing the evidence," I can't send you
24 back with a set of scales for you to do that in a
25 literal sense. It's a mental process, and you can and

1 you should use your good common sense, your sense of
2 logic and sound judgment throughout your deliberations
3 and, hopefully, into a unanimous verdict.

4 And you will determine what the facts are from the
5 evidence. So let me tell you what the evidence is, and
6 I'm going to describe to you the different types of
7 evidence we recognize.

8 The only evidence that you may consider as
9 evidence was the sworn testimony from right here in
10 this witness stand or down on the floor. The sworn
11 testimony, whether it be on direct examination or
12 cross-examination. And the only other evidence that
13 you may consider as evidence are the exhibits that I
14 have allowed to come into evidence in this case.
15 That's the only evidence in this case.

16 Now, that takes me to what is not. I'll remind
17 you that the arguments and the statements by these
18 attorneys is not evidence. They have not been sworn.
19 They have not been subject to cross-examination. What
20 they say is designed to help you understand what their
21 contentions are in this case, but it is not evidence.

22 If your collective memory of something told to you
23 by one of these -- by one or both of these attorneys
24 differs from what they said, then your collective
25 memory will control.

1 Also, Mr. Foreman, let me remind you again that
2 just because something appears in one of your juror's
3 notes doesn't mean it trumps somebody's memory on that
4 fact. That's why they call them deliberations.

5 Also, ladies and gentlemen, the questions asked by
6 the attorneys is not evidence. The responses is
7 evidence, but the questions themselves is not.

8 Also, ladies and gentlemen, as I've told you at
9 the beginning of this case and during this case,
10 lawyers have a duty to object. You may not and shall
11 not consider the fact that objections were made or to
12 the extent I let you stay and hear my rulings on those
13 objections. Suffice it to say, Mr. Foreman, the fact
14 that attorneys object is part of the process in every
15 trial that comes before me.

16 Ladies and gentlemen, finally, anything you may
17 have seen or heard when the trial was not in session is
18 not evidence.

19 So that leads me to the types of evidence that we
20 recognize here in South Carolina. We recognize two
21 types. It's direct evidence and circumstantial
22 evidence. Let me define those for you.

23 Direct evidence is evidence that directly proves
24 the existence of a fact and does not require deduction
25 or inference. For example, if the issue was whether or

1 not I ran a stop sign, and my court reporter testified
2 that she saw me run that stop sign, that would be
3 direct evidence of that fact because you don't have to
4 infer or deduce anything from her testimony to
5 establish the fact that I ran a stop sign.

6 We also have what is called circumstantial
7 evidence. And this is a little more tricky, but I'm
8 going to define it for you. Circumstantial evidence is
9 a proof of a chain of facts and circumstances
10 indicating the existence of a fact. In other words, it
11 takes deduction or inference.

12 For example, if I were to go to bed at night, and
13 there was a fresh sheet of snow in my front yard, if I
14 were to wake up in the morning and see tracks through
15 that yard, I may deduce or infer that someone or
16 something walked through my yard during the night
17 although I did not see it. The only prohibition is the
18 inference or your conclusion can't be speculation or
19 surmise.

20 Now, ladies and gentlemen, crimes in South
21 Carolina may be proven by circumstantial evidence. And
22 the law in our state makes no distinction between the
23 weight or value to be given to either direct or
24 circumstantial evidence. However, to the extent that
25 the State relies on circumstantial evidence, all of the

1 circumstances must be consistent with each other and,
2 when taken together, point conclusively to the guilt of
3 the accused beyond a reasonable doubt. If these
4 circumstances merely portray the defendant's behavior
5 merely as suspicious, then that proof will have failed.

6 The State has the burden of proving the defendant
7 guilty by proof beyond a reasonable doubt, and that
8 burden rests with the State regardless of whether it
9 uses direct evidence, circumstantial evidence, or a
10 combination of both direct and circumstantial evidence.

11 Now, Mr. Foreman, ladies and gentlemen of the
12 jury, in deciding what the facts are in this case or,
13 in other words, your verdict, you have to consider all
14 the testimony, all the exhibits. In doing this, you
15 have to decide which testimony that you want to believe
16 and if there's any testimony you wish not to believe.
17 You have a right to disbelieve all or part of any
18 witness' testimony who came before you. You have a
19 right to believe all the witnesses' testimony who came
20 before you.

21 But making this decision of what we refer to as
22 the credibility of the witnesses, you may take into
23 account the following factors: You can ask yourself,
24 was the witness able to see or hear or know the things
25 about which that witness testified? How well was the

1 witness able to recall and to describe the subject of
2 their testimony? What was their manner while they were
3 on the witness stand? In other words, what was their
4 demeanor while they were up here on the stand? You can
5 ask yourself whether there's some reason a witness
6 would want to give testimony to help or hurt one side
7 or the other, whether or not that witness had an
8 interest in the outcome of the case or any bias or
9 prejudice towards any issue or party involved in the
10 case.

11 You can ask how reasonable that witness' testimony
12 was considered in the light of all the other evidence
13 in the case, and also whether that witness' testimony
14 had been contradicted by what that witness had said or
15 done at another time or any other evidence or testimony
16 within the case.

17 Now, Mr. Foreman, ladies and gentlemen, those are
18 simply some of the factors you may consider in deciding
19 which testimony to believe and if there's any you wish
20 not to believe. Also, you don't check your good common
21 sense when you're sworn in as jurors and you shouldn't
22 in this case. You should use those things -- use those
23 things in your common experience that show lack of
24 candidness or lack of truthfulness or truthfulness in
25 making your decision -- determination of which