

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED
FEB 07 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN CHRISTOPHER HART,

APPELLANT

APPELLATE CASE NO. 2017-001291

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

Court's Exhibit #3 (compact disk of discovery received April – May of 2017);
Court's Exhibit #16 (compact disk of discovery provided August 2016 and April 2017)

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS

3 The State,)

4 -vs-)

5 John Christopher Hart,)

6 Defendant.)

TRANSCRIPT OF RECORD

2014-GS-32-01421

January 5, 2017

Lexington, South Carolina

7
8
9
10 B E F O R E :

11 HONORABLE EUGENE C. GRIFFITH, JR., JUDGE

12
13
14 A P P E A R A N C E S :

15 DAVID SHAWN GRAHAM, ESQUIRE
16 Attorney for the State

17 DAYNE C. PHILLIPS, ESQUIRE
18 Attorney for the Defendant

19
20
21
22 Margaret A. Woods
23 Circuit Court Reporter
24
25

1 MR. GRAHAM: Judge, standing before you is John
2 Christopher Hart, he's indicted on 2014-GS-32-01421 charging
3 him with murder, he's represented by Dayne Phillips. We had
4 two things that we wanted to do today, one is a status
5 conference to set a trial date and the second thing
6 was is, uh, we have got an affidavit that we have provided
7 Mr. Phillips a copy of I believe ---

8 MR. PHILLIPS: Five minute ago.

9 THE COURT: Did you have ---

10 MR. GRAHAM: --- requesting ---

11 THE COURT: --- a chance, you had a chance to review the
12 last minute?

13 MR. PHILLIPS: No, Your Honor.

14 THE COURT: Well, okay.

15 MR. GRAHAM: And we don't, I mean, honestly, what it is,
16 Your Honor, it's an affidavit, um, prepared by the sergeant
17 who's a detective at the ca -- at the time, Shaun Spivey, he's
18 present in the courtroom and it's a, um, request for
19 handwriting samples and I don't think that case law
20 requires the officer to take the stand and be subject to
21 cross-examination.

22 (Pause.)

23 MR. PHILLIPS: May I have a moment to discuss this with
24 Mr. Hart so he understands?

25 THE COURT: Absolutely, and that, and I'll do this for ya

1 if ya like: since you just got that if you wanna defer to
2 sometime next week earlier one mornin', we can come back and
3 reconvene this 'cause Mr. Graham's be in the buildin', I'll be
4 in the buildin', we can bring it back over on Wednesday
5 mornin', Thursday mornin', Friday mornin' 'bout nine and ---

6 MR. PHILLIPS: Well I'm, I am fairly caught up to speed
7 with the *Schmerber* process, I just need a moment to ---

8 THE COURT: Okay, ---

9 MR. PHILLIPS: --- make sure he's ---

10 THE COURT: --- talk to him.

11 MR. GRAHAM: He, Mr. Phillips knew we were doin' a
12 *Schmerber* hearing today, ---

13 MR. PHILLIPS: Right.

14 MR. GRAHAM: --- he just hadn't seen the affidavit, Your
15 Honor.

16 THE COURT: Okay.

17 MR. PHILLIPS: Right, ---

18 THE COURT: All right, we'll ---

19 MR. PHILLIPS: --- I just wanna make sure I've I've
20 wrapped my head around the affidavit, that's all.

21 THE COURT: Okay.

22 (Pause.)

23 MR. PHILLIPS: All right, Your Honor, I think I'm I'm
24 able to address the ---

25 THE COURT: All right, let's hear it.

1 MR. PHILLIPS: First like to address the fact that and
2 al -- it -- SLED has already been submitted a known sample and
3 it's noted in the affidavit that SLED analyst Gail Heath is
4 requesting additional known samples, uh, we would certainly as
5 the defense would argue that she needs to also provide a sworn
6 affidavit stating the reasons why specifically she needs
7 additional handwriting exemplars, uh, from Mr. Hart and in due
8 candor to the Court, I I'm gonna argue against precedent to
9 preserve this issue for appellate review but the defendant
10 objects to any order compelling him to provide handwriting
11 exemplars pursuant to Article I Sections 3 and 12 of the South
12 Carolina Constitution, hear me out for a second, Judge, I --
13 specifically, our Supreme Court recently confirmed in *State v.*
14 *Counts* that our state constitution can provide a greater
15 protection than the federal constitution, it's a case that I
16 argued before our Supreme Court; in other words, state courts
17 can develop law through their interpretation of the South
18 Carolina Constitution to provide their citizens with a second
19 layer of protection that the federal constitution does not.
20 Article I, Section 12 provides that no person shall be
21 compelled in any criminal case to be a witness against
22 himself, uh, obviously it mirrors the Fifth Amendment. Same
23 as in *Counts* the defendant argues that there should be a
24 prohibition against, well different similar to *Counts*, uh, the
25 defendant argues that there should be a prohibition against

1 requiring defendant to submit handwriting exemplars. I
2 understand that this is against precedent from *Frasier*, the
3 United Supreme Court case of *Gilbert* but we would also argue
4 in addition to the argument of of prohibition there being
5 similar accounts that there should be at a minimal this
6 evidenti -- evidentiary threshold, uh, essentially stating
7 ascent for the probable cause of his, uh, the Fifth Amendment
8 or in this case Article I, Section 12 compelling, uh,
9 essentially his, uh, response to handwriting exemplars, that
10 that would violate, uh, this right against possible
11 self-incrimination. In *State v. Armstead*, that's a Court of
12 Appeals case outta Georgia as persuasive authority, obviously
13 it's not controlling authority for the Court but as persuasive
14 authority *State v. Armstead*, that's 152 Georgia App. 56, it's
15 a 1979 case, uh, that Court of Appeals of Georgia identified,
16 uh, that there is, uh, the State of Georgia has long granted
17 more protection to its citizens than the federal constitution
18 and held that, To force a defendant to prozu -- produce
19 samples of his handwriting potentially incriminating evidence
20 which may be used as evidence in the defendant's prosecution
21 would violate the constitutional sanctions against
22 self-incrimination, so based on that, that would be the
23 defendant's objection, Your Honor, and I, we understand it's
24 arguin' against precedent and it's simply, uh, necessary for
25 the defense to make that argument to preserve the issue for

1 appellate review and then of course our additional argument
2 that we understand that within the affidavit provided, uh,
3 what's been noted as the SLED analyst Gail Heath is requesting
4 the additional known samples due process, I would argue that
5 the Fifth and Fourteenth Amendments to United States
6 Constitution and Article I, Section 3 of the South Carolina
7 Constitution and due process would require it be fundamentally
8 fair that she provide a sworn affidavit stating exactly the
9 additional reasons for why the comparisons are needed,
10 additional comparisons are needed if they have the known
11 sample, thank you.

12 THE COURT: Okay.

13 MR. GRAHAM: Ms. Heath is here, we could actually put
14 her on the stand if you wanna be able to answer that question
15 Mr. Phillips has.

16 THE COURT: You got -- you wanna call her as a witness?

17 MR. PHILLIPS: It w -- and based on our objection we have
18 to.

19 THE COURT: Sure, bring her in.

20 MR. PHILLIPS: Thank you.

21 MR. GRAHAM: The State calls Gail Heath.

22 (Whereupon, a discussion was held off the record.)

23 (Whereupon, the witness came forward.)

24 THE CLERK: Raise your right hand, please.

25 GAIL HEATH, having been first duly

1 sworn, testified as follows:

2 THE CLERK: Thank you, if you'll have a seat over here
3 (indicating), please. State your name and spell your last for
4 the record.

5 THE WITNESS: My name is Gail Heath, H-E-A-T-H.

6 DIRECT EXAMINATION BY MR. GRAHAM:

7 Q. Ms. Heath, where are you employed, ma'am?

8 A. The South Carolina Law Enforcement Division, commonly
9 known as SLED.

10 Q. And what is your current job title?

11 A. I'm a forensic document examiner.

12 Q. And how long have you been a forensic document examiner?

13 A. Approximately 33 years.

14 Q. And how many times have you been qualified as an expert
15 in forensic document examination?

16 A. A hundred and eighty-five.

17 Q. Um, have you had a chance to look at some letters related
18 to this case that we're here on today?

19 A. Yes, I have.

20 Q. Would you tell the Court what you've seen and what
21 additional information you're requesting, why.

22 A. Okay. I was submitted one, uh, brief standard containing
23 four lines of text, um, I was missing several letters and
24 letter combinations that I need to make a complete and
25 thorough examination of the questioned document. The

1 questioned document is a full text length page of 8 1/2 by 11
2 paper and the standard I have is approximately four small
3 lines of text from a, uh, inpl -- inmate complaint form.

4 Q. So what you had so far are you able to render opinion
5 about the known standard versus the unknown?

6 A. Yes, I was able to and we have, um, a 9-point conclusion
7 scale that we use at the SLED forensic lab, uh, beginning with
8 an identification all the way down to an elimination.

9 Q. So what was the finding so far of your comparison?

10 A. Uh, there was no conclusion at this time based on
11 insufficient significant similarities or differences based on
12 the standard that I received.

13 Q. And so what is it that you had, what is it that you're
14 asking the Court to allow us to take that would let you make a
15 conclusion?

16 A. Um, I would like to dictate the questioned entries to the
17 defendant, uh, several times or or or portions thereof to get
18 a better, uh, idea of his letters and letter combinations and
19 how he constructs each of the letters.

20 Q. In addition to that, did you also want him to actually
21 rewrite the entire letter itself?

22 A. Oh, I would pref -- that would be the perfa -- preferable
23 method yes, sir.

24 Q. Okay. Um, and though the unknown, just for the record
25 the unknown letter is that a letter dated from May of 2013

1 'cause the affidavit actually mentions two different letters,
2 one is that one which I believe that's the letter that you've
3 seen.

4 A. Um, the letter I have is not dated, it begins with,
5 What's good, bro?

6 Q. Okay, which is, that, and that's good enough for
7 identification, thank you Ms. Heath.

8 A. Okay.

9 Q. Please answer any questions that Mr. Phillips has.

10 A. Okay.

11 CROSS-EXAMINATION BY MR. PHILLIPS:

12 Q. The alleged known standard did you see him write that
13 letter?

14 A. Uh, no, I did not.

15 Q. And who provided you with that letter?

16 A. Uh, that was submitted to me by Candy Keaser.

17 Q. And who is Ms. Keaser?

18 A. I believe she's with the Lexington County Sheriff's
19 Department.

20 Q. And she told you that this known standard is an inmate
21 complaint form?

22 A. Um, sh -- she submitted the evidence on our laboratory
23 take-in sheet and I have a photocopy of a Lexington County
24 Detention Center Inmate Request Form ---

25 Q. Oh.

1 A. --- was -- well that was submitted as a known standard.

2 Q. Thank you, no further questioning.

3 THE COURT: Okay, you may step down.

4 THE WITNESS: Yes, sir.

5 (Whereupon, the witness left the stand.)

6 MR. PHILLIPS: Would -- we'd have additional argument.

7 THE COURT: All right, let's hear it.

8 MR. PHILLIPS: This alleged known standard it has not
9 been authenticated with that that for the State to claim that
10 there is a known standard without providing au --
11 authentication, they lack the indicia of probable cause, the
12 sole basis for this hearing.

13 MR. GRAHAM: If I can clarify, Your Honor, the -- there's
14 two letters that we believe that the defendant has written,
15 one was from May 2013 that was provided by another inmate who
16 stated that he had a conversation with the defendant and
17 defendant wrote him that letter of May 2013, that inmate gave
18 a statement to then Detective Spivey, now Sergeant Spivey
19 saying the defendant had made statements admitting that he had
20 killed a woman and that this was the handwriting of the
21 defendant so that's the unknown standard. The known standard
22 was an Inmate Request Form that Lexington County Detention
23 Center personnel intercepted from the defendant's hand I
24 believe he passed from the defendant to medical and that's
25 what Ms. Heath has looked at so far are those two letters but

1 regardless of whether the known standard is really collected
2 from or not, that's immaterial, we have the unknown standard
3 that we need to authenticate, we we tried to do it without
4 having a *Schmerber* hearing.

5 THE COURT: Okay. Okay, Mr. Phillips.

6 MR. PHILLIPS: The defense would certainly stand on its
7 arguments.

8 THE COURT: Okay.

9 MR. PHILLIPS: Thank you.

10 THE COURT: All right. I'm gonna require that he provide
11 the handwriting exemplar, I think the State has met the
12 threshold of probable cause sayin' they need that to examine
13 the unknown letter they're tryin' to verify, it may exclude
14 him, it may include him, who knows, uh, without a proper and
15 sufficient exemplar, I don't believe the State can make a
16 proper comparison and so he'll have to provide that to
17 them ---

18 MR. PHILLIPS: Okay.

19 THE COURT: --- and then you'll share the results of that
20 report.

21 MR. GRAHAM: Judge, we have passed up a proposed order.
22 U9, in addition to finding probable cause, I think case law
23 requires that the the elements or what we're labeling as one,
24 two, three, four and five and six if I have my numbers right,
25 um, I find that probable cause, believe the defendant

1 committed the crime, there is clear indication relevant and
2 material evidence is involved necessitating a comparison of
3 the handwriting to the unknown documents, um, which is stated
4 in the affidavit of why we want it, the third is it is a
5 serious natured crime, murder of course is; four, that the
6 evidence is important prosecution a the case, this of course
7 could be used in either its case in chief to, um, implicate
8 the defendant or also potentially to use on cross-examination
9 of him, um, five says the motion is appropriate which I
10 believe that the affidavit shows that and; six, is that the
11 defendant have made no showing which would justify the refusal
12 as he he's made his arguments, um, Your Honor, for the record
13 though.

14 THE COURT: Yeah, and tho -- those findings would be, uh,
15 consistent with my ruling, I mean, it certainly the crime is
16 serious, the State wouldn't be asking for it if it wasn't
17 important evidence their case, been appropriately filed, um,
18 but leave to clear indication relevant material evidence
19 required by an exemplar comparing to the documents I think
20 that's the most important so, um, I think State's met its
21 burden to show it's entitled to it, okay.

22 MR. PHILLIPS: Thank, Your Honor, ---

23 THE COURT: Um-hum.

24 MR. PHILLIPS: --- and the State has provided me with a
25 copy of the order.

1 THE COURT: Okay, fair enough, I've signed it, that it be
2 placed with the case file here in my hand.

3 MR. PHILLIPS: Thank Your Honor.

4 MR. GRAHAM: Judge, is there -- that order is is is there
5 or is that order acceptable to court?

6 THE COURT: Yes, sir, ---

7 MR. GRAHAM: Okay.

8 THE COURT: --- yes, it is.

9 MR. GRAHAM: Ms. Heath is here, is there any reason that
10 we can't go ahead and take the exemplars now today?

11 POLICE OFFICER: That's up, uh, to ya'll.

12 THE COURT: Everybody's here and present.

13 (Whereupon, a discussion was held off the record.)

14 MR. PHILLIPS: We can do it now ---

15 THE COURT: Okay, we'll do it now.

16 MR. PHILLIPS: --- subject to our objection.

17 THE COURT: Um, your record's protected.

18 MR. PHILLIPS: Thank you.

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on January 5, 2017 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 13, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

May 16, 2017

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

1 State of South Carolina

Court of General Sessions

2 County of Lexington

3
4
5 State

6 v.

7 John C. Hart

8
9 Defendant.

)
)
) Transcript of Record
) 14-GS-32-3110
)
)
)

10 April 12, 2017

11 Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable Eugene C. Griffith, Jr., Judge.

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

17 D. Shawn Graham, Assist. Solicitor
18 Robert E. McNair, Assist. Solicitor
Attorneys for the State

19 Dayne C. Phillips, Esquire
20 Attorney for the Defendant
21
22
23

24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

I N D E X

WITNESSPAGE

(There were no witnesses.)

E X H I B I T S

NO.DESCRIPTIONID.EVD.

D-1

Supplemental Motion

3

D-2

Letter

3

D-3

Rule 5 motion

3

D-4

Consent Order

3

1 (The following proceedings were held on
2 April 12, 2017.)

3 (Defendant's Exhibit Numbers 1 through 4
4 marked for identification.)

5 **THE COURT:** All right. This is a motion for
6 discovery?

7 **MR. PHILLIPS:** Yes, Your Honor. The
8 solicitor's office, we were discussing last Friday
9 the nature of the specific supplemental discovery
10 request, and they decided to schedule a hearing for
11 today based on that discovery request. And I can
12 certainly kind of --

13 **THE COURT:** They don't want to give you what
14 you asked for?

15 **MR. PHILLIPS:** Well, it's a unique discovery
16 request. It's been done in one other case. It's
17 not unique to civil cases, as Your Honor will see,
18 but it's unique to criminal cases.

19 **THE COURT:** You're not going to e-file
20 anything, are you?

21 **MR. PHILLIPS:** No e-filing. No e-filing.

22 Specifically, the discovery motion goes into
23 electronically stored information, you know. You'll
24 see in Defense Exhibit Number 1 -- actually, Your
25 Honor, I did hand up a copy of the defense exhibits

1 to Your Honor. They also are marked. And I put the
2 numbers corresponding to the exhibits with Your
3 Honor's copies.

4 Defense Exhibit Number 1 is the supplemental
5 discovery motion for, and pursuant to Rule 5 the
6 defense had filed in this case on February 16th,
7 2017. It goes through a very detailed -- you'll see
8 it's ten pages long -- detailed request for
9 electronically stored information and then, of
10 course, any other statements as kind of a catchall
11 at the end regarding witnesses.

12 In this case -- in the previous case where I'd
13 seen it done was in Richland County in a murder case
14 where the defense attorney, the same as in my
15 supplemental discovery motion, is asking for e-mails
16 from the investigators in the case regarding the
17 witnesses.

18 One of the things that we were able to clarify
19 to limit the scope of my request is not an all
20 encompassing wide net of every e-mail sent in the
21 case, but of e-mails related to the witnesses in the
22 case. The witnesses in this murder case they have
23 long criminal histories, and with that, these
24 officers most likely or maybe possibly have dealt
25 with these individuals in the past. And if they

1 were being candid or cavalier about credibility of
2 witnesses or things that they saw during their
3 investigation, these e-mails could be incredibly
4 relevant to the impeachment of these witnesses in
5 attacking the thoroughness of the case.

6 Going specifically through -- just as to
7 placeholder, Your Honor, the requested information
8 is necessary. Providing the defendant with a
9 meaningful opportunity to present a defense is
10 essential to ensure the defendant's right to a fair
11 trial, specifically his right to confrontation of
12 witnesses and compulsory process under the Fourth --
13 excuse me -- Fifth, Sixth and Fourteenth Amendments
14 to the United States Constitution and Article 1
15 Sections 3 and 10 of the South Carolina
16 Constitution.

17 The basis of this request is under Kyles versus
18 Whitley, Your Honor. Essentially, the Supreme Court
19 of the United States held that an individual
20 prosecutor --

21 **THE COURT:** All right. You're clouding too
22 much law in there. What do you want? I mean, get
23 to that. Because all this law crap and
24 constitution, we know what it says. What do you
25 want?

1 **MR. PHILLIPS:** I'll boil it down to you.
2 During our discussions, what we were able to agree
3 on or at least agree to what I was limiting the
4 scope was e-mails from the investigators that are
5 directly related to witnesses in the case, that
6 reference witnesses in the case or somehow ---

7 **THE COURT:** So you got investigator chief and
8 he writes a witness on an e-mail. Do you know they
9 exist or not?

10 **MR. PHILLIPS:** Well, in our conversations on
11 Friday, it appears some e-mails possibly have been
12 deleted. And I sent, on February 28th, a
13 preservation of evidence letter to the general
14 counsel of the Lexington County Sheriff's
15 Department, Vinton D. Lide.

16 And one of the issues I think we will address
17 today, and I think the Solicitor will provide a
18 summary of what his conversation was with the
19 investigator, because there are multiple agencies in
20 this case, it would be -- I asked, Do I need to
21 subpoena this officer? And they said, No, we'll
22 bring him.

23 Apparently, he's on spring break and he's not
24 present today. So I would request, at some time, if
25 it doesn't get resolved here today, a hearing where

1 I'm able to cross-examine this officer and ask very
2 specific questions of when was he notified of the
3 request, when were the e-mails deleted. And I
4 believe that's going to be addressed by the
5 Solicitor in his conversations regarding these
6 deletion of these e-mails.

7 So with that, Your Honor, in limiting the scope
8 of it, again, any evidence that attacks the
9 thoroughness of an investigation or the impeachment
10 of witnesses, it is well settled under the United
11 States Supreme Court and our Supreme Court that that
12 is evidence that is discoverable. With that, if
13 e-mails have been deleted, it makes it impossible
14 for me, under Arizona v. Youngblood and Cheeseboro,
15 our state case, to prove one of the two prongs,
16 either bad faith or that the evidence had
17 exculpatory value, makes it impossible for me.

18 Addressing the argument that I believe the
19 prosecutor's going to make today is I need to have a
20 basis to make the claim of exculpatory or
21 discoverable information that's in the e-mails. I
22 believe it puts an impossible burden on the defense
23 to know something that's impossible to know, to know
24 the unknowable.

25 The reason it makes that request unknowable is

1 if I knew a prosecutor said -- or, excuse me, an
2 investigator said a specific statement about a
3 witness or about the investigation in an e-mail, I
4 could say, well, on May 5th, 2000, whatever year, I
5 need that exact e-mail, but it's impossible for me
6 to know. And under *Kyles v. Whitley*, the court
7 held, The individual prosecutor -- this is quote --
8 that the individual prosecutor has a duty to learn
9 of any favorable evidence known of others acting on
10 the government's behalf in the case, including the
11 police. And that's a direct quote.

12 With that, I believe the case law clearly says
13 it's imputed to them, anything that's in the police
14 department's possession is imputed to the
15 prosecutors. And I know it's very onerous and,
16 certainly, a request that requires a lot of work.
17 Fortunately, the solicitor's office has a great
18 wealth of resources, great number of people to work
19 on the cases.

20 With that, Your Honor, his due process rights
21 to present a complete defense and to be ready to
22 make sure that this trial is fair, we have to
23 request this evidence because the credibility of the
24 witnesses in this case is key; it's vital to the
25 defense.

1 **THE COURT:** What do you think it's going to
2 say? I mean, give me a hypothetical. I don't
3 understand. I mean, do you think the police are
4 going to write the guy and say, all right, look,
5 you're our best witness and don't you come to court
6 lying like you normally do? Is that what he's going
7 to say?

8 **MR. PHILLIPS:** Not direct e-mails to the
9 witness, but --

10 **THE COURT:** That's what I thought you said, the
11 investigator's e-mail to the witnesses.

12 **MR. PHILLIPS:** Regarding the witnesses. Let me
13 rephrase, e-mails about the witnesses. They
14 wouldn't be e-mailing directly with the witnesses.

15 **THE COURT:** Well, that's what I thought you
16 were saying. And I was thinking, why can't you have
17 that?

18 **MR. PHILLIPS:** I'm sorry for the -- I apologize
19 for the -- if they did write a e-mail to the
20 witness, I absolutely want that.

21 **THE COURT:** Well, that's what I thought you
22 were asking for. Did I misunderstand that?

23 **MR. PHILLIPS:** So to clarify -- I apologize for
24 the confusion -- if there is an e-mail from an
25 investigator to a witness, I absolutely want that.

1 But if there's an e-mail from an investigator
2 talking about the witness about their investigation
3 in the case -- in this case, I think it's safe to
4 assume there's a witness that the State will have
5 that will testify that Mr. Hart is the shooter in
6 this murder case. And this fellow has a long
7 criminal history in dealing with law enforcement.

8 And because this request is not a normal
9 request, I think there is the basis where they might
10 have, with these prior instances of dealing with
11 these individuals involved in the case -- there are
12 so many witnesses in this case -- it would be one
13 where because the request doesn't come about and the
14 investigators know their e-mails have never had to
15 have been turned over before, they could have been
16 very cavalier and candid in what they were writing
17 about. And I think that's where it becomes -- I
18 mean, that's my basis. I know it's a unique
19 request.

20 **THE COURT:** All right. How does the
21 investigators' e-mails back and forth and their
22 opinion as to the believability of the witnesses,
23 how does that get before a jury? Isn't that the
24 jury's job?

25 **MR. PHILLIPS:** Right. So as far as that being

1 pure speculation, that's true and wouldn't
2 necessarily be admissible, but --

3 **THE COURT:** I mean, you know, if one of the
4 e-mails said, you know what a lying SOB he is, that
5 couldn't come in front of the jury, that's your job.

6 **MR. PHILLIPS:** But that's the context of one
7 sentence. If there was an explanation provided with
8 -- I mean, that's why we have the rule of
9 completeness, it's not in a vacuum of this one
10 sentence. If there was -- if that's in response to
11 something that was done in the investigation or is
12 followed up -- I mean, that's the whole thing, it's
13 impossible to know the unknowable. I mean, I'd have
14 to see the e-mails to know what -- I mean, you know,
15 we had a political scandal about this and it's --
16 you don't know what's in them. I mean, that's, you
17 know, that's the thing, I don't -- we don't know.

18 So, again, with -- you'll see in Defense
19 Exhibits Number 3 and 4, this request was made in
20 Richland County. And with that, in Richland County,
21 they ultimately came to an agreement and did a
22 consent order before the Honorable Knox McMahon.
23 And they agreed to turn over -- they used a special,
24 like, case management system for the sheriff's
25 department where they were able to, I believe,

1 search for this -- or relevant terms. And they
2 provided, in electronic form, these e-mails to the
3 defense attorney.

4 So it has been done before. We're not
5 trailblazing before the Court. And the solicitor's
6 office in Richland County did consent to it.

7 And I believe that the consent order that has
8 it as kind of a, almost like, a sealed, confidential
9 type of the order, I think that, that doesn't make a
10 whole lot of sense to me as a defense attorney
11 because I don't know who I could have turned it over
12 to anyway is the way the court limits it in that
13 consent order. But I have provided that to the
14 Court to give some type of basis. You know, it's
15 not controlling, but, certainly, it's persuasive
16 authority that another circuit court judge had dealt
17 with this issue before and has ruled that it is
18 discoverable information.

19 And I'm willing to limit the scope solely to
20 witnesses. In that request, it is a wide cast net
21 of every piece of electronically stored information.
22 I think it would be impossible for me to be able to
23 review that much prior to trial, but it has been
24 done before, Your Honor. This wouldn't be the first
25 time.

1 Again, based on the law that's cited in my
2 supplemental discovery motion and, of course, the
3 law that was requested, why it's necessary and vital
4 to the defense, I think is paramount in this case.

5 Of course, in dealing with the issue of whether
6 the e-mails were deleted, because it -- it was
7 indicated to me that e-mails have been deleted, I
8 would then have to ask for, again, what -- the
9 hearing we just had, an independent review and
10 request funding for a forensic examination. We've
11 got to be able to determine when e-mails were
12 deleted, how, when, where, why and be able to build
13 -- for me to cross-examine the officer. So I know
14 that's a lot going on in one motion, Your Honor, and
15 I'll certainly sit down and be able to reply after
16 the State responds. Thank you.

17 **THE COURT:** Let's hear what Mr. Graham's got to
18 say.

19 **MR. GRAHAM:** Your Honor, if I can, I have two
20 cases that I would like to pass up to the Court..
21 It'll be State versus Heyward Bryant, both the Court
22 of Appeals and the Supreme Court case from 1992.

23 I guess, for starters, Your Honor, for
24 clarification, Defense Exhibit 1 is a ten-page
25 motion. And I believe that there are 20 -- 20

1 specific requests for information, some including
2 inventory of computers, to that -- down to that
3 level, and I think maybe even forensic copies are on
4 there.

5 And my understanding is that all of Defense
6 Exhibit 1 is being withdrawn except for a specific
7 request for e-mails related to witnesses from the
8 Lexington County Sheriff's Department. So I think
9 we're going to focus it down to that issue.

10 **MR. PHILLIPS:** Right. And then all the other
11 catchalls about any other additional subsequent
12 statements that are not related to ESI. But, yes,
13 as far as electronically stored information, I'm
14 willing to concede to limit my scope to e-mails
15 related just to witnesses in the hopes that the
16 motion is granted.

17 **THE COURT:** And this would be e-mails,
18 interdepartmental e-mails?

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

20 **THE COURT:** Is that what you understand --

21 **MR. GRAHAM:** That's my understanding of where
22 we're at now is he's trying to get the Lexington
23 County Sheriff's Department e-mails. And he would
24 propose to the Court, I believe, particular search
25 terms to have them go look for a particular witness'

1 name, to scour their e-mails for everybody in the
2 department looking for anything related to that
3 person.

4 **THE COURT:** What do you think about all of
5 that?

6 **MR. GRAHAM:** Addressing -- Sergeant Spivey,
7 Shawn Spivey, with the Lexington County Sheriff's
8 Department is the lead investigator on this case.
9 When Mr. Phillips and I talked earlier in the week,
10 I thought this hearing was going to be on Friday.
11 It's spring break for him. Mr. Spivey said that he
12 could cut his vacation short and be here on Friday
13 if we needed him to be. Yesterday this got changed
14 to today and I didn't try to get Mr. Spivey here,
15 but I told Mr. Phillips that we can have him
16 available at a subsequent hearing if we need to go
17 into that.

18 My understanding, and I found out from
19 Mr. Phillips, was that he had sent a preservation
20 letter over in February for e-mails. I asked
21 Sergeant Spivey, Do you have any e-mails? And he
22 said, and this is what I was told, was that back in
23 November of last year, one of his co-worker's
24 computers had crashed and that the reason that it
25 crashed, he was told from the IT people or from that

1 officer or someone, was because of too many e-mails
2 on his computer. So Sergeant Spivey went and
3 deleted his trash. I don't think he deleted every
4 e-mail, but he deleted his trash.

5 So it is possible that some e-mails that
6 Mr. Phillips is looking for may have been deleted,
7 but it would be unintentional. And Sergeant Spivey
8 is willing to get up on the stand, if needed, to
9 discuss when he -- what he deleted and when he
10 deleted it. And we can do that at a different time.

11 I guess my start on this, Your Honor, is that
12 Richland County has done this. Apparently,
13 Mr. Phillips got this motion from hearing about Dick
14 Harpootlian being successful in getting e-mails, and
15 that's what he passed up as Defense 3 and Defense 4.

16 What that was was a similar motion to Defense
17 Exhibit 1 that was filed. They had a hearing
18 similar to what we did. And I'm guessing, at this
19 point, that Judge McMahon said, What do you want?
20 It came down to e-mails again. And Judge McMahon
21 said, What can we work out? And the State
22 consented. And that part I confirmed yesterday in a
23 conversation with the assistant solicitor in that
24 case. Here, we're not consenting, and that's why
25 we're having this hearing.

1 The question then comes down to is, is this
2 discoverable? And discovery is controlled in South
3 Carolina and in the federal system too. Here, it's
4 Rule 5. In the federal system, I think it's Rule
5 26. And then you have Brady and its progeny and
6 everything that comes after that.

7 So if you look at Rule 5(a)(2), it talks about
8 what is not subject to disclosure. It says it does
9 not authorize the discovery or inspection of
10 reports, memorandum or other internal prosecution
11 documents made by the attorney for the prosecution
12 or other prosecution agents in connection with the
13 investigation of the case.

14 And what that means is that officers' notes are
15 not discoverable. E-mails would be very similar to
16 officers' notes. We turn over witnesses' statements
17 when I get them. I turn over supplemental reports.
18 The officers, I believe by their agency, are
19 directed to write supplemental reports. When we get
20 those, we turn them over.

21 So if you look -- Rule 5 itself says that notes
22 -- internal prosecution documents by the agency are
23 not discoverable.

24 State versus Bryant, which is a Court of
25 Appeals case, which I did, I believe, hand up to

1 Your Honor, which is 304 S.C. 488, 1991, had this
2 question at least related to officers' notes. And
3 it very clearly says under headnote one of one,
4 Production of handwritten notes was not required by
5 Rule 5. It goes on to say that notes are clearly
6 internal prosecution documents and, therefore, not
7 covered by Rule 5. And our stance is that e-mails
8 interdepartment are the same as notes and they're
9 not discoverable.

10 Now, there is a federal rule, which is 26.2,
11 incorporating what is known as a Jencks Act which
12 mirrors our 5 -- Rule 5(a)(2), says the same thing
13 over and over again, officers' notes are not
14 discoverable.

15 The question then comes down to, what does
16 Brady require us do? There is a South Carolina case
17 called State versus Bryant. So that's the Supreme
18 Court version of that one. They reverse and remand
19 it; however, they do it on a Brady issue.

20 And what they say is, they're quoting United
21 States versus Ritchie, which is -- or, excuse me,
22 Pennsylvania versus Ritchie, which is 480 U.S. 39,
23 1987, U.S. Supreme Court. And it says, We conclude
24 that under Ritchie, the state must produce
25 undisclosed evidence for the trial judge's

1 inspection, which is what Mr. Phillips is asking for
2 here, once a defendant has established a basis for
3 his claim that contains material, exculpatory or
4 impeachment evidence.

5 So it's not just a request, he has to show that
6 it's material, exculpatory or impeachment. And
7 materiality actually runs to the level of it, would
8 it change a difference of the outcome of the case if
9 it was disclosed?

10 So then it continued on in Brady. He made a
11 specific request for documents. And I think under
12 Giglio, if I'm pronouncing it right, Giglio, which
13 is one of the Brady cases that comes after it, it
14 says, When a specific request is made, we shouldn't
15 ignore it.

16 And so based on a specific request, my
17 co-counsel and I sat down and had e-mailed every
18 member of the sheriff's department that we could
19 find whose name is mentioned in this case. And what
20 we did was reminded them what Rule 5 requires,
21 reminded what Brady says and asked them to go
22 through their memory, their notes and their e-mails
23 and to turn over anything that they know is
24 impeachment evidence, which is what Mr. Phillips is
25 looking for.

1 He's quoting Kyles versus Whitley saying that
2 an individual prosecutor has a duty to learn. We're
3 trying to learn. And we have taken these steps to
4 do that.

5 In addition to that, every case that I prepare
6 for trial, I try to meet with every officer that
7 exists. If I see their name, we try to meet with
8 them. When I meet with them, I look for Brady
9 information. If I find it, I turn it over. I'll
10 write a letter to Mr. Phillips. I've done it case
11 after case after case that I prosecuted saying, I
12 met with officer so and so today and I learned this
13 as potential Brady information; I'm turning it over.
14 I think that's what my duty to learn is.

15 I don't think my duty to learn has anything to
16 do with me going over and asking each officer for
17 their handwritten notes and reviewing them. I don't
18 think my duty to learn has anything to do with me
19 getting a copy of e-mails and scouring through them
20 or turning it over to the Court and asking you to do
21 it in looking for impeachment evidence.

22 Brady, I'm not trying to ignore Brady. It's
23 just, where does this stop? If you ask for e-mails
24 in this case and it's the proper thing to do, then
25 e-mails are required in every case whether it's a

1 simple possession of marijuana. If Brady requires
2 that, then Brady requires that, but it doesn't. It
3 can't.

4 And there's no case that Mr. Phillips can bring
5 to you that says under Brady in discovery, the State
6 has a responsibility to go collect e-mails or that
7 the court has the authority to go order those
8 e-mails collected. And I guess that's our position
9 is where -- if this is proper, where does it stop?

10 I don't think that -- Rule 5 clearly doesn't
11 allow for this. Brady doesn't allow for it, for
12 this kind of fishing expedition. If I find it, I
13 turn it over, but there's nothing that says that the
14 court has to or that I have to or that Mr. Phillips
15 and his client are entitled to go fishing in
16 officers' e-mails or their handwritten notes. And
17 that's the basis for our objection, Your Honor.

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

19 In response, as far as not finding a case on
20 point, technology obviously changes things on a
21 daily basis.

22 **THE COURT:** It certainly does.

23 **MR. PHILLIPS:** Right. There's only one way to
24 have cases on point and that's to have issues
25 brought before the court, and that's what we've

1 done. This is a new request. I've only known of
2 one other request where this request was made and it
3 was granted, consented to. In this case, it's not
4 consented to. Regarding --

5 **THE COURT:** He has made the concession that
6 he's asked, do you have any, can I see them. And so
7 he can -- he's looking. That's something. If he
8 finds something, I think that would be -- a
9 respectable lawyer would tell you that. And I think
10 Mr. Graham will do that.

11 **MR. PHILLIPS:** And I'm not trying to impugn
12 him. He's treated me with utmost respect and I find
13 him to be incredibly ethical. That is not what the
14 defense is raising.

15 **THE COURT:** I understand. But he has, since
16 you made him aware, I'm looking for some e-mails
17 that may have impeachment evidence, he's now gone
18 and asked -- apparently, maybe it's still in the
19 process, I don't know.

20 Mr. Graham, is that fair?

21 **MR. GRAHAM:** That's correct. I've received
22 answers from some of the officers but not all of
23 them.

24 **THE COURT:** Okay. So that's in the works.

25 **MR. PHILLIPS:** So -- the other response would

1 be, in a civil case, if this case was about money, I
2 can get the e-mails without a problem if I was suing
3 the sheriff's department. This man's life, this
4 charge faces life in prison. It's not about money;
5 it's about the ultimate price that he could die in
6 prison as the ultimate punishment. Because of that,
7 in a civil case, these e-mails would be
8 discoverable. I don't know how we can say that
9 they're not discoverable when a liberty interest is
10 at stake.

11 Again, also under FOIA, unless they had a very
12 specific reason to object, these e-mails would be
13 subject to FOIA. You can absolutely FOIA text
14 messages from a government worker's phone, e-mails
15 from --

16 I mean, the Attorney General's Office, they
17 were able to FOIA that one staff member's e-mails
18 showing where he was talking about political stuff
19 in that interesting case in Columbia about political
20 stuff dealing outside of the scope of his duties as
21 a senior assistant or deputy attorney general.
22 Newspapers were able to get that. And that's
23 certainly a top law enforcement agency or
24 prosecutorial agency and his e-mails were
25 discoverable.

1 You're saying that officers' e-mails related to
2 witnesses in a murder case are not relevant? I
3 mean, that's kind of my thing, and I'm not --

4 **THE COURT:** I'm not certain that FOIA is
5 allowed to do an investigation or something. I
6 don't think that's true, is it? I'm not aware of
7 that.

8 **MR. PHILLIPS:** I believe -- I think while it's
9 pending. But at this point -- I mean, I guess they
10 can make the argument, because this case hasn't been
11 to trial, it's not discoverable yet under FOIA or
12 it's not -- can be released. But after this case is
13 over, somebody can FOIA the e-mails. I don't know
14 what objection they can make that it was privileged
15 after the case was over, but after the case is over,
16 it's too late for Mr. Hart.

17 And as far as the federal rules, they don't
18 apply in this court at all, federal rules, criminal
19 procedure. So with that, we certainly stand on our
20 ability to present a meaningful defense.

21 The United States Supreme Court said the
22 opportunity to present a full and complete defense
23 includes defendant's privilege to request and obtain
24 material evidence from the State. And I know the
25 main issue is, well, how do we know what's material?

1 And I understand that.

2 Going to Washington versus Texas --, this isn't
3 cited in my -- this is actually a new thing that's
4 not cited in my brief. But in Washington v. Texas,
5 the United States Supreme Court said -- explained
6 that the Sixth Amendment right to compulsory process
7 is, in plain terms, the right to present a defense,
8 the right to present the diversions -- defendant's
9 version of the facts, as well as the prosecution's,
10 to the jury so it may decide where the truth lies,
11 and the right is a fundamental element to due
12 process of law.

13 I mean, that's -- we can't present our defense
14 fully without knowing that there might be something
15 sitting there.

16 And one of the things that the prosecutor and I
17 discussed was the fact that if it somehow came out
18 later, say through a FOIA subpoena, however it came
19 out in a subsequent case, that this -- these e-mails
20 did exist even if an officer said they didn't exist
21 because they didn't turn them over, they just said,
22 no, they don't exist, but they were there, it's too
23 late for the criminal case.

24 We certainly -- again, I'm not trying to say
25 that the prosecutor's doing anything wrong. That is

1 not the case at all.

2 **THE COURT:** You just want to read the notes.

3 **MR. PHILLIPS:** That's it. And I think it's
4 common place to turn over handwritten notes. In the
5 hearing we just had, the prosecutor's office turned
6 over handwritten notes. That's pretty common place.
7 So e-mails wouldn't be any different than
8 handwritten notes. And, certainly, based on --
9 again, I won't cite anymore law. It's all there for
10 you, Your Honor, and the constitution -- and I
11 already said it once, so --

12 **THE COURT:** When is this scheduled for trial?

13 **MR. PHILLIPS:** May 22nd?

14 **MR. GRAHAM:** May 22nd, Your Honor.

15 **THE COURT:** Let me read over this stuff this
16 afternoon. I'll try to decide something this week.

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

18 **THE COURT:** Because I've got the morning open
19 also.

20 **MR. PHILLIPS:** And the last thing -- I know I'm
21 -- blowhard. So with the deleted e-mails, that
22 might be a subsequent hearing as well. Just don't
23 want to seem like I'm beating a horse. But thank
24 you, Your Honor.

25 **THE COURT:** And, Mr. Graham, if you find --

1 based upon your request, if you find anything that's
2 -- you believe will be discoverable, I'm confident
3 you would provide that over.

4 MR. GRAHAM: No question, Your Honor. If I --
5 in talking with the officers, if I find Brady
6 information, I'm going to turn it over. I do have
7 my copy of the Supreme Court case of State v. Bryant
8 that I can pass up.

9 THE COURT: Can I make a copy of it?

10 MR. GRAHAM: Yes, sir.

11 THE COURT: Anything else?

12 MR. PHILLIPS: And I have no hesitation if he
13 finds it, he will give it to me.

14 MR. GRAHAM: Nothing else from the State, Your
15 Honor.

16 THE COURT: All right. I'll let y'all know.

17 MR. PHILLIPS: Thank you, Your Honor.

18

19 END OF PROCEEDINGS

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23

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C E R T I F I C A T E

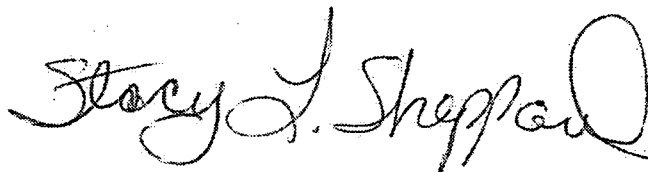
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 12th of April, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 11, 2017



Stacy L. Sheppard, RPR
Circuit Court Reporter

1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions
3) Indictment No.: 2017-GS-32-01421
4 State of South Carolina,)
5 Plaintiff,)
6 vs.) Transcript of Record
7 John Christopher Hart,)
8 Defendant.)
9

10 May 8, 2017
11 Lexington, South Carolina

12 BEFORE:

13 The Honorable Eugene C. Griffith, Junior, Judge

14
15 APPEARANCES:

16 Robbie McNair, Assistant State Solicitor
17 Attorney for the State

18
19 Dayne Phillips, Esquire
20 Attorney for the Defendant

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EXHIBITS

NO.	DESCRIPTION	ID	EVDS.
NONE			

1 Thereupon, the following proceedings were had,

2 THE CLERK: John Hart.

3 THE COURT: Mr. McNair, tell me you have the case
4 name for the court reporter?

5 MR. McNAIR: Yes, sir. This is State v. Hart. He's
6 charged with murder. Indictment number 2014-GS-32-01421.
7 This is Mr. Phillips. This is currently set for trial
8 May 22nd. This is Mr. Phillips' motion for continuance.

9 THE COURT: All right. Mr. Phillips, let me hear
10 from you.

11 MR. PHILLIPS: Good afternoon, Your Honor. If I may
12 approach and hand you what's already marked as Court's
13 exhibit number 1. This is the motion for continuance
14 that I supplied to Your Honor.

15 THE COURT: Yes.

16 MR. PHILLIPS: Yes, Your Honor, last night via
17 e-mail as well as the Solicitor's Office. They have been
18 provided a copy. In reference to Court's exhibit number
19 1, the motion for continuance, the defendant does
20 respectfully move for a continuance of the scheduled
21 trial date on May 22nd. Again, I know we had this
22 discussion in our last hearing.

23 Quickly for the record purposes, preservation of
24 error -- I know. I know. I see you laughing already.
25 This motion is made pursuant to the Fifth, Sixth,

1 Fourteenth Amendments to the United States Constitution
2 and Article 1, Sections 3 and 14 of the South Carolina
3 constitution. Essentially that in enacting this he does
4 have these guaranteed protections to the right to a fair
5 trial, effective assistance of counsel, substantive
6 procedural due process, compulsory process and the
7 opportunity to present a complete defense as Your Honor
8 well knows.

9 In this case just to reiterate the procedural
10 history Mr. Hart was arrested on April 20th of 2013 and
11 charged with murder. He was subsequently indicted on
12 June 9th, 2014. I was appointed on this case on July
13 18th, 2016. I was the fourth attorney as has been
14 brought up in previous hearings to the case and when I
15 received it, an investigator had not been hired on the
16 case. No investigative work had been done on the case,
17 at least none that was in the file that was provided to
18 me and there were no reports. We had the Schmerber
19 hearing on January 5th, 2017 and then we had originally
20 his trial scheduled, I believe, in March of this year and
21 in February the Solicitor's Office continued the case due
22 to a conflict and that continuance, we never appeared
23 before Your Honor, I don't think, we never had a hearing
24 on it but they were able to continue the March trial
25 date.

1 Then on April 12th we had the hearing on my motion
2 for supplemental discovery and an inspection of evidence
3 and then, of course, I have indicated to your law clerk
4 or your former law clerk that I had been in a week long
5 trial here in Lexington County between April 24th and
6 28th, an attempted murder case. Again, he's scheduled
7 for trial on May 22nd. The new discovery that I have
8 received in this case since that motion for supplemental
9 discovery, Your Honor, which dealt with a e-mail issue,
10 this is all unrelated to that. On April 12th after that
11 hearing I was provided with additional discovery.

12 Again, once that hearing was concluded -- And I have
13 listed out the additional discovery. It was the SLED and
14 fire service reports, a statement from Michael Young, a
15 phone summary.. The statement from Michael Young is very
16 critical because it's a new witness that had not been
17 mentioned in the discovery which directly implicates
18 Mr. Hart in the crime. He's a critical witness because
19 it starts to bolster the State's theory of the case. It
20 goes directly to a part that was kind of missing in the
21 case as far as witnesses are concerned. There were
22 supplemental reports that were provided in the statement
23 from Jeremy Washington who is in federal prison in
24 California. That is another witness that is critical,
25 fits in a part of this, you know, the State's theory that

1 was missing and now that they have these two jailhouse
2 informants being able to testify that is coming out
3 almost four years later, virtually four years later, this
4 was just provided to defense the day of that hearing on
5 April 12th.

6 On April 20th I believe via e-mail I did receive a
7 case supplemental report as well as, again, the FBI
8 proffer of Jeremy Washington and then recently on May 3rd
9 I received the following discovery via e-mail and that's
10 SLED DNA analysis report dated July 27th, 2015, SLED
11 serology report dated November 10th, 2014, a report from
12 the police department that was not dated but if you read
13 the report you can tell it came after March 1st of this
14 year, and then the supplemental report with a meeting
15 from, I believe, Officer Flagger and the date ranges in
16 that was from March 6th to May 2nd of this year.
17 Discovery not provided to defense that was included in
18 the motion, I believe a lot of it was provided to me just
19 prior to this hearing. Just to read it out. Prior to
20 this hearing I was provided with a legible copy of a
21 handwritten letter that is supposed to be involved with
22 Jeremy Washington, the SLED chain of custody report as
23 well as the Lexington County certified chain of custody
24 report. I don't believe there is anything additional
25 that was provided. That was everything from today.

1 MS. MARTIN: Yes.

2 MR. PHILLIPS: With that being the case the only
3 thing that I know I'm missing is the copy of the
4 handwriting exemplars that were provided through the
5 Schmerber hearing to be able to provide for an
6 independent review. I do not have those handwriting
7 exemplars yet. I think it can be provided to me in
8 speaking with the Solicitor.

9 MR. McNAIR: I believe they were e-mailed this
10 morning, Your Honor.

11 THE COURT: These are exemplars your client gave?

12 MR. PHILLIPS: Right. But they are in the custody
13 of the State. I don't have them. I need them for an
14 handwriting expert review.

15 THE COURT: That seems very plausible.

16 MR. PHILLIPS: Yes. So with that, Your Honor, in
17 conducting this as you will see in the case, defense
18 counsel, myself, is, of course, asking for additional
19 time to conduct a reasonable investigation. As I have
20 indicated in the motion, this case has somewhere between
21 100 to 200 potential witnesses. There's over a thousand
22 pages of discovery. Hundreds of pictures.

23 Obviously I doubt the State will call 100 to 200
24 people. I understand that but in doing my due diligence
25 of a reasonable as the law requires under Strickland and

1 Wiggins and McKnight and Loundes I must conduct a
2 reasonable investigation based on the evidence and that
3 is a lot to do in the eight months that I have had the
4 case when the Solicitor's Office has had it for four
5 years.

6 Part of my equity argument would be that the
7 Solicitor's Office when it wasn't convenient for them was
8 able to get a continuance in February. Now here we are
9 asking for the same request as a defense and the
10 difference would be in February it's just shy of four
11 years and the State still was able to get a continuance.

12 As I have listed in my motion despite being
13 unconstitutional, the Eleventh Circuit Solicitor's Office
14 still retains exclusive control of the criminal docket
15 and that's in direct violation of State v. Langford.

16 Now, I know Your Honor as the chief administrative
17 Judge has been working on this case exclusively for quite
18 some time. Again, going back to the equity argument of
19 the Solicitor's Office having that ability to get the
20 case continued without a hearing in February is
21 essentially saying if they were allowed that extra time
22 for whatever reason that was not provided, their
23 conflict, then certainly our conflict is the fact that I
24 still have to do additional investigation, preparation to
25 ensure the defendant's right to a fair trial and, of

1 course, effective assistance of counsel.

2 With that being the case, Your Honor, I believe that
3 there was also, there's 14 videos in the case. I believe
4 we were able to handle the jail phone call issue. There
5 were over 300 jail phone calls. I believe the
6 Solicitor's Office has pinpointed to just one jail phone
7 call so I certainly appreciate that. That helps
8 tremendously in listing the review.

9 In the new discovery that was provided there is an
10 individual that is in federal prison in California. The
11 Solicitor's Office has indicated to me that they are
12 bringing him en route but, of course, I would need to
13 have my investigator to see whether he would be willing
14 to speak with us since he's a critical witness. So
15 that's obviously one of the, certainly the main crux of
16 the request for a continuance as well as the fact that I
17 received just recently on May 3rd this DNA analysis
18 report. In the report it shows that the DNA that was
19 recovered under both the right and left hand fingernail
20 scrapings of the victim come back as there was no DNA
21 hits or CODAS matches but they were unable to exclude
22 what they believe to be at least two male DNA subjects.

23 With that being the case and having this late DNA
24 analysis report that was back from 2015 and receiving it
25 on the eve of trial, it's one of those things where as

1 defense counsel in conducting this reasonable
2 investigation certainly under Von Dohlen and if you look
3 at the Fourth Circuit case of Eddie Elmore I need to get
4 an expert to independently review it to make sure if
5 there are any issues regarding that. If the State seeks
6 to present this expert witness or this testimony or this
7 evidence during the trial, I need to be able to properly
8 confront it, cross examine it and know it's reliability
9 and accuracy.

10 THE COURT: Well, let me ask you this: How is it
11 that you have a trial date in March and instead of a
12 continuance that you were ready and now here it is two
13 months later and you're not ready because you have got
14 several pieces of additional evidence? How do you have
15 too much work left to do when allegedly you were prepared
16 for March, it got kicked back till late May, some new
17 stuff has come out, that's not been admitted or not yet,
18 certainly you have an argument for late discovery, you
19 can suppress it because it caught you by surprise, you've
20 got all those arguments still and you have not made those
21 today so I'm not saying you have to. That's for trial
22 time. So you're not -- I'm not coming up with
23 prejudicial comments as to those arguments. But how are
24 you ready in March and not ready in May when it's just
25 some additional stuff that's been kicked out?

1 MR. PHILLIPS: When we initially met and had that
2 hearing, I'm trying to remember which month it was in the
3 fall, our goal was to be ready by March if I remember
4 correctly, and I was still plugging away and then the
5 case got continued. Obviously I can't say for certain
6 whether at that time I had any continuance motion
7 drafted. This is being, in due candor to the Court --

8 THE COURT: You didn't jump up and down when they
9 said they were continuing it. It didn't bother you a
10 whole lot.

11 MR. PHILLIPS: Absolutely not because here I am
12 still trying to plug through this voluminous amount of
13 discovery. In allowing them to have this continuance,
14 this is the Eleventh Circuit Solicitor's Office, they
15 have multiple attorneys, Lexington County Sheriff's
16 Department, case managers, investigators that all work
17 full staff. You know, I work for a two person law firm
18 and I'm one of them and I do only the criminal defense in
19 the office. So this case, there's no other lawyers on
20 the case. There's a law student that's helping pro bono
21 randomly when she can help me go through this and prepare
22 the case.

23 THE COURT: My law firm was half as big as the one
24 you work in so I understand.

25 MR. PHILLIPS: So with that being the case certainly

1 we would request and we believe that fundamental fairness
2 and for me to provide this effective assistance of
3 counsel and conduct a reasonable investigation that I
4 would need more time. I certainly don't want to belabor
5 the points. They are all provided in the motion but
6 based on this I think to provide the defense that I know
7 Mr. Hart deserves I need more time. Thank you, Your
8 Honor.

9 THE COURT: All right. Mr. McNair, you want to put
10 anything on the record?

11 MR. MCNAIR: I can't really address whether or not
12 he needs more time to prepare. I will tell you most of
13 the discovery that we have provided was just duplicate
14 information that we have re-sent with some new
15 information. The SLED DNA report, me and Mr. Graham felt
16 like we e-mailed that to Mr. Phillips. Obviously he
17 doesn't have it. It wasn't in the discovery provided to
18 him so I can't comment to that.

19 THE COURT: When you've got multiple lawyers and
20 reappointments and stuff, that's happened before. Stuff
21 falls through the cracks.

22 MR. PHILLIPS: Right. And I just know from the
23 e-mail I received on May 3rd, it said provided is the new
24 discovery.

25 THE COURT: All right. My inclination is to deny

1 the motion and that's kind of where I'm sitting. If, and
2 I'll probably decide by tomorrow, all right, if I decline
3 the motion to continue it and you need any extra funds,
4 you need to get on that and I'll be very available for
5 you for that purpose since I'm the chief administrative
6 judge on that end, too.

7 MR. PHILLIPS: Yes, Your Honor.

8 THE COURT: Am I scheduled to hear this since I'm
9 marshalling through since --

10 MR. PHILLIPS: That had always been the plan.

11 THE COURT: Is that right? Okay. So that helps me
12 understand the discovery process.

13 MR. PHILLIPS: Absolutely.

14 THE COURT: Being the presiding judge it helps. I
15 wish we had more of that, the assigning judge and then
16 keep the case. It makes it easier because you kind of
17 get the flavor essentially of what's going on, who's
18 playing fair and who's not and it just helps. I'm glad
19 I'm the trial judge. That suits me fine because I think
20 it would be easier for me than some other judge that's
21 not quite warm to the totality of the --

22 MR. PHILLIPS: And it does make it difficult trying
23 to explain to somebody for the first time on a Monday
24 morning what's happened over the course four years.

25 THE COURT: Absolutely. I'll let you all know

1 before lunch tomorrow what I'm gonna do. If you need
2 anything in my ruling, let me know.

3 MR. PHILLIPS: Yes, Your Honor. And may I approach
4 real quick on that matter of the funding?

5 THE COURT: Sure.

6 WHEREUPON, THE HEARING WAS CONCLUDED.
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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

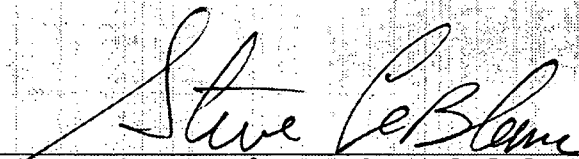
3 (COUNTY OF LEXINGTON,)
4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 8th day of May, 2017.

11 I FURTHER CERTIFY that the forgoing 14 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 10th day of February, 2018.

17
18 
19 _____
20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.
23
24
25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 State of South Carolina Court of General Sessions
2 County of Lexington Eleventh Judicial Circuit

3
4 State of South Carolina,) Transcript of Record
5 Plaintiff,) 2014-GS-32-01421
6 vs.)
7 John Christopher Hart,)
8 Defendant.)

9
10 May 22nd - 26th, 2017
11 Lexington, South Carolina

12 B E F O R E:

13 The Honorable Eugene C. Griffith, Jr., Judge, and a Jury

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

16 D. Shawn Graham, Deputy Solicitor
17 Robert E. McNair, Assistant Solicitor

18 On behalf of the State of South Carolina

19 Dayne Phillips, Esquire

20 On behalf of the Defendant

21

22

23

24

25

Stacy S. Johnson
Circuit Court Reporter

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1 (Whereupon, the following proceedings were held on
2 May 22, 2017, beginning at 9:19 AM.)

3 (Court's Exhibit Number 1 was marked for
4 identification.)

5 (Court's Exhibit Number 2 is marked for
6 identification.)

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

9 (Whereupon, jury rollcall was conducted.)

10 (Recess taken.)

11 (Whereupon, the following proceedings were held on
12 May 22, 2017, beginning at 10:38 AM.)

13 **BAILIFF:** All rise.

14 **THE COURT:** Y'all be seated.

15 (Whereupon, the jury panel enter the courtroom at
16 10:39 AM.)

17 **THE COURT:** All right, folks. We're ready to call
18 the first case to trial. Solicitor, call your case.

19 **MR. GRAHAM:** Thank you, Your Honor. The State calls
20 Indictment 2014-GS-32-01421, the State versus John
21 Christopher Hart, an indictment for murder.

22 **THE COURT:** All right. Ladies and gentlemen, the
23 State's called the Indictment 1421 from 2014 versus John
24 Christopher Hart. Mr. Hart's in the courtroom represented
25 by his lawyers. He's pled not guilty to this indictment.

1 And, ladies and gentlemen, I'm gonna explain some things to
2 you as we go, but most particularly the indictment which
3 was just handed to the Court is a notice document more or
4 less. It's a notice to Mr. Hart of what to be prepared to
5 come into court to defend himself against. It is not proof
6 of anything. They are mere allegations which the State
7 must prove beyond a reasonable doubt.

8 And so I'm gonna give you instructions as the jury
9 selection process goes through. I'll give you instructions
10 if you're selected on the jury as to some of the procedures
11 and processes the law requires the Court to do. I'll give
12 you instructions on the law before the trial starts, during
13 the Court's hearing of the case, and at the very end. But
14 most importantly I need you to remember that my goal this
15 morning would be to select twelve jurors and a couple of
16 alternates to sit and hear this case and I want twelve
17 people plus the alternates, I'm gonna say fourteen, who are
18 good listeners who are not connected to the case in any
19 fashion that would give them pause to think they could not
20 be fair and impartial. I want fourteen good jurors who can
21 be fair and impartial to both sides and listen to the
22 testimony and the evidence presented, consider the case,
23 follow the instructions of the Court and render a unanimous
24 verdict at the appropriate time, so that's what I'm looking
25 for.

1 Now everyone must understand that the Court, and that
2 is the presiding judge, is in charge of instructing the law
3 as it stands currently in South Carolina and so I caution
4 jurors to try to anticipate what the law is or have an
5 understanding of what the law might be because they've seen
6 it on TV, read it on the Internet, heard it on the street
7 corner. It's my job to keep up with the law as it stands
8 right now and the law changes a little bit here and there
9 when opinions come out of the Supreme Court and when new
10 statutes come out of the General Assembly and are signed
11 into law; thus, it's my job to instruct jurors on what the
12 law is and so I always have to ask jurors if you have a
13 misunderstanding of what the law is and it conflicts with
14 what I instruct, you must accept it as I instruct it and
15 disregard your misunderstanding of what the law is in South
16 Carolina; thus, I'll remind you of that repeatedly during
17 this selection process as well as during the trial itself.

18 All right. What I'm gonna do, I'm gonna -- is that me
19 making that noise?

20 **THE CLERK:** Yes, sir.

21 **THE COURT:** Somebody took my little fuzz ball off my
22 mic. I'm sorry I was making all that racket. I'll try
23 to speak more clearly. Is anybody having trouble or
24 difficulty hearing me even in spite of that distracting
25 noise?

1 All right. Here's what I'm gonna do. We're gonna go
2 through an introduction process and I'm gonna allow the
3 solicitor to introduce the parties at his table and then
4 I'm gonna allow Mr. Phillips to introduce his client and
5 the parties at his table and my questions are gonna follow
6 a pattern. Do you know any people introduced? If so,
7 would that relationship create an issue for you to be fair
8 and impartial to both sides? That's how it's gonna go.
9 Then I'll introduce or read a list of potential witnesses
10 and yet, again, do you know any of the potential witnesses,
11 can you be fair and impartial if you have any type of
12 relationship with any of those potential witnesses.

13 Now what -- here's a very important thing. As I ask
14 these questions, sometimes it gets a little bit tedious,
15 but what I don't need -- for instance, I'm gonna give you
16 an example. I don't need too much information from you,
17 this is not my first jury selection. It is the first one
18 today, but not my first one. But what I don't need is for
19 you to give me a long explanation as to why or what you
20 know. I had a gentleman and I didn't realize he went to
21 church with me because he didn't attend regularly and I was
22 holding court in Newberry and we were in civil court and he
23 thought insurance companies were the biggest racket that
24 ever came down the pipe and he stood up and says I know
25 what this is about, this is a car wreck case and insurance

1 companies and they're represented by a bunch of thugs and
2 insurance agents and, you know, went on. I just about had
3 to put him in jail and hold him in contempt to shut him up
4 because that was the kind of case I had was a car wreck
5 case and he wanted to tell me how insurance companies
6 weren't fair. I don't know why he didn't like insurance
7 companies, but he didn't. Anyway, I moved him to a
8 criminal court week.

9 So if any of you don't want to hear criminal court,
10 I'll move you to a civil court week. There is a cure for
11 this. I generally try to get twelve good listeners and two
12 alternates on every jury, so don't try to get out of it by
13 telling me something. I've probably already heard it. I
14 need twelve good listeners for both sides for the sanctity
15 of the court and for the our constitutional rights to be
16 protected. I always tell jurors this also. If you were
17 ever in a situation, a civil case or a criminal case,
18 wouldn't you like good conscientious jurors just like
19 yourself willing to listen and take their time to listen
20 carefully and follow the law and not have some people who
21 don't care? It's the fact that we care is the reason we do
22 it this way and that's why our forefathers who wrote the
23 constitution wrote it this way, so I impart that civic duty
24 upon you.

25 I want to thank you very much for serving as jurors as

1 we go. I try to take good care of my jurors and not impose
2 unreasonable wastes of time. I generally provide hard
3 candy for them to suck on while they listen because that's
4 what I do. But in any event, I think you'll find it very
5 much a learning experience.

6 So now if I ask a question and it's appropriate for
7 you to stand up, let me get your name and juror number and
8 then answer my question, but try to answer it in a yes or
9 no fashion and let me ask the follow up questions and don't
10 blurt out all this nonsense about why insurance companies
11 are a bunch of racketeers because I don't really need that,
12 okay?

13 All right. Starting off, introduce your table,
14 Solicitor.

15 **MR. GRAHAM:** Thank you, Your Honor. I'm Shawn
16 Graham with the Lexington County Solicitor's Office.
17 Robbie McNair is co-counsel with me on the case. This is
18 Sergeant Sean Spivey with the Lexington County Sheriff's
19 Department, Rhonda Robinson, who is a paralegal working on
20 the case with me, Jill Smith, who is an investigator with
21 the Lexington County Solicitor's Office, and Wendy Frazier,
22 who is a victim advocate, is also helping us on this case.

23 **THE COURT:** All right. Mr. Phillips.

24 **MR. PHILLIPS:** Good morning. My name is Dayne
25 Phillips. This is my law clerk, Kaitlyn Pennington, and

1 John Christopher Hart.

2 **THE COURT:** Thank you, sir.

3 All right. Ladies and gentlemen of the jury, is there
4 any member of this jury panel who is related by blood,
5 marriage or close personal friends to any of the parties
6 just introduced? If so, please stand. No one's standing.

7 Has any member of the jury panel ever been represented
8 by any of the attorneys just introduced? If so, please
9 stand. No one's standing.

10 All right. I'm gonna -- I'm gonna read a list of
11 potential -- yes, ma'am, tell me your name.

12 **POTENTIAL JUROR:** I'm sorry. My name is Barbara
13 Ringer. I'm Juror 234. Wendy Frazier was a victim
14 advocate for us.

15 **THE COURT:** Wendy Frazier was your victims advocate?

16 **POTENTIAL JUROR:** Yes, sir.

17 **THE COURT:** Okay. Is she working on this case,
18 Mr. McNair?

19 **MR. McNAIR:** She is, Your Honor.

20 **THE COURT:** Now she used to work for "us", who would
21 you be working for?

22 **POTENTIAL JUROR:** Who me?

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

24 **POTENTIAL JUROR:** My niece died and she was here as
25 the victim advocate for our family on a drunk driving case

1 and my niece died in that.

2 **THE COURT:** All right. How long ago was that case?

3 **POTENTIAL JUROR:** About a year ago. My niece died two
4 years ago and I think it was a year ago we sat right over
5 there, the same courtroom.

6 **THE COURT:** All right. Now the fact that you've been
7 a family member of a victim to a crime, would that create
8 an issue for you being fair and impartial in this case?

9 **POTENTIAL JUROR:** This is a murder case -- oh.

10 **THE COURT:** No, I want yes or no. I don't want a full
11 explanation. I don't need for you to impart all that.

12 **POTENTIAL JUROR:** Can you ask it again, please? I'm
13 so sorry.

14 **THE COURT:** All right. And I'm sorry to cut you off,
15 but --

16 **POTENTIAL JUROR:** That's okay. Ask it again.

17 **THE COURT:** All right. Would the fact that you've
18 been a family member of a victim to a crime such as that
19 create an issue for you being fair and impartial in this
20 case to either side?

21 **POTENTIAL JUROR:** I'm afraid it would.

22 **THE COURT:** All right. Then I'm gonna excuse you from
23 this case and I'll probably transfer -- I may transfer you
24 to a civil week. When did you say it was, July 17th,
25 Ms. Frick?

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

2 **THE COURT:** All right. I think I'm gonna transfer you
3 to the civil week and that way it will be a little better
4 for you to serve. I appreciate your candor with me. All
5 right. You're free to go.

6 **POTENTIAL JUROR:** Thank you.

7 **THE COURT:** All right, folks. Now what I'm gonna do
8 is I've got a list of potential witnesses. I'm gonna read
9 them in groups of about ten and ask you if you're related
10 by blood, marriage, close personal friends to any of those
11 potential witnesses, okay?

12 All right. Potential witnesses in this case. Now
13 I'll tell y'all also there's a lot of potential witnesses.
14 They're -- generally not all the witnesses are called, but
15 out of an abundance of caution I must read any potential
16 witness to make certain that the jury panel -- I don't want
17 to get tomorrow afternoon into the trial and go oh, I just
18 recognized that witness and I don't know if I can be fair
19 and impartial now. That's why I read all of them, okay?
20 They're generally not all called, but in caution they try
21 to name everybody they could potentially think of that
22 could testify.

23 Bill Barkley. Joe Chappell. David Day. Shelby
24 Derrick. Jason Jones. Roy Mefford. William Patterson.
25 Mike Phipps. Michael Remia. Daniel Scherer.

1 Any member of the jury panel related by blood,
2 marriage or close personal friends to any of those
3 potential witnesses, please stand.

4 (Jurors stand.)

5 **THE COURT:** I've got one. Tell me your name, please,
6 ma'am.

7 **POTENTIAL JUROR:** Sylvia Stevens, Juror Number 264.

8 **THE COURT:** Which witness do you know?

9 **POTENTIAL JUROR:** I know a man named David Day. I
10 don't know if it's this David Day.

11 **THE COURT:** All right. This David Day works for the
12 Lexington County Sheriff's Department. Would it be the
13 same David Day?

14 **POTENTIAL JUROR:** I don't think so.

15 **THE COURT:** All right. Now if it were this David Day,
16 the same person, would that affect your ability to be fair
17 and impartial? What's your relationship to Mr. Day?

18 **POTENTIAL JUROR:** A longtime friend, but I haven't
19 seen him in a number of years. I don't think it would
20 affect my ability.

21 **THE COURT:** All right. We'll keep moving then. Thank
22 you very much.

23 Tell me your name, please, sir.

24 **POTENTIAL JUROR:** It's Charlie Ricard, Number 231.

25 **THE COURT:** All right, Mr. Ricard.

1 **POTENTIAL JUROR:** I know a Mike Phipps.

2 **THE COURT:** And Mr. Phipps works for the Lexington
3 County Sheriff's Department and I believe is an
4 investigator.

5 **POTENTIAL JUROR:** No, wrong one.

6 **THE COURT:** Wrong one. Okay. So you can be fair and
7 impartial?

8 **POTENTIAL JUROR:** Yes, sir.

9 **THE COURT:** Very well. Tell me your name, please,
10 ma'am.

11 **POTENTIAL JUROR:** Kristen Corley, Number 46.

12 **THE COURT:** And which witness are you standing for?

13 **POTENTIAL JUROR:** Shelby Derrick.

14 **THE COURT:** Ms. Derrick? You're friends with
15 Ms. Derrick?

16 **POTENTIAL JUROR:** Yes, sir. She is the ex-fiancee of
17 my husband.

18 **THE COURT:** She's what now?

19 **POTENTIAL JUROR:** Ex-fiancee of my husband. We've
20 been married seven years, so.

21 **THE COURT:** Okay. So you know her, but --

22 **POTENTIAL JUROR:** I know of her.

23 **THE COURT:** Would the fact that your husband was close
24 friends to her at that time, would that effect your ability
25 to be fair and impartial now?

1 **POTENTIAL JUROR:** Absolutely not.

2 **THE COURT:** Absolutely not. Thank you very much.

3 All right. Continuing with the potential witnesses,
4 Sean Spivey. Berry Sowards. Tricia Stoner. Renee
5 Strickland. Brian Travis. Matt Young. Cain Mayrant.
6 Candy Kyzer. Beth Holliman. Doug Novak.

7 Any member of the jury panel related by blood,
8 marriage or close personal friends to any of those
9 potential witnesses, please stand.

10 (Juror stands.)

11 **THE COURT:** Tell me your name, please, sir.

12 **POTENTIAL JUROR:** Manuel Flores.

13 **THE COURT:** Mr. Flores, which witness did I call that
14 sounds familiar to you?

15 **POTENTIAL JUROR:** Did you say Brian Turner?

16 **THE COURT:** I said Brian Travis.

17 **POTENTIAL JUROR:** Yeah, I think I worked with him.

18 **THE COURT:** Does the -- the Mr. Travis you know, does
19 he work with you?

20 **POTENTIAL JUROR:** Yes, sir.

21 **THE COURT:** Okay. This Mr. Travis is an officer with
22 the Lexington County Sheriff's Department. Would that be
23 the same gentleman?

24 **POTENTIAL JUROR:** We work among the same --

25 **THE COURT:** Mr. Flores, I'm having trouble hearing you

1 because you're hoarse. Tell me again, Mr. Travis, you work
2 with him now?

3 **POTENTIAL JUROR:** Yes, he works in the same company.
4 I'm not sure if it's him.

5 **THE COURT:** All right. This Mr. Travis is a Lexington
6 County sheriff's deputy.

7 **POTENTIAL JUROR:** Oh, no.

8 **THE COURT:** Okay. A different guy. That's what I
9 thought you said. If you work with him, I don't think he
10 works with you. A different Mr. Travis, which is very
11 common. Anybody else? All right.

12 Additional potential witnesses. Sheree Brown. Thomas
13 Darnell. Tim Grambow. Gaile Heath. Jessica Stowe.
14 Catherine Leisy. Amy Stephens. Kenneth Whitler.
15 Dr. Janice Ross. Brian Gwyn.

16 Any member of the jury panel related by blood,
17 marriage or close personal friends to any of those
18 potential witnesses, please stand.

19 (Juror stands.)

20 **THE COURT:** I've got one. Tell me your name.

21 **POTENTIAL JUROR:** John Winston Holliday, 124.

22 **THE COURT:** And your name's Mr. Winston?

23 **POTENTIAL JUROR:** Holliday.

24 **THE COURT:** Holliday. All right. Which witness did
25 you think you knew?

1 **POTENTIAL JUROR:** Gaile Heath.

2 **THE COURT:** And how do you know her?

3 **POTENTIAL JUROR:** From work.

4 **THE COURT:** What do you?

5 **POTENTIAL JUROR:** I'm an assistant U.S. Attorney. I
6 believe Ms. Heath works for SLED.

7 **THE COURT:** Yes, she does.

8 **POTENTIAL JUROR:** It would not affect my ability to be
9 impartial in this case.

10 **THE COURT:** And what do you do for the U.S. Attorney?

11 **POTENTIAL JUROR:** I prosecute white collar cases.

12 **THE COURT:** Fair enough. But you say you know her
13 through your work at the U.S. Attorney's Office?

14 **POTENTIAL JUROR:** I've used her as an expert witness
15 before.

16 **THE COURT:** Okay. Fair enough. But you can be fair
17 and impartial?

18 **POTENTIAL JUROR:** I can.

19 **THE COURT:** Thank you very much.

20 All right. Additional witnesses. Deputy John Lutz.
21 Meghan Walker. Sammy Bird -- Samuel Bird. Hakim Kapacee.
22 Linda Allen. Ty Rather. Buddy Hoffman. Sean Bebbington.
23 Goldy Singh. Gabrielle Norwood.

24 Any member of this jury panel related by blood,
25 marriage or close personal friends to any of those

1 potential witnesses, please stand.

2 No one's standing.

3 Additional witnesses. Joshua Austin. Jasmine Tell.
4 Briteny Baker. Chance Belton. Jeffrey Behymer.
5 Christopher Cherry. Tevin Deloach. Daniel Everhart.
6 Terrance Flagler. Robert Greenberg.

7 Any member of the jury panel related by blood,
8 marriage or close personal friends to any of those
9 potential witnesses, please stand.

10 No one's standing.

11 Additional witnesses. Crystal Hartless. Gloria Joye.
12 Robert Justice. Gene McLaughlin. Tina Perry. Randy
13 Reynolds. Carl Rohland. Anthony Richardson. Jozelyn
14 Smith. Deandre Staley.

15 Any member of the jury panel related by blood,
16 marriage or close personal friends to any of those
17 potential witnesses, please stand.

18 No one's standing.

19 Additional witnesses. Austin Switzer. Jessica Ussery
20 Alex Wallace. Jeremy Washington. Shykiem Williams.
21 Michael Young. Emonte Brooks. Marvin Dawson. Dylan Dowd.
22 Glenn Harold. Ronald Ostrakowski. Pete Skidmore. Tom
23 Slovenski and Alex Wallace.

24 Any member of the jury panel related by blood,
25 marriage or close personal friends to any of those

1 potential witnesses, please stand.

2 No one's standing.

3 All right. Now I've read all of the potential
4 witnesses. I'm gonna ask some general questions. They'll
5 be similar to the ones that I asked to the lady I excused
6 a moment ago, but I want you to be very aware I don't need
7 a detailed explanation. I'd like to ask the questions to
8 prevent you from having to tell me the entire story why or
9 why not. If additional explanation is needed, I may call
10 you up and have a more private conversation with you to
11 determine whether or not you can be fair and impartial.
12 You're gonna be questioned, but for our purposes right now
13 I'll ask these questions.

14 For instance, my first question, and there will be
15 several questions characterized like this, my first
16 question is, has any member of the jury panel or a member
17 of your immediate family ever been a victim of or accused
18 of a violent crime? And so as I ask that question, I've
19 asked it both ways. Either side you could be on, you or
20 a member of your family could be on either side of an
21 accusation. If that is appropriate for you to stand and
22 ask, I don't need to know -- well, for instance, I'm gonna
23 use her. The lady said my niece was a victim of a driving
24 incident and she was in the courtroom. Once I knew that, I
25 wanted her to tell me could she be fair and impartial and

1 she did, she was candid with me, and that's what I'm
2 looking for. I want to make certain anyone selected on
3 this jury can be fair and impartial to both sides. That's
4 my ultimate goal. If you're concerned you can't, then I
5 need to know. I don't really need to know why, I just need
6 to know, if that makes since.

7 All right. So my first question: Any member of the
8 jury panel or a member of your immediate family ever been
9 accused of or a victim of a violent crime, please stand.

10 (Jurors stand.)

11 **THE COURT:** All right. I've got a couple.

12 Gentleman in the blue, tell me your name.

13 **POTENTIAL JUROR:** I'm Charlie Ricard.

14 **THE COURT:** Mr. Ricard is number?

15 **POTENTIAL JUROR:** 231.

16 **THE COURT:** 231. All right. You stood to answer my
17 question. Now the fact that you stood, can you be fair
18 and impartial in spite of whatever posture your personal
19 situation is regarding the accusation of a violent crime?

20 **POTENTIAL JUROR:** Yes, sir.

21 **THE COURT:** You can be fair and impartial:

22 **POTENTIAL JUROR:** Yes, sir.

23 **THE COURT:** I'm gonna have some follow-up questions
24 to this as we go, but that's what I want an answer for.

25 All right. Ma'am in the blue, tell me your name.

1 **POTENTIAL JUROR:** Mary Lohman-Vargas, Juror 161.

2 **THE COURT:** Same question. You stood because I said
3 accused or a victim of a violent crime, you or a member of
4 your family. Would that affect your ability to be fair and
5 impartial?

6 **POTENTIAL JUROR:** No, sir.

7 **THE COURT:** Thank you very much.

8 Ma'am in the black sweater, tell me your name.

9 **POTENTIAL JUROR:** Kristen Corley, Juror Number 36.

10 **THE COURT:** Ms. Corley, would that affect your ability
11 to be fair and impartial? Same question.

12 **POTENTIAL JUROR:** I'm sorry, say that again.

13 **THE COURT:** All right. You stood when I asked the
14 question either you or a member of your family has either
15 been accused of or a victim of a violent crime. Would that
16 fact, that you've stood in response affirmatively to that
17 question, can you be fair and impartial in spite of
18 whatever your personal situation is?

19 **POTENTIAL JUROR:** Absolutely.

20 **THE COURT:** Can you?

21 **POTENTIAL JUROR:** Yes, sir.

22 **THE COURT:** Thank you very much.

23 All right. Coming to my right, the lady in the black
24 sweater stood first. Tell me your name, please, ma'am.

25 **POTENTIAL JUROR:** Cynthia Garrick, Juror Number 93.

1 **THE COURT:** 93. Tell me her name, Ms. Frick. What's
2 your name again? Somebody coughed when you were saying it.

3 **THE CLERK:** It's Garrick.

4 **POTENTIAL JUROR:** Cynthia Garrick.

5 **THE COURT:** Oh, Ms. Garrick. All right. You stood
6 when I asked the question. Can you be fair and impartial
7 in spite of your situation?

8 **POTENTIAL JUROR:** Yes, I can.

9 **THE COURT:** Thank you very much.

10 All right. Gentleman in the green, tell me your name.

11 **POTENTIAL JUROR:** Charles Lyons, Number 169.

12 **THE COURT:** And you stood in answer to my question in
13 the affirmative. Can you be fair and impartial, Mr. Lyons?

14 **POTENTIAL JUROR:** Yes, I can.

15 **THE COURT:** Thank you very much.

16 All right. A very similar question. Any member of
17 the jury panel or a member of your immediate family ever
18 witnessed a violent crime? If so, please stand.

19 **THE COURT:** Ma'am, I'm gonna know your name in a
20 minute. This the third time I've talked with you. Tell
21 me your name again.

22 **POTENTIAL JUROR:** Kristen Corley.

23 **THE COURT:** Ms. Corley. All right. I'm gonna have it
24 now. I'm pretty good with names. All right. You stood
25 again. Was it the same situation as before, the same

1 victim of my prior question?

2 **POTENTIAL JUROR:** No, actually it's different.

3 **THE COURT:** Different?

4 **POTENTIAL JUROR:** Yes, sir.

5 **THE COURT:** All right. The fact that you or a member
6 of your family have been a witness to a crime, would that
7 create an issue for you being fair and impartial in this
8 case?

9 **POTENTIAL JUROR:** Absolutely not.

10 **THE COURT:** Absolutely no. Thank you very much.

11 All right. The gentleman that stood in the T-shirt,
12 tell me your name.

13 **POTENTIAL JUROR:** James Adams, Number 1.

14 **THE COURT:** All right, Mr. Adams.

15 **POTENTIAL JUROR:** You said you or family?

16 **THE COURT:** Yeah, a member of your immediate family
17 ever been --

18 **POTENTIAL JUROR:** I have witnessed.

19 **THE COURT:** All right. Now would that affect your
20 ability to be fair and impartial in this case?

21 **POTENTIAL JUROR:** No.

22 **THE COURT:** Thank you so much.

23 **POTENTIAL JUROR:** Yes, sir.

24 **THE COURT:** All right. Any member of the jury panel
25 or a member of your immediate family ever been involved

1 with taking illegal drugs or have a drug addiction of any
2 type? If so, please stand. And this is one of those where
3 I don't know the details, but the involvement with is what
4 I need to know, would that create you issue with you being
5 fair and impartial. So anyone in that question, please
6 stand.

7 (Jurors stand.)

8 **THE COURT:** All right. Gentleman in the green first.
9 I need your name.

10 **POTENTIAL JUROR:** William Johnson, 140.

11 **THE COURT:** All right. Mr. Johnson, you or a member
12 of your family ever been affiliated with anything to do
13 with illegal drugs or addiction? You stood in answer
14 affirmatively. Would that affect your ability to be fair
15 and impartial? This case might discuss use of or addicted
16 to drugs or illegal drugs or that type, so that may be part
17 of the subject matter. Would that affect your ability to
18 be fair and impartial?

19 **POTENTIAL JUROR:** No, sir.

20 **THE COURT:** All right. And the reason I ask the
21 question kind of open-ended like that is I don't know a
22 whole lot about this case either. I'm kind of hearing
23 some of the details as we go just like y'all will.
24 Anticipating testimony like that from either side, I
25 want to make certain we don't get into a subject matter

1 that would create issues for you where you can't then be
2 fair and impartial. That's the purpose of the question.

3 Gentleman in the navy, tell me your name.

4 **POTENTIAL JUROR:** Ricardo Ferrer, Number 80.

5 **THE COURT:** All right. And the same question.

6 **JUROR:** Yeah, I can be impartial.

7 **THE COURT:** You can be fair and impartial?

8 **JUROR:** (Nods head.)

9 **THE COURT:** And the question -- and I keep repeating
10 myself and I'm sorry about that, folks, but I'm trying to
11 make my record clear for Ms. Johnson's and my benefit, but
12 for the parties benefit also, so I keep repeating that
13 question to make certain we're responding to the
14 appropriate question. Okay. Thank you, sir.

15 All right. Ma'am in the gold jacket, tell me your
16 name. That's you.

17 **POTENTIAL JUROR:** Number 30, Margaret Buenzow.

18 **THE COURT:** And, ma'am, you stood when I asked about
19 you or a member of your family ever been touched by drugs
20 and addiction and whatnot, illegal drugs. Would that
21 affect your ability to be fair and impartial in this case?

22 **POTENTIAL JUROR:** No, sir.

23 **THE COURT:** Thank you very much.

24 All right. Ma'am in the blue.

25 **POTENTIAL JUROR:** Me?

1 **THE COURT:** Yes, ma'am. Same question about family
2 affiliation potentially with illegal drugs.

3 **POTENTIAL JUROR:** Marlene Gearon, Number 96.

4 **THE COURT:** Would that affect your ability to be fair
5 and impartial?

6 **POTENTIAL JUROR:** No.

7 **THE COURT:** Thank you very much.
8 Ma'am in the green, tell me your name.

9 **POTENTIAL JUROR:** Scarlett Gibson, 97.

10 **THE COURT:** The same question. The subject matter may
11 involve drugs, illegal drugs, or addiction. Would that
12 affect your ability to be fair and impartial?

13 **JUROR:** Possibly, yes.

14 **THE COURT:** That's what I need to know. Thank you,
15 Ms. Gibson. I need you to hang around. You may be part
16 of my second jury, I don't know that, so you don't need to
17 stand and answer any more questions on this trial, okay?

18 Ma'am in the white right in front of Ms. Corley --
19 see there, I'm getting it -- tell me your name.

20 **POTENTIAL JUROR:** Dee Branham, 26.

21 **THE COURT:** All right. Ms. Branham, I asked the
22 question about involvement with illegal drugs being the
23 subject matter potentially of this case. Would that affect
24 your ability to be fair and impartial in this case?

25 **POTENTIAL JUROR:** No, sir.

1 **THE COURT:** All right. Thank you very much.

2 **POTENTIAL JUROR:** All right. Ms. Corley, the same
3 question. This case could be dealing with affiliation
4 with drugs. Would that affect your ability to be fair and
5 impartial?

6 **POTENTIAL JUROR:** No, sir.

7 **THE COURT:** Thank you very much.

8 All right. Ma'am, the blond in the back, tell me your
9 name.

10 **POTENTIAL JUROR:** Laura Cannon, Juror Number 34.

11 **THE COURT:** And the same question. This subject
12 matter may involve illegal drugs and/or addiction. Would
13 that affect your ability to be fair and impartial?

14 **POTENTIAL JUROR:** No, sir.

15 **THE COURT:** Thank you very much.

16 All right. Coming to the right, the gentleman in the
17 black, tell me your name.

18 **POTENTIAL JUROR:** Ben Wooten, 295.

19 **THE COURT:** Mr. Wooten, the subject matter may involve
20 illegal narcotics and/or addiction. Would that affect your
21 ability to be fair in this case to both sides?

22 **POTENTIAL JUROR:** I don't think so.

23 **THE COURT:** Thank you so much.

24 Gentleman in the blue, tell me your name.

25 **POTENTIAL JUROR:** Robert Collins, 42.

1 **THE COURT:** Same question. This involves the subject
2 matter involving illegal drugs perhaps. Would that affect
3 your ability to be fair and impartial?

4 **POTENTIAL JUROR:** No, sir.

5 **THE COURT:** Thank you very much.

6 Gentleman in the T-shirt, tell me your name.

7 **POTENTIAL JUROR:** Matthew Harris, Juror Number 113.

8 **THE COURT:** Same question. It may involve the subject
9 matter involving illegal drugs. Would that affect your
10 ability to be fair and impartial?

11 **POTENTIAL JUROR:** No, sir.

12 **THE COURT:** Thank you very much.

13 All right. I don't think I asked this question
14 earlier. I didn't read the accusations in the indictment.
15 The accusations regarding the allegations made by the
16 State involve an incident on April 10th of 2013. The
17 victim to this accusation was a Paula Justice. It involved
18 the shooting of Ms. Justice. It could have been reported
19 in the news media, whether it be newspaper, newscast,
20 television news, social media.

21 The question to the jury panel: Does any member of
22 the jury panel know anything about the accusation involving
23 Mr. John Christopher, perhaps Tevin Xavier Deloach and
24 Ms. Paula Justice? Any member of the jury panel heard
25 anything, listened to a news report, read a news report,

1 seen anything on social media about these accusations and
2 allegations? If so, please stand.

3 No one's standing.

4 Are any members of the jury panel or a member of
5 your immediate family a regular user of social media and
6 frequents any law enforcement Facebook or Twitter page?
7 If so, please stand.

8 (Jurors stand.)

9 **THE COURT:** We've got a couple.

10 Okay. Ma'am in the blue, tell me your name again.

11 **JUROR:** Marlene Gearon, 96.

12 **THE COURT:** And, ma'am, is it you or a member of your
13 family that frequents a law enforcement homepage?

14 **POTENTIAL JUROR:** Yes.

15 **THE COURT:** It's you?

16 **POTENTIAL JUROR:** Yes.

17 **THE COURT:** All right. Would that affect your ability
18 to be fair and impartial in this case?

19 **POTENTIAL JUROR:** No.

20 **THE COURT:** All right. Thank you very much.

21 Ma'am in the gray, tell me your name.

22 **POTENTIAL JUROR:** Larisa Teague, 274.

23 **THE COURT:** Okay. Ma'am, you or a member of your
24 family is a frequent social media user of a law enforcement
25 homepage?

1 **POTENTIAL JUROR:** Yes.

2 **THE COURT:** Would that affect your ability to be fair
3 and impartial in this case?

4 **POTENTIAL JUROR:** No, sir.

5 **THE COURT:** Thank you very much.

6 All right. Any member of the jury panel or a member
7 of your immediate family employed in any capacity, now or
8 formerly, as a law enforcement officer? If so, please
9 stand.

10 (Jurors stand.)

11 **THE COURT:** We've got a few. We generally do.

12 All right. Starting over here, is it Mr. Harris?

13 **POTENTIAL JUROR:** Yes, sir.

14 **THE COURT:** Mr. Harris, you or a member of your
15 immediate family is law enforcement?

16 **POTENTIAL JUROR:** My daughter.

17 **THE COURT:** Your daughter. Is she still currently
18 employed?

19 **POTENTIAL JUROR:** Yes, sir.

20 **THE COURT:** And which law enforcement agency?

21 **POTENTIAL JUROR:** Directly employed by DHEC.

22 **THE COURT:** By DHEC?

23 **POTENTIAL JUROR:** Yes, sir.

24 **THE COURT:** And would that affect your ability to be
25 fair and impartial in this case?

1 **POTENTIAL JUROR:** No, sir.

2 **THE COURT:** All right. Thank you very much,
3 Mr. Harris.

4 All right. Ma'am in the green, tell me your name.

5 **POTENTIAL JUROR:** Kayla Meermans.

6 **THE COURT:** Is that green?

7 **POTENTIAL JUROR:** Sure. Yes.

8 **THE COURT:** I don't want to embarrass myself.

9 **POTENTIAL JUROR:** 183.

10 **THE COURT:** All right. And are you or a member of
11 your family a member of the law enforcement community?

12 **POTENTIAL JUROR:** Yes, sir.

13 **THE COURT:** And would that affect your ability to be
14 fair and impartial?

15 **POTENTIAL JUROR:** No, sir.

16 **THE COURT:** All right. Thank you very much.

17 All right. Ma'am in the white, tell me your name.

18 **POTENTIAL JUROR:** Mary-Ellen Saur, 243.

19 **THE COURT:** And you or a member of your family is
20 employed in the law enforcement community?

21 **POTENTIAL JUROR:** My husband was with New York State
22 Department of Corrections.

23 **THE COURT:** Would that affect your ability to be fair
24 and impartial in this case?

25 **POTENTIAL JUROR:** No.

1 **THE COURT:** Thank you very much.

2 All right. Ms. Teague? Looky there. All right. You
3 or a member of your immediate family employed in the law
4 enforcement community?

5 **POTENTIAL JUROR:** Yes, sir.

6 **THE COURT:** Would that affect your ability to be fair
7 and impartial in this case?

8 **POTENTIAL JUROR:** (Shakes head.)

9 **THE COURT:** No? I need it out loud.

10 **POTENTIAL JUROR:** Oh, sorry.. No.

11 **THE COURT:** Ms. Johnson can't take down silence. I
12 mean, I say that as a joke, but y'all -- thank goodness
13 y'all aren't used to being in here, but everything is on
14 the record and she has to hear your response and that's why
15 I ask for it. Because she'll look at me in a minute and
16 say you know I can't hear nothing. She's got to hear
17 something. So it happens a lot.

18 All right. Gentleman in the blue, tell me your name.

19 **POTENTIAL JUROR:** Frederick Moore, Juror Number 200.

20 **THE COURT:** And you or a member of your family is
21 employed in law enforcement?

22 **POTENTIAL JUROR:** Yes, sir.

23 **THE COURT:** Would that affect your ability to be fair
24 in this case?

25 **POTENTIAL JUROR:** No, sir.

1 **THE COURT:** Thank you very much.

2 All right. Ma'am in the black sweater, tell me your
3 name.

4 **POTENTIAL JUROR:** Cheryl Fitts, Number 82..

5 **THE COURT:** Phipps?

6 **POTENTIAL JUROR:** Fitts, F-I-T-T-S.

7 **THE COURT:** Okay. Ms. Fitts, would that affect your
8 ability to be fair and impartial?

9 **POTENTIAL JUROR:** No, sir.

10 **THE COURT:** Thank you very much.

11 All right. Ma'am in the next black sweater.

12 **POTENTIAL JUROR:** Barbara Walker, 285.

13 **THE COURT:** Ms. Walker, you or a member of your family
14 is in the law enforcement community?

15 **POTENTIAL JUROR:** Yes.

16 **THE COURT:** Would that affect your ability to be fair
17 in this case?

18 **POTENTIAL JUROR:** No, sir.

19 **THE COURT:** Thank you very much.

20 I'm gonna know your name in a moment, too. Tell me
21 your name, please, ma'am.

22 **POTENTIAL JUROR:** Marlene Gearon.

23 **THE COURT:** All right. Tell me is it you or a member
24 of your family?

25 **POTENTIAL JUROR:** Yes.

1 **THE COURT:** All right. Would that affect your ability
2 to be fair in this case?

3 **POTENTIAL JUROR:** No.

4 **THE COURT:** Thank you very much.

5 Ms. Corley, tell me your juror number again.

6 **POTENTIAL JUROR:** 46.

7 **THE COURT:** All right. You or a member of your family
8 is employed in the law enforcement community. Would that
9 affect your ability to be fair in this case?

10 **POTENTIAL JUROR:** In this community?

11 **THE COURT:** In the law enforcement community.

12 **POTENTIAL JUROR:** Yes, sir.

13 **THE COURT:** All right.

14 **POTENTIAL JUROR:** It wouldn't affect my ability, no,
15 sir.

16 **THE COURT:** All right. So let me get it clear on the
17 record. A member of your family is employed as a law
18 enforcement member, but it would not affect your ability
19 to be fair in this case; is that right?

20 **POTENTIAL JUROR:** That's correct.

21 **THE COURT:** That's correct. Okay. Thank you very
22 much.

23 Gentlemen in the blue.

24 **POTENTIAL JUROR:** Chris Kiley, 145.

25 **THE COURT:** Mr. Tally?

1 **POTENTIAL JUROR:** Kiley.

2 **THE COURT:** All right. Would that -- you or a member
3 of your family employed in the law enforcement community?

4 **POTENTIAL JUROR:** Yes, sir.

5 **THE COURT:** Would that affect your ability to be fair
6 in this case?

7 **POTENTIAL JUROR:** No, sir.

8 **THE COURT:** Thank you very much.

9 All right. Ma'am in the black sweater, tell me your
10 name again.

11 **POTENTIAL JUROR:** Laura Cannon, Juror Number 34.

12 **THE COURT:** And, Ms. Canon, you or a member of your
13 family is employed in law enforcement?

14 **POTENTIAL JUROR:** Yes.

15 **THE COURT:** Would that affect your ability to be fair
16 in this case?

17 **POTENTIAL JUROR:** No, sir.

18 **THE COURT:** Thank you very much.

19 All right. Any member of the jury panel or a member
20 of your immediate family work as an attorney, either as a
21 criminal defense attorney, a public defender, a prosecutor
22 or an attorney general, anyone involved in the court of
23 General Sessions? If so, please stand.

24 (Jurors stand.)

25 **THE COURT:** All right, ma'am. Tell me your name.

1 **POTENTIAL JUROR:** Cheri Anderson, Juror Number 6.

2 **THE COURT:** All right. Ms. Anderson, you or a member
3 of your family is employed as an attorney in what capacity?

4 **POTENTIAL JUROR:** I have a friend that cleans house
5 for me, she's retired, she worked --

6 **THE COURT:** And, Ms. Anderson, would that affect your
7 ability to be fair and impartial in this case?

8 **POTENTIAL JUROR:** No, sir.

9 **THE COURT:** All right. Thank you very much.
10 Tell me your name again, Mr. Attorney General.

11 **POTENTIAL JUROR:** Winston Holliday.

12 **THE COURT:** And you work, Mr. Holliday, for the United
13 States Attorney, which does not practice in Lexington
14 County, they practice in the Federal courts.

15 **POTENTIAL JUROR:** That's correct.

16 **THE COURT:** Would that affect your ability to be fair
17 and impartial in this case?

18 **POTENTIAL JUROR:** No, Your Honor.

19 **THE COURT:** Thank you so much.

20 **THE CLERK:** We have another one, Judge.

21 **THE COURT:** You stepped up on me.

22 **POTENTIAL JUROR:** I'm sorry.

23 **THE COURT:** That's okay. Tell me your name, please.

24 **POTENTIAL JUROR:** Linda Hall, Number 107. My
25 son-in-law is an attorney.

1 **THE COURT:** And would that affect your ability to be
2 fair and impartial?

3 **POTENTIAL JUROR:** No, sir.

4 **THE COURT:** All right. Thank you so much.

5 All right. Any member of the jury panel or member
6 of your immediate family a member of any temperance
7 organization such as MADD mothers, SADD students or a
8 member of any victims advocacy groups which would support
9 victims of crime such as Citizens Against Violent Crime,
10 Bikers Against Child Abuse, any type of organizations which
11 supports victims rights and/or temperance organization? If
12 so, please stand.

13 (Juror stands.)

14 **THE COURT:** I've got one. Tell me your name, please,
15 ma'am.

16 **POTENTIAL JUROR:** Mary Lohman-Vargas, Number 161.

17 **THE COURT:** And you or a member of your family a
18 member of one of those organizations?

19 **POTENTIAL JUROR:** Yes.

20 **THE COURT:** Would that affect your ability to be fair
21 in this case?

22 **POTENTIAL JUROR:** No.

23 **THE COURT:** Thank you so much.

24 All right. Any member of the jury panel or member of
25 your immediate family ever been involved in any type of

1 litigation that the case went to trial? If so, please
2 stand.

3 Ms. Corley, you or a member of your family was
4 involved in prior litigation? And that can be either
5 civil or criminal, but I don't need family court. Anybody
6 involved in divorce or anything like that, I don't need to
7 know that.

8 Ms. Corley?

9 **POTENTIAL JUROR:** Yes, sir.

10 **THE COURT:** And would that affect your ability to be
11 fair in this case?

12 **POTENTIAL JUROR:** No, sir.

13 **THE COURT:** Thank you so much.

14 Ma'am in the white sweater.

15 **POTENTIAL JUROR:** Dee Branham, Number 26.

16 **THE COURT:** And, ma'am, you or a member of your family
17 was involved in some sort of litigation?

18 **POTENTIAL JUROR:** Yes, sir.

19 **THE COURT:** Would that affect your ability to be fair
20 in this case?

21 **POTENTIAL JUROR:** No, sir.

22 **THE COURT:** Thank you, Ms. Branham.

23 All right. Gentleman right behind Ms. Branham in the
24 T-shirt, tell me your name again.

25 **POTENTIAL JUROR:** James Adams, Number 1.

1 **THE COURT:** Mr. Adams, you or a member of your family
2 was involved in a litigation issue. Would that affect your
3 ability to be fair in this case?

4 **POTENTIAL JUROR:** No, sir.

5 **THE COURT:** All right. Ms. Branham? No? Got it
6 wrong? In the black in the very back corner.

7 **POTENTIAL JUROR:** Laura Cannon.

8 **THE COURT:** Ms. Cannon. I knew there was an A.

9 **POTENTIAL JUROR:** Juror Number 34.

10 **THE COURT:** All right. You or a member of your family
11 involved in some sort of litigation?

12 **POTENTIAL JUROR:** Yes, sir.

13 **THE COURT:** Would that affect your ability to be fair
14 in this case?

15 **POTENTIAL JUROR:** No, sir.

16 **THE COURT:** Thank you so much.
17 Gentleman in the purple, tell me your name.

18 **POTENTIAL JUROR:** 245, Zachary Schumpert.

19 **THE COURT:** And, Mr. Schumpert, you or a member of
20 your family was involved in some sort of litigation?

21 **POTENTIAL JUROR:** Yes, sir.

22 **THE COURT:** Would that affect your ability to be fair
23 in this case?

24 **POTENTIAL JUROR:** No.

25 **THE COURT:** All right. Gentleman in the blue, tell me

1 your name again.

2 **POTENTIAL JUROR:** Ricardo Ferrer, Number 80.

3 **THE COURT:** You or a member of your family was
4 involved in some litigation.

5 **POTENTIAL JUROR:** What does litigation mean again?

6 **THE COURT:** It means something -- an issue that
7 couldn't be resolved and it had to go to a court where
8 there was presentation of issues.

9 **POTENTIAL JUROR:** Yeah.

10 **THE COURT:** And so you or a member of family did that?

11 **POTENTIAL JUROR:** (Nods head.)

12 **THE COURT:** Would that affect your ability to be fair
13 in this case?

14 **POTENTIAL JUROR:** No.

15 **THE COURT:** All right. Thank you so much.
16 Mr. -- is it Johnson?

17 **POTENTIAL JUROR:** Yes, William Johnson.

18 **THE COURT:** Mr. Johnson, your juror number?

19 **POTENTIAL JUROR:** 140.

20 **THE COURT:** 140. You or a member of your family was
21 involved in some sort of litigation?

22 **POTENTIAL JUROR:** Correct.

23 **THE COURT:** Would that affect your ability to be fair
24 and impartial in this case?

25 **POTENTIAL JUROR:** No, sir.

1 **THE COURT:** Thank you so very much.

2 Ma'am in the black and white, tell me your name.

3 **POTENTIAL JUROR:** Sylvia Stevens, Juror 264.

4 **THE COURT:** And you stood because I asked about prior
5 litigation, you or a member of your family. Would that
6 affect your ability to be fair in this case?

7 **POTENTIAL JUROR:** No, sir.

8 **THE COURT:** Thank you so much.

9 And, ma'am, I remember you standing before. Tell me
10 your name again.

11 **POTENTIAL JUROR:** Cynthia Garrick, Juror 93.

12 **THE COURT:** You or a member of your family was
13 involved in some sort of litigation?

14 **POTENTIAL JUROR:** Yes.

15 **THE COURT:** And would that affect your ability to be
16 fair in this case?

17 **POTENTIAL JUROR:** No.

18 **THE COURT:** Thank you so much.

19 All right, folks. This is kind of how I finish up,
20 but y'all have seen my pattern of questions. The way
21 the case is gonna proceed is the State has the burden
22 of proving this case. They call their witnesses first.
23 The defense has no responsibility to prove or disprove
24 anything. Part of my job as the trial court judge is to
25 give you instructions on the law.

1 Is there any member of the jury panel not gonna be
2 able to accept an oath which requires you to follow the
3 law as instructed by the Court? Meaning, as I asked you
4 early on, your understanding of the law might be different
5 than my understanding as a trial court judge. You must be
6 able to disregard the law as you understand it and accept
7 it as the Court instructs it. Is any member of the jury
8 panel not gonna be able to take the law as instructed by
9 the Court and disregard their different understanding of
10 it? If so, please stand.

11 No one's standing.

12 And as part of those instructions, does any member of
13 the jury panel not understand at this moment the State is
14 making the accusation towards Mr. Hart? Mr. Hart is
15 presumed innocent at this time. He will remain presumed
16 innocent throughout the trial until the jury makes a
17 consideration of whether or not the State has met its
18 burden of proof. Does any member of the jury panel not
19 understand that instruction at this time? If so, please
20 stand.

21 Does any member of the jury panel -- and, for the
22 record, no one's standing. Sorry, Stacy.

23 Does any member of the jury panel know any reason
24 whatsoever they cannot give both the State, Lexington
25 County, and Mr. Hart a fair and impartial trial and listen

1 to the witnesses who testify, consider the evidence which
2 gets introduced and make a fair and impartial decision on
3 this case? If anybody knows why they can't do that, please
4 stand.

5 No one's standing.

6 Any other voir dire from the State?

7 **MR. GRAHAM:** No, Your Honor.

8 **THE COURT:** Mr. Phillips?

9 **MR. PHILLIPS:** Subject to Court's Exhibit Number 1.

10 **THE COURT:** All right. Fair enough.

11 All right, folks. Here's what's gonna happen.

12 Ms. Frick, get me a jury list. Strikes five and ten.

13 **THE CLERK:** How many alternates?

14 **THE COURT:** Two. I want fourteen. Is fourteen gonna
15 be enough for both sides or do you want fifteen? Do you
16 want to go with fifteen?

17 Mr. Phillips, do you want to go with fifteen? The
18 State seems kind of nodding with you, too, so we'll go with
19 fifteen.

20 **MR. PHILLIPS:** Absolutely.

21 **THE COURT:** Do I have fifteen chairs here?

22 **BAILIFF:** Yes, sir.

23 **THE COURT:** All right. We'll go with three alternates
24 then.

25 **MR. PHILLIPS:** Yes, sir.

1 **THE COURT:** All right. Now each side has a certain
2 number of "please excuse the jurors", and so what's gonna
3 happen -- do y'all want them to come up or do you mind if
4 they stand here? I don't care. I'm indifferent to that.
5 It's up to y'all either way.

6 **MR. GRAHAM:** No preference. Whatever Your Honor
7 wants.

8 **MR. PHILLIPS:** The normal procedure is fine.

9 **THE COURT:** I'm gonna bring them up because I didn't
10 realize how much helpful it was through the timing of what
11 their name is and looking at the notes.

12 The lawyers have been trying to get to know y'all
13 based upon coming in here and telling where you worked,
14 what your spouse did and that kind of thing, and they're
15 still strangers to you and everybody wants as fair and
16 impartial a jury you can get. So what's gonna happen is
17 each side gets a certain number of "please excuse the
18 jurors". The Clerk of Court, Ms. Frick, will call you up
19 one at a time and she's gonna give you instructions, but
20 that computer table that's right in the center of the
21 courtroom, you're gonna stand in front of it and turn
22 around and face that back door as they call your name up
23 one at a time. The lawyers will look at you and you'll
24 wonder what they're thinking. It doesn't matter. I used
25 to strike jurors depending on eye color. If I had a toss

1 of the coin, I would select certain eye color. That's just
2 what I went for when I was a lawyer.

3 So it's not rocket science, it's kind of a gut
4 feeling; thus, the lawyers are gonna do their job as best
5 they can basically going with their gut feeling and
6 experience. So if you're lucky enough to get selected,
7 congratulations. If you're lucky enough to get excused,
8 congratulations. It's kind of like golf. You know,
9 everybody's putt makes somebody happy and somebody unhappy.
10 It makes no difference to me.

11 **THE CLERK:** Proceed, Your Honor?

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

13 **THE CLERK:** Make sure to bring your personal
14 belongings with you and as I call you, come forward,
15 please.

16 Number 285, Barbara Walker.

17 (Whereupon, Barbara Walker, a white female, was called
18 forward.)

19 **THE CLERK:** What say for the State?

20 **MR. GRAHAM:** Please present Ms. Walker.

21 **THE COURT:** What say for the defense?

22 **MR. PHILLIPS:** Please excuse Ms. Walker.

23 **THE CLERK:** Return to your seat, please, ma'am.

24 26, Dee Branham.

25 (Whereupon, Dee Branham, a white female, was called

1 forward.)

2 **THE CLERK:** What say for the State?

3 **MR. GRAHAM:** Please seat Ms. Branham.

4 **THE CLERK:** What say for the defense?

5 **MR. PHILLIPS:** Please seat Ms. Branham.

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

7 Unh-unh, that way.

8 Number 269, Bryn Swaim.

9 (Whereupon, Bryn Swaim, a white male, was called
10 forward.)

11 **THE CLERK:** What say for the State?

12 **MR. GRAHAM:** Please present Mr. Swaim.

13 **THE CLERK:** What say for the defense?

14 **MR. PHILLIPS:** Please seat Mr. Swaim.

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

16 Number 87, Mark Fowke.

17 (Whereupon, Mark Fowke, a white male, was called
18 forward.)

19 **THE CLERK:** What say for the State?

20 **MR. GRAHAM:** Please present Mr. Fowke.

21 **THE CLERK:** What say for the defense?

22 **MR. PHILLIPS:** Please seat Mr. Fowke.

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

24 Number 113, Matthew Harris.

25 (Whereupon,) Matthew Harris, a white male, was called

1 forward.)

2 **THE CLERK:** What say for the State?

3 **MR. GRAHAM:** Please present Mr. Harris.

4 **THE CLERK:** What say for the defense?

5 **MR. PHILLIPS:** Please excuse Mr. Harris.

6 **THE CLERK:** Return to your seat, please, sir.

7 Number 90, Nancy Galloway.

8 (Whereupon, Nancy Galloway, a white female, was called
9 forward.)

10 **THE CLERK:** What say for the State?

11 **MR. GRAHAM:** Please present Ms. Galloway.

12 **THE CLERK:** What say for the defense?

13 **MR. PHILLIPS:** Please excuse Ms. Galloway.

14 **THE CLERK:** Please return to your seat, please, ma'am.

15 Number 30, Margaret Buenzow.

16 (Whereupon, Margaret Buenzow, a white female, was
17 called forward.)

18 **THE CLERK:** What say for the State?

19 **MR. GRAHAM:** Please present Ms. Buenzow.

20 **THE CLERK:** What say for the defense?

21 **MR. PHILLIPS:** Please excuse Ms. Buenzow.

22 **THE CLERK:** Return to your seat, please, ma'am.

23 243, Mary-Ellen Saur.

24 (Whereupon, Mary-Ellen Saur, a white female, was
25 called forward.)

1 **THE CLERK:** What say for the State?

2 **MR. GRAHAM:** Please present Ms. Saur.

3 **THE CLERK:** What say for the defense?

4 **MR. PHILLIPS:** Please excuse Ms. Saur.

5 **THE CLERK:** Return to your seat, please, ma'am.

6 Number 123, David Holley.

7 (Whereupon, David Holley, a white male, was called

8 forward.)

9 **THE CLERK:** What say for the State?

10 **MR. GRAHAM:** Please present Mr. Holy.

11 **THE CLERK:** What say for the defense?

12 **MR. PHILLIPS:** Please seat Mr. Holley.

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

14 187, Nathan Melton.

15 (Whereupon, Nathan Melton, a white male, was called

16 forward.)

17 **THE CLERK:** What say for the State?

18 **MR. GRAHAM:** Please present Mr. Melton.

19 **THE CLERK:** What say for the defense?

20 **MR. PHILLIPS:** Please seat Mr. Melton.

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

22 Number 6, Cheri Anderson.

23 (Whereupon, Cheri Anderson, a white female, was called

24 forward.)

25 **THE CLERK:** What say for the State?

1 **MR. GRAHAM:** Pleas present Ms. Anderson.

2 **THE CLERK:** What say for the defense?

3 **MR. PHILLIPS:** Please excuse Ms. Anderson.

4 **THE CLERK:** Return to your seat, please, ma'am.

5 Number 219, Allison Williams.

6 (Whereupon, Allison Williams, a white female, was
7 called forward.)

8 **THE CLERK:** What say for the State?

9 **MR. GRAHAM:** Please present Ms. Williams.

10 **THE CLERK:** What say for the defense?

11 **MR. PHILLIPS:** Please seat Ms. Williams.

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

13 111, Brian Harmon.

14 (Whereupon, Brian Harmon, a white male, was called
15 forward.)

16 **THE CLERK:** What say for the State?

17 **MR. GRAHAM:** Please present Mr. Harmon.

18 **THE CLERK:** What say for the defense?

19 **MR. PHILLIPS:** Please seat Mr. Harmon.

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

21 145, Christopher Kiley.

22 (Whereupon, Christopher Kiley, a white male, was
23 called forward.)

24 **THE CLERK:** What say for the State?

25 **MR. GRAHAM:** Please present Mr. Kiley.

1 **THE CLERK:** What say for the defense?

2 **MR. PHILLIPS:** Please excuse Mr. Kiley.

3 **THE CLERK:** Return to your seat, please, sir.

4 44, Natasha Cook.

5 (Whereupon, Natasha Cook, a white female, was called
6 forward.)

7 **THE CLERK:** What say for the State?

8 **MR. GRAHAM:** Please present Ms. Cook.

9 **THE CLERK:** What say for the defense?

10 **MR. PHILLIPS:** Please seat Ms. Cook.

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

12 Number 93, Cynthia Garrick.

13 (Whereupon, Cynthia Garrick, a black female, was
14 called forward.)

15 **THE CLERK:** What say for the State?

16 **MR. GRAHAM:** Please present Ms. Garrick.

17 **THE CLERK:** What say for the Defense?

18 **MR. PHILLIPS:** Please seat Ms. Garrick.

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

20 Number 47, Walter Counts.

21 (Whereupon, Walter Counts, a white male, was called
22 forward.)

23 **THE CLERK:** What say for the State?

24 **MR. GRAHAM:** Please present Mr. Counts.

25 **THE CLERK:** What say for the defense?

1 **MR. PHILLIPS:** Please excuse Mr. Counts.

2 **THE CLERK:** Return to your seat, please, sir.

3 Number 200, Frederick Moore.

4 (Whereupon, Frederick Moore, a white male, was called
5 forward.)

6 **THE CLERK:** What say for the State?

7 **MR. GRAHAM:** Please present Mr. Moore.

8 **THE CLERK:** What say for the defense?

9 **MR. PHILLIPS:** Please seat Mr. Moore.

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

11 82, Cheryl Fitts.

12 (Whereupon, Cheryl Fitts, a white female, was called
13 forward.)

14 **THE CLERK:** What say for the State?

15 **MR. GRAHAM:** Please present Ms. Fitts.

16 **THE CLERK:** What say for the defense?

17 **MR. PHILLIPS:** Please excuse Ms. Fitts.

18 **THE CLERK:** Return to your seat, please, ma'am.

19 219, Charles Polk.

20 (Whereupon, Charles Polk, a white male, was called
21 forward.)

22 **THE CLERK:** What say for the State?

23 **MR. GRAHAM:** Please present Mr. Polk.

24 **THE CLERK:** What say for the defense?

25 **MR. PHILLIPS:** Please excuse Mr. Polk.

1 **THE CLERK:** Return to your seat, please, sir.

2 Number 38, David Cheatham.

3 (Whereupon, David Cheatham, a black male, was called
4 forward.)

5 **THE CLERK:** What say for the State?

6 **MR. GRAHAM:** Please excuse Mr. Cheatham.

7 **THE CLERK:** Return to your seat, please, sir.

8 258, Brenda Snyder.

9 (Whereupon, Brenda Snyder, a white female, was called
10 forward.)

11 **MR. GRAHAM:** What was the number, Madam Clerk?

12 **THE CLERK:** 258.

13 **MR. GRAHAM:** Thank you, ma'am.

14 **THE CLERK:** What say for the State?

15 **MR. GRAHAM:** Please present Ms. Snyder.

16 **THE CLERK:** What say for the defense?

17 **MR. PHILLIPS:** Please excuse Ms. Snyder.

18 **MR. GRAHAM:** Your Honor, if we can approach?

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

20 **MR. PHILLIPS:** That's fine.

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

22 Number 245, Zachary Schumpert.

23 (Whereupon, Zachary Schumpert, a white male, was
24 called forward.)

25 **THE CLERK:** What say for the State?

1 **MR. GRAHAM:** Please present Mr. Schumpert.

2 **THE CLERK:** What say for the defense?

3 **MR. PHILLIPS:** Please seat Mr. Schumpert.

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

5 Proceed with alternates, Your Honor?

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

7 **THE CLERK:** Number 140, William Johnson.

8 (Whereupon, William Johnson, a white male, was called
9 forward.)

10 **THE CLERK:** What say for the State?

11 **MR. GRAHAM:** Please present Mr. Johnson.

12 **THE CLERK:** What say for the defense?

13 **MR. PHILLIPS:** Please seat Mr. Johnson.

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

15 Number 273. That's Alternate Number 1, Your Honor.

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

17 **THE CLERK:** Number 273, Wilur Taylor.

18 (Whereupon, Wilur Taylor, a black male, was called
19 forward.)

20 **THE CLERK:** What say for the State?

21 **MR. GRAHAM:** Please excuse Mr. Taylor.

22 **THE CLERK:** Return to your seat, please, sir.

23 Number 112, Michael Harmon.

24 (Whereupon, Michael Harmon, a white male, was called
25 forward.)

1 **THE CLERK:** What say for the State?

2 **MR. GRAHAM:** Please present Mr. Harmon.

3 **THE CLERK:** What say for the defense?

4 **MR. PHILLIPS:** Please excuse Mr. Harmon.

5 **THE CLERK:** Return to your seat, please, sir.

6 **THE CLERK:** Number 190, Don Miller.

7 (Whereupon, Don Miller, a white male, was called
8 forward.)

9 **THE CLERK:** What say for the State?

10 **MR. GRAHAM:** Please present Mr. Miller.

11 **THE CLERK:** What say for the defense?

12 **MR. PHILLIPS:** Please seat Mr. Miller.

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

14 That's Alternate 2, Your Honor.

15 **THE COURT:** Excellent.

16 **THE CLERK:** 231, Charles Ricard.

17 (Whereupon, Charles Ricard, a white male, was called
18 forward.)

19 **THE CLERK:** What say for the State?

20 **MR. GRAHAM:** Please present Mr. Ricard.

21 **THE COURT:** What say for the defense?

22 **MR. PHILLIPS:** Please seat Mr. Ricard.

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

24 That's Alternate Number 3, Your Honor.

25 **THE COURT:** All right. Are there any matters of law

1 the Court needs to take up regarding the selection process
2 employed or the composition of the jury from the State or
3 the defense?

4 **MR. GRAHAM:** Nothing from the State, Your Honor.

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

6 **THE COURT:** All right. I'm gonna have to send y'all
7 to the jury room real quick.

8 Other members, I've got to take something up that I
9 need to make a record of, so I'm gonna ask y'all to step
10 out of the courtroom for a little bit. So y'all step out
11 and when you get good and comfortable, then I'll have you
12 back in here.

13 (Whereupon, the selected jury retires to the jury
14 room and the jury panel stepped out of the courtroom.)

15 **THE COURT:** All right. The courtroom is now free of
16 jurors. Mr. Phillips, I'm anticipating your motion. Go
17 ahead and make your record.

18 **MR. PHILLIPS:** Thank you, Your Honor. Pursuant to
19 Batson v. Kentucky, jurors number 38 and 273 were the only
20 two black males that appeared before us and both were
21 struck. That's Number 38, David Cheatham, and Number 273,
22 Wilur Taylor.

23 **THE COURT:** All right, Mr. Graham.

24 **MR. GRAHAM:** Thank you, Your Honor. Regarding Juror
25 Number 38, Mr. Cheatham, running his rap sheet, Your Honor,

1 it appears he has nine separate incidences with law
2 enforcement over numerous years. Some of the charges
3 would be probably dismissed. Probably most importantly,
4 Your Honor, he has a conviction for CDV, which is a crime
5 against a female, and that's what this case is involving.

6 Juror 273 -- if I can get there, Your Honor. I'm
7 sorry. Juror Number 273 is Mr. Taylor. Mr. Taylor has
8 a CDV conviction in '06, '07 and '13, and it looks like
9 there may be an arrest in '09, so there's four separate
10 incidences and at least three convictions of CDV, crimes
11 against women.

12 **THE COURT:** All right. Mr. Phillips, it appears the
13 State has given racially neutral reasons that Mr. Taylor,
14 Juror 273, and Juror 38 -- what's his name -- Mr. Cheatham,
15 were involved in prior arrests with law enforcement, as
16 well as accusations of crimes involving some sort of
17 violence against women. Those seem to be racially neutral
18 in the Court's eyes. Anything else from you on those two
19 issues?

20 **MR. PHILLIPS:** I don't have the criminal records of
21 the seated jurors, so I can't say similarly situated. I
22 assume the State can certify --

23 **THE COURT:** All right. Mr. Graham can represent that
24 to me. Mr. Graham, were there any other jurors presented
25 that have any type of convictions for arrests for CDV?

1 That would be a fair question.

2 **MR. GRAHAM:** I can go through them on my list. I
3 don't believe there are, Your Honor, but let me check.
4 Number 26 is no. 269 does not have any CDV or crimes
5 against women.

6 **THE COURT:** All right.

7 **MR. GRAHAM:** 87 does not either. 123 does not either.
8 187 does not either. 291 does not. 111 does not. 44 does
9 not. 93 does not. 200 does not. 258 does not. 245 does
10 not. And the alternate jurors, 140 does not.

11 I'm sorry, what was the second alternate juror?

12 **THE CLERK:** 190.

13 **MR. GRAHAM:** 190 does not. And 231 does not.

14 **THE COURT:** Okay. I think that would make any jurors
15 seated consistent with his striking process. None of them
16 have any type of crime of the sort that he alluded to that
17 jurors 38 and 291 -- I'm sorry, 273, Mr. Taylor, I put the
18 wrong number -- have.

19 Anything else regarding the jurors?

20 **MR. PHILLIPS:** As we discussed in chambers, Court's
21 Exhibit Number 1 is my motion for supplemental voir dire
22 examination where you have the hybrid of the normal
23 statutory judge-conducted voir dire and then the
24 attorney-conducted voir dire to follow that up. And then,
25 of course, the Defendant's proposed voir dire, any of the

1 questions that weren't answered, specifically in
2 referencing -- the basis of the motion in Court's Exhibit
3 Number 1 is potentially to preserve the Defendant's right
4 to a fair trial and, of course, an impartial jury, and I
5 have the Federal and state constitutions cited in the
6 motion and wanted to preserve that for the record.

7 **THE COURT:** All right. And your record is preserved
8 and I think the Court, in essence, asked sufficiently the
9 issues raised to determine which jurors in the panel had
10 potential issues and/or prejudices, but the Court would
11 acknowledge that I did not verbatim ask the questions as
12 written and to the extent I did not your record is
13 protected. I will not go back and ask those. I think the
14 jury seated should be as fair and impartial a jury as can
15 be seated, but you are noted and protected.

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

17 **THE COURT:** All right. It's a few minutes to twelve.
18 Is it y'all's inclination to go on to lunch and come back
19 and start about one-ish, 1:15 with the pre-trial matters?

20 **MR. GRAHAM:** Yes, Your Honor. Then I would -- as far
21 as the jury, I think we can start tomorrow morning, Your
22 Honor.

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

24 All right. Bring the jury back in here and I'm gonna
25 get them gone. Y'all start bring this jury in. I can talk

1 to them very quickly.

2 (Whereupon, the selected jury and the jury panel
3 return to the courtroom at 11:49 M.)

4 **THE COURT:** All right, folks. Y'all should have a
5 juror information card and phone number for the Clerk of
6 Court's office. I want y'all to call in at night and
7 listen to the recording. Ms. Frick will have an
8 announcement on that recording. It will say please call
9 back tomorrow night or please come in tomorrow morning at.
10 It will give you instructions of what to follow. My
11 expectation is that this trial will start and proceed on,
12 but I never know because something may happen and I may
13 need you back tomorrow or Wednesday. My guess is I
14 probably won't, but the call-in system will allow y'all to
15 call in and not be imposed upon until I find out, all
16 right?

17 So if y'all will call in and follow the instructions
18 on the recording, y'all are free to go and thank you for
19 your help and patience.

20 And y'all hang on.

21 (Whereupon, jury panel was dismissed at 11:51 AM.)

22 **THE COURT:** All right, folks. Can you hear me, Stacy,
23 as they're walking out? Some of them make so much noise I
24 can't talk at the same time.

25 Ms. Johnson has got to take down everything I say to

1 y'all, as well as the lawyers. We're gonna get started
2 this afternoon, but most of the things this afternoon are
3 things I've got to hear from the lawyers to try to organize
4 the case for tomorrow and the next day to make certain that
5 -- some issues that need to be ironed out as to what order
6 and how we're gonna proceed and things of that sort.

7 So I've got a good deal of work to do with the lawyers
8 this afternoon which I don't need your help on. That's
9 part of our job. I'm the judge of the law and I make
10 rulings as to what the law is and what the law allows, what
11 the rules of evidence allow, and that sort of thing.

12 Y'all, as a group, are gonna be the judges of the facts.
13 Y'all are gonna answer questions of fact. I won't be in
14 the jury room when y'all are doing y'all's job and y'all
15 won't need to be in the courtroom when I'm doing my job.

16 And many times you will be. A lawyer will jump up and
17 say Judge, I object, that's not relevant. Many times I can
18 go ahead and rule on the admissibility right on the fly and
19 I'll say sustained or overruled and we'll keep on rolling.
20 Sometimes the lawyers will say Judge, I'd like to be heard
21 a little further on that and when I hear that, that's code
22 for me that they want to talk a little more in-depth about
23 what they -- and some calls are close. The rules of
24 evidence say that one, two, three. And that's what judges
25 get to do. They get to interpret the rules based upon the

1 facts and what's going on right then.

2 So when I have some issue like that of law that I have
3 to do and the lawyers want to be heard a little further, I
4 generally excuse the jury from the jury room while I make a
5 record because that's what Ms. Johnson does. If the
6 lawyers say Judge, that's not allowed, judge that is
7 allowed, then I make a ruling one way or the other, but I
8 don't really need your help when I'm doing that. Same as
9 you don't need my help when y'all are making your answers
10 to whether or not a fact is true or not true. That will be
11 y'all's job that y'all will do in the jury room.

12 Now this is important. Everything you need to decide
13 this case and to answer the questions of fact which will be
14 presented to you you'll get to hear in this courtroom as a
15 group of fifteen. You don't need to go home and do any
16 independent research, you don't need to read up on any law.
17 I'll give it to you. You don't need to go on social media
18 and say hey, guess what? I'm on the jury. Does anybody
19 know what happened? No, please don't do that. That is not
20 what I need because that would not be on the record, that
21 would be outside of the court's supervision and the record.

22 So independent research, independent conversation
23 outside the courtroom is not allowed from anybody. If
24 someone tries to come and tell you about the case; hey, I
25 hear you're on the jury and can I tell you what's gonna

1 happen tomorrow? No. The lawyers are allowed through
2 their witnesses and evidence to influence you about this
3 case in the courtroom and that's it. So if anyone tries
4 to approach you via social media, telephone, in-person,
5 smoke signals, any way, you're not to talk about the case
6 with those people.

7 Now y'all don't know much about the case. Just
8 barely. We know about the same amount. We'll learn as we
9 go. That's part of the process of presenting the case.
10 The lawyers present the witnesses in the order they deem
11 appropriate. I don't have any control over that, nor do
12 you. We'll both be receiving information as it comes.
13 With that in mind, y'all are not gonna be allowed to even
14 discuss the case with each other until the very end, all
15 right? So not only can you not go home and get on social
16 media and say do you know anything, you can't tell anybody
17 or discuss the case with anyone until I say okay, now
18 you've heard the law, I've given you my instructions,
19 you've received all the evidence, heard all the testimony,
20 now go and resolve the questions of fact that were
21 presented to you. That's when you talk about the case.
22 Until then we talk about Memorial Day weekend coming up,
23 the rain shower we had last night, whatever you want to
24 except about the testimony and the witnesses and how
25 somebody acted or whatnot. Until then, until I say discuss

1 the case, I'm gonna remind you at each break please
2 remember to not discuss the case and I need you to not
3 discuss the case until I tell you to.

4 Now first thing in the morning when y'all get here --
5 we're gonna start at 9:15, 9:30, somewhere along in there.
6 If y'all get here by 9:15, we'll start as promptly as
7 everybody gets here. As soon as you get here, Mr. Price
8 will remind you because I'm gonna tell you now, some of you
9 may want to take notes. I allow note-taking in trials
10 provided you keep them for your own use. Some people just
11 want to listen and watch and they'll take it in listening
12 and watching. That's perfectly fine. There's no rule that
13 you have to, there's no rule that you don't need to. If
14 you want a notepad, we'll get one for you. We'll get one
15 for everybody if we need to. You can take notes if you
16 want to.

17 So the first thing when you get in the jury room, get
18 comfortable. If you want a notepad and a pencil or pen,
19 we'll get that for you so when we start you can take notes
20 if you'd like. Most jurors like to and I allow people to
21 do that. I'm taking notes, so you're allowed to do that,
22 but remember I don't need you doing any independent
23 research, I don't need you going on social media. I don't
24 need you to go on social medial. It used to not be a
25 problem when I first started becoming a judge or judging,

1 but Facebook and Twitter, I'm on a jury, oh, is it a jury
2 about such and such, and then you're starting a
3 conversation and you're kind of in violation of my
4 instructions.

5 So don't put on social media you're on the jury.
6 Here's your answer. Judge Griffith says we can't talk
7 about the case and leave it there. Stop right there.
8 That's all you've got to do. Because if you do anything
9 more than that, you're in violation of my instructions and
10 you're allowing somebody to influence you outside the
11 courtroom and these parties are gonna influence you in the
12 courtroom, okay?

13 Thus, y'all are you free to go until 9:15 in the
14 morning. Don't discuss the case. You've seen where the
15 jury room is. The bailiffs -- now none of the lawyers,
16 none of the witnesses, none of the parties are allowed to
17 communicate with you outside the courtroom. If you bump
18 into one of these guys or girls, ladies, and they don't
19 really speak to you other than good morning, they're not
20 being rude, they're following the rules. They can't
21 influence you outside either.

22 So the bailiffs can. Any of the ladies and gentlemen
23 in the red blazers, their job is to meet and greet you and
24 help get you through and get you on the elevator and get
25 you up here and get you back to the jury room. That is

1 their job and they will speak to you and they will help you
2 with anything you need. So the bailiffs are go-to people
3 for you. They're go-to people for me also, but they work
4 for the Clerk of Court's office. They're here to assist
5 y'all with anything you need.

6 Thus, we'll see you in the morning. Any questions
7 real quick? We'll see y'all in the morning at 9:15 ready
8 to listen. He'll take you out the way you'll come in, all
9 right? See you in the morning.

10 (Whereupon, the jury was excused for the day at
11 11:59 AM.)

12 **THE COURT:** All right. I'll see y'all at 1:15. If
13 anything comes up, let Jacob know.

14 (Whereupon, a luncheon recess was taken.)

15 **BAILIFF:** All rise. Court's now in session.

16 **THE COURT:** Y'all be seated.

17 All right. Are y'all ready to get started?

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

19 **THE COURT:** Are you ready, Mr. Graham?

20 **MR. GRAHAM:** Yes, sir.

21 **THE COURT:** All right. Mr. Phillips, this is your
22 motion, I believe.

23 **MR. PHILLIPS:** Yes, sir. One thing I wanted to
24 address first was what we addressed in chambers, the issue
25 of reviewing new discovery on Michael Young. On Friday I

1 started to read in his disciplinary housing records from
2 Lexington County Detention Center about him being sick. I
3 knew that we have in our office, the Michael Jeffcoat firm,
4 personal injury clients that are in the investigation
5 stage. I then started to run a conflict check with our
6 case management software and noticed that numerous
7 witnesses in this case are personal injury clients of the
8 firm of which I'm employed, I'm an associate in. Certainly
9 at that point I e-mailed Your Honor, as well as copied the
10 solicitors, and certainly if Your Honor wishes, we can then
11 provide those e-mails as Court's exhibits if necessary.

12 I also e-mailed over the weekend -- in dealing with
13 this issue, I've researched Rule 1.7, 1.8 and 1.16 of the
14 Rules of Professional Conduct regarding conflicts of
15 interest with current clients. I don't believe we have
16 a true direct adverse conflict, but I believe it is a
17 potential conflict as we discussed. In looking at
18 Rule 1.7, the comment section, Number 2 says the resolution
19 of a conflict of interest problem under this rule requires
20 the lawyer to clearly identify the client or clients, which
21 I've done and provided to the Court in an e-mail. At
22 different times we did a full audit with our paralegals of
23 both those clients in the personal injury cases and then
24 with the witness list in this case that we created which
25 was, again, over two hundred witnesses. We have a listed

1 and provided Your Honor with the potential conflict clients
2 that we found.

3 It says decide whether representation may be
4 undertaken despite the existence of a conflict, whether
5 the conflict is consentable. As we discussed in chambers,
6 the Michael Jeffcoat Firm is taking adequate steps to
7 ensure that their rights are protected, so we are going
8 to withdraw representation on those cases to avoid the
9 appearance of any impropriety and, of course, fully comply
10 with the Rules of Professional Conduct to make sure they
11 have lawyers that don't have any potential conflicts. We
12 believe that's in their best interest and we have drafted
13 the letters and are sending them out and I think the
14 Michael Jeffcoat Firm has even got an investigator trying
15 to make sure this stuff gets served, Your Honor.

16 With that, the next is deciding again -- consult with
17 the client, in effect, on whether -- I have explained this
18 with my client, John Hart. He does wish to put on the
19 record his feelings. He's indicated to me that he wants to
20 waive any potential conflict with that. I know the rules
21 say it must be written consent, so I can get that from him,
22 but I believe if it's put on the record that also will
23 satisfy the rules because the whole point is to get rid of
24 a swearing contest later since it will be an under oath,
25 certified issue.

1 With that, with these potential witnesses, I believe
2 we also need to have them -- since they were at one time
3 personal injury clients of the firm, to have them examined
4 and have these issues -- these potential conflicts waived
5 by each witness before they testify.

6 **THE COURT:** If they're called.

7 **MR. PHILLIPS:** If they're called. Yes, Your Honor.
8 Some of them are very critical and will be called. If not,
9 I think the State's case would be much different and the
10 State can address that. What I would say is if we wait
11 until they get called and the State's case gets moving if
12 one of the witnesses then at that point says he won't waive
13 the conflict and I need to withdraw, we're in a mistrial
14 situation and I certainly want to avoid that. It's been
15 four years and to protect, you know, John, the fact that
16 he's been incarcerated for four years and, of course, today
17 is his day in court, and I am about to make a motion for
18 continuance based on discovery and we'll go through that,
19 but to ensure that those clients on the personal injury
20 side, that their rights are protected, and as well as
21 Mr. Hart's rights are protected, I have to make sure -- and
22 to protect myself to be honest. Now that this potential
23 conflict has been identified, I want to make sure that the
24 Rules of Professional Conduct is fully complied with and
25 that I'm ensuring my duty as one of the lawyers that we

1 are complying with all ethical rules and to make sure that
2 this is done in a fair and just way.

3 **THE COURT:** All right. Mr. Graham, y'all have seen
4 the list of potential witnesses that are potential
5 conflicts of Mr. Jeffcoat's firm; have you not?

6 **MR. GRAHAM:** I have a list that was e-mailed to me,
7 Your Honor.

8 **THE COURT:** Now are any of those what you would
9 consider to be critical witnesses for your case? And by
10 that I mean is so important that you couldn't call the
11 case without them?

12 **MR. GRAHAM:** Yes.

13 **THE COURT:** So some of them are?

14 **MR. GRAHAM:** Some of them are.

15 **THE COURT:** Okay. On any of those, if -- I mean, it
16 seems to be the Court's observation if they're afforded an
17 opportunity to find other counsel for the personal injury
18 action, then their rights should be protected. Because the
19 main rights I'm worried about would be Mr. Hart's.

20 And, Mr. Phillips, you don't represent any of those
21 parties, it would be your partner? You don't represent any
22 of them on the personal injury side?

23 **MR. PHILLIPS:** Well, it -- I'm an associate in the
24 firm and I know -- because there's so many individuals in
25 this investigation stage, I have signed status update

1 letters and, you know, it will be a stack of "this is your
2 status update", and I can't even remember all the people
3 involved because I'm not actively -- I'm the criminal
4 defense attorney in the firm and Michael Jeffcoat is the
5 personal injury attorney. But with that being said, in a
6 case that has that many clients, I have signed letters and
7 I want to make sure that we're not overstepping any lines.

8 **THE COURT:** All right. I want you to draft a letter
9 to put in the record for Mr. Hart to say these are the
10 potential witnesses, the trial is starting in the morning
11 with the jury being sworn, and he waives any potential
12 conflict on his part because you're making arrangements to
13 find new representation for all these potential clients
14 whose cases are in various stages of personal injury
15 resolution and, therefore, his rights will be protected.
16 But I'll ask Mr. Hart right now. I'm wanting the letter
17 supplemented and I want it in the -- as a Court's exhibit
18 before tomorrow.

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

20 **THE COURT:** All right. Mr. Hart, let me ask you.
21 Do you understand as Phillips has explained to you the
22 potential witnesses the State has, that his firm represents
23 some of them and they'll be testifying in some fashion in
24 this trial? You have been working with Mr. Phillips some
25 three and a half, four years, I guess, representing you.

1 **MR. PHILLIPS:** Nine months, Your Honor.

2 **THE COURT:** Nine months? Anyway, you've been --
3 you've been waiting for your day in court for more than
4 three and a half years?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Do you understand the conflict issue that
7 Mr. Phillips has explained to you as being potential
8 witnesses in your trial could be called by the State or
9 by you on your side of the case, that Mr. Jeffcoat and
10 Mr. Phillips are representing, but they are attempting to
11 undo the professional relationship they have and find them
12 new attorneys to represent them on those matters as we
13 speak? Do you understand the potential conflict that would
14 exist there if Mr. Phillips and Mr. Jeffcoat continue to
15 represent those folks?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** And are you willing to waive that conflict
18 here today to proceed going to trial with Mr. Phillips
19 representing you?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** You've had enough time to discuss that
22 with him?

23 **THE DEFENDANT:** Yes, sir. We -- we discussed it. I
24 understand completely.

25 **THE COURT:** Okay. Now he's gonna prepare some sort

1 of memorandum of waiver for you to waive that potential
2 conflict for whichever witnesses these are and it would
3 be the Court's intent to discuss that with the potential
4 witnesses as they're called, okay?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** All right.

7 **MR. PHILLIPS:** And the only other issues would be as
8 the witnesses are called when the jury -- conceptually when
9 the jury is in the room, how the examination of -- how do
10 we have the in-camera examination?

11 **THE COURT:** I'll deal with that, but I'll do that if
12 y'all let me know. Y'all know the list, I don't. If
13 you're about to call one say Judge, it's a good time to
14 take a break, so I'll handle that.

15 **MR. PHILLIPS:** Thank you, Your Honor. And I'll have
16 that drafted and signed and marked as a Court's exhibit.

17 **THE COURT:** All right. We should be good on that
18 issue or we're prepared to address that issue as it arises.

19 **MR. PHILLIPS:** The first motion is the standard
20 sequestration of witnesses, Your Honor. I know that's
21 pro forma.

22 **THE COURT:** Yes.

23 **MR. PHILLIPS:** With that, the next is the motion for
24 the solicitor to certify compliance with Brady and Rule 5,
25 as well as the supplemental discovery requests. I did

1 receive this morning prior to jury selection more
2 discovery, some jail phone calls. I'm not sure if it
3 covers -- I mean, I can read out the disks or the
4 solicitor's office can say which phone calls are on the
5 disk. I know Tevin Deloach is one of them. Two disks are
6 for Tevin Deloach -- three disks were Tevin Deloach, and I
7 know we requested jail phone calls for multiple witnesses.
8 Some of them I think the phone calls -- the retention was
9 one year, so they might be gone and, of course, we can deal
10 with a spoliation request later, but I think based on the
11 e-mail that I had there are some jail phone calls in
12 existence for -- is it Michael Young? There are some jail
13 phone calls that are in existence for several other
14 witnesses that will be needed by the defense in preparation
15 for trial as impeachment of these witnesses since they are
16 material witnesses.

17 Also provided with paper discovery this morning was
18 provided the following. It is two written letters that --
19 I sent an e-mail when I was reviewing discovery yesterday
20 and doing a supplemental request to the solicitor's office
21 requesting two written letters by Daniel Everhart. They
22 were provided this morning. The arrest warrant was given
23 to me for Jeremy Washington yesterday. Jeremy Washington,
24 a very critical witness in the case, was charged with
25 murder now four years later. Also attached was Washington

1 -- at my supplemental request Washington and Michael
2 Young's criminal records, as well as Mr. Hart's rap sheet.

3 So at this time I would request that the State certify
4 that other than what's not been provided with the jail
5 phone calls as far as those other witnesses, whether
6 there's any other discovery that they still need to submit
7 or whether they can certify full compliance.

8 **THE COURT:** How do y'all respond?

9 **MR. GRAHAM:** I'm sorry, Your Honor?

10 **THE COURT:** How do y'all respond to his request for
11 certification of compliance with discovery?

12 **MR. GRAHAM:** I'm insulted.

13 **THE COURT:** Pardon?

14 **MR. GRAHAM:** I'm insulted. As an officer of the
15 Court, I know what my responsibilities are under Rule 5
16 and Brady. I've done my best to provide information as
17 required under the rules. Do I still have some things
18 that I haven't turned over? I do, but the rules tell me
19 when I have to turn them over. I don't have to turn over
20 everything on a witness until they testify if they're gonna
21 be impeached, I understand that. He will get it when I get
22 it and when I'm prepared to turn it over before the people
23 testify.

24 A lot of this stuff that he's asked for is stuff that
25 he's asked for that we never had in our possession and I'm

1 assuming as we go through the discovery that he's gonna
2 talk about for a continuance.

3 **THE COURT:** All right. Well, if some discovery arises
4 that was not discovered during the pendency of the trial,
5 that's for the Court to decide whether or not to suppress
6 it or not, and I understand that, but I think under the
7 rules it's a continuing and ongoing duty to provide
8 discovery as it comes into the possession of the
9 investigation and so I think you have answered the question
10 as I thought it is most appropriately supposed to be done
11 within the rules. You have provided what you're supposed
12 to, so we'll move on.

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

14 We are now making our renewal of the supplemental
15 motion for discovery. I do want to mark the transcript
16 from April 12, 2017, that was before Your Honor as a
17 Court's exhibit. This is the hearing where I filed
18 a supplemental discovery motion requesting all
19 electronically-stored information, and Your Honor denied
20 that motion. It was a -- specifically we narrowed it down
21 -- casted a wide net and narrowed it down and agreed upon
22 that I was specifically requesting four e-mails. With that
23 being the case, Your Honor denied it, but I wanted to renew
24 that motion before Your Honor and mark the transcript as a
25 Court's exhibit. It should be Court's Exhibit Number 4 --

1 is that correct?

2 **THE COURT REPORTER:** Yes.

3 **MR. PHILLIPS:** -- to make sure the motion is
4 preserved.

5 **THE COURT:** It's preserved. You've got that.

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

7 (Court's Exhibit Number 4 was marked for
8 identification.)

9 **MR. PHILLIPS:** And as to the Defendant's motion for
10 a continuance or in the alternative a motion to suppress
11 evidence, I have marked this written motion as Court's
12 Exhibit Number 2. I have a CD with all of the discovery
13 that's been provided to me since April 12, 2017. It's
14 marked as Court's Exhibit Number 3. It does not include
15 the discovery that was provided to me this morning that we
16 discussed, the jail phone calls, as well as the written
17 reports and statements that were given.

18 With that being the case, I'll go ahead and start
19 arguing the motion for continuance, Your Honor.

20 **THE COURT:** Okay. Go ahead.

21 **MR. PHILLIPS:** We respectfully move at this time for a
22 continuance of the scheduled trial date. With that being
23 the case, Your Honor, if Your Honor does deny this motion,
24 we would request that any of the -- what we believe to be
25 untimely discoverable evidence to suppress -- or we would

1 move to suppress that evidence. We make this request based
2 on the fact that counsel has not only a duty to conduct a
3 reasonable investigation, specifically with the jail phone
4 calls that were just provided, but it's impossible for me
5 to be able to review all those phone calls and be prepared
6 as I just received them today in court based on my
7 supplemental discovery motion for this. You'll see that
8 this request is made pursuant to the Fifth, Sixth and
9 Fourteenth amendments to the United States Constitution and
10 Article 1, Sections 3, 12 and 14 of the South Carolina
11 Constitution, essentially protecting the Defendant's
12 constitutional right obviously to effective assistance of
13 counsel and, of course, citing Strickland and Wiggins with
14 the duty to investigate.

15 I go pretty deep into the case law in the motion for
16 continuance. I know we've already had a hearing on this a
17 little over a week ago on a motion for continuance and it
18 was denied and part of that was the argument was presented
19 to the Court regarding the Langford issue where in State v.
20 Langford our Supreme Court found that exclusive control of
21 the docket by the solicitor's office was unconstitutional.
22 With that still being the case, in the Eleventh Circuit
23 the solicitors still control the criminal docket and the
24 original trial date for this case was scheduled in March.
25 Unilaterally without a hearing, this case was continued by

1 the solicitor's office in February. Since the April 12th
2 hearing on the supplemental discovery motion, I have
3 received an incredible amount of discovery in this case.
4 You will see the discovery that is contained in the disk
5 that was provided as Court's Exhibit Number 3 that a lot of
6 this discovery is one to four years old, that it's not all
7 brand new, and certainly deserves the Court's review of how
8 much discovery has been turned over since April 12th, as
9 well as the morning before the trial.

10 **THE COURT:** It's not the morning before trial stuff
11 you asked for?

12 **MR. PHILLIPS:** That's correct.

13 **THE COURT:** That's right. I just wanted to make sure
14 I understood.

15 **MR. PHILLIPS:** As far as the jail phone calls and the
16 statements. I mean, I think it's undisputed that written
17 statements by witnesses would be part of Rule 5 and --

18 **THE COURT:** Well, I mean, if they weren't gonna use
19 it, but you asked for it and they gave it to you. It would
20 be kind of hard for me to say you're right, Mr. Phillips,
21 they're giving you late discovery when you're the one
22 asking for specific things and they weren't gonna use it.
23 I kind of understand --

24 **MR. PHILLIPS:** I understand that part of it, Your
25 Honor. As far as being able to have the opportunity to

1 present --

2 **THE COURT:** I just want to make sure I'm getting the
3 facts --

4 **MR. PHILLIPS:** Of course.

5 **THE COURT:** -- of what happened when and I don't get
6 confused over late produced discovery that they've been
7 sitting on and trying to ambush you with it, as an opposed
8 to something you asked for that you just want to see but
9 they weren't intending on -- as an ancillary issue.
10 There's a difference to me.

11 **MR. PHILLIPS:** Of course. To avoid any confusion,
12 I'll walk through the timeline that's provided in the
13 motion to make sure. As Your Honor has heard, I think,
14 too many times that I am the fourth attorney on this case.
15 I was appointed back in July to represent Mr. Hart; that
16 an investigator had not been hired on the case, there had
17 virtually been no work done on the case, starting this
18 case fresh in July when it was three and a half years old.

19 With that being the case, going directly to the
20 discovery that we received, I've listed in my motion a
21 timeline of what we did receive on April 12th. There's a
22 SLED and fire service report, there's a written statement
23 from Michael Young, a phone summary statement from Carlos
24 Watkins, supplement reports from Investigator Spivey that
25 was updated from July 8th of 2014. So I did not have the

1 investigative notes from Detective Spivey from July 8th
2 until the current -- until April 12th.

3 There's a written statement from Alex Wallace, a
4 written statement from Jessica Ussery, an FBI statement of
5 Demory James Robinson, the FBI statement of Jerome Pugh,
6 FBI statement of Jeremy Washington, a Federal proffer of
7 Michael Young. There's an FBI statement of Jeremy
8 Washington, a pathology report, SLED lab report, a case
9 supplemental report from Investigator Mefford, a case
10 supplemental report from Investigator Spivey, a SLED lab
11 report, numerous medical records.

12 On April 20th, I received a couple of case
13 supplemental reports from Investigator Stoner, an FBI
14 proffer of Jeremy Washington, a case supplemental report
15 from Investigator Spivey.

16 On May 3, 2017, a SLED DNA analysis report, a SLED
17 serology report, a report from Rome Police Department, a
18 supplemental report from meeting with Witness Slager.

19 May 8th, Lexington County Sheriff's Department chain
20 of custody, SLED chain of custody, questioned documents for
21 handwriting analysis.

22 May 9th, Michael Young breach of proffer, some of the
23 rap sheets for witnesses, as well as the CDV report for
24 Mr. Hart.

25 May 16th, DVD with exhibits of the maps that will be

1 used for demonstrative purposes, which that's not -- I
2 mean, that was them being --

3 **THE COURT:** Does Ms. Johnson have a copy of that?

4 **MR. PHILLIPS:** She does.

5 **THE COURT:** Okay. You're talking fast. I wasn't sure
6 if she can keep up with that. When you read stuff, you
7 talk -- everybody talks faster.

8 **MR. PHILLIPS:** Absolutely. It is provided with -- I
9 sent this motion via e-mail, I believe, on Saturday to
10 Your Honor and the solicitors, as well as provided paper
11 copies this morning, and it's marked as a Court's exhibit.

12 May 17th is SLED documents, more rap sheets of
13 potential witnesses.

14 May 18th is a report by Investigator Spivey, which
15 is -- my guess is not listed as such regarding Jeremy
16 Washington's polygraph and statements to solicitors Graham
17 and McNair. Report by Investigator Spivey regarding
18 polygraph and statement from the Defendant. At this point,
19 I have requested -- that's something else I have requested,
20 polygraph results and analysis from Jeremy Washington,
21 who's a critical witness. I do not have that and I believe
22 that was taken this past Wednesday and I learned that he
23 was charged with murder yesterday. I learned this morning
24 that he was charged with murder yesterday.

25 **THE COURT:** I learned today.

1 **MR. PHILLIPS:** Alex Wallace's juvenile records, John
2 Hart's juvenile records. Sentencing sheets and indictments
3 are pretty standard stuff. Based on a supplemental
4 discovery motion on May 9th, I received the housing reports
5 and certified convictions of certain inmates and discipline
6 reports. Michael Young's district court order, as well as
7 his housing and discipline records. Richland County
8 documents for Paula Justice.

9 The case that I've cited in the motion, in addition
10 to having this Langford issue, is Winkler v. State.

11 **THE COURT:** All right. Well, let's get by Langford.
12 I can't do much with that because Langford is not imposed
13 anywhere. Every makes that motion. The Supreme Court's
14 supposed to be coming out with an addendum or some sort
15 of amendment or change to Langford, but I can't enforce
16 something with the very hazy direction that was afforded to
17 circuit judges. So I appreciate your argument. I think
18 that's a little premature. You're protected on the issue,
19 you've raised it, but don't argue it anymore, okay? Let's
20 get by Langford, they moved the trial from March till now,
21 I'll give you that. I don't want to cry afoul on that
22 because I'm chief administrative judge. Langford is
23 Langford. It is not crystal clear.

24 **MR. PHILLIPS:** I'm protected. We're moving on.

25 **THE COURT:** All right.

1 **MR. PHILLIPS:** In Winkler v. State, our Supreme Court
2 decided a case concerning the granting of a continuance in
3 a PCR case and the Court used the language of "if good
4 cause is shown to justify a continuance". I believe this
5 amount of discovery that's been provided since April 12th,
6 as well as jail phone calls on the morning of trial, I
7 believe once this evidence is reviewed by Your Honor it's
8 clear that we have this good cause shown to justify a
9 continuance.

10 In making this standard, it's not -- the argument that
11 the Defendant is arguing -- is presenting to the Court is
12 not the typical continuance argument. It's the standard
13 that's used in Winkler v. State that when good cause is
14 shown to justify a continuance you have essentially a
15 presumption that must be rebutted as to why the good
16 cause wouldn't be enough to grant the continuance. Where
17 would be the prejudice to the State in not granting the
18 continuance or denying the motion for continuance? I
19 think the prejudice to the Defendant is clear if the trial
20 would have happened in March, it would have been a much
21 different trial than we're having now in May based on this
22 discovery, so we'd have two different trials and part of
23 that with good cause being shown there needs to be more
24 time to fully investigate all of this amount of discovery
25 and the witnesses that are being presented is an incredible

1 amount. Luckily with the witness list that cuts down a
2 good number of the potential witnesses that I now know as
3 of this morning which ones to focus on. Of course, there
4 are a handful of critical witnesses that are obvious. I
5 certainly have no doubt about that.

6 With that being the case, in citing, again, State v.
7 Lounds, that I have that duty to conduct a reasonable
8 investigation and when you have jail phone calls if there
9 is any type of exculpatory impeachment evidence that's
10 contained in those phone calls if I don't have the
11 opportunity to review them, it's similar to State versus
12 Burns in the confidential informant context of if I don't
13 have the time to conduct this investigation, I'm
14 essentially being denied disclosure of those records in
15 the first place, and essentially it creates an opportunity
16 where if they're found after trial or some type of
17 exculpatory or impeachment evidence is found post-trial,
18 then we run afoul of essentially having to file a motion
19 for a new trial because we have this evidence that should
20 have been timely presented and, of course, available for
21 the defense to be prepared.

22 With that being the case, I will say that my motion
23 is very thorough. I don't want to belabor the point, but
24 I think another matter that's very important is the right
25 -- the opportunity to -- you have a right to have the

1 opportunity to present a full and complete defense under
2 Crane v. Kentucky and, of course, Washington v. Texas, and
3 having this is that opportunity to be fully prepared and,
4 of course, your right to confrontation of the witnesses
5 under the Sixth Amendment, of course, under the South
6 Carolina Constitution. It's impossible for counsel to be
7 able to make sure he complies with that and ensures his
8 due process and the other constitutional rights that I've
9 cited in the motion when I'm not fully prepared to cross
10 these witnesses.

11 I can tell Your Honor that I have spent many, many
12 hours preparing this case and you will see that if the
13 motion is denied. It's not something that I'm doing for
14 purposes of delay. Myself and the law clerk, Kaitlyn
15 Pennington, have put many hours into preparing this case,
16 we just need more time to make sure it's fair and that's
17 what this process certainly is -- the whole purpose of why
18 we have these constitutional safeguards and protections.

19 With that being the case, Your Honor, I wanted to
20 make sure -- if Your Honor does deny this motion for
21 continuance, we would request that Your Honor review the
22 evidence that's been listed, and I would even certainly
23 provide it in evidence as well, and decide what you would
24 consider in a motion to suppress as far as being untimely.
25 Specifically with -- there's critical witnesses where --

1 and other witnesses that are provided that had been in the
2 State's possession for quite some time, but had not been
3 turned over until the case started getting worked in April.
4 And I think if you look back though the evidence as it
5 comes out, I mean, it's pretty clear that that's what
6 happened; that these documents had been there for a couple
7 of months up to four years and just had not been turned
8 over. And there was the discussion by the solicitor about
9 a continuing duty to disclose and I think that would also
10 be on a reasonable basis of when it's provided or when it's
11 available, the continuing duty must be reasonable as to
12 when it's provided or disclosed to defense counsel, and
13 having all this within a short amount of time certainly
14 constrains the constitutional rights of the Defendant.

15 Again, with that being said, we would certainly rest
16 on our written motion and the arguments provided.

17 **THE COURT:** All right. Let's hear from Mr. Graham or
18 Mr. McNair as to the continuance and the discovery that's
19 been provided here recently.

20 **MR. GRAHAM:** I guess from the beginning I wasn't
21 there for the conference call when this date was set. My
22 understanding was that Solicitor Hubbard and Mr. McNair
23 were on the phone with Your Honor and Mr. Phillips when
24 this date was set, so I don't think we unilaterally decided
25 on a date. That's my understanding of how this happened.

1 A date was scheduled earlier and it got continued because
2 of other scheduling issues in our office and other cases
3 that wanted to go forward. I don't know -- is that
4 correct?

5 **MR. PHILLIPS:** That part's correct.

6 **MR. GRAHAM:** So I don't -- I guess I didn't understand
7 where the -- us making unilateral choices about this was
8 coming from.

9 **THE COURT:** Okay. We had several calls. That was
10 several trials that were set. We basically set all the
11 trials during a multi lawyer -- not just this one, but
12 another trial that was set earlier this spring got put
13 forth in January, this one was there, too. I remember
14 that phone conference now. There were multiple lawyers
15 for multiple cases and multiple solicitors and I was in
16 Saluda when I was part of the call from what I remember
17 now and my law clerk's refreshed my memory, so it wasn't
18 just about this one case, it was about several cases and
19 trying to pitch out which were the most convenient trials
20 weeks forward for particular lawyers and their particular
21 schedules and difficulties setting up. I remember that
22 now.

23 **MR. PHILLIPS:** Right. And the conference call without
24 a doubt happened. What I'm saying as far as being able to
25 pick and choose which cases they called is, again, not --

1 you've already ruled on the Langford issue, was -- is the
2 crux of the Langford issue, having that control of deciding
3 when they --

4 **THE COURT:** Well, as I remember it, it was more or
5 less a stipulation among each of the lawyers, whether it be
6 prosecution or defense with the Court kind of directing,
7 which is more consistent with Langford than the solicitor
8 saying it's gonna be here or else or here or else because
9 that wasn't the way that conversation went. I had three
10 or four different trial lawyers on the phone and I took
11 interaction from everybody and trying to accommodate the
12 varying requests that I had and it was more the Court
13 providing direction of what available court weeks we had,
14 who wants when, does that suit, yes or no. It was that
15 type. Now I don't remember specifically this case and,
16 you know, the exact conversation, but the tenor of the
17 whole conversation was the Court was receiving information
18 from the solicitor's office, the public defender,
19 Mr. Swerling had a case coming up, he was on the conference
20 call, someone else and you were, I believe, and it was a
21 combination of lawyers talking and us picking out weeks
22 and going forward and that kind of thing, so.

23 **MR. PHILLIPS:** And I do remember that we had
24 discussion of another trial that I was in a month ago that
25 was an attempted murder, CSC that was a week long trial

1 that, again, I was involved in and that goes partly into
2 my ability to be prepared was that I was in a week long
3 attempted murder, CSC trial, burg first, within the last
4 month, just one term ago -- two terms ago, and so that's
5 part of the argument that's in the motion as well.

6 **THE COURT:** Okay. Well, I remember that conference
7 call and I think that was very accommodating of a chief
8 administrative judge to get everybody on the phone and try
9 to work it out, and that's what I did, so I'll take credit
10 for that. You're protected on the Langford issue, but that
11 might be as close to Langford ever being complied with if
12 the Court's supposed to have the roster is what I did that
13 day, so that is on the record.

14 All right. Go ahead, Mr. Graham, onto the discovery
15 issues.

16 **MR. GRAHAM:** I don't even know how to begin to address
17 it, Your Honor. He -- I mean, it almost seems like we need
18 to parcel out what is in response to what he requested
19 versus what we gave them and then we can address it. For
20 instance, he -- the last disk that he was talking about
21 today, my understanding is we got those from Alvin S. Glenn
22 Detention Center. Those were phone calls with Tevin
23 Deloach; is that correct?

24 **MR. PHILLIPS:** Those CDs do say Tevin Deloach.

25 **MR. GRAHAM:** The ones that's he saying that's on there

1 he was talking about a spoliation issue, we never asked for
2 them, I didn't look for them. He asked for them last week,
3 we put a request for them, we got them and we're giving
4 them to him. He didn't -- I mean, I can understand why he
5 wants to look at them, I get that, but, I mean, he didn't
6 ask for them before the first trial date and he knew --
7 Mr. Deloach is the testifying co-defendant. That's not a
8 new name. So I -- that's not my fault that he's just
9 getting it today.

10 **THE COURT:** Well, I think what I want to focus on,
11 and this is kind of my inclination assuming we go forward,
12 just like any other evidence, if something comes -- an
13 issue arises and it's a piece of evidence that was -- the
14 State has been sitting on and not providing in violation
15 of discovery, and Mr. Phillips says wait a minute, y'all
16 have had that a long time, I asked for it a long time ago
17 and you gave it to me very recently, that would be a
18 suppression issue for the Court. It's hard for me to take
19 them all together not knowing what's coming in or what's
20 not coming in. That's kind of my idea of how to handle
21 these. If he got something very recently and he asked for
22 it a long time ago and it was not provided, that would be
23 an issue for the Court to decide whether or not to suppress
24 it or not, not something he recently asked for, you
25 provided it to him. That's kind of -- you know, we're

1 gonna utilize that the best you can, but all the evidence
2 to me would be subject to a suppression request if it was
3 provided very reluctantly or tardily under the discovery
4 request provided by the defense.

5 **MR. GRAHAM:** The only one that I know, Your Honor,
6 is that I thought that we had sent the DNA report over
7 earlier. I know that's something. The DNA report was
8 done probably -- I don't know what year. Dayne may know.

9 **MR. PHILLIPS:** '15.

10 **MR. GRAHAM:** '15. I know that we had conversations
11 with Mr. Hart's three -- two prior lawyers, with Tommy
12 Shealy and Walt Whitmire. Both of those people we talked
13 about would he consent to a Schmerber and we also talked
14 with Dayne about that as well and we have e-mails about it.
15 I don't know -- I can't prove that I ever gave discovery.
16 I honestly thought -- if I didn't discuss the results, I
17 thought that I had handed it to one of them, but it's not
18 -- that's not purposeful on our part that we didn't supply
19 it and all of the attorneys were aware of the results.
20 The bottom line is unless Mr. Phillips knows something
21 different it's inconclusive. Nothing that was found in
22 DNA is gonna be able to rule in or rule out Mr. Hart.

23 **THE COURT:** That's where there were two potential
24 sources found, but neither one of them were enough to get
25 a sample or get a --

1 **MR. GRAHAM:** Under the fingernails. Yes, Your Honor.

2 **THE COURT:** Okay.

3 **MR. PHILLIPS:** And to clarify, the previous
4 supplemental discovery request for jail phone calls was
5 not limited solely to Tevin Deloach. It was multiple
6 witnesses listed, witnesses that are critical to this
7 case; specifically, Michael Young, Jeremy Washington. I
8 can't rattle them off. Deandre Staley. I mean, there
9 were way more than even just what I just mentioned as I
10 specifically requested jail phone calls for those people
11 that are gonna be witnesses.

12 **MR. GRAHAM:** I think there were probably at least
13 seven or eight other people that were asked for last week.
14 We sent that request to the jail and complied where we
15 could. I don't know -- I believe we got some and I believe
16 we turned some over, didn't we? And I think for the ones
17 that we didn't get, we were told that they didn't have
18 records. The records go back to a year by the company
19 they deal with. Some of those requested are not even --
20 I think he asked for Jeremy Washington in Federal prison.
21 I don't have any access to Federal prison. I don't even
22 know who to ask or honestly where he would have been during
23 the last year. I don't know how to -- I mean, he knows as
24 much as I do and the truth is he can send a subpoena like
25 I can, so that would be the only one that I think I know

1 about that we didn't do our best to comply with would be
2 Jeremy Washington in Federal prison.

3 **MR. PHILLIPS:** And we did send a subpoena and within
4 the last hour I did get a text message from the paralegal
5 saying that Lexington County says that they have jail phone
6 calls available, but that goes back to my initial argument
7 of it's impossible for me to review jail phone calls in the
8 middle of trial.

9 **THE COURT:** But you're the one asking for them.

10 **MR. PHILLIPS:** Of course. These are witnesses that
11 will testify and if there's exculpatory impeachment
12 evidence that's contained in the phone call and it's not --
13 I don't have the opportunity to review it to be prepared
14 for cross-examination, then we run into a motion for a new
15 trial if it's found afterwards.

16 **THE COURT:** I understand your -- all right. Keep
17 going, Mr. Graham. I'm gonna come back to that.

18 **MR. GRAHAM:** So that's the DNA issue. I think the
19 defense may have not seen the report, but they all -- I
20 believe Mr. Phillips, Mr. Whitmire and Mr. Shealy were all
21 aware in discussions with Mr. McNair and myself of what
22 they were, but other than that they have received it.

23 **MR. PHILLIPS:** And I'm good on the DNA issue. They've
24 provided additional discovery. We have our independent
25 expert. I'm good on the DNA issue. But, again, when you

1 look at Court's Exhibit Number 3, the CD that's provided --
2 I mean, I can take the time and we can go through it, but
3 if you start to look at the discovery that's been presented
4 starting on April 12th all the way up until the trial date
5 and you start actually going through these discovery
6 packets, there are statements of witnesses that had been in
7 the State's possession for months to four years that had
8 not been turned over until April. Unless the State's gonna
9 say that they had turned it over to a previous attorney. I
10 mean, this -- and that's why I marked it as -- the CD is
11 all -- the amount of discovery. There's two different
12 cases. There's the case before April and the case after
13 April and the amount of discovery has changed the nature
14 of the case, specifically all the discussions with Jeremy
15 Washington. In April we find that -- we get the FBI
16 statement saying that he doesn't know anything about the
17 murder, he doesn't set it up, then we get another statement
18 later, I think it's maybe May, I can pull it out, saying
19 well, maybe I do know something about it, I might have said
20 something about paying money and drugs, but he never told
21 me, then we found out that he was polygraphed Wednesday of
22 this week. I don't believe that it shows that he was
23 Mirandized on that.

24 **MR. GRAHAM:** Jeremy Washington has never been
25 polygraphed.

1 **MR. PHILLIPS:** It says polygraphed on the report.
2 That he spoke with a polygraph --

3 **MR. GRAHAM:** I don't know. As far as I know he has
4 never been polygraphed.

5 **MR. PHILLIPS:** I'll pull the report. It says that he
6 spoke with a polygraph person.

7 **MR. GRAHAM:** He did speak to a polygraph examiner, but
8 he was never polygraphed.

9 **MR. PHILLIPS:** Okay. So on this Wednesday, a
10 pre-polygraph interview. Let me be specific. In a
11 pre-polygraph interview with this person with the FBI
12 Wednesday of this week he says that he did hire John Hart
13 and that he did -- John Hart did confirm that he killed
14 Paula Justice and that now as of yesterday I found out this
15 morning Jeremy Washington has been charged with murder.
16 That's a pretty big chain of events starting from last
17 Wednesday.

18 **THE COURT:** All right. Mr. Graham.

19 **MR. GRAHAM:** I don't know the first time that
20 Mr. McNair spoke by phone to Mr. Washington. I don't know
21 the date of that.

22 **MR. PHILLIPS:** November of 2016.

23 **MR. GRAHAM:** All right. At that time he denied any
24 involvement. He was in Federal custody in California. He
25 denied any involvement in the case. I don't know what time

1 we got the report, but I don't know that him denying it at
2 this moment would be relevant. We continued to have
3 conversations and was able to do a writ and get him here
4 and that's when everything else was happening, which was
5 in the past week, and we got it, had reports written and
6 turned it over.

7 **MR. PHILLIPS:** Again, I can walk through -- I mean,
8 there's just other reports. Specifically, Investigator
9 Spivey's full case report. It ends, I believe, before
10 July 8th of 2014 and on April 12th we get provided with
11 the full case report that is from July 8, 2014, all the
12 way to April 12th, so all of the investigation that he
13 had done and written notes on we get provided two, almost
14 three years worth of investigator's notes, as well as all
15 these written statements from Michael Young. Michael
16 Young's a material and critical witness in this case. He
17 -- he is a jailhouse informant. He comes out the woodwork
18 in April. I mean, we can kind of go on and on about --

19 **MR. GRAHAM:** If I could take them by points, maybe we
20 could address them by points.

21 **THE COURT:** It helps me.

22 **MR. GRAHAM:** Sergeant Spivey's report that he's
23 talking about, we re-sent 78 pages. Because of the way
24 that the sheriff's department system formats and the way we
25 get it, it's not always on the same page. So page 1 and 2

1 may not end and start at the same place. It doesn't change
2 the text content in the middle, but it changes the way it's
3 formatted. There were only four additional pages in that
4 78 pages that detailed the timeframe that he's talking
5 about.

6 **MR. PHILLIPS:** Hold on, Your Honor.

7 **THE COURT:** Okay.

8 **MR. GRAHAM:** And we turned it over when we got it. I
9 don't think we sat on that.

10 **MR. PHILLIPS:** Are we still on?

11 **THE COURT:** Yeah, keep going. While you're looking,
12 I'm gonna walk around. I'm tired of sitting.

13 **MR. PHILLIPS:** Yes, sir. The discovery packet that's
14 dated April 7, 2017, I received on April 12th. The July 8,
15 2014, comes in on page 27 of 78 and so pages 27 to 36 are
16 case supplemental reports where he is investigating the
17 case and speaking to witnesses. A new witness would be
18 Daniel Everhart. The information related to new, just
19 discussions with Jessica Ussery, Carlos Watkins, Jeremy
20 Washington, Alex Wallace.

21 **THE COURT:** These are nine pages, 27 to 36?

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

23 **THE COURT:** Okay. I want to make sure I'm following
24 you.

25 **MR. PHILLIPS:** And, again, in the written motion for

1 discovery, I've tried to lay out as best as possible each
2 individual either statement or report as provided and the
3 date that it was received for ease of the Court's review.
4 Certainly I can go into more detail. It would just take
5 more time, which in this case I haven't had a lot of,
6 because on April -- the week of April 24th through 28th I
7 was trying the attempted murder, burg first, CSC case.

8 **THE COURT:** How were you involved in that case again?
9 Because I remember Mr. Chehoski was the lead on that one.

10 **MR. PHILLIPS:** He was. It was a case that I
11 originally had at the PD's office for over two years and
12 when I left the PD's office Jason gave me kind of a --
13 you've got some bad cases that we have there, some pretty
14 big trials, and I said well, I'll do one pro bono for you,
15 one of the ones that I have had, so the no good deed goes
16 unpunished continues, Your Honor.

17 **THE COURT:** I'm familiar with that rule.

18 **MR. PHILLIPS:** I said I will do one pro bono full
19 trial with you, no problem, since I had the case for over
20 two years and it's a factually intensive, pretty -- you
21 know, I'll let the record of that one stand.

22 **THE COURT:** You can do that.

23 **MR. PHILLIPS:** Mr. McNair can certainly attest to that
24 week long trial. So with the no good deed goes unpunished,
25 we certainly had to prepare and present a week's long worth

1 of trial prep and then, of course, the trial itself. And
2 we literally got the jury verdict around 5:00 on Friday.
3 It was a true week long trial, so that was right in the
4 middle of all of this discovery coming in. I hope to show
5 that my supplemental discovery motions is that I've
6 actively worked the case, but as I'm going through the
7 discovery I'm seeing things that I need to be able to do my
8 job. So certainly I believe when you see that I have been
9 working the case, that this is not a baseless motion.

10 **THE COURT:** Okay. Now I think where we were when
11 Mr. Graham sat down he said there was 78 pages of something
12 and they weren't done -- the pagination didn't reflect the
13 way the original was printed, but affected the way it was
14 copied and the page breaks weren't consistent with the
15 page numbers, but all the pages from the copy to the
16 original were provided over and he thought there were some
17 four pages that would be missing from the first version as
18 opposed to the second version.

19 Mr. Graham, is that still your understanding?

20 **MR. GRAHAM:** That's what my paralegal tells me, Your
21 Honor.

22 **THE COURT:** And what you were telling me is about
23 nine pages that you found different, so.

24 **MR. PHILLIPS:** That's the way we had it marked. And,
25 I mean, there's a lot of information that's done. I mean,

1 this is not limited in a vacuum or in a small thing. Going
2 to Jeremy Washington, as the solicitor's office stated,
3 they met with Jeremy Washington or at least had the phone
4 conference with the FBI and the U.S. Attorney's Office back
5 in November and he denied having any involvement, but I
6 don't find out about that until Apri. That's, you know,
7 five months. That's exculpatory -- that would have been
8 exculpatory evidence that the State's theory was that
9 Jeremy Washington had paid John Hart or set up somehow
10 John Hart to kill Paula Washington {sic}. He outright
11 denies it back in, I believe, April -- or, excuse me,
12 November 16th. That's off the top of my head, I can go
13 pull the FBI report, but he -- he denies it before 2017
14 and I don't know about it until April of 2017.

15 **THE COURT:** But didn't he change that story?

16 **MR. PHILLIPS:** Twice. And, again, that goes to --

17 **THE COURT:** So which way do you want it; the first
18 way, the second way or the third way?

19 **MR. PHILLIPS:** Well, obviously the first one when he
20 denies any involvement and then what's kind of clear in
21 the second one he's given the ultimatum of either violate
22 your Federal proffer or cooperate.

23 **THE COURT:** And so what did he do?

24 **MR. PHILLIPS:** He implicated Mr. Hart a little bit
25 more. He kind of peeled the onion back enough to where he

1 says I did say I want her dead, I did kind of offer money,
2 and then the third statement that came out this past
3 Wednesday was very direct. The pre-polygraph exam was I
4 did pay him or did give -- exchange for drugs and that he
5 did confirm and tell me that he killed her and that's
6 obviously a very big difference between that and the
7 first statement. With that being the case, once he
8 started discussing it with the solicitor's office, he
9 said he -- I think it's in the FBI report he said he
10 felt like they were trapping him and he asked for a
11 lawyer. I think they've got a little bit of an issue
12 right now since he's now charged with murder as of
13 yesterday and this is four years later.

14 **THE COURT:** Right. I get that. What do y'all say to
15 that, Mr. Graham? This is the first case -- never mind.
16 Go ahead.

17 **MR. GRAHAM:** He has a lawyer, Aimee Zmroczek, and I
18 don't know whether Mr. Phillips has contacted her to see
19 whether he can speak with Mr. Washington. I don't know --

20 **THE COURT:** Well, if he has a lawyer, you can't speak
21 to him.

22 **MR. GRAHAM:** He can ask to speak to him through his
23 lawyer. I don't know whether he's made that request.
24 That's all I was saying. I guess -- I don't even know --
25 the report that was written on November 8th or that was

1 for the conversation on November 8th --

2 **MR. PHILLIPS:** We'll just say November.

3 **MR. GRAHAM:** -- November of last year I believe was
4 an FBI report. I don't know what time we got it. I'm not
5 saying that I didn't sit on it for a couple of months.
6 That's possible. It did get turned over. I don't know
7 what he would have done in the meantime with it. I don't
8 know the rules -- I mean, honestly I don't know the rules
9 require me to get a document turned over the next day. I
10 don't think they do. I understand that he wants enough
11 time to do his job with it. I feel like I've done that.
12 Mr. Washington, in my opinion, was denying knowledge of
13 it. He would have got a copy of that and I guess he could
14 have tried to get Mr. Washington here to say that he didn't
15 hire John Hart to do that, I don't know, but he's here.
16 Mr. Washington's here in South Carolina. If he wants him
17 and he -- he can call him to the stand, he can do that now.
18 I don't see how there's a prejudice to it.

19 **MR. PHILLIPS:** And that's another note. He wasn't --
20 Jeremy Washington was in Federal prison in California.

21 **THE COURT:** I guess it was harder for them to get it
22 than it was you.

23 **MR. PHILLIPS:** I wouldn't -- I disagree with that. I
24 don't have a direct line with the United States Attorney's
25 Office. They don't come to my office.

1 **THE COURT:** Mine either. You know I went to a trial
2 academy thing this past Friday, I went up to the Federal
3 courthouse, and I was not allowed to carry my cell phone
4 into the Federal courthouse, so I don't have rights there
5 either.

6 **MR. PHILLIPS:** The Federal court's a different animal.
7 We would agree.

8 **THE COURT:** You're telling me.

9 **MR. GRAHAM:** I guess I would add as far as Jeremy
10 Washington, it was also an active investigation in charging
11 him. The sheriff's department has looked at him from the
12 beginning of this case, so I don't know at what point we
13 have to turn it over. I know Mr. Hart needs to know about
14 it and we have turned it over, but it was also an active
15 investigation which ultimately resulted in Mr. Washington
16 being charged.

17 **MR. PHILLIPS:** And then the other would be Michael
18 Young, who's a material witness. His statement wasn't
19 provided until April and let me -- I'll pull that statement
20 so I can get the dates for it.

21 **THE COURT:** Okay.

22 **MR. PHILLIPS:** We've got three big binders for paper
23 discovery, so bear with me, Your Honor.

24 So for Michael Young, starting -- again, getting
25 this stuff on April 12th, the discovery packet's dated

1 April 7th, and then there's more statements from Michael
2 Young in the other discovery packets that come after
3 that. But the first one I see is a Federal report of
4 investigation from the U.S. Department of Justice.
5 Page 64 of that report, Michael Young is a witness which
6 states that John Hart also confessed to him and that he's
7 somewhat confirmed that with Washington, and the first we
8 hear of it is, again, in this. It appears that he's made
9 his information known regarding the case back in 2000 --
10 9-16 of 2015. Again, it's impossible for me to know when
11 the solicitor's office had -- had become aware of Michael
12 Young and his implication of Mr. Hart and Jeremy
13 Washington.

14 **MR. GRAHAM:** Your Honor, on Michael Young, the first
15 time our office talked to him was February 19th of 2017
16 and we turned that written statement over on April 6th.
17 My understanding was he was under a Federal proffer. I
18 don't honestly know when we got the Federal proffer. I
19 believe we found out about it and got a copy of it right
20 before we talked to him. So although the Feds had it from
21 2015, we didn't.

22 **MR. PHILLIPS:** So, again, that would be February and
23 then I find out April 12th that Michael Young's a witness
24 and it was after our supplemental discovery motion hearing
25 I was given these documents.

1 **THE COURT:** All right. I need to coordinate a short
2 break myself and step off the bench and use the restroom.
3 You're still on. I'll be back out in a minute.

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

5 **THE COURT:** And I've not ruled against you or with
6 you. I've just not ruled yet. You're still presenting
7 the discovery issue.

8 **MR. PHILLIPS:** We're in abeyance.

9 **THE COURT:** We're in abeyance.

10 (Recess taken.)

11 **BAILIFF:** All rise.

12 **THE COURT:** All right. Be seated.

13 **MR. PHILLIPS:** We're still on the clock. So
14 specifically we can start to go somewhat page by page or
15 individual. But, again, my written discovery motion --
16 excuse me, my written motion for a continuance or --

17 (Pause in proceedings.)

18 **THE COURT:** Okay. Now continue on, Mr. Phillips.

19 **MR. PHILLIPS:** Thank you, Your Honor. That my written
20 motion for continuance or, in the alternative, motion to
21 suppress, we certainly stand on that, Court's Exhibit
22 Number 2; the CD, Court's Exhibit Number 3 that contains
23 the new discovery, and, of course, the discovery we
24 received this morning, the jail phone calls. And to
25 rehash, the jail phone calls aren't limited to Tevin

1 Deloach. There are multiple people that were requested.
2 There was an e-mail sent by the solicitor's office of which
3 persons the phone calls had already been deleted, I guess,
4 because of the one-year retention policy and the ones that
5 they still have the calls, so I'll have to go pull that
6 e-mail up and see which ones other than Tevin Deloach had
7 phone calls in Lexington County. And, of course, I have
8 the text message about the subpoena from Lexington County
9 about my request obviously for the jail phone calls.
10 Again, it's not limited to jail phone calls, it's an
11 overarching -- again, what I said before.

12 Looking at the Winkler case, having that good -- you
13 know, once I show that there's good cause shown that
14 there's got to be this different standard kind of applied
15 the same that was in Winkler where you've got to rebut
16 where the prejudice would be to the State and I think based
17 on all this I have shown there's good cause and that the
18 prejudice would be solely on the Defendant and it would
19 deny his right to a -- due process right to a fair trial,
20 right to confrontation, opportunity to present a full and
21 complete defense, compulsory process in case they don't
22 call somebody that I need to call because of the jail phone
23 calls.

24 **THE COURT:** All right. Well, the jail phone calls
25 you asked for and you retrieved or they retrieved, they

1 finally give it to you. If they didn't have that in their
2 possession, weren't gonna use it, therefore -- I mean,
3 certainly it can be exculpatory, but if they didn't ask
4 for jail phone calls of a particular witness who was housed
5 in the Lexington jail or Richland jail, whichever one, and
6 then you find this stuff out and you want extra time for
7 discovery, how is that fair to the State and the victim?

8 **MR. PHILLIPS:** Well, the argument would be that he
9 has a right to effective assistance of counsel and that's
10 another cloud that's looming in here is if there is
11 information contained in that and my duty to conduct a
12 reasonable investigation. If I'm unable to know what's
13 in those jail phone calls, then that's a potential piece
14 of --

15 **THE COURT:** Or even if they exist.

16 **MR. PHILLIPS:** I mean, there's a lot of variables.
17 And, of course, that's just one limb of the motion.

18 **THE COURT:** You didn't know whether the phone calls
19 from the jail existed at least for these particular people.
20 You said if any, please get me copies of them if they're
21 available, right?

22 **MR. PHILLIPS:** Of course. And some of these would be
23 people that I found out in April of their existence. I
24 found out their existence in April. Again, that's just one
25 prong or one limb of the argument. The next would be the

1 fact of just the total amount of discovery provided since
2 April 12th. And, you know, to use the Court's analysis of
3 a totality of the circumstances, I know that's thrown
4 around improperly a lot, but just to use the buzz words,
5 when you look at it as a whole and you see the information
6 that's been provided in April of stuff that's anywhere
7 from several months to several years old that is now in my
8 possession in April, I think there's got to be good cause
9 shown for why I can't have additional time. I think for
10 them to have turned it over -- and, again, solicitors
11 Graham and McNair are ethical. I am not making any of
12 those type of allegations. I'm just saying it's untimely.
13 I'm just saying that continuing duty, it just came late.
14 And, again, Assistant Solicitor Graham argued that he's not
15 sure whether there is a trigger of a specific amount of
16 time. I would argue that just like any other -- like
17 touchstone Fourth Amendment reasonableness, that the
18 continuing duty to disclose would be reasonable, that would
19 be my argument. And Your Honor is the one that has to make
20 that argument -- or make that determination, that finding,
21 as to whether things that are provided late or subsequently
22 to the date that they were given to the prosecution whether
23 it's reasonable, and that's our argument, that's it's not.

24 **THE COURT:** Okay. I understand your argument.

25 All right. Mr. Graham, let me hear from you on a few

1 of those issues.

2 **MR. GRAHAM:** Without going through each and every
3 number, it looks like it goes up to 46, I'm not quite sure
4 how to address it. It is not my policy to sit on documents
5 and not turn it over. If I don't turn it over, there's
6 usually is a reason. Whether -- I mean, this is a case
7 about a contract -- our belief is that this is a contract
8 hit. Our belief is that Mr. Hart's a high ranking member
9 of the Blood gang and has the ability to reach out and
10 touch people, so taking all of that into consideration I
11 have been careful about what I turn over regarding people
12 for fear that their name would be drug into this
13 needlessly. That has been a consideration of mine.

14 As far as -- and a lot of these documents, and we'd
15 have to go through and talk about it, but a lot of them --
16 he's asked for housing records, he's asked for jail calls,
17 he's asked for extra things from DNA, from SLED that's not
18 normal or it's not normal in the cases I've dealt with as
19 to their procedures and things like that. He's had the
20 case for nine months. I understand, again, why he wants
21 them, but why is he waiting until now to ask for them? Why
22 didn't he ask for them nine months ago? Why didn't he ask
23 for them before the first trial was continued? Why is he
24 just asking for them a week before trial and then using
25 that as a basis to come in and ask for a continuance. I

1 mean, I understand that he may listen to Tevin Deloach and
2 there may be something on that call that he wished that he
3 had known, but I don't -- I don't know. That confuses me.

4 **MR. PHILLIPS:** And it's specifically limited to Tevin
5 Deloach when he says that. I filed initial Brady, Rule 5
6 citing Kyles v. Whitley. Most of this information is
7 discoverable under Kyles v. Whitley. Anything that would
8 go to attack the prosecution, any prosecution witness or
9 the investigation of the case, is discoverable material
10 under Kyles v. Whitley. That is undisputable. That's in
11 my initial discovery motion that would have been filed in
12 July or early August 2016. I have filed supplemental
13 discovery motions in this case as the discovery came in.
14 Again, most of the discovery that I'm arguing about -- all
15 of the discovery I'm arguing about is stuff that I've
16 gotten post -- or on April 12th and post, post-April 12th.
17 Having this, I couldn't request something nine months ago
18 that I did not know exists. If I don't know about Michael
19 Young, then I can't request jail phone calls of Mr. Michael
20 Young. With that being the case, we --

21 **MR. GRAHAM:** Michael Young won't be testifying in this
22 case, Your Honor.

23 **MR. PHILLIPS:** So, again, as I'm preparing for the
24 trial to be an effective advocate under Strickland, I don't
25 know who they are gonna call, who they're not gonna call

1 and as I'm going through this discovery I'm having --
2 again, in reviewing the discovery yesterday, I noticed that
3 two written letters from Daniel Everhart had been provided
4 to Investigator Spivey, but I didn't have those, so I sent
5 the e-mail and they provided them this morning. Again, I
6 don't know whether he's gonna testify or not. He's on the
7 witness list. And this is stuff that I received this
8 morning. I mean, even in one of the letters I just looked
9 at Daniel Everhart says he won't talk unless he has a plea
10 deal. Now, again, they don't provide plea deals prior to,
11 but that's something that's a -- me not having that letter
12 until this morning, that would have been great cross, but
13 had I not had it, had I not specifically requested it, I
14 would never know and so you run afoul of his right to a
15 fair trial and, of course, effective assistance of counsel,
16 confrontation of witness, again, opportunity to present a
17 complete defense, and I know I'm beating a dead horse, but
18 we're just running into issues. And, again, with the
19 information starting on April 12th and as I walked through
20 in the written motion the timeline of how it's disclosed,
21 the date, because a lot of it is disclosed in May, I had
22 the week long trial that last week of April, so in
23 preparing for that trial and sitting in that trial it's
24 impossible for me to prepare for this case.

25 **THE COURT:** All right, Mr. Graham.

1 **MR. GRAHAM:** Daniel Everhart won't be testifying in
2 this trial. I do understand my obligations under Brady
3 and Rule 5. I really do believe that I do and I would have
4 turned over impeachment stuff to you prior to the witness
5 testifying. I don't believe the rules say that I have to
6 turn it out a year ahead. I'm supposed to provide their
7 statements and make sure that Mr. Phillips has impeachment
8 evidence prior to him cross-examining him. I don't make a
9 practice of waiting until the last minute, but there are
10 reasons why, which I stated earlier about this case, that
11 there's a particular time I think that's more appropriate
12 than others to turn things over.

13 **THE COURT:** All right. I'm -- Mr. Phillips, any one
14 particular thing -- I mean, other than this charge of
15 murder of this co-defendant, and that seems unusual that
16 on the eve of trial another person gets charged with this
17 murder, is there anything other than that which --

18 **MR. PHILLIPS:** I don't want to waive any issues or
19 concede any points that may hurt my argument, Your Honor.
20 I hope you understand.

21 **THE COURT:** Okay.

22 **MR. PHILLIPS:** In just due candor, I hope -- I hope
23 you understand.

24 **THE COURT:** All right, Mr. Graham.

25 **MR. GRAHAM:** Your Honor, if I can, my paralegal has

1 gone through and looked to see what we've actually given
2 since April 12th. There's 321 pages. 139 pages are the
3 Lexington County Sheriff's Department chain, so that would
4 be for all the items that were collected by this case and
5 the movement of that case. 37 of those pages relate to the
6 handwriting exemplar and SLED's on that. 14 pages dealt
7 with SLED DNA and serology, which I believe both of those
8 items had already been previously sent. No, the DNA is
9 what I'd talked about before. The serology, I believe, had
10 been sent. There was a seven-page supplement by Detective
11 Stoner and Detective Stout, which there's a five-page
12 supplement -- there's a five-page proffer regarding Jeremy
13 Washington. There's seven pages regarding fire service and
14 SLED. 32 pages regarding Michael Young, who is not going
15 to be testifying. Two pages related to Jeremy Washington.
16 And then 78 pages with only four or five new pages from
17 Sergeant Spivey. The rest of the stuff that's listed, my
18 understanding and belief is, are things that he has
19 specifically asked for.

20 **THE COURT:** Okay. Mr. Phillips, are you representing
21 those four notebooks represent what they've given to you
22 since April 12th?

23 **MR. PHILLIPS:** No, I was about to start to go through
24 where it starts and all of that's provided in the disk on
25 Exhibit Number 3.

1 **THE COURT:** Okay.

2 **MR. PHILLIPS:** But to show you -- I mean, this is the
3 discovery as a whole, but if I take away this -- well,
4 actually, no, this is part of it, too. Half of one of
5 these notebooks and all of the other -- the other two are
6 all April 12th, it's not a minimal amount, and that's why I
7 provided it on a disk for Your Honor to look at.

8 **THE COURT:** Okay.

9 **MR. PHILLIPS:** I mean, the solicitor's office, I
10 think, could concede that it's not a minimal amount that's
11 been turned over since April 12th because the discovery
12 packets that are dated April 6th, April 7th were not turned
13 over on April 6th or April 7th.

14 And, again, I am not alleging any ethical violations
15 at all and there are duplicate things in some of the
16 reports. I'm just saying when you look at the amount of
17 discovery that was handed over in April, we'll just start
18 in April, April 1st, however date you want to say,
19 April 1st, it is a great -- it's a significant amount of
20 discovery.

21 **THE COURT:** This kind of discovery issue happens a
22 lot in every county when there's a request from the defense
23 to the prosecution, have you given me this. Many times out
24 of an abundance of caution they'll give everything plus
25 whatever the new stuff is, give it again, and it creates a

1 whole, huge bunch of paper and/or DVDs or whatever type of
2 electronic media the State uses. I guess the main thing
3 that concerns me is the gentleman. Is DeLoach the one that
4 was just --

5 **MR. PHILLIPS:** Jeremy Washington, Your Honor.

6 **THE COURT:** Washington. He's the one that's just
7 recently been charged with murder because his story changed
8 very, very recently. How does the State stand on that one
9 issue? Because I'm guessing that was a total shock to the
10 State that he finally decided to change his story.

11 **MR. GRAHAM:** We didn't know what he was gonna say
12 until we got him here, Judge.

13 **THE COURT:** So he wasn't talked to by the State until
14 y'all carted him in here from California?

15 **MR. GRAHAM:** No. He denied involvement on the phone
16 in California and then we had reason to believe that wasn't
17 true and asked the U.S. Attorney to polygraph him, they
18 sent a polygraph examiner out there to him, I guess, in
19 April. I'm not sure if it was -- April, I believe,
20 sometime at the beginning of April, and that's when he
21 started disclosing the story and that's when we worked on
22 getting the writ and he just came here last Monday, so we
23 had an opportunity to talk with him on Tuesday. He got his
24 an attorney appointed on Friday.

25 **THE COURT:** All right. Mr. Phillips, your request to

1 continue the case is denied since we were ready in March.
2 I understand there was some additional discovery provided.
3 If when we get to whatever it is there's something that was
4 lately provided in very recent order and you want to argue
5 suppression -- or on any of it because of late discovery,
6 certainly I'm gonna give you some latitude on that, but it
7 doesn't seem to me like there was much provided by the
8 State recently other than the changed story of the --
9 Washington. Is it Washington?

10 **MR. PHILLIPS:** Washington.

11 **THE COURT:** Is the co-defendant now?

12 **MR. PHILLIPS:** He's not -- well, now he is as of
13 yesterday.

14 **THE COURT:** But anyway there may be some evidence the
15 State would attempt to introduce that you have a real good
16 basis for suppression because of late discovery and I'm
17 certainly gonna consider those very thoroughly, but I think
18 the case is ready to be tried and should go forward, so
19 respectfully I'm gonna deny that motion for continuance.

20 All right. What else do we got? Number 4.

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

22 The next motion is the Defendant moves to offer
23 evidence of third-party guilt pursuant to the Fifth and
24 Fourteenth amendments to the United States Constitution and
25 Article 1, Section 3 of the South Carolina Constitution.

1 Specifically, as to the witness, Alex Wallace, there's
2 evidence offered -- there will be evidence offered either
3 by the State -- or the defense, most likely, depending on
4 whether the State calls him, limited to the facts
5 inconsistent with the Defendant's own guilt and raises a
6 reasonable inference as to his innocence.

7 **THE COURT:** Any objection to them -- assuming the
8 testimony comes out, something similar to what Mr. Phillips
9 is saying, what's the State's posture?

10 **MR. GRAHAM:** My understanding is that I don't plan on
11 calling him and I don't believe that Mr. Phillips will call
12 him. However, prior to him calling him if it's relevant to
13 the State's case in chief.

14 **THE COURT:** Well, if he calls him and presents
15 testimony to that effect, then it seems like he'd be
16 entitled to argue third-party guilty.

17 **MR. PHILLIPS:** Yes, Your Honor. And based on the
18 State not calling Alex Wallace because he was provided in
19 discovery, we recently went through with my investigator
20 and did a recorded interview with him and my investigator's
21 told to have two copies. So I'm turning that over now and
22 I know that it's got to be in the Defendant's case in chief
23 and it's not impeachment.

24 **THE COURT:** Fair enough.

25 **MR. PHILLIPS:** And it's nothing inconsistent with

1 what's in the written letters. Everything's the same.

2 The next motion, Your Honor, is the Denno hearing
3 request, the motion to suppress all statements made by the
4 Defendant to any government agent and any evidence seized
5 because the statement was obtained in violation of the
6 Fourth, Fifth, Sixth and Fourteenth amendments to the
7 United States Constitution and Article 1, Sections 3, 10
8 and 14 of the South Carolina constitution. Specifically,
9 as Your Honor knows, we request that the Court hold an
10 in-camera evidentiary hearing on the admissibility of the
11 Defendant's statements.

12 **THE COURT:** All right. Ready to go forward with the
13 Denno hearing?

14 **MR. GRAHAM:** We can or we can -- the Jackson v. Denno
15 and then Biggers will require testimony. We can go forward
16 at this moment or we can handle all the ones that are just
17 arguments by the lawyers. However you want to do it, Your
18 Honor.

19 **THE COURT:** Let's do the ones -- let's get the lawyer
20 arguments over first and we're gonna do the Jackson v.
21 Denno hearing in a moment and Neil versus Biggers, too. Go
22 on down to Number 7, I guess, Mr. Phillips.

23 **MR. PHILLIPS:** All right. So -- okay. We're jumping
24 to Number 7. The Defendant moves to suppress or to exclude
25 any evidence of gangs and gang activity, again, pursuant to

1 the Fifth and Fourteenth amendments to the United States
2 Constitution and Article 1, Section 3 of the South Carolina
3 Constitution, Rules 401, relevance, and then 403, danger of
4 unfair prejudice to the Defendant under the South Carolina
5 Rules of Evidence.

6 In this case, the State's theory is that Jeremy
7 Washington hired -- was arrested with Paula Justice, the
8 victim, and was then hiring John Hart to kill her, and the
9 evidence of gang activity that's throughout every witness
10 and throughout the discovery is all related to the fact
11 that they were gang members, not that it was a gang hit,
12 and that -- the fact that Jeremy Washington was arrested
13 for drugs is not necessarily gang-related.

14 With that being the case, it's not relevant under
15 Rule 401 that he was in a gang and that any mention of all
16 this gang activity and going through steps and --

17 **THE COURT:** This is more of a formal motion in limine.

18 **MR. PHILLIPS:** Yes, Your Honor. I'm just trying to
19 prevent -- you can't un-ring the bell.

20 **THE COURT:** Okay. Well, assuming your motion in
21 limine is about gang activity and gang -- relevant gang
22 activity and membership in a gang, then as we get closer to
23 the issues it's a lot easier for the Court, as you know, to
24 see then the relevance and prejudicial effect under 401 and
25 403 is much easier because if I'm listening for it, it's

1 much easier to anticipate.

2 **MR. PHILLIPS:** The only reason I raise these issues
3 in pre-trial is because in opening statements they can be
4 referenced and you can't -- again, you can't un-ring the
5 bell. So if that's part of the State's theory to raise --
6 and I've had this in trials where when we don't rule on it
7 or we don't have a direction in pre-trial, the State
8 presents their opening, which they're allowed to do,
9 they're gonna present their theory, again, I understand
10 that, but my argument's that this can't be part of their
11 theory under the Federal and state constitutions and rules
12 of evidence and if that gets before the jury in opening,
13 again, you can't un-ring the bell and you can't then walk
14 it back.

15 **THE COURT:** What do you think, Mr. Graham?

16 **MR. GRAHAM:** We have no intention in opening
17 statements of stating anything about gang activity. My
18 understanding is that Mr. Washington was not in a gang,
19 he was a midlevel or higher level drug dealer, so his
20 affiliation with Mr. Hart was drugs only. There was no
21 gang involvement there. I believe that he and Mr. Deloach
22 were Blood members. I have no intention of drawing that
23 out in my case in chief. It's possible it could come up
24 one way or another depending on questions asked, but I
25 already -- when I talked with him I told him not to say

1 that he was a Blood member or not to say that Mr. Hart was
2 a Blood member. I told him if that was gonna come out,
3 then we would stop and deal with it at the time.

4 **THE COURT:** That seems fair. I mean --

5 **MR. PHILLIPS:** No, I --

6 **THE COURT:** -- I think it would take a big risk if
7 they come out and say we're gonna show you gang activity
8 and gang membership and then it either got suppressed or
9 they couldn't prove it, then they're at risk of screwing
10 their own case up. And Mr. Graham's never come across as
11 a --

12 **MR. PHILLIPS:** With my appellate experience, I think
13 that taint would then be used to say it was cumulative to
14 any of the evidence that comes out later; therefore, taking
15 away the prejudice, rendering it harmless. It would be a
16 harmless error.

17 **THE COURT:** I thought you would be arguing they said
18 it was gang-related and they didn't prove a dadgum thing
19 about a gang and you'd give it back to him for failing to
20 prove what he said he was -- promised you.

21 **MR. PHILLIPS:** I understand.

22 **THE COURT:** That's what I was thinking you'd be going
23 after.

24 **MR. PHILLIPS:** I mean, that certainly would -- I'd be
25 boxed in and have to make that argument. I don't want to

1 even have to make that argument.

2 **THE COURT:** Okay. He said he won't mention it in
3 opening statements and if they get into the drug activity
4 and that sort of stuff, that's all easy -- I understand
5 what I'm listening for and we'll see when we get there.

6 **MR. GRAHAM:** Drug activity is another thing. I do
7 think we have to talk about drug dealing.

8 **MR. PHILLIPS:** That's -- that's different.

9 **THE COURT:** He can argue that.

10 **MR. GRAHAM:** All right.

11 **THE COURT:** I think you would have free rein on that,
12 subject to you're having to prove it, and then you're
13 subject to his criticizing your not proving what you
14 promised you would prove to the jury and that's -- that's
15 in every case. So I understand your motion in limine about
16 the gang and gang activity and that will come in if it's
17 relevant under a 403 analysis at the time when we get there
18 subject to what's going on and what I hear and then the
19 flavor of the testimony then. But right now I'm listening
20 for it not coming into evidence.

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

22 The next motion is the Defendant renews his objection
23 to the finding of probable cause from the Schmerber hearing
24 and the admission of any testimony regarding handwriting
25 analysis. I want to mark the transcript from January 5,

1 2017, of the Schmerber hearing as a Court's exhibit.

2 (Court's Exhibit Number 5 was marked for
3 identification.)

4 **MR. PHILLIPS:** This motion is made -- Your Honor,
5 again, I made the argument unartfully after reading the
6 transcript, very unartfully, during the Schmerber hearing,
7 but wanted to go back and say that the defense argument
8 against precedent in this case, stating State versus
9 Armstead. That's 152 GA App. 56. It's a Georgia courts of
10 appeals case, Your Honor. That court held that Georgia has
11 long granted more protection to a citizen than the Federal
12 constitution provides and they said to force the defendant
13 then to produce samples of his handwriting, potentially
14 incriminating evidence, which may be used as evidence in
15 the defendant's prosecution would violate constitutional
16 sanctions against self-incrimination. In other words, as
17 our constitution provides, our State constitution, a case
18 that I argued at the State Supreme Court, State v. Counts,
19 there is exceptions that -- for when you look at State v.
20 Forrester that allows the State constitution to provide
21 greater protections than that of the Federal constitution,
22 and that's what Georgia found; that their constitution
23 provided greater protections than the Federal constitution,
24 and I know the case law is settled federally as far as
25 being compelled to make those handwriting analyses, but I

1 wanted to say that akin to that argument that our South
2 Carolina Constitution, Article 1, Section 12 -- I believe
3 that's correct, if not, it's Article 1, Section 14, but I
4 believe it's Article 1, Section 12, specifically states as
5 far as the self-incrimination process that we would argue
6 similar to State v. Armstead that our South Carolina
7 Constitution provides greater protections and would not
8 -- it would be a foul to force him to -- compel him to
9 write a handwriting analysis, so we would renew that
10 motion.

11 **THE COURT:** Okay. I think the law is settled on
12 that. I think a Schmerber disclosure and fingerprints,
13 hair, DNA samples, handwriting, all of that's part of --
14 part and parcel of who the Defendant is and is subject to
15 cross-examination, expert testimony, as to whether or not
16 it's identical handwriting or not. I mean, it's -- I
17 understand your objection, it's noted for the record, but
18 if the State could provide a foundation when they get
19 there and they want to go into that type of testimony, it
20 will be up to them to try to introduce it and lay the
21 proper foundation with the proper witness. If they can do
22 that, then I'll rule on it at that time.

23 **MR. PHILLIPS:** I understand, Your Honor. Thank you.

24 The next motion would be the -- four. The Defendant
25 moves to disclose any propensity evidence that the State

1 intends to introduce during its case in chief under Rule
2 404(b), State v. Lyles.

3 **THE COURT:** Have you got any Lyles testimony coming
4 in?

5 **MR. GRAHAM:** No, other than his drug dealing
6 activities.

7 **THE COURT:** Okay. We've already decided that was a
8 different issue, but it comes in. There should not be any
9 Lyles issue coming in. Fair enough.

10 **MR. GRAHAM:** If there is something, I'll stop the
11 Court and let you know.

12 **THE COURT:** Okay. Fair enough.

13 **MR. PHILLIPS:** And the only other thing, I didn't know
14 if the State had the list of photographs they intend to
15 introduce. I figure as a way of judicial economy I could
16 see whether I can stipulate or whether we need to make any
17 motions on them regarding any possible redactions or motion
18 to suppress just so we wouldn't have to stop and start, if
19 necessary.

20 **THE COURT:** All right. Well, can y'all look over the
21 photographs that y'all plan to use this afternoon after we
22 finish the Denno hearing?

23 **MR. GRAHAM:** We'll try to sit down. I don't think
24 we'll be able to go over all of them. I don't think we've
25 selected every one with every witness yet, but we'll try to

1 pre-mark them.

2 **THE COURT:** I'll tell you what I'll do. I'll be here
3 in the morning at 9:00 and I would like to try to address
4 that before 9:15, 9:30 and not hold the jury up in the
5 back. So if you find there's an issue, alert Jacob and
6 we'll get in here a little earlier so as not to hold the
7 jury up and hold them hostage back in the jury room until
8 10:30. That's not something I like to do. I promised them
9 a 9:30 start and I'd like to give it to them, okay?

10 **MR. GRAHAM:** Yes, sir.

11 **MR. PHILLIPS:** Yes, Your Honor. As far as the
12 pre-trial list of motions and objections, that covers it,
13 Your Honor, except for, I guess, with the Jackson v. Denno
14 and Neil v. Biggers, are we holding off on the in-camera
15 testimony until the witnesses are going to testify? I just
16 want to make sure we have --

17 **THE COURT:** For the potential conflict witnesses?

18 **MR. PHILLIPS:** No, I'm sorry, Your Honor. For the
19 admissibility of the statements and the identification.
20 We still have those two motions pending.

21 **THE COURT:** I thought we were gonna have those
22 hearings now.

23 **MR. PHILLIPS:** Okay. That's what I wanted to make
24 sure.

25 **MR. GRAHAM:** What I thought we would do, Your Honor,

1 is we have three officers for the Jackson v. Denno
2 hearing and we have one officer for Neil versus Biggers.
3 The people who are gonna actually do photo lineup
4 identification at trial, we thought we would do their part
5 of it right before.

6 **THE COURT:** Okay.

7 **MR. GRAHAM:** So the only thing -- before we move past
8 it, I was gonna ask -- other than requesting sequestration,
9 I don't know whether Your Honor ruled on it. Has
10 Mr. Phillips said specifically why? Because I think the
11 case law requires him to say specifically why he wants it.
12 I don't think -- there's more to it, I think, than just
13 asking for sequestration and I was just trying to figure
14 out what the boundaries were and where we are at on that.

15 **MR. PHILLIPS:** Of course, it's in the Court's -- the
16 Court has full discretion in granting the motion. I think
17 when you look at it, it's, again, whether there's any
18 witnesses that would be present in the courtroom that would
19 -- in any type of swearing matches would be able to hear,
20 specifically with any law enforcement officers -- say for
21 the Denno, for example, being an issue where if there is
22 some type of discrepancy that would be presented in a way
23 that the statement was taken, if one officer hears the
24 other officer testify, then he knows exactly what he should
25 say on the testimony. I'm not making any allegations, I'm

1 just saying that's -- I think it's pretty obvious as to the
2 reasons why we have the sequestration.

3 **THE COURT:** I'm kind of inclined to grant it. If
4 there's some reason I shouldn't -- I mean, is it gonna
5 create a huge problem for us? I can't remember a reason
6 to -- I can't remember a time I've ever denied the request
7 for sequestration because it's part of the process.

8 **MR. GRAHAM:** If Your Honor is gonna grant it, I would
9 ask that it apply to both sides --

10 **THE COURT:** Oh, yes.

11 **MR. GRAHAM:** -- because Mr. Phillips has some
12 witnesses as well.

13 **MR. PHILLIPS:** Of course.

14 **THE COURT:** Absolutely. What's good for the goose is
15 good for the gander. Absolutely.

16 **MR. PHILLIPS:** We would say that our investigator,
17 Pete Skidmore, that he would be exempt, the same as the
18 State's investigator.

19 **THE COURT:** Sure. No problem with that. Everybody's
20 gonna be eating out of the same spoon as far as that goes.

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

22 I think that's -- the only other witness we'd call
23 other than experts would be in jail, so they're not gonna
24 be sitting in the back of the courtroom.

25 **THE COURT:** All right. Well, let's do the

1 interviewing officer for the Jackson v. Denno hearing and
2 get that done if they're here.

3 **MR. GRAHAM:** So two of our officers who are involved
4 with this are in the courtroom. Are they sequestered
5 during the pre-trial Jackson v. Denno hearing, Your Honor?

6 I've got my case officer, who, by law, I believe, gets
7 to stay in the courtroom all the time. There are two other
8 officers that are here.

9 **THE COURT:** I think it's easier to keep track of it to
10 sequester them all the way down the line. So keep your
11 case -- your investigating officer, he gets to stay, and
12 the other two can step out.

13 **MR. GRAHAM:** The State calls Sergeant Spivey.

14 (Whereupon, Sean Spivey was duly sworn by the Clerk of
15 Court.)

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

18 **THE WITNESS:** Sean Spivey, S-P-I-V-E-Y.

19 SEAN SPIVEY,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION (In-Camera)

22 BY MR. GRAHAM:

23 Q. Sergeant Spivey, where are you employed and what do
24 you do?

25 A. Lexington County Sheriff's Department. I'm a property

1 crimes sergeant out in our West District.

2 Q. And how long have you worked for the sheriff's
3 department?

4 A. About nine years.

5 Q. And are you the lead case officer on this case?

6 A. I am.

7 Q. When did you first become involved with this case?

8 A. It was back on April 10, 2013.

9 Q. And at some point did you develop John Christopher
10 Hart as a suspect in the murder of Paula Justice?

11 A. We did.

12 Q. When was the first opportunity that you had to speak
13 with Mr. Hart?

14 A. It would have been April the 12th in the middle of the
15 night around about -- I think the phone records show at
16 3:01, I believe it was.

17 Q. Okay. Tell the Court about -- you said that was a
18 phone conversation?

19 A. It was.

20 Q. All right. He was not in custody at the time?

21 A. He was not.

22 Q. When you called him on the phone, tell the Court about
23 your conversation.

24 A. I called -- we actually obtained the phone number at
25 the time to be Chris Hart's and so we were actually looking

1 for him at the time and we were actually sitting in the
2 parking lot of Sportsmen's Warehouse and I contacted him at
3 that point on his 603 phone number that was provided to us.
4 And whenever I called I identified myself. I basically
5 said, you know, hey, Chris, this is Sergeant Spivey with
6 Lexington -- well, Detective Spivey at the time with
7 Lexington County Sheriff's Department. His response at
8 that time was -- I can go back to my notes and everything,
9 but he immediately asked me how I got this number and while
10 I was talking to him at that time I basically told him that
11 his name came up in a case and that we wanted to speak to
12 him. I had not told him what the case at that time was
13 about, I just told him his name came up in a case that we
14 were working, and I asked him to come sit -- you know, come
15 talk to us. His response at that time was this must be
16 important if I'm calling him this late. I advised him that
17 I did not have any warrants for his arrest, but we needed
18 to talk to him because his name came up, again, in a case.
19 He asked if we could do it over the phone and I advised him
20 that I preferred doing it in person. He asked if he could
21 do it at a later day, I told him we'd prefer to do it right
22 now, if at all possible. He then asked if he could bring
23 his family and I told him yes. Chris at that point then
24 hung up on me. At that time I attempted to call him back
25 several times, but it went straight to voicemail as if it

1 had been shut off.

2 Q. And that was a telephone conversation, correct?

3 A. Correct.

4 Q. The next time you had an opportunity to speak to him
5 was when and where?

6 **MR. GRAHAM:** Before I ask, Your Honor, do you want to
7 go into the contents of the statement or just -- I mean,
8 the actual words that were spoken or do you just want to
9 know about the surrounding -- whether he was in custody and
10 promises and threats?

11 **THE COURT:** I'd rather have the Jackson v. Denno
12 parameters of the promise and threats and the nature of the
13 response only. I mean, if Mr. Phillips wants that in. I
14 just don't think that's necessary, but that's just me.

15 **MR. GRAHAM:** Okay. We won't go into that and develop
16 it if we need to then. Thank you, Your Honor.

17 BY MR. GRAHAM:

18 Q. When was the next time you had an opportunity to speak
19 with Mr. Hart?

20 A. The next time was April the 19th. We actually --
21 myself and Detective Stout drove to Oneida County jail in
22 order to speak to him. That's in New York.

23 Q. Utica, New York?

24 A. We did. We drove to New York.

25 Q. And that's after he'd been picked up on an outstanding

1 warrant from South Carolina?

2 A. Correct.

3 Q. All right. Tell the Court about meeting Mr. Hart up
4 in New York.

5 A. When we got there, we had been driving since -- we
6 left the -- around about 4:00 that morning. We drove about
7 fourteen, fifteen hours, I think it was, one way. When we
8 got up there -- because we were told that when we got there
9 that he was willing to talk to us if we sent investigators
10 to go talk to him. At the time when we actually got to the
11 -- I guess it was the jail, we met with the investigators
12 who actually brought Hart into one of the rooms. His
13 response was are we here to pick him up. I told him no,
14 that we were, you know -- at that time I went over his
15 Miranda warnings with him.

16 Q. Okay. How did -- do you have a document that explains
17 how you went over the Miranda warnings?

18 A. I do.

19 **MR. GRAHAM:** Your Honor, if I could have that marked,
20 I guess, as State's for ID because it will eventually go
21 into evidence would be my guess unless it's suppressed.

22 (State's Exhibit Number 1 was marked for
23 identification.)

24 **MR. GRAHAM:** Mr. Phillips, the Miranda warning.

25 BY MR. GRAHAM:

1 Q. Sergeant, looking at State's Exhibit Number 1, what is
2 that?

3 A. This is a suspect statement. It's one we use at the
4 sheriff's department.

5 Q. And who was present with you when you were up in
6 Utica, New York reading Miranda to Mr. Hart?

7 A. Myself and Detective Stout.

8 Q. And would you describe to the Court how you went about
9 advising Mr. Hart of his rights.

10 A. The suspect statement form actually has the -- his
11 Miranda rights actually on it and I read it verbatim as far
12 as based on here. Do you want me to read it?

13 Q. Please do, just as how you administered it to him.

14 A. All right. It says: You have the right to remain
15 silent. Anything you say can be used against you in a
16 court of law. You have the right to talk to a lawyer for
17 advice before I ask any questions; to have him or her
18 present with you during questioning. If you have no money
19 for lawyer's fees, the Court will appoint one to represent
20 you without any cost, if you wish. If you decide to answer
21 any questions now without a lawyer present, you still --
22 you will still have the right to stop answering questions
23 at any time. You also have the right to stop answering
24 questions at any time until you talk to a lawyer. And then
25 basically it goes, I have read the statement of my rights

1 and I understand what these rights are. We ask him if he
2 understands his rights and if he says yes, we ask if he
3 still continues to want to talk to us, and he said yes.

4 Q. To the right of -- for instance, there's blue ink and
5 black ink. What's the difference?

6 A. The blue ink is myself, my handwriting.

7 Q. And the black ink?

8 A. That's gonna be Mr. Hart.

9 Q. All right. So here what is -- with the initials of
10 Mr. Hart, I'm assuming, what's he indicating?

11 A. His initials, John Christopher Hart, and at that --
12 right there he says I have read -- I can read and write.
13 The first line.

14 Q. Okay. So as you're administering the rights to him,
15 the first one you said, I have the right to remain silent,
16 there are initials there. Whose initials are those?

17 A. Those are Mr. Hart's.

18 Q. All right. In black ink. Now, in fact, each of the
19 -- one, two, three, four -- five of the individual rights
20 each have his initials, correct?

21 A. That's correct.

22 Q. Did you read all of them to him and he went back and
23 initialled all of them or did you do it one by one?

24 A. I believe I read them all and then we went back and
25 had him initial does he understand each one.

1 Q. All right. And did he indicate by putting his
2 initials in black ink that he understood every right?

3 A. Yes.

4 Q. Did he have any questions about any of those rights?

5 A. No.

6 Q. To the left of the numbers one through five there's
7 blue ink that appears to have SS on there. What is that?

8 A. That's my initials indicating that I read each line.

9 Q. Okay. And then finally there is: I have read the
10 statement of my rights and understand what my rights are,
11 and there are initials in black ink. Whose are those?

12 A. Those are Mr. Hart's.

13 Q. And there are initials to the left of that in blue.
14 That's yours?

15 A. That's mine.

16 Q. Indicating you read it?

17 A. Correct.

18 Q. So did he acknowledge that he understood his rights?

19 A. Yes.

20 Q. Did he have any questions about his rights?

21 A. No.

22 Q. Did he appear to be under the influence of alcohol or
23 drugs?

24 A. No.

25 Q. Did you promise him anything to get him to speak with

1 you?

2 A. No.

3 Q. Did you threaten him in any way?

4 A. No.

5 Q. And based on you -- do you believe that he understood
6 his rights?

7 A. I did.

8 Q. And he had no questions about them?

9 A. No.

10 Q. And he waived those rights and he spoke to you?

11 A. He did.

12 Q. Is that correct?

13 A. That's correct.

14 **MR. GRAHAM:** Your Honor, do you need me to go into --
15 I think you said you didn't want to go into the actual
16 statements unless --

17 **THE COURT:** Mr. Phillips, do you want to go into the
18 statements?

19 **MR. PHILLIPS:** I don't believe that there's a need for
20 purposes of the hearing.

21 **THE COURT:** Okay. He's gone through the waiver of
22 the rights and that's kind of what I've been focussing and
23 listening on. So unless you're gonna ask that they go into
24 it, I want to stop there as far as the waiver, understand,
25 appearance, threats, coercion, all those sort of issues

1 that come under the Jackson v. Denno thing. That's what
2 I'm listening for.

3 **MR. PHILLIPS:** Exactly.

4 **THE COURT:** Okay.

5 BY MR. GRAHAM:

6 Q. And that was a conversation where?

7 A. That was in Oneida County jail in New York.

8 Q. And he was in custody, correct?

9 A. He was.

10 Q. Okay. How long was that interview; do you remember?

11 A. It didn't last -- it didn't last very, very long. I
12 don't -- I don't remember the actual -- how long it
13 actually took.

14 Q. Okay. The next time you spoke to Mr. Hart was when
15 and where?

16 A. The next morning. We got up and -- we actually
17 picked Mr. Hart up to transport him back because he had
18 waived extradition from New York and so we picked him up
19 at approximately 4:00 in the morning to drive back to
20 South Carolina.

21 Q. How long of a drive was that?

22 A. About a fourteen, fifteen hour drive.

23 Q. Did you Mirandize him again?

24 A. I did.

25 Q. And how did you -- when and where did that occur?

1 A. That actually occurred in the car. As soon as we --
2 as soon as we picked him up prior to leaving, I actually
3 went over the Miranda rights again with him verbally.

4 Q. You said verbally?

5 A. I did verbally.

6 Q. What, if anything, did you use to assist you in
7 reading his rights?

8 A. I would have went off the suspect statement form
9 again.

10 Q. That's State's Exhibit 1 for identification?

11 A. Yeah.

12 Q. And when you went over the rights again with him,
13 tell me about that, what his responses were.

14 A. He said he understood everything again and he still
15 agreed to talk. We basically read the rights to him
16 because we knew it was gonna be a long ride and, you know,
17 I was pretty -- pretty confident at some point the case
18 would likely come up again, so we wanted to make sure that
19 he understood his rights prior to talking.

20 Q. I want to back up for a second because I didn't ask.
21 On the 19th, the night before in New York, at any time did
22 he say that he didn't want to talk to you during your
23 interview of him?

24 A. No.

25 Q. Did he ever invoke his right to an attorney?

1 A. No.

2 Q. All right. In the drive back -- so now we're back
3 on the 20th again. You re-read him his rights. Did he
4 understand his rights and waive them?

5 A. He did.

6 Q. Did you threaten him in any way during the
7 administration of the rights or during the car ride?

8 A. No.

9 Q. Did you make any promises to him during that
10 timeframe?

11 A. No, sir.

12 Q. Did you coerce him in any way to get him to speak to
13 you?

14 A. No.

15 Q. Did you threaten him?

16 A. No.

17 Q. You made no promises?

18 A. No.

19 Q. And you said it was about a fourteen to fifteen hour
20 car ride?

21 A. Yes, sir.

22 Q. And then he would have been booked into the Lexington
23 County Detention Center?

24 A. That's correct.

25 Q. And have you had any other conversations with him

1 since?

2 A. No.

3 Q. In all the conversations -- the two conversations
4 you had on the 19th and 20th, did you believe that he
5 understood his rights?

6 A. I do.

7 Q. And that he knowingly waived his rights and spoke to
8 you?

9 A. I do.

10 **MR. GRAHAM:** Your Honor, as far as the Jackson v.
11 Denno, that's all the questions the State has for Sergeant
12 Spivey right now.

13 **THE COURT:** All right. Mr. Phillips.

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

15 CROSS-EXAMINATION (In-Camera)

16 BY MR. PHILLIPS:

17 Q. So the first time that you were able to speak with him
18 was you said over the phone?

19 A. It was.

20 Q. And that was a brief conversation?

21 A. I'm sorry?

22 Q. And that was a brief conversation?

23 A. It was.

24 Q. And nothing substantive came up other than you wanted
25 to speak with him?

1 A. Correct.

2 Q. And then you said the phone call ended?

3 A. That's correct. He hung up on me. The call
4 disconnected.

5 Q. Then the next time you spoke to him was on April 19th?

6 A. That's correct.

7 Q. And that was in New York?

8 A. That's correct.

9 Q. So can you explain -- so you were in the -- how do you
10 say it, the Oneida County jail?

11 A. It was.

12 Q. Did they have a -- could you explain the room you were
13 in?

14 A. It was just a generic room. It was just a small --
15 with a table and I think it may have had a few chairs,
16 something like that.

17 Q. What size was the room?

18 A. Maybe ten by ten. I don't recall completely. Maybe
19 a ten by ten room or something. I don't know for certain.

20 Q. Would you classify it as a small room?

21 A. It was a regular size room. I mean, I'd say it was
22 actually probably a tad bit bigger than maybe what we've
23 got back there at the sheriff's department.

24 Q. Okay. As far as an interrogation room?

25 A. Yeah.

1 Q. And how many officers were with you whenever you had
2 the interrogation?

3 A. Just myself and Detective Stout.

4 Q. Was he handcuffed during this questioning?

5 A. He would have been.

6 Q. And was he handcuffed both wrists and ankles?

7 A. I don't recall if he had ankles -- if he had chains
8 on his ankles or not. My guess is he probably did, but I
9 don't know for certain. I can't recall that.

10 Q. And you said you weren't sure of the length. If we
11 kind of tried to put somewhat of a time period, was it
12 over an hour?

13 A. It was probably about maybe a little bit over hour.
14 It wasn't very long as -- you know, as a normal --

15 Q. And during that hour at that point did he -- you said
16 he never invoked his right to counsel?

17 A. He never asked for an attorney.

18 Q. He never invoked his right to silence? He never said
19 he didn't want to cease questioning?

20 A. No.

21 Q. And at that point you -- during the questioning of
22 over an hour, did he ever ask for any breaks or ask for
23 any -- you know, just for any breaks or for any other
24 reasons to stop questioning?

25 A. No.

1 Q. Were there any statements made during that hour of
2 questioning that would have been you're going -- you know,
3 you have been charged with murder, if you don't tell us --
4 was there any type of -- do explain that part. What was
5 told to him in response to questioning as to whether, you
6 know, specific -- not necessarily even threats, but implied
7 -- you know, implied criminal liability in a case, the
8 sentencing that he was facing, was there any of those types
9 of questions asked?

10 A. Well, he knew -- we explained to him that he had been
11 charged with a murder. As far as what he was looking at
12 as far as time-wise, I mean, that's -- that's not my
13 determination. That's up to the courts.

14 Q. Did you make any statements that could have been
15 implied as a threat or coercion?

16 A. I don't think -- I don't think that would have been
17 the case. We never made any threatening comments, no.

18 Q. And you said there certainly was no issue regarding
19 his ability to understand the questions asked?

20 A. I don't think there was.

21 Q. Did you have the ability to record the interview?

22 A. I'm trying to remember if they -- if they asked us
23 that. We -- we basically don't record typically unless
24 there's some -- in my cases and any time that I've ever
25 dealt, I don't record any cases unless I feel like the

1 individual is maybe illiterate to be able to write.

2 Q. And in this case he didn't provide a written
3 statement?

4 A. He did not. He refused to write any kind of
5 statement.

6 Q. So did you have access to record the statement?

7 A. I'm trying to remember if they asked us -- they may
8 have actually asked us if we would like for it to be done
9 at the time and I told them no, there was no need to have
10 one done.

11 Q. All right. And that would have been either video or
12 audio?

13 A. I don't recall if they asked for both or --

14 Q. Whether they just said they had the ability if you
15 wished to record.

16 A. Yeah, and I've never -- I've just never done it
17 because in my opinion as far as a written statement to me
18 he's -- you know, it allows me the ability to ask the
19 question and it also allows him the ability to think about
20 methodically what he wants to -- how he wants to answer it
21 before he -- before he writes down if he chooses to do
22 that.

23 Q. Right.

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

25 **THE COURT:** Okay. Anything else, Mr. Graham?

1 **MR. GRAHAM:** Not for this witness on this matter,
2 Your Honor.

3 **THE COURT:** All right, Mr. Spivey. You can step down.

4 **MR. PHILLIPS:** Your Honor, I apologize. Could I ask
5 -- looking at my notes, I forgot there's one set of
6 questions I forgot to ask regarding the second set of
7 statements. I apologize.

8 **THE COURT:** Yes. Sure. Come back up, Mr. Spivey.
9 There are a lot of different issues. I can understand.

10 BY MR. PHILLIPS:

11 Q. When you spoke to him the next day prior to the car
12 ride, you said it lasted fourteen or fifteen hours?

13 A. Correct.

14 **THE COURT:** That's the car ride. Not the interview.

15 **MR. PHILLIPS:** That's correct.

16 **THE COURT:** Okay. I wanted to be sure I understood.

17 **MR. PHILLIPS:** Yeah, the car ride was fourteen or
18 fifteen hours.

19 BY MR. PHILLIPS:

20 Q. The -- you said in the car is when you verbally
21 Mirandized him?

22 A. It was.

23 Q. All right. And how long -- how much time had passed
24 when you said he initiated -- during the ride back the case
25 was brought back up. Who brought the case up?

1 A. We brought -- we would have actually brought it back
2 up talking to him, but it was clear that Mr. Hart any time
3 we brought up about the case, talked about the case, he
4 became very confrontational as far as about it, so we
5 basically would talk about it and then we would end it as
6 far as with that. There may have been some statements made
7 here and there, but as far as the entire ride back for
8 fourteen hours, fifteen hours, there was a lot more
9 conversation about just random generic stuff that we talked
10 about.

11 Q. So the case would have been brought up by law
12 enforcement; that you would have initiated it?

13 A. Yeah, we would have brought it up again as far as --

14 Q. And how long had the time passed since you gave that
15 Miranda warning to him when it would have been brought back
16 up during the long car ride?

17 A. Well, we -- initially at 7:35 on the day before, that
18 evening, 7:35 PM is when we initially began talking with
19 him at the Oneida County jail. At 4:00 the next morning is
20 whenever we picked him up and prior to leaving is what I
21 wrote down that I read his rights to him again.

22 Q. And then -- but what's the length of time from when
23 you read him verbally the Miranda rights in the car until
24 when you initiated the case again -- the questioning?

25 A. We -- after we read his rights and stuff to him, I

1 mean, we started kind of talking about it probably right
2 away, just kind of bring it up here and there, but it would
3 be something as far as -- you know, when we talked about
4 something, it was very kind of confrontational kind of
5 comments back, whatever, back and forth, you know, and so
6 at that point we may have made some comments here and
7 there, but then after -- and then we'd just start talking
8 about things. So, I mean, it was just kind of -- but we
9 started talking about it initially right away kind of about
10 the case, but then it kind of got shut down pretty quick as
11 far as --

12 Q. And specifically your comments -- you said some
13 comments here and there. Specifically what --

14 A. About -- about the case. About kind of some of the
15 similar questions we'd asked maybe the day before just in
16 regards to the actual murder itself, but he never -- he
17 never -- he became very confrontational about the questions
18 that we were asking. Any time we talked about the case
19 itself, he became very confrontational at the time, so we
20 basically would shut it off ourselves just to kind of get
21 out of that predicament and just start talking about other
22 things. It would come up at times throughout, I mean, in
23 -- just something that may have been said; you know, he may
24 have brought it up or we may have brought something up in
25 regards to it, but when we started talking about the actual

1 case itself, normally that case would -- you know, normally
2 the comments would become very confrontational and it
3 wouldn't last very long and then we'd start talking about
4 something else. I mean, we had a fourteen, fifteen hour
5 ride, so, I mean, that wasn't the only thing by any means
6 we were talking about. We were, you know, just kind of
7 hanging out and talking.

8 **MR. PHILLIPS:** Thank you. No further questions.

9 **THE COURT:** All right. Thank you. You can step down.

10 (Witness excused.)

11 **MR. PHILLIPS:** We would have a partial motion on the
12 statements on April 20th in the car ride. Since we do not
13 have -- and I know that's not the standard. Certainly he
14 is -- he was in custody, he was in the back of a patrol car
15 and he was handcuffed and being transported by two law
16 enforcement officers.

17 **THE COURT:** He's in custody.

18 **MR. PHILLIPS:** So certainly we have a custodial
19 interrogation; questions were asked, were initiated. Since
20 there is not a specific amount of time listed between when
21 further Miranda was provided, we don't have an actual form
22 to show that the Defendant was read his Miranda rights, I
23 would make the argument and certainly move to suppress any
24 of the statements made during the April 20th car ride by
25 the Defendant.

1 **THE COURT:** Didn't the detective say it was almost
2 immediate he gave him the oral warnings consistent with the
3 form and the questioning began nearly immediately or the
4 subject was brought up maybe? Anyway the police initiated
5 conversations with him almost immediately is what he just
6 said.

7 **MR. PHILLIPS:** Well, where it's murky, Your Honor, is
8 that fact that there are statements that have been provided
9 in the investigator's report, but we don't know exactly
10 when those statements were made throughout a fifteen hour
11 car ride where we don't have a Miranda form. I think
12 that's -- that's problematic and in reviewing this
13 certainly -- I believe that certainly puts it at a
14 disadvantage to the Defendant as far as knowing at which
15 point during a fifteen hour car ride. If there's lulls of
16 where these specific statements were made, we don't know
17 and how it was initiated and what was said.

18 **THE COURT:** Well, Mr. Graham, what you got?

19 **MR. GRAHAM:** Just quickly to make sure that -- I
20 didn't know if I misheard something. He read the --
21 statement number one is the rights that were read the night
22 before. He never invoked on those. The next morning when
23 they put him in the car, he verbally Mirandized him again.
24 I believe he said he used that same sheet of paper. So he
25 received -- Miranda one's never invoked and at 7:00 the

1 next morning he was re-Mirandized and they had a fourteen
2 or fifteen hour car ride and he never invoked. He never
3 said he didn't want to talk, never said he wanted an
4 attorney. Is that --

5 **THE COURT:** Mr. Phillips, if I hadn't been reversed
6 one time on an advising of rights, Miranda. The factual
7 scenario was a gap of time, a polygraph examination and
8 then a subsequent examination and the subsequent
9 examination seemed to me to be outside of the Miranda
10 warning, and I was wrong. And so my understanding of the
11 law is once they get advised Miranda, that's a continuous
12 presence of law. He's steadily in custody, steadily in
13 their presence on a long ride. I think anything he says
14 is fair game; that it's within the Miranda advised orally
15 consistent with the form. I think it's fair game and so
16 I'm going to deny your motion as to your partial motion to
17 suppress for the statements made in the car on the ride --
18 fifteen hour ride home from New York. I understand your --
19 I understand the issue very clearly, but I'm gonna deny
20 motion.

21 **MR. PHILLIPS:** Thank you, Your Honor. And certainly
22 we would just -- I'm sure I probably went through the
23 constitutional sections, but the Fifth and Fourteenth
24 and Article 1, Sections 3 and 14 and Article 10 -- or
25 Article 1, Section 10. With that being the case, certainly

1 -- is there any other statements that --

2 **THE COURT:** Any other statements, Mr. Graham, y'all
3 want to try to get in?

4 **MR. GRAHAM:** I think there was another statement
5 during the car ride or at some point, maybe at a stop, when
6 Sergeant Spivey wasn't present that Detective Stout was.
7 So I think that --

8 **THE COURT:** That would be a different --

9 **MR. GRAHAM:** -- just to hear that part of it. .

10 **THE COURT:** Okay.

11 **MR. PHILLIPS:** This is something that came up recently
12 with the discovery. I think Detective Phipps remembered
13 it.

14 **MR. McNAIR:** It's Detective Stout.

15 **MR. PHILLIPS:** Oh, Stout. Sorry.

16 **MR. McNAIR:** A comment made to him during the ride
17 back to South Carolina while Detective Spivey was not in
18 the vehicle, but if he was advised of Miranda prior to the
19 car ride and never invoked his rights, I don't know that we
20 really need to get into that statement.

21 **MR. PHILLIPS:** I would request testimony on that given
22 the fact that we need to pin down the timing of when the
23 Miranda was given and when Detective Stout received the
24 question.

25 **THE COURT:** Are you gonna call Stout?

1 **MR. McNAIR:** Yes, sir. He's on the way.

2 Your Honor, the State calls Investigator Chris Stout.

3 (Whereupon, Chris Stout was duly sworn by the Clerk of
4 Court.)

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

7 **THE WITNESS:** Yes, ma'am. Chris Stout, S-T-O-U-T.

8 CHRIS STOUT,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION (In-Camera)

11 BY MR. MCNAIR:

12 Q. Investigator Stout, where are you employed?

13 A. The Lexington County Sheriff's Department.

14 Q. How long have you been with the sheriff's department?

15 | A. Eighteen years.

16 Q. Now back on April 19th of 2013, were you present
17 with Sergeant Spivey for an interview with the Defendant,
18 Mr. Hart?

19 A. Yes, sir, I was.

20 Q. All right. And where was -- where did that interview
21 take place?

22 | A. In New York.

23 Q. And were you present when he was advised of his
24 Miranda rights?

25 A. Yes, sir, I was.

1 Q. All right. And how did Sergeant Spivey advise him of
2 those rights?

3 A. Off of one of our Lexington County sheets -- statement
4 forms.

5 Q. All right. And did Mr. Hart appear to understand
6 those rights?

7 A. Yes, sir, he did.

8 Q. Did he have any questions about his rights?

9 A. No, sir.

10 Q. To the best of your knowledge, did he knowingly and
11 willingly waive those rights?

12 A. Yes, sir, he did.

13 Q. Did y'all threaten, force or promise him anything in
14 exchange for talking to you?

15 A. No, sir, we did not.

16 Q. Now after that interview -- when did you say that
17 interview took place?

18 A. When?

19 Q. When. The first interview with Mr. Hart.

20 A. It was in the --

21 Q. Do you have your notes with you?

22 A. I do. It's in the Oconee -- Oneida County jail.

23 Q. And the date?

24 A. That would be April 19, 2013.

25 Q. All right. Now after that interview took place, did

1 y'all -- were you involved with transporting him back to
2 South Carolina?

3 A. Yes, sir, I was.

4 Q. And what date did y'all transport him back?

5 A. That would have been on the 20th.

6 Q. Okay. And prior to transporting him, was he
7 Mirandized again?

8 A. Yes, he was.

9 Q. And how was he Mirandized?

10 A. The same way he did before with the same sheet. As
11 we picked him up, put him in the car, Detective --
12 Sergeant Spivey read him his rights again.

13 Q. All right. Again, did he appear to understand those
14 rights?

15 A. Yes, sir.

16 Q. Did he have any questions about them?

17 A. No, sir.

18 Q. Did he appear to freely and knowingly waive those
19 rights?

20 A. Yes, sir, he did.

21 Q. All right. Now on the car ride back, is there a time
22 when you were present in the vehicle with the Defendant
23 when Sergeant Spivey was not there?

24 A. Yes, sir.

25 Q. And did you ask the Defendant anything or did the

1 Defendant volunteer anything to you at that point?

2 A. No, he -- he volunteered asking if he could be housed
3 with his co-defendant.

4 Q. All right. And was that in response to a question you
5 asked or was that something he asked you?

6 A. No, we were talking about some other things that had
7 nothing to do with the case, and I couldn't tell you
8 exactly what it was, but I know we didn't ask him any
9 questions about the case that we were -- we was bringing
10 him back for at the time and he just said I'd like to be
11 housed with my co-defendant, if I could, and I said that
12 ain't gonna happen.

13 Q. All right. So that's something he brought up?

14 A. Yes.

15 Q. Prior to that statement being made, did he ever invoke
16 any of his rights or ask for an attorney or anything like
17 that?

18 A. No, sir.

19 **MR. MCNAIR:** That's all the question I have, Your
20 Honor.

21 **THE COURT:** All right. Mr. Phillips.

22 CROSS-EXAMINATION (In-Camera)

23 BY MR. PHILLIPS:

24 Q. So on April 20th during the -- prior to the car ride
25 back, you were present when Investigator Spivey verbally

1 Mirandized John Hart?

2 A. Yes. Both times, yes.

3 Q. And did this happen -- at what point did this happen?
4 When did he do the verbal Miranda?

5 A. As soon as we got in the car and got him secured in
6 car, in the front seat of the car, I was driving, he did it
7 right -- right there in the vehicle.

8 Q. And the statements that were made when Investigator
9 Spivey was not in the car, what point was this?

10 A. That was -- that was a fifteen hour ride back, so it
11 had to be closer to when we got back to the Columbia area,
12 so I would say that evening sometime. I mean, obviously
13 if he was -- he was not with me, we had -- we had to do
14 bathroom stops and when we have a prisoner one of us has to
15 stay or the other, but we also have to go to the restroom,
16 too, so one of us still has to stay with the prisoner while
17 the other one is excusing himself, so it happened during
18 that time.

19 Q. And did you initiate the conversation? Did you ask --
20 or initiate the statement or --

21 A. Not on that, no, sir.

22 Q. -- did he volunteer? And what was his specific
23 statement?

24 A. Asked if he could be housed with his co-defendant.

25 Q. And that was just a question that he brought up on his

1 own?

2 A. Yeah.

3 Q. Okay. And Detective Spivey was not --

4 A. He was not present during that time because I had to
5 tell him to make sure we -- that we told the sergeant back
6 in the jail to make sure they were kept away.

7 Q. Was the patrol car equipped with a videocamera?

8 A. No, sir.

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

10 **THE COURT:** Okay. Anything else?

11 **MR. GRAHAM:** Nothing further, Your Honor.

12 **THE COURT:** You can step down.

13 **THE WITNESS:** Yes, sir. Thank you.

14 (Witness excused.)

15 **MR. PHILLIPS:** Subject to the same motion, Your Honor.

16 **THE COURT:** Okay.

17 **MR. McNAIR:** Your Honor, the State calls Sergeant Roy
18 Mefford.

19 (Whereupon, Roy Mefford was duly sworn by the Clerk of
20 Court.)

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

23 **THE WITNESS:** Roy Mefford, M-E-F-F-O-R-D.

24 ROY MEFFORD,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION (In-Camera)

2 BY MR. McNAIR:

3 Q. Sergeant Mefford, I'm still gonna refer to you as
4 "sergeant", but what is your current position?

5 A. I'm currently the Director of Animal Services for
6 Lexington County.

7 Q. All right. How long were you with the sheriff's
8 department before that?

9 A. Nineteen years.

10 Q. Okay. So you were working back in April of 2013,
11 correct?

12 A. I was.

13 Q. And did you become involved in the investigation of
14 Chris Hart?

15 A. Yes, sir.

16 Q. All right. At some point did you have the opportunity
17 to speak with Mr. Hart?

18 A. I did.

19 Q. Can you describe the circumstances surrounding that
20 conversation?

21 A. When we were notified that he was in custody in New
22 York, I had to make a decision to -- whether or not to send
23 the investigators there to try to make an attempt to speak
24 with him about the case or if he was unwilling to speak
25 with investigators right off, then I would just let the

1 extradition process take place on its own.

2 Q. Okay. So how did you attempt to make contact with
3 him?

4 A. I obtained the number for the Fugitive Task Force
5 investigator that was handling the case up in New York. It
6 would be Officer Race. I contacted him on his telephone.
7 My initial -- my plan was just to talk to the officer just
8 to kind of get an idea or ask that officer to get an idea
9 whether or not Mr. Hart would be cooperative or be willing
10 to speak to detectives if I did send them to New York.

11 Q. All right. And as a result of your request, what did
12 the officer in New York do?

13 A. I -- when I made the request to him, again, it was
14 just -- my intention was just to speak to the officer and
15 just kind of get -- get an idea of Mr. Hart's demeanor and
16 whether or not he was going to speak with me. He offered
17 to let Mr. Hart speak to me directly.

18 Q. All right. And did you, in fact, have an opportunity
19 to speak to him on the phone?

20 A. I did. The -- the officer let him know who I was and
21 when I got on the phone, I identified myself as a sergeant
22 with Lexington County Sheriff's Department and I just
23 asked him if he understood what he was being charged with
24 and if he was willing to -- that we wanted to speak with
25 him about the case and if he was willing to speak with the

1 investigators should I send them -- if I would send them to
2 New York.

3 Q. Okay. So he was in custody in New York at that time,
4 correct?

5 A. Yes, he was.

6 Q. And had the warrants for murder been served at that
7 point?

8 A. I don't know if the warrants were served. It was an
9 NCIC arrest, so I'm not sure what the -- whether or not the
10 warrants -- our warrants were not served. The original
11 warrants are maintained down here. We just put them on the
12 National Crime Information Center computer as wanted for
13 murder and the arrest is made on that.

14 Q. All right. And are you aware if anybody had
15 Mirandized him at that point prior to you talking to him
16 on the telephone?

17 A. I do not know that.

18 Q. All right. And you asked him what?

19 A. I just asked him if -- introduced myself, asked him if
20 he understood what -- what he was being charged with and
21 asked him if he was willing to speak to investigators if I
22 did send them up to New York.

23 Q. All right. And what was his response to that
24 question?

25 A. His initial response was to try to ask me details of

1 the case, which I was not prepared or willing to do over
2 the phone. That's not how you do an interview for this
3 serious nature of these charges. My simple goal was just
4 to find out whether or not he would speak to investigators
5 if they did send them up there and his -- I explained that
6 to him, that I would not discuss any kind of evidence over
7 the phone, and then he made the statement to me "How do
8 you charge me with murder? You found a gun with my
9 fingerprints on it?", or something, and at that point I
10 thought that was interesting because I had not given any
11 details of what the -- you know, what the charge -- who he
12 was alleged to have killed or how they were killed.

13 Q. All right. And that was not a response made to you
14 asking him anything in particular about the case, that was
15 just a response to you asking him whether or not he was
16 willing to meet with investigators, correct?

17 A. That's correct, sir.

18 Q. All right. And when did that conversation take place?
19 Do you have that in your notes?

20 A. Yes. April 18, 2013 --

21 Q. All right. And --

22 A. -- around -- I'm sorry. Around 3:30 PM.

23 Q. All right. Precise. Was that the extent of your
24 conversation with Mr. Hart?

25 A. That was my only interaction with him.

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

2 **THE COURT:** All right. Mr. Phillips.

3 CROSS-EXAMINATION (In-Camera)

4 BY MR. PHILLIPS:

5 Q. So you knew when you made the phone call that the --
6 there was an arrest warrant for murder at that time?

7 A. Yes.

8 Q. Pending?

9 A. Yes.

10 Q. From April 15th?

11 A. Yeah, he was wanted. Yes.

12 Q. That he was wanted for murder?

13 A. Yeah, he was arrested on our warrant that we had
14 generated.

15 Q. And he was in custody in Rome, New York?

16 A. He was.

17 Q. And in asking him that question, whether he wanted to
18 speak, you never provided any Miranda rights?

19 A. I did not. I was not trying to question him about --
20 it was not an interrogation. I was simply asking if he
21 would be willing to speak with us. The same thing I would
22 do in the initial stages of an interview if we were in
23 person; the first thing if they even want to talk, but
24 that's where I was gonna leave it just to see -- and it
25 was just to see whether or not logistically to send two

1 detectives to New York City or wait until they came back.
2 down here.

3 Q. And in asking that question, had you been in Lexington
4 County, the first thing you would have done was walk
5 through the Miranda rights form; is that correct?

6 A. If I intended to do an interrogation, yes, sir.

7 Q. Would there be any other instance when you talk to a
8 defendant or at that time someone who's got a pending
9 arrest warrant for murder where -- again, I understand the
10 unusual situation with him being in New York --

11 A. Yes.

12 Q. -- where the Miranda rights are not provided prior to
13 asking any questions of a defendant?

14 A. If they weren't in custody.

15 Q. And he was in custody?

16 A. He was in custody.

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

18 **THE COURT:** Okay.

19 **MR. MCNAIR:** Nothing further, Your Honor.

20 **THE COURT:** You can step down.

21 **THE WITNESS:** Thank you.

22 (Witness excused.)

23 **MR. PHILLIPS:** Your Honor, it's been testified to that
24 he was in custody, there was interrogation, in other words,
25 there were questions that were asked of him while being in

1 -- so custodial interrogation has been admitted that they
2 did ask a question without providing Miranda warnings to
3 him.

4 **THE COURT:** But wasn't it in response to his question
5 are you willing to talk to us?

6 **MR. PHILLIPS:** Well, at that point the argument would
7 be that --

8 **THE COURT:** I mean, if he answered the wrong question
9 -- I get it that you don't want it to come in, but are you
10 willing to talk to us, should I send two detectives to pick
11 you up, are gonna waive extradition was the tenor of the
12 question, not did you do it.

13 **MR. PHILLIPS:** Right. Are you willing to talk to us
14 and that generally follows up with the Miranda warnings.
15 That's the trigger of it.

16 **THE COURT:** Right.

17 **MR. PHILLIPS:** And he never had that opportunity to
18 be Mirandized and notified of his rights to provide the
19 statement before that statement came out. I think it's
20 fairly dangerous. I think obviously when you have someone
21 who's in custody, the first thing that he would have done
22 had they been in Lexington County, he said, would be to
23 read him his Miranda rights so you don't have any of these
24 issues.

25 **THE COURT:** No, I thought he said he would have

1 asked him are you willing to talk to us and then give him
2 Miranda. He was basically doing the same thing this time
3 except the voluntary comment came before he could do that.
4 He was, "Are you willing to talk to us if I send two people
5 up there to get you?", and this came out. I agree with you
6 on -- on what happened, but what happens in Lexington and
7 what happened on the telephone really doesn't matter to me.
8 It's what happened on the telephone is what I'm concerned
9 with, are you willing to talk with us, and then the
10 statement came out not responsive to are you willing to
11 talk with us, not -- he didn't ask him -- do you see what
12 I'm getting at? I don't care what -- I don't care what
13 they would have done in Lexington. What they did in
14 Lexington is what they do in Lexington, but on the
15 telephone is what we've got to deal with.

16 **MR. PHILLIPS:** Well, the would you talk with us with a
17 custodial -- he's certainly in custody. No question.

18 **THE COURT:** No question.

19 **MR. PHILLIPS:** When they ask that question, it's
20 generally followed up, to protect his rights, the Miranda
21 rights warning -- the adequate Miranda warnings.

22 **THE COURT:** I agree.

23 **MR. PHILLIPS:** At that point -- again, it wasn't
24 testified that it was immediate because he did provide
25 additional information that they were gonna drive -- send

1 two investigators up there to meet with him and then you
2 said -- as Your Honor pointed out, that it was
3 nonresponsive to the question. The Defendant's argument
4 is that knowing that he was in custody, a pending arrest
5 warrant for murder, when they called and asked are you
6 willing to speak with them, it should have been followed
7 up with I'm gonna read you your rights first before you
8 provide us with any statements. Now I understand trying
9 to parse out whether it was wholly unresponsive. We don't
10 have a recording of the phone call as to as the timing and
11 the exact phrasing and length, but I do believe it's
12 troublesome and when you're calling an inmate on a murder
13 case and asking them are you willing to speak and then not
14 having a Miranda advisement.

15 **THE COURT:** All right. Let me hear from Mr. McNair,
16 I guess.

17 **MR. McNAIR:** Your Honor, I guess under Mr. Phillips'
18 logic, you couldn't approach him and ask if he's willing
19 to waive extradition. I mean, that was a question, are
20 you willing to talk, that's not likely to induce an
21 incriminating response, and if he just volunteered that
22 information -- I agree he's in custody. Everybody can see
23 that.

24 **THE COURT:** He's in custody.

25 **MR. McNAIR:** My argument is it's not interrogation

1 because it's not a question likely to induce an
2 incriminating response. It's just are you/willing to talk
3 to us, similar to are you willing to waive extradition. I
4 don't think that runs afoul of Miranda.

5 **THE COURT:** All right. I'm gonna think about that
6 one, but it would seem to me that the detective was not
7 allowed the opportunity to give Miranda because Mr. Hart
8 started talking before he could take the next step.

9 **MR. McNAIR:** Exactly, Your Honor. Exactly.

10 **THE COURT:** All right. I'm gonna sit on that one.

11 **MR. PHILLIPS:** And I'll look to see if -- how the case
12 law parses that out as well.

13 **THE COURT:** Okay. I think that's it on this one.

14 **MR. PHILLIPS:** That would be it as far as statements
15 provided by Defendant.

16 **MR. McNAIR:** There are statements made during the
17 course of the traffic stop. I don't know if you want a
18 Denno on that or --

19 **MR. PHILLIPS:** So there was traffic stop the night
20 of the murder by the South Carolina highway patrol. The
21 solicitor's office indicated, I believe, the officer -- or
22 the trooper, excuse me, is in --

23 **MR. McNAIR:** He had a jury trial across the street,
24 Your Honor. I believe he's available now.

25 **THE COURT:** Okay.

1 **MR. McNAIR:** We'll do him next.

2 **THE COURT:** Sure. Good deal. Do you want a hearing
3 on that one?

4 **MR. PHILLIPS:** Yes, Your Honor. That way we don't
5 have to stop and start during trial.

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

7 **MR. PHILLIPS:** Thank you.

8 **THE COURT:** Who's the trooper? I don't see his name
9 here.

10 **THE CLERK:** Patterson, Your Honor.

11 **THE COURT:** You look like a deputy now.

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

13 **THE COURT:** Were you a trooper?

14 **THE WITNESS:** No, sir.

15 **THE COURT:** Y'all just misstated that.

16 **MR. PHILLIPS:** I thought he was a trooper. I
17 apologize.

18 **THE COURT:** Well, I know what troopers wear and that's
19 not a trooper uniform.

20 **MR. PHILLIPS:** That's right, Your Honor.

21 **MR. McNAIR:** I'm sorry. Yes, Your Honor. The State
22 calls Deputy William Patterson. I apologize.

23 (Whereupon, William Patterson was duly sworn by the
24 Clerk of Court.)

25 **THE CLERK:** Once you're seated, state your full name,

1 spelling your last, please.

2 **THE WITNESS:** William Patterson.

3 WILLIAM PATTERSON,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION (In-Camera)

6 BY MR. McNAIR:

7 Q. Deputy Patterson, how long have you worked for the
8 sheriff's department?

9 A. I started with the sheriff's department in February
10 of 2006.

11 Q. All right. And what is your current position there?"

12 A. I'm assigned to the traffic division.

13 Q. Were you on duty the night of April 10, 2013?

14 A. Yes, I was.

15 Q. And who else were you working with that night?

16 A. I was working with Deputy David Jones and also
17 Trooper Sammy Bird from the South Carolina Highway Patrol.

18 Q. All right. And what were y'all doing the night of
19 April 10th?

20 A. At that time I was assigned to our criminal
21 interdiction unit. We were working I-20 doing traffic
22 enforcement.

23 Q. Okay. Now were you involved in a traffic stop of a
24 Lincoln Town Car that night?

25 A. Yes, sir. And it was actually April the 11th. It was

1 five minutes after midnight.

2 Q. Okay. 12:05. I apologize.

3 A. Yes, sir.

4 Q. And why did you pull that vehicle over?

5 A. When the vehicle came by, the tag was slanted at an
6 angle. The South Carolina state law states the tag has to
7 be horizontal, especially with some of the roads in South
8 Carolina that if they hit some bumps the remaining screw
9 could fall out and the tag could fall off, so I pulled up
10 to the vehicle and initiated a traffic stop to let them
11 know about the tag. As I was approaching the vehicle, the
12 vehicle also starts striking the fog line, which is the
13 white line on the right side of the road.

14 Q. Okay. And so what did you do after you pulled that
15 vehicle over?

16 A. After I initiated the traffic stop, I walked up on the
17 passenger side of the vehicle. The passenger opened the
18 door. I asked the driver, who was identified as
19 Mr. Deloach, for his information, had him step out of the
20 vehicle and meet me at the rear of the vehicle so I could
21 explain to him why I stopped him and I showed him the
22 reason I stopped him with the tag being --

23 Q. Improperly displayed?

24 A. -- hanging off.

25 Q. All right. And did you ask Mr. Deloach any questions?

1 A. Yes, sir. As I was conducting my enforcement action,
2 which was a written warning in this case, I engaged in
3 conversation and asked him where they were coming from. I
4 also asked him whose vehicle it was. During the course of
5 the conversation, he informed that they were coming from
6 the country. I asked him if he could elaborate a little
7 bit more. He said they were coming from Wagner. I asked
8 him where he was going. He stated he was taking the friend
9 -- or the vehicle to a friend's location off of Two Notch
10 Road, that the friend was paying him a hundred dollars to
11 transport the vehicle. He could not give me the friend's
12 name other than he went by the nickname of Black.

13 Q. Okay. And did you ask him for any paperwork for the
14 vehicle?

15 A. Yes, sir. He did not have any, so once I got finished
16 speaking to Mr. Deloach momentarily I went up to the
17 passenger side vehicle again and made contact with the
18 passenger, who was later identified as Mr. Hart.

19 Q. All right. Let's stop right there. What -- what did
20 you -- at that point what did you say to the passenger?

21 A. I asked him if he could find any paperwork for me for
22 the vehicle. He stated he had been looking. He was unable
23 to locate the paperwork. At that time I began speaking
24 with him kind of asking him where they were coming from
25 because the story the driver, Mr. Deloach, had given me

1 didn't make a whole lot of sense, that you're driving a
2 vehicle that doesn't belong for you for a hundred dollars,
3 you don't know the person's name, so the story just didn't
4 make any sense so I tried to get some clarification from
5 Mr. Hart.

6 Q. Okay. And what did -- had you identified him as --
7 with the last name Hart yet or were you just still --

8 A. No, at that point I had no idea who he was.

9 Q. All right. But you asked him questions about where
10 they were going?

11 A. Yes, sir.

12 Q. What did he tell you at that point?

13 A. He told me that they were coming from Wagner also. He
14 gave me different location. I can't remember where the
15 locations were, but I know it was a different location than
16 where the driver had told me they were coming from. He
17 stated that he was just going home. When I asked him whose
18 vehicle it was, he stated he had no idea, that he was just
19 a passenger in the vehicle. Again, it struck me as rather
20 odd because when I had asked the driver of his -- of their
21 relationship, he told me Mr. Hart was his brother and so I
22 thought it was kind of odd that they were that close of
23 friends and yet he didn't know whose vehicle he was riding
24 in.

25 Q. Okay. So at this point you had two inconsistent

1 stories about what was going on?

2 A. Yes, sir. That's correct.

3 Q. What do you do next?

4 A. At that point in time, I requested assistance from
5 Trooper Bird, who was within several miles of where I was.
6 We worked about a four mile stretch of the interstate and
7 so I asked if he could respond to that location to back me
8 up while I was still completing my records checks and my
9 enforcement action of the traffic stop.

10 Q. So while Trooper Bird is en route, you were, still
11 running license checks and registration checks?

12 A. Yes, sir, and still writing my warning.

13 Q. All right. And how long did it take Trooper Bird to
14 get on the scene?

15 A. Several minutes.

16 Q. And he had a -- did he have a K-9 with him?

17 A. Yes, sir, he did. And prior to him getting there
18 while I was still writing my warning and processing
19 Mr. Deloach, I asked him if there was anything in the
20 vehicle that was illegal. He stated there was not. I
21 asked him if I could further get consent to search the
22 vehicle. He made the comment -- and let me see if I can
23 find the exact -- his exact words were "if you have
24 probable cause, I don't have a problem with it", which I
25 thought was a little odd that he phrased it that way. I

1 informed him at that time that Trooper Bird, like I said,
2 was coming with his narcotics-detecting K-9 at which time
3 he asked what could the dog detect and I explained that the
4 dog could detect the odor of narcotics. At that time he
5 sort of seemed like he was relieved a little bit, kind of
6 made a sigh of relief so to say.

7 Q. Did you ever ask the passenger for his identifying
8 information?

9 A. Yes. Once Trooper Bird got on the scene, I had the
10 passenger, who was Mr. Hart, step out of the vehicle and
11 meet me at the rear of the vehicle and I did ask him for
12 his information at the time.

13 Q. Did he provide it to you?

14 A. He did not have any ID, but he did provide me his
15 name.

16 Q. He did that verbally?

17 A. Yes, sir. He advised me his name was John Hart and
18 he gave me a date of birth of [REDACTED], 1988, and stated
19 that he did not have a middle name and that he was in our
20 computer system.

21 Q. Okay. Now once the drug dog got on the scene, did the
22 dog alert to anything?

23 A. Yes, sir. Once Trooper Bird got on the scene, he did
24 deploy his canine, which was K-9 Titus, and K-9 Titus did
25 alert on the presence of an odor of narcotics in the

1 vehicle.

2 Q. And the vehicle was ultimately searched?

3 A. Yes, sir, it was.

4 Q. Now prior to -- I guess when you got the information
5 from Mr. Hart about where they were going and then his
6 identity, how long do you think that was into the traffic
7 stop?

8 A. I'd say with all of that and Trooper Bird getting on
9 the scene with his K-9 I'd guess between ten or fifteen
10 minutes of the initial stop.

11 Q. All right. And during that time you were in the
12 process of writing Mr. Deloach a warning ticket for the tag
13 violation?

14 A. Yes, sir, I was still writing a warning, as well as
15 running their information through records checks and DMV
16 as Trooper Bird had arrived on the scene and was deploying
17 his K-9.

18 Q. Mr. Hart was never under arrest when you spoke to him?

19 A. No, sir.

20 Q. You never charged him with anything, correct?

21 A. No, sir.

22 Q. He was never handcuffed?

23 A. No, sir.

24 Q. Any conversation that you had with him was just in the
25 course of a traffic stop, correct?

1 A. Yes, sir. That's correct.

2 Q. And did he ever say he didn't want to talk to you or
3 ask for an attorney?

4 A. No, sir.

5 Q. All right.

6 **MR. McNAIR:** No further questions, Your Honor.

7 CROSS-EXAMINATION (In-Camera)

8 BY MR. PHILLIPS:

9 Q. So there was a highway patrolman there, a trooper?

10 A. Yes, sir.

11 Q. All right. With that being the case, all the
12 questions were basic investigatory questions of a traffic
13 stop?

14 A. Yes, sir, the same questions I ask on almost any
15 traffic stop.

16 Q. Was there anything unusual about their responses?

17 A. Other than the behaviors as they -- as I was coming
18 up on the vehicle initially, like I said, they started
19 striking the fog line, which from my training and
20 experience is consistent with someone trying to see what
21 I'm doing and not paying attention to where you're driving.
22 When I walked up to the vehicle, the driver's side window
23 would not go down, which, again, is consistent sometimes
24 with my training and experience is if they had something
25 concealed in the door pocket it can interfere with the

1 windows and then the inconsistent stories, where they were
2 coming from, where they were going, not knowing whose
3 vehicle it was. Mr. Hart trying to distance himself from
4 the vehicle, saying he didn't know whose vehicle it was, he
5 was just a passenger.

6 Q. And the search was inconclusive?

7 A. Yes, sir. That's correct.

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

9 **THE COURT:** Okay.

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

11 **MR. PHILLIPS:** No motion, Your Honor, on this.

12 There's no motion based on that testimony. I would have
13 unrelated issues based on the testimony as far as when he
14 testifies as to training and experience of what could be
15 in a door, what could be -- what could be happening.

16 **THE COURT:** Okay. That's fair enough. So no motion
17 here?

18 **MR. PHILLIPS:** That's correct.

19 **THE COURT:** Good enough. You may step down.

20 (Witness excused.)

21 **THE COURT:** All right. What else?

22 **MR. GRAHAM:** That's all for the Jackson v. Denno,
23 Your Honor.

24 **THE COURT:** All right. I've got one under advisement,
25 there's not one there. I ruled on the other two.

1 **MR. PHILLIPS:** That just leaves us with the Neil v.
2 Biggers hearing, the identification of the Defendant.
3 Specifically, the Defendant moves for a hearing on the
4 suggestiveness of the out of court identification pursuant
5 to Neil v. Biggers and State v. Simmons that challenges
6 the reliability of the identification procedures used.

7 **THE COURT:** Okay. Who did the identifying?

8 **MR. PHILLIPS:** There's multiple photo lineups in this
9 case.

10 **MR. GRAHAM:** One of the first issues would be --
11 is an in court identification by the officer who just
12 testified because the only time that he had contact with
13 him would have been the traffic stop and here in court
14 and my understanding is that he says he does recognize
15 him. So I don't know whether --

16 **THE COURT:** He says he does not recognize him?

17 **MR. GRAHAM:** That he does.

18 **THE COURT:** All right.

19 **MR. PHILLIPS:** I think the in court doesn't even apply
20 to the hearing, so.

21 **MR. GRAHAM:** I understand.

22 **THE COURT:** He wasn't shown the lineup?

23 **MR. GRAHAM:** No, sir.

24 **MR. PHILLIPS:** No, that's not --

25 **THE COURT:** So that's not part of the Biggers. Okay.

1 We're good there.

2 **MR. PHILLIPS:** No, Your Honor.

3 **THE COURT:** All right. I was just a little confused.

4 **MR. PHILLIPS:** Yeah, just the photo lineups.

5 **MR. GRAHAM:** If we could have a five minute break,
6 Your Honor?

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

8 (Recess taken.)

9 **THE COURT:** All right. Are y'all ready to go?

10 **MR. GRAHAM:** Yes, sir.

11 **THE COURT:** How many of these photos lineups do we
12 have?

13 **MR. GRAHAM:** I'm putting up an officer only and we'll
14 do the witnesses when they testify. I think that there
15 are three or four, Your Honor.

16 **THE COURT:** Okay.

17 **MR. GRAHAM:** We should be able to finish before 5:00.

18 **THE COURT:** Well, I'm getting -- I'm getting a little
19 fatigued with the tediousness of however y'all do this and
20 so we may have to -- I'm just telling you.

21 **MR. PHILLIPS:** This is, I believe, our last --

22 **THE COURT:** I don't care. When I give out, I stop.
23 That's how I do it. So whether you're tired or not doesn't
24 matter to me. If I get tired, that's when I'll stop and
25 that's protecting Mr. Hart, all right?

1 **MR. PHILLIPS:** Well, we agree with that.

2 | **THE COURT:** Okay.

3 **MR. GRAHAM:** The other option is we can do this before
4 each person testifies, Your Honor.

5 **THE COURT:** Give me a little preview of it. Let's
6 call the first one.

7 **MR. GRAHAM:** It's not gonna happen tomorrow, I don't
8 think. The State recalls Sergeant Sean Spivey.

9 **THE COURT:** All right. The sergeant is already under
10 oath.

11 SEAN SPIVEY,

12 having been previously sworn, testified as follows:

13 DIRECT EXAMINATION (In-Camera)

14 BY MR. GRAHAM:

15 Q. Sergeant Spivey, you're the lead investigator on this
16 case?

17 | A. I am.

18 Q. As part of your investigation, did you develop John
19 Christopher Hart as a suspect?

20 | A. We did.

21 Q. In dealing with several witnesses, did you attempt
22 photo lineups with them to see if they recognized John
23 Hart?

24 | A. Yes..

25 Q. Some of those people knew him by what name?

1 A. KG, some of them knew him by, I think, Bhريس.

2 Q. Let me show you --

3 **MR. GRAHAM:** I have four documents, if I can go ahead
4 and mark them, Your Honor. It will be State's 2, 3, 4 and
5 5 for ID.

6 (State's Exhibit Numbers 2, 3, 4 and 5 were marked for
7 identification.)

8 BY MR. GRAHAM:

9 Q. Sergeant, State's Exhibit Number 2 for identification,
10 do you recognize that?

11 A. I do.

12 Q. And what is that?

13 A. That's a photo lineup we did with John Christopher
14 Hart in it.

15 Q. And who did you show that one to?

16 A. Jeffrey Behymer.

17 Q. And who is Jeffrey Behymer?

18 A. He is the white guy that we identified that actually
19 gave Hart a ride to the Delta Motel that night.

20 Q. All right. Just so -- explain to the judge a ride
21 from where to where?

22 A. They -- after the traffic stop, Hart and Deloach
23 actually went to the 44 Truck Stop. At that point in time
24 there was a white male that actually came out of the
25 restaurant and as he was coming out they approached him and

1 he's the one that actually gave Hart a ride to the Delta
2 from there.

3 Q. What date and time did you show this photo lineup to
4 Mr. Behymer?

5 A. It's on April 30, 2013.

6 Q. And where did it happen?

7 A. This would -- this would have been at his house.

8 Q. At Mr. Behymer's house?

9 A. Yes.

10 Q. All right. Would you describe to the judge how you
11 went about showing this lineup to him?

12 A. Typically what I do whenever -- any time whenever I
13 show a lineup, I typically turn it over facedown or
14 basically if I'm holding it up -- if I'm standing up and
15 there's nothing to put it on, I hold it facedown as well.
16 At that point in time I explain to them there's gonna be
17 six individuals on the actual -- that I'm gonna show him
18 and I explained that the individual that -- may or may not
19 be on here and if he recognizes him to let me know. If he
20 doesn't recognize anybody on that lineup, to also let me
21 know that as well.

22 Q. Did you do anything to indicate to Mr. Behymer who he
23 should pick out?

24 A. No.

25 Q. And once you flipped the paper over and showed it to

1 him, what did Mr. Behymer do?

2 A. He looked at it and then he picked out Number 2 on
3 here, which is actually John Christopher Hart.

4 Q. And how long did he spend looking at it?

5 A. It didn't take long. He actually just looked at it
6 and looked at the six individuals and then picked him out.

7 Q. And how did he indicate that he picked him out?

8 A. He circled Number 2 and he wrote beside 75 percent.

9 Q. And what does the 75 percent mean?

10 A. Basically that's the certainty that he is that that
11 was -- that was Mr. Hart that was in the car with him.

12 Q. And how did he -- the handwriting on this form, whose
13 handwriting is it?

14 A. That is his.

15 Q. Okay. And so all of the blue ink on there is --

16 A. I think April 30, 2013, is gonna be -- that's gonna
17 be mine, I believe.

18 Q. His name and signature is his?

19 A. That is his name and signature and he would have
20 circled Number 2 and he would have also put the percent
21 number in there.

22 Q. All right. And Number 2 was the Defendant?

23 A. John Chris -- yes, sir.

24 Q. And how long of a time did he tell you that he had in
25 contact with Mr. Hart?

1 A. Just from the ride from the 44 Truck Stop to the Delta
2 Motel.

3 Q. Okay. State's Number 3 for identification. Do you
4 recognize that one?

5 A. I do.

6 Q. And what is that?

7 A. It's another photo lineup with six individual people
8 on there to include the Defendant, Mr. Hart.

9 Q. Who did you show that one to?

10 A. Tina Perry.

11 Q. When and where?

12 A. It would have been April 25, 2013, and we showed that
13 at the jail, the Lexington County Detention Center.

14 Q. Okay. And what, if anything, did you do to indicate
15 to her who she should pick out?

16 A. Nothing.

17 Q. And, again, what did you do?

18 A. The same thing basically. I flipped over -- we were
19 actually in the pod when she was back there in the jail.
20 When we met with her, we showed her and did, you know, the
21 same thing, facedown. The person that -- may or may not be
22 on this actual lineup. Please let me know if that person
23 is on there. If it's not on there, also indicate and let
24 me know that as well.

25 Q. All right. Ms. Perry, did she -- what name did she

1 know Mr. Hart by?

2 A. KG.

3 Q. All right. So you would have been asking her to look
4 and see if KG was on this and he may or may not be on
5 there?

6 A. Correct.

7 Q. Did you do anything to indicate to her who she should
8 select or pick out?

9 A. No.

10 Q. And, again, once you flipped the paper over for her,
11 what did she do?

12 A. She immediately picked out Number 2, which is Hart.

13 Q. How long did she tell you that she had known the
14 individual known as KG?

15 A. I don't recall. I'd have to refer back to my notes,
16 which is over there, but -- if that's on there, but she's
17 known him through basically the drug trade as far as him
18 coming over there to the Delta Motel and other hotels that
19 she'd been around, so she's known him for a little while.
20 She actually has contact with him on a regular basis and
21 actually did the night prior to getting there as well.

22 Q. How much time did it take her to do the
23 identification?

24 A. She picked him out immediately.

25 Q. And how did she indicate that on the paper?

1 A. She circled the entire face and then she signed --
2 signed her name -- printed and then signed it as well and
3 circled down at the bottom as well and then she also
4 indicated by putting a certainty of 100 percent.

5 Q. The handwriting on this page, is any of that
6 handwriting yours?

7 A. No.

8 Q. All of it's hers?

9 A. All of it's hers, yes. And she also wrote on here
10 right -- right to the side of his face she put "known as
11 KG to me" and then she signed her name to the side of that
12 as well as Tina Perry. So she basically -- when she looked
13 at it, she immediately picked him out a hundred percent and
14 she, you know, was to the point where she was excited and
15 she signed her name without -- before I gave her any other
16 instructions on what to do.

17 Q. State's Number 4 for identification, what's that?

18 A. This is another photo lineup with Mr. Hart in there
19 as well.

20 Q. And who did you show this one to?

21 A. Mr. Randy Reynolds. Mr. Randy Reynolds is a guy that
22 -- states that he was buying -- had been buying drugs from
23 Hart.

24 Q. And did he tell you how long -- did he admit that to
25 you?

1 A. Yes. Yes, he did admit that he had been buying drugs
2 from him.

3 Q. Did he say how long he had known Mr. Hart?

4 A. It wasn't very long. He's from -- he's a guy from
5 North Carolina and so he was down here -- doing some
6 construction down here.

7 Q. When and where did you show him that lineup?

8 A. I want to say -- if I could look back at my notes, I
9 want to say he was right outside the Chuck E. Cheese right
10 there in Columbia --

11 Q. Okay.

12 A. -- over on St. Andrews Road. I'm sorry.

13 Q. And did you do the same way of presenting it to him?

14 A. I did.

15 Q. Did you tell him you were -- without looking, what
16 name did Mr. Reynolds know Mr. Hart by?

17 A. We were also going -- asking the name KG at the time
18 as well.

19 Q. When you flipped it over and asked him if KG was on
20 there, what, if anything, did he do?

21 A. He could -- he basically told me after looking at it
22 he does not recognize any of these people, so at that
23 point --

24 Q. And Mr. Hart's picture was on it?

25 A. It was.

1 Q. And he did not pick out Mr. Hart or anybody on that
2 lineup?

3 A. Correct. Yeah, he said he didn't recognize any of
4 these people. That was the words he told me.

5 **MR. GRAHAM:** The last one, Your Honor, if I could
6 re-label. I had had a copy and I actually found the
7 original, so if I could substitute and ask the court
8 reporter to make that as Number 5 for identification.

9 **THE COURT:** As long as Mr. Phillips understands what
10 you just asked to do. He wasn't listening. Tell him what
11 you did.

12 **MR. PHILLIPS:** Is it the original copy that he's now
13 marking as the exhibit?

14 **MR. GRAHAM:** Yeah. I had shown him a copy that I was
15 going to introduce, the clerk {sic} marked that as Court's
16 Number 5. Since the time that the officer's been on the
17 stand, we found the original and I'd like to have that one
18 marked as 5 and I'm gonna take the copy out.

19 **THE COURT:** Fair enough. Do you think that's fair?

20 **MR. PHILLIPS:** Absolutely.

21 **THE COURT:** All right.

22 (State's Exhibit Number 5 was re-marked for
23 identification.)

24 BY MR. GRAHAM:

25 Q. Sergeant, looking at State's Number 5, what's that?

1 A. This is a photo lineup that we were trying to put
2 together at the time and we showed this on April the 12th
3 to a Chance Belton. We didn't have any other booking
4 photos to use, so we went and referred to Richland County
5 Sheriff's Department's website, Alvin S. Glenn, and
6 attempted to put one together. We were actually still in
7 the process of trying to see if we could put something
8 together on that and so when we met with Mr. Belton we
9 basically felt that was -- you know, that we should show
10 him this, at least what we've got, so we could have at
11 least something on the record.

12 Q. Who -- what was your understanding in the
13 investigation of who Mr. Belton was and what his
14 relationship with Mr. Hart was?

15 A. Mr. Belton was the -- he -- when we started talking to
16 him, Mr. Belton actually sold the Lincoln Town Car that's
17 in question to Mr. Hart for \$4,500. According to him he
18 actually bought -- ended up buying the car back for 1,800
19 bucks according to Belton and then he also -- he continued
20 to rent it out for \$50 a day to Mr. Hart as well any time
21 when he would use the car. Mr. Belton is also the
22 individual that Mr. Hart contacted as far as upon the
23 traffic stop right before they went to the 44 Truck Stop.

24 Q. And what was your understanding of the length of time
25 that they knew each other?

1 A. My understanding -- well, he bought the car from
2 another individual back in 2012. He knew -- he had known
3 him for a little bit of time. I'd have to go back to my
4 notes to see if that's something in there, but he'd known
5 him for a little while and he knew his name to be Chris.

6 Q. So when you showed this photo lineup to him, were you
7 asking him to see whether Chris was in there or who was in
8 there?

9 A. I was asking to see if he recognized anybody in this
10 -- in this picture as Chris.

11 Q. And, again, did you use the same procedure to show
12 that to him?

13 A. I did.

14 Q. And when you flipped that over and he looked at it,
15 tell me about his response.

16 A. He immediately put out a hundred percent beside it,
17 below it and initialled. He actually circled Mr. Hart's
18 photo and then, like I said, put a hundred percent and then
19 signed his name and also put his initials as well.

20 Q. And all the handwriting on that sheet is his?

21 A. It is, except for the date and time is mine.

22 Q. Did you do anything to indicate who he should select?

23 A. No.

24 Q. The individual he picked out in this -- you said a
25 booking photo of Mr. Hart?

1 A. Yes, it's the booking photo, I believe, over at
2 Alvin S. Glenn Detention Center.

3 Q. At an earlier time?

4 A. It is.

5 **MR. GRAHAM:** Your Honor, that's all the questions
6 the State has.

7 **MR. PHILLIPS:** Do you have the copies? May I
8 approach, Your Honor?

9 **THE COURT:** Yes.

10 **MR. PHILLIPS:** Thank you.

11 CROSS-EXAMINATION (In-Camera)

12 BY MR. PHILLIPS:

13 Q. In speaking to Mr. Behymer, you specifically
14 referenced which name, whether he knew John Hart or --

15 A. At the time -- I believe at the time we were asking
16 if he knew KG.

17 Q. Would you have ever used the name John Christopher
18 Hart or just the KG, whether he knew KG?

19 A. It would have been based on KG is what he was, I'm
20 assuming, giving to everybody. I'd have to, like I say,
21 refer back to my notes and stuff.

22 Q. You can take your time.

23 A. They're over there.

24 **MR. GRAHAM:** (Handing.)

25 A. It doesn't say how I -- how I basically asked, but I

1 would have more than likely asked KG because that's the
2 name I was giving out at that time.

3 Q. So at that point you weren't using John Christopher
4 Hart, you were using KG?

5 A. It doesn't appear based on my notes that I -- I would
6 have used that name at all to him.

7 Q. As to Ms. Perry's identification, you also used solely
8 whether she knew him as KG?

9 A. Yeah, they knew him as KG at the time, so we stayed
10 with that trying to be consistent with what they knew him
11 by.

12 Q. Did you ever ask whether she knew John Christopher
13 Hart and whether that was the same person?

14 A. I don't -- I don't recall if I ever asked her if she
15 knew John Christopher Hart at the time. I know we were
16 using KG because at the time when we initially were
17 investigating this and talking to different people that
18 we were interviewing and investigation during the
19 investigation they knew KG at the time.

20 Q. How long did she know him?

21 A. She had been -- according to her, I believe she said
22 she had been buying some drugs and stuff from him, but
23 she's known him for a little while. I don't recall off the
24 top of my head.

25 Q. Just a few months?

1 A. Yeah, maybe a few months or something.

2 Q. Mr. Reynolds, how long did he know Mr. --

3 A. He hadn't -- I don't think he knew Mr. Hart very long.
4 He came down, he was doing construction, so I don't think
5 he had been dealing with Mr. Hart very long at the time.

6 **THE COURT:** He didn't make the identification.

7 **THE WITNESS:** No, he did not.

8 **MR. PHILLIPS:** Right.

9 BY MR. PHILLIPS:

10 Q. And then for Mr. Belton and showing the Alvin S. Glenn
11 photos, that's where you did say he didn't know him as KG?

12 A. He knew him by -- he knew him as Chris.

13 Q. And then he made the positive identification as well?

14 A. Correct.

15 Q. How long did he know Mr. Hart?

16 A. I don't recall as far as how long he knew him, but he
17 knew him for a -- he knew him for a little while, but
18 because he didn't know the last name whenever I asked him,
19 that's -- that's when we made the decision to go ahead and
20 show him what we had at the time.

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

22 **THE COURT:** Okay. Mr. Belton was the one trading
23 cars with him back and forth?

24 **THE WITNESS:** Yes.

25 **MR. GRAHAM:** Correct, Your Honor.

1 **THE WITNESS:** And it was also who he was contacting
2 whenever he got stopped by the traffic stop.

3 **THE COURT:** All right.

4 (Witness excused.)

5 **MR. GRAHAM:** Nothing else on Neil versus Biggers,
6 Your Honor, at this time.

7 **MR. PHILLIPS:** And the defense doesn't have any
8 motions regarding the suggestiveness of the photographs.
9 What we do have a motion on is that the photo lineups,
10 three of them, are of Mr. Hart and other individuals
11 wearing the typical jailhouse --

12 **THE COURT:** Smock?

13 **MR. PHILLIPS:** Yeah, however you want to regard --
14 with that being said, we would certainly -- the defense
15 would make the motion that either to have it redacted,
16 essentially the same rights that apply for in court for
17 the Defendant, that it would deny his right to a fair
18 trial by having photographs of him along with other people
19 who are in jail clothing, but not to the suggestiveness.
20 It doesn't go to the Neil v. Biggers. This is separate.

21 **THE COURT:** All right. So you're saying they're not
22 suggestive, but the fact that they're all dressed with the
23 similar neutral dark covering --

24 **MR. PHILLIPS:** I'm sorry, let me -- let me fix that.
25 As far as Neil v. Biggers, we have no motions and no

1 arguments on the suggestiveness of the photographs. It's
2 an entirely new matter. I'm sorry about that.

3 **THE COURT:** Okay.

4 **MR. PHILLIPS:** The new matter would be as to the
5 admissibility. Of course, we'll deal with that at trial
6 when they go to move in the photographic lineups. The
7 argument would be that it needs to be either specifically
8 explained to the jury that the photo used is of his arrest
9 in this case and not his mugshot from a prior instance.

10 **THE COURT:** You're talking about like the prejudicial
11 effect of knowledge to the jury that he's been in jail
12 before?

13 **MR. PHILLIPS:** Exactly. So 404(b), 403 as far as
14 unduly prejudicial, and, of course --

15 **THE COURT:** So a curative instruction that this is a
16 photograph from his arrest in this matter, are you okay?
17 Because all the identifications were done in late April.

18 **MR. PHILLIPS:** That would cure it. I just don't want
19 the jurors to fill in the blanks themselves.

20 **THE COURT:** Okay. I don't see any problem with the
21 Court giving an instruction that these photographs were an
22 arrest from this booking. The identification was made
23 post-arrest; were they not? They're all late April.

24 **MR. PHILLIPS:** They -- they are.

25 **MR. GRAHAM:** I'm not sure. I think some of them may

1 have been made before his arrest, Your Honor.

2 **MR. PHILLIPS:** One's 4-12, so that's before. The
3 others are 4-30.

4 **THE COURT:** Y'all make a suggestion how to cure that,
5 but that doesn't sound unreasonable to have a Court's
6 instruction to that effect.

7 **MR. GRAHAM:** It looks like State's Exhibit Number 5,
8 the one shown to Chance Belton, is the only one that was
9 made prior to his arrest. And, the truth is, is this --
10 let me pass that up to Your Honor.

11 **THE COURT:** That's the one that came from Richland
12 County?

13 **MR. GRAHAM:** Right. Two, three and four are all the
14 same, which is the photo lineup standard, and that one was
15 a photo taken from the Richland County Detention Center.
16 It don't know that it -- it looks like he's in T-shirt in
17 that one to me.

18 **THE COURT:** Yeah, it seems to me that this one
19 wouldn't have the -- with three, doesn't have the
20 potential --

21 **MR. PHILLIPS:** Yeah, State's Exhibit 5 doesn't have
22 that issue, Your Honor.

23 **THE COURT:** So 5's fine. The other three were
24 post-arrest booking photos. A curative instruction will
25 be allowed on those three -- or those two. There's only

1 two of them coming in.

2 **MR. GRAHAM:** Correct.

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

4 **THE COURT:** Because the other one he didn't make the
5 identification, correct?

6 **MR. PHILLIPS:** That's right, Your Honor.

7 **THE COURT:** It sounds like the problem solved itself.
8 Y'all did good on that.

9 **MR. PHILLIPS:** I believe -- I believe that's where we
10 end. The defense doesn't have any additional pre-trial
11 motions or objections, Your Honor.

12 **THE COURT:** Excellent. Okay. I'm clear on these
13 then. All right. They're marked for identification.
14 We'll deal with them as they come in and you said it
15 probably won't be tomorrow anyway.

16 All right. Fair enough.

17 **MR. PHILLIPS:** We finished before five.

18 **THE COURT:** Y'all did good.

19 All right, folks. I'll be here about nine-ish in the
20 morning. The jury is supposed to be here at 9:30. I'd
21 like to be starting at 9:30 sharp, if possible, all right?

22 **MR. GRAHAM:** Thank you, Your Honor.

23 **MR. PHILLIPS:** Thank you.

24 (Whereupon, the proceedings were concluded for May 22,
25 2017, at 4:29 PM.)

1 (Whereupon, the following proceedings were held on
2 May 23, 2017, beginning at 9:22 AM.)

3 (Court's Exhibit Number 6 was marked for
4 identification.)

5 **BAILIFF:** All rise.

6 **THE COURT:** All right. Anything we need to do before
7 we get going?

8 **MR. PHILLIPS:** Just to put that on the record, Your
9 Honor.

10 **THE COURT:** You don't have to put it on the record.
11 That was something I asked for yesterday. We don't need
12 it. The waiver has been made a Court's exhibit. There
13 you go.

14 **MR. PHILLIPS:** All right.

15 **THE COURT:** We went into great detail with it
16 yesterday.

17 **MR. PHILLIPS:** I know the only other issue that I
18 would still be concerned about is as dealing with this
19 potential conflict with each witness as they are called.
20 That if -- as the trial proceeds, if one witness does say
21 it is a conflict, even though the Michael Jeffcoat firm is
22 withdrawing the representation and telling them to seek
23 separate representation to protect their rights, if they
24 believe there's a conflict and I have to withdraw at this
25 point my fear would be that it still runs afoul -- I know

1 we did the written waiver for Mr. Hart -- whether that
2 triggers a mistrial. That's what -- I'm just definitely
3 afraid --

4 **THE COURT:** All right. Here's the thing, is they
5 don't have a conflict except for the firm and if they want
6 to waive it, what are you gonna do anyway? You've got to
7 get rid of them. I mean, finding new -- finding them new
8 representation, which you're in the processing of doing --

9 **MR. PHILLIPS:** Yes, sir.

10 **THE COURT:** -- and if they disagree with that, what
11 are you gonna do? You've got an unhappy client and you've
12 got to ask to be relieved. Either way, they're gonna be
13 unhappy with you, but not with your current client, so that
14 process is gonna go forward. I mean, what can they say?

15 **MR. PHILLIPS:** That's -- I just wanted to --

16 **THE COURT:** I mean, I don't waive the conflict, I'm
17 gonna stick with Jeffcoat? Like, I'm sorry, but you don't
18 have a choice. Y'all have made the decision to stick with
19 Mr. Hart and to depart from them, so if they don't agree
20 that's something I'll deal with with them. But, I mean,
21 you've got to go left or right, you can't go straight, and
22 y'all have chosen left.

23 **MR. PHILLIPS:** Yes, Your Honor. Thank you.

24 **THE COURT:** And so if a witness comes up and
25 stonewalls you, we'll fix it. They can't have it both

1 ways.

2 **MR. PHILLIPS:** Yes, sir. Thank you.

3 **THE COURT:** Okay.

4 **MR. GRAHAM:** Judge, one thing that we realized
5 yesterday after we went out of court was we did the
6 Jackson v. Denno on Detective Chris Stout. When we looked
7 at the potential jury {sic} list, his name was not on
8 that. So I guess before you swear the jury we'd ask
9 if you would poll them, I guess, as to whether they know
10 Detective Stout and whether that would affect their ability
11 to be fair and impartial.

12 **THE COURT:** Okay. That sounds fair.

13 All right. Is it Jack Stout?

14 **MR. GRAHAM:** Chris.

15 **THE COURT:** Chris Stout.

16 **MR. GRAHAM:** Detective Chris Stout with the Lexington
17 County Sheriff's Department.

18 **THE COURT:** All right. Bring in the jury, please.

19 (Whereupon, the jury enter the courtroom at 9:33 AM.)

20 **THE COURT:** All right, folks. I've got to ask you a
21 question. There was one witness left off the potential
22 witness list. It's Detective Chris Stout. Does any member
23 of the fifteen of you know, a close personal friend,
24 related by blood or marriage to Detective Stout? If so,
25 let me know. Raise your hand. No one remarked they knew

1 Mr. Stout, so we're good there.

2 All right, folks. I told you I'd give you some brief
3 additional instructions. Those of you who have the
4 notepads do. Great. We're gonna start momentarily so I'm
5 gonna ask you to do this. Give careful attention to the
6 parties. They're gonna give some opening comments to you.
7 The State will go first, Mr. Phillips second. After that,
8 they will start calling the witnesses. And sometimes I say
9 this and they prove me wrong, but generally the earlier
10 witnesses are the longer witnesses. Sometimes that's just
11 -- I don't have any idea which witness is going first, but
12 sometimes the preliminary or the first witnesses are more
13 lengthy. I try to break either when the witness is done
14 testifying or in the middle; like one side finishes
15 questioning and then we'll take a break then. If we go
16 longer than an hour, I start watching the clock because
17 about an hour and fifteen minutes is all I can stand or
18 I've got to go to the restroom myself. So if you need
19 something a little quicker than that, let Mr. Price know
20 and he'll get my attention and we'll take a break then.

21 But, as I told you, everything you need to know to
22 decide this case you get here in this courtroom as a group
23 of fifteen. My instructions and comments, the testimony
24 and the evidence, is what you will need. So please
25 remember you can't discuss the case during any breaks.

1 You've got to listen and take your notes until we receive
2 all of the information. It's not -- it's preliminary, it's
3 too quick to start making decisions. You make decisions
4 when I say to do so.

5 Some things will happen during the trial and I'll
6 try to give you some instructions. Like if the parties
7 stipulate or agree to certain things, I'll explain that to
8 you. There may be some expert witnesses. I'll explain to
9 you what that means as we're going on the fly, but as I
10 told you many times if I can make a ruling as we're going
11 on the fly, I'll do so, we'll keep moving, but if it
12 becomes necessary for me to hear something a little more
13 in detail, we'll take a break and sit you back in the jury
14 room. I'm gonna do my best not to keep you back there too
15 long, but sometimes I get out here and there's testimony I
16 need to hear or a witness we're waiting on. If that
17 happens, I'll try to let y'all know and let y'all step
18 outside and get some fresh rain or air if you need to step
19 outside. Because I don't want to keep you locked in the
20 jury room. We'll try to figure out what the problem is
21 with this noise, but we'll keep things moving. If you
22 need something, let them know and I'll try to help you.
23 Ms. Frick and I will try to make y'all's -- the imposition
24 on your time as polite and nice as we can. I need y'all
25 to listen carefully and if y'all will stand, Ms. Frick

1 will place you under oath.

2 **THE CLERK:** Yes, sir. Please stand and raise your
3 right hand.

4 (Whereupon, the trial jurors were duly sworn by the
5 Clerk of Court.)

6 **THE CLERK:** Be seated, please.

7 **THE COURT:** Mr. McNair.

8 **MR. McNAIR:** Thank you, Your Honor. May it please the
9 Court?

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

11 **MR. McNAIR:** Paula Justice had the right to live.

12 She wasn't presumed innocent, she wasn't given the benefit

13 of the doubt. Chris Hart showed her no mercy. To Chris

14 Hart her life was worth nothing more than five pieces of

15 crack. You see, Paula had gotten tied up in a drug case

16 with a guy named Jeremy Washington in Richland County.

17 Jeremy Washington was a big time drug dealer. He went by

18 the nickname of Munchkin or Fat Boy. Paula was in a

19 vehicle with Jeremy Washington when they got pulled over

20 by Richland County deputies. The vehicle was searched.

21 They found trafficking amounts of crack cocaine inside the

22 vehicle. They were both arrested. Jeremy Washington was

23 looking at a substantial amount of jail time and he thought

24 Paula had set him up. Paula was working as a confidential

25 informant for law enforcement at the time. Jeremy

1 Washington wanted Paula dead and he found a cold-blooded
2 killer who was willing to take her out at a bargain rate.
3 And after Paula bonded out on March 15, 2013, she was dead
4 in less than a month.

5 Phone records show multiple calls between Chris Hart
6 and Jeremy Washington prior to the murder. They show one
7 call right after the murder where Chris Hart is heard
8 saying watch the news. That call was made to Jeremy
9 Washington.

10 Paula was killed on April 10, 2013. On that same
11 night Chris Hart was at the hospital with his girlfriend
12 who had just given birth to their child and he left her
13 that night without a ride home. The co-defendant in this
14 case, Tevin Deloach, who's also charged with murder, met
15 him at the hospital that night. They left in Deloach's
16 vehicle. They ultimately switched that vehicle out for a
17 Lincoln Town Car that Chris Hart was known to drive. It
18 was not registered in his name. Chris Hart then begins
19 calling Paula Justice from unregistered cell phone number
20 that had just been activated a month after -- a week after
21 Paula had bonded out of jail. He starts calling and
22 texting Paula from that number telling her he had two guys
23 that he could set her up with to have sex because Paula was
24 a prostitute and she needed the money.

25 They picked Paula up at the Waffle House on 378 near

1 where she was staying. Video there shows her getting into
2 that Lincoln Town Car about 10:48. From there Deloach is
3 driving. He drives Hart and Paula out to the country, out
4 to Lumberjack Road. It's a dirt road. He parks on the
5 road. Hart and Paula get out of the vehicle. They start
6 walking a little ways down the dirt road. Hart then pulls
7 out his 45 caliber pistol and blows her brains out.
8 Executes her.

9 At that point Hart runs back to the vehicle. He and
10 Deloach head towards I-20. While they're on I-20, they get
11 stopped by a Lexington County deputy for a tag violation,
12 a traffic stop. The deputy had no idea they had just been
13 involved in a murder. They end up searching the vehicle
14 for drugs, but they don't look under the passenger seat
15 where Hart was sitting and they don't find the gun. So
16 they write him a warning ticket and let them go on their
17 way.

18 Hart and Deloach then go to the 44 Truck Stop. Hart
19 doesn't want to be in a vehicle without a tag anymore,
20 so they meet a random guy named Jeffrey Behymer at the
21 44 Truck Stop. Hart then hitches a ride with Behymer back
22 to the Delta Motel in West Columbia. Deloach drove the
23 Lincoln Town Car back. When they get to Delta, they go to
24 a lady named Tina Perry's room and wait for somebody to
25 come pick them up. Tina knew Chris Hart as KG. That was

1 his street name. Law enforcement talks to Tina. She
2 gives them the name KG and says yeah, KG was there that
3 night, he left his Lincoln Town Car in the parking lot,
4 he's got a girlfriend that just had a baby, and she gives
5 law enforcement that 348 number that he had contacted
6 Paula on.

7 They show Tina a photo lineup and she picks out Chris
8 Hart as the person that she knew as KG. Law enforcement
9 then goes and talks to Jessica Ussery, who is Chris Hart's
10 girlfriend at the time. She's like yeah, I just -- I
11 just had a baby and he wasn't at the hospital when I was
12 discharged. He was supposed to take me home that night.
13 I called him multiple times and he didn't answer. She
14 then gives law enforcement two numbers for Chris Hart.
15 One is the number -- the 348 unregistered phone number
16 that Tina had also given law enforcement. The other is
17 a 603 number.

18 Law enforcement then gets phone records for both those
19 phones. Both those phones are hitting on cell towers right
20 by the Waffle House at the time Paula is picked up and
21 they're hitting on cell towers right by Lumberjack Road
22 when she's killed.

23 After law enforcement spoke with Jessica, Chris Hart
24 never goes back home. That's where he lived. He gets
25 Tevin Deloach's girlfriend to rent him a room on the 11th

1 at the Quality Inn off Piney Grove. He changes his 603
2 phone number to a 414 number on the 12th. He'd already
3 thrown that 348 phone out the window after the murder. He
4 then gets a bus ticket to New York and that's where he's
5 ultimately picked up and arrested.

6 When law enforcement finally makes their way to
7 Deloach and arrests him several days later, he doesn't
8 initially come clean with everything, but eventually he
9 does and he tells the story. He says I knew what Chris
10 Hart was going to do prior to picking Paula Justice up,
11 and I'm guilty of murder. Under the hand of one, hand of
12 all, he's as guilty of murder as Chris Hart whether or not
13 he pulled the trigger or not.

14 And obviously Mr. Phillips probably will try to
15 discredit Tevin Deloach because Tevin Deloach is an
16 eyewitness to all of this. He was along for the whole
17 ride. This isn't a case where we need forensic evidence
18 to piece together what happened because we have somebody
19 who was present for the whole thing.

20 You alone determine who you believe, who's credible
21 and who's not. Ask yourselves this. If Tevin Deloach was
22 gonna make up a story, why would he implicate himself in a
23 murder? If he admits he knew prior to picking her up, he
24 admits he's guilty of murder. If you're gonna make up a
25 story, make up a story where you didn't know what he was

1 gonna do.

2 Murder is the killing of another person with malice
3 aforethought. Malice is evil intent, ill will, hatred,
4 hostility towards another. It doesn't have to be
5 premeditated. You just have to have malice at the time
6 you pull the trigger, but in this case Paula Justice was a
7 dead person walking from the time she woke up on April 10th
8 and she just didn't know it. She was on a one-way ride
9 with a killer. Her fate was sealed at the time she got in
10 that Lincoln Town Car. Malice. She meant nothing to Chris
11 Hart. He had no reason to be mad at her. She was nothing
12 to him. He killed her for a little bit of dope.

13 You've all probably heard that the burden of proof in
14 a criminal case is beyond a reasonable doubt. The way it
15 should be. We welcome that burden. That's a burden we
16 meet in this case. I want to talk about it because a lot
17 of people don't know exactly what that means. I heard
18 somebody talking about it the other day on the radio. They
19 were talking about a criminal case and they said the State
20 didn't prove their case beyond a shadow of a doubt, but
21 that's not the standard. It doesn't mean that we have to
22 prove this case to you to an absolute certainty because
23 that doesn't exist in this world. There's nothing --
24 there's very few things we can know to an absolute
25 certainty. All that it requires is that at the conclusion

1 of this case you are firmly convinced of this Defendant's
2 guilt and if you are, you've just taken an oath to find him
3 guilty. All I ask of you is that throughout this process
4 you use your common sense. Just like you do in your
5 everyday lives, you can use your common sense to determine
6 what's reasonable and what's not, what's fact and what's
7 fiction.

8 At the end of this trial, we will come back before you
9 and we're gonna ask you to return a verdict that speaks the
10 truth. We will ask you find Mr. Hart guilty.

11 Thank you.

12 **MR. PHILLIPS:** I killed Paula Justice. I killed
13 Paula Justice. These are the words of Alex Wallace. A
14 confession, ladies and gentlemen. Let me say that again.
15 Confession. There are two ways an opening statement can
16 go. The prosecutor can tell you all the facts, the good
17 and the bad, or they can tell you only what they want you
18 to hear. You know what they didn't tell you? There's a
19 man in jail who's on -- who's in jail for an unrelated
20 murder who has confessed to this crime, who has confessed
21 to being the shooter in this case. You didn't hear
22 anything about that in the prosecutor's opening. Alex
23 Wallace has confessed to the police, has confessed to the
24 solicitor's office, has confessed to the defense team that
25 he's killed Paula Justice. On numerous occasions he has

1 not wavered in his story about him killing Paula Justice
2 and you didn't hear anything about that.

3 Four years have gone by and on the eve of trial
4 Jeremy Washington, you just heard about, the linchpin of
5 the whole case, was charged with murder this weekend. You
6 didn't hear about that either. Four years have gone by.
7 Jeremy Washington, who their case rests upon, that they
8 just told you is the one who set up the murder, wasn't
9 charged until this weekend. You have to ask yourself why.
10 If the State believes that he is the one who set up a
11 murder and John Hart was arrested four years ago for it,
12 why would it be four years later for this individual to be
13 arrested? Why would they do that? Would they need him to
14 testify? Would they need him to say things to support
15 their story? You didn't hear about that either.

16 There are undisputed facts in this case. Facts that
17 even the prosecutors would agree with. Chris Hart and
18 Paula knew each other. Chris sold drugs. We're not
19 denying that fact. It's not something certainly to be
20 proud of, that he's a drug dealer, but that is a true
21 statement. Something we're not running from. Paula is a
22 prostitute and that's how they know each other. It's not
23 uncommon for people who deal drugs and prostitutes to have
24 close relationships because what happens is there are runs
25 that's done where they are protected, drugs are sold,

1 money's exchanged for sex. This is another world that
2 exists that most of us are not aware of, but that's the
3 reality. It's undisputed that they knew each other. It's
4 undisputed of their relationship.

5 Paula told her friends who she was going with that
6 night, where she was going, what she was gonna do, how much
7 she was gonna get paid to have sex with. You heard from
8 the prosecutors that everybody knew Chris Hart. You heard
9 from the prosecutors that Paula told her friends she was
10 going with Chris Hart to have sex. He was taking her to
11 have sex with people for money. Everybody knew that.

12 You have to ask yourselves if you were going to kill
13 someone, why would you make sure everybody who knows you
14 and this individual that they know you're the last person
15 she's went with on a prostitution drug run? You have to
16 ask yourself this. This is a critical question. That's
17 the one thing I agree with that the prosecutor said. He
18 said don't leave your common sense at that door. I don't
19 want you to leave your common sense at the front door.

20 We have someone who has confessed to this crime, we
21 have the person who they say set it up getting arrested
22 four years later and charged with murder, and then we have
23 the fact that everybody knew who Chris Hart was and that
24 she had told everybody where she was going and what she was
25 gonna do and that there's evidence to support it. So don't

1 leave your common sense at the door. I don't want you to.
2 These are questions that must be answered and it will be
3 from that witness stand. That's why we're here.

4 Most importantly Tevin Deloach was in the car that
5 night. John Hart and Paula Justice was, too. We're not
6 disputing that John Hart was there when Paula was murdered.
7 We're not disputing that. John Hart was there when Paula
8 was murdered. The one thing we do dispute is all the
9 statements by Tevin Deloach. The prosecutor said why
10 wouldn't Tevin Deloach give you a story about him not being
11 involved? He did. Several times he said I didn't know
12 what was gonna happen. I thought we were taking her for
13 drugs. He denied it, he denied it, he denied it. Then he
14 played ball. He's arrested. He's in jail charged with
15 murder facing thirty years to life in prison.

16 Bias, reason to sing the story, sing the song, change
17 your story. He did deny it. He also said he didn't see
18 Paula get shot. It was dark on a dirt road in the middle
19 of the night. He said he couldn't see it, he only heard
20 the gunshot. The prosecutor told you he was an eyewitness.
21 That's not true. Not unless he testifies differently
22 today. He said he only heard it.

23 Another thing we admit is Deloach did take John Hart
24 and throw away that gun in the pond. You'll hear testimony
25 about it. He's willing to admit his role. Alex Wallace

1 called John Hart and arranged a meeting with Paula Justice.
2 Paula Justice owed Alex Wallace money. John Hart didn't
3 know Alex Wallace very well, but Alex Wallace knew John
4 Hart knew Paula. Alex couldn't get in touch with Paula,
5 she was ducking him because she owed him money. Alex get
6 in touch with John, however they do it in the street, and
7 says I want to set up a prostitution run. I've got some
8 buddies who want to have sex with Paula Justice. They set
9 up the arrangement. Everybody knows about it. They go out
10 to the arranged place. You will hear that the place where
11 Paula was murdered is within a mile or two from where Alex
12 Wallace grew up. You will hear that John Hart's from
13 Columbia and doesn't know the South Congaree, Pine Ridge,
14 Gaston area. What they call "the country". I grew up in
15 Pine Ridge, so I know the area very well. But if you were
16 from Columbia, it's not a place you ended up travelling to
17 often, but you will hear that Alex Wallace grew up very
18 close to where this dirt road is. You will hear Alex
19 Wallace say he killed Paula Justice.

20 We don't dispute that John Hart was an accessory.
21 That's a big admission. He's admitting to a crime. He
22 admits that him and Deloach went to a pond and threw the
23 gun away. But one thing he disputes with all his heart
24 is that he knew when they got there what Alex Wallace was
25 gonna do. That's another question you have to answer.

1 Why would John Hart take Paula with everybody knowing it
2 was him to a place where another man would murder her and
3 everybody would be able to quickly point the finger at him
4 since he's the one they all knew was the one taking Paula
5 to the prostitution run? That he'd be caught in a skinny
6 minute if that was gonna happen. Why would he do that?
7 Common sense. Common sense.

8 Chris please stand up. This is the man that you're
9 in charge of being in judgment of. I'm in awe of that
10 responsibility. There are very few people who ever sit
11 in those chairs who can judge a man --

12 **MR. McNAIR:** Objection, Your Honor. They're not
13 standing in judgment of him, they're judging facts.

14 **THE COURT:** Move on. I sustain your objection.

15 **MR. PHILLIPS:** In judgment of the State and their
16 burden of proof and whether they met it. That's how
17 important it is. Because they've arrested John Hart and
18 they've accused him of murder and the consequences are
19 dire. So, yes, they've charged him with murder and they're
20 the ones who have the burden of proof. He's willing to
21 accept responsibility for his role after it happened, but
22 he refuses to plead guilty for murder, refuses to plead
23 guilty to a crime he didn't do, and that's why we're here.
24 He's charged with murder. He's not charged with accessory
25 after of the fact. The State chose not to arrest Alex

1 Wallace, not to charge Alex Wallace with murder. They
2 charged -- they chose not to charge Mr. Hart with accessory
3 after the fact. They could have done that. They could
4 have put you in a position to choose, but they didn't.
5 What they did do was wait four years and charge Jeremy
6 Washington with murder on the eve of trial, the weekend
7 before trial. You have to ask why would they do that?
8 Why would they put that pressure on an individual
9 four years later to say you're now charged with murder
10 facing thirty years to life? Is he gonna testify?

11 The indictment reads the State versus John Hart.
12 That means the Government is also on trial for what we
13 just talked about. Their burden of proof. They've got
14 to prove it beyond a reasonable doubt. You've got to be
15 firmly convinced of his guilt. You've got to say that
16 there's not a real possibility that he's innocent in a
17 case where a man is going to say he killed Paula Justice,
18 that he's written the solicitor's office, he's spoken to
19 us, the police, and admitted it on numerous occasions that
20 he killed Paula Justice.

21 The reason the Government's on trial and that they
22 have the burden of proof is to protect us. The Government
23 has all the power, all of the resources, all they money.
24 They can lock you up, you can sit in jail for four years
25 and the only thing you can do to protect yourself is wait

1 for your day to sit before a jury and tell your side and
2 wait for what happens. The constitutional protection of
3 a right to a jury trial is why we're here and it is of
4 grave importance. The odds are you probably didn't want
5 to come to court when you got that notice. Odds are you
6 probably didn't want to have to be picked on this jury,
7 especially given the nature of the charge. But you're
8 here for a purpose. You're here for a reason. Each of
9 you were chosen, selected, and y'all have this awesome
10 responsibility. All of the evidence you need will come
11 from right there. This isn't the court of public opinion.
12 We've all watched the news, we've all watched WIS, ABC,
13 and you see virtually every night of the week someone
14 getting charged with a very serious crime. For myself and
15 many others it's easy to immediately assume that person
16 was guilty of the crime. They're they are, they're in a
17 mugshot, there they are on TV being said that they did
18 these horrible things. It's easy just to assume they did
19 it, but you swore not to do that to John Hart. You swore
20 to give him a fair trial. You swore under oath on that
21 Bible that you're gonna give him a fair trial and that
22 you're gonna hold the prosecution to their burden.

23 During this trial there's very important questions
24 that must be answered and the biggest one is have you
25 fulfilled your duty as a juror. I'm gonna ask you a very

1 serious question. After the prosecution got done with
2 their opening statement, did you assume that John Hart was
3 guilty? If you did, now's your chance to have a fresh
4 start because the oath was that you will not make that
5 decision until you've heard all of the evidence and you're
6 in the deliberation room and you hash it out and you make
7 that decision whether you are firmly convinced and whether
8 there's a real possibility that he's innocent. So now's a
9 fresh start. You can take a step back. If you crossed the
10 line after you heard the opening statement and you assumed
11 he was guilty, you can start over. The trial hasn't begun
12 yet essentially. There's no witnesses that have testified.

13 Lastly, did you hold the Government to its burden of
14 proof? And at the end of this trial after you've heard all
15 of the evidence, I know you will find John Hart not guilty
16 of murder.

17 Thank you.

18 **THE COURT:** Mr. McNair.

19 **MR. McNAIR:** The State calls Robert Greenberg, Your
20 Honor.

21 **THE COURT:** All right. And we've sequestered the
22 witnesses. I'll explain that to the jury.

23 All right. The parties agreed based on the Court's
24 instruction to sequester the witnesses. All of the
25 witnesses except the lead investigator and the victim

1 and the Defendant are in the courtroom. The rest of the
2 witnesses are somewhere outside the courtroom, so we've
3 got to go get them. They're in another room somewhere
4 so they're not here listening to each other's testimony.
5 They testify without the benefit of being in the courtroom
6 to hear what other ones said. So y'all will get to hear
7 it the same way, all right? Just so you know what that
8 means.

9 (Whereupon, Robert Michael Greenberg, was duly sworn
10 by the Clerk of Court.)

11 **THE CLERK:** Once you're seated, I need you to state
12 your full name, spelling your last on the record, please.

13 ROBERT MICHAEL GREENBERG,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. McNAIR:

17 Q. Mr. Greenberg, state your full name and spell your
18 last name, please, sir.

19 A. My name's Robert Michael Greenberg, G-R-E-E-N-B-E-R-G.

20 Q. Mr. Greenberg, what do you currently do for a living?

21 A. I'm a heavy equipment and diesel truck mechanic.

22 Q. How long have you been doing that?

23 A. Roughly three years now.

24 Q. All right. Now where were you working back on
25 April 10, 2013?

1 A. I was working for Big Foot Recovery, a repossession
2 agency.

3 Q. Okay. And were you working that particular night?

4 A. Yes, sir.

5 Q. Who were you working with that night?

6 A. Karl Rohland.

7 Q. Was he the owner of that company?

8 A. He was.

9 Q. All right. And what were y'all doing that night?

10 A. We were looking for a vehicle on Greenwood Drive, I
11 believe it was.

12 Q. Is that near Lumberjack?

13 A. Yes, sir.

14 Q. All right. Now I guess while y'all were looking for
15 that vehicle on Greenwood, at some point did you hear
16 something that caught your attention?

17 A. Yes, sir, something that resembled a gunshot.

18 Q. All right. Do you remember where you were when you
19 heard that?

20 A. We were on Greenwood Drive just -- and we were about
21 to head onto Lumberjack Road.

22 Q. All right. Now did you drive down Lumberjack?

23 A. I did.

24 Q. And just tell the jury what you saw as you were
25 driving down Lumberjack?

1 A. As I was driving down Lumberjack Road, I came down
2 the road and I saw something that resembled maybe a large
3 jacket laying off the left-hand side of the road, so as I
4 proceeded to get closer toward it I realized it looked like
5 a person. As I went to pass, I looked out the window --
6 out of the driver's side window and I observed that there
7 was a person laying there. I looked at my boss man and I
8 said -- Karl Rohland and I said Karl, there's somebody
9 laying there. He said, what? Back up. I backed up and I
10 rolled the window down and went to reach out toward them
11 with my flashlight and said ma'am, are you okay, and I saw
12 blood. At that point I yelled at Karl to call 9-1-1.

13 Q. Okay. Now how long do you think it was between the
14 time you heard what you thought was a gunshot and when you
15 rolled up on the body?

16 A. Forty-five seconds to a minute.

17 Q. Approximately what time of night do you think that
18 was?

19 A. Around 11:16 or so. I'm guessing. I know it was
20 around 11:00.

21 Q. All right. And you mentioned someone called 9-1-1?

22 A. Correct.

23 Q. And who was that?

24 A. That would have been Karl Rohland, my boss man.

25 Q. Okay. Now prior to getting to the body on Lumberjack,

1 had you passed anybody on foot or in a vehicle?

2 A. Not to my knowledge.

3 Q. Okay. So which way were you heading down Lumberjack?

4 A. I was headed toward Gator Road.

5 Q. So Greenwood's at your back and Gator Road's in front
6 of you?

7 A. That's correct.

8 Q. After you stopped and realized it was a body and 9-1-1
9 was called, what did y'all do next?

10 A. Karl proceeded to check for a pulse like dispatch,
11 I assume, advised him to do and I was -- I was just walking
12 around. I -- I was kind of shook up. I didn't know what
13 was going on. I happened to observe what appeared to be a
14 shell casing on the bank right next to the railroad tracks
15 on the left-hand side along where the body was at. It was
16 a little further back from the body.

17 Q. Okay. And what did you do when you saw that shell
18 casing?

19 A. Broke a small twig off and marked beside it.

20 Q. All right. Did anybody move that shell casing prior
21 to you putting the stick to the side?

22 A. No, sir.

23 Q. Now while you were on-scene, did somebody else roll
24 up?

25 A. There was a group of two people. It was two males

1 and a female that came from Gator Road coming in the
2 opposite direction from the direction that we were headed.

3 Q. All right. Now were you on-scene when the police and
4 emergency personnel arrived?

5 A. Yes.

6 Q. And were you present when they secured the scene?

7 A. I was.

8 Q. Had anybody moved that shell casing prior to them
9 securing the scene?

10 A. No.

11 Q. All right. How long do you think you were on the
12 scene for?

13 A. I don't know. It happened around 11:00 that night
14 and I'm thinking it was 6:30, 7:00 that morning before we
15 were released.

16 Q. Okay. And so did law enforcement talk to you and
17 Karl and those other folks who had rolled up?

18 A. They did. They wanted to see our GPS system,
19 Microsoft Streets and Trips, that allowed them to see
20 where we had come from and where we were heading to and
21 the reason that we were on Lumberjack Road. They wanted
22 to, you know, just basically have us there. Our truck was
23 in the middle of what was considered now a crime scene, so
24 until it was processed they wanted to make sure that --
25 that nothing was moved until they had processed it

1 correctly, you know, everything secured.

2 Q. Okay. And you showed them where the shell casing was,
3 correct?

4 A. I did.

5 Q. And after talking to you, Mr. Rohland and the other
6 folks, everybody left at some point?

7 A. Yes, sir.

8 Q. All right. Were you present when they transported the
9 victim to the hospital?

10 A. I was.

11 Q. Okay.

12 **MR. McNAIR:** That's all the questions I have. Please
13 answer any questions Mr. Phillips has.

14 **MR. PHILLIPS:** Good morning, Mr. Greenberg.

15 **THE WITNESS:** Good morning.

16 **MR. PHILLIPS:** I don't have any questions. Thank you.
17 Thank you for coming.

18 **THE COURT:** You can step down.

19 (Witness excused.)

20 **MR. GRAHAM:** The State calls Matt Young.

21 (Whereupon, Matthew Thomas Young was duly sworn by the
22 Clerk of Court.)

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

25 **THE WITNESS:** Matthew Thomas Young, Y-O-U-N-G.

1 MATTHEW THOMAS YOUNG,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GRAHAM:

5 Q. Mr. Young, where are you employed currently?

6 A. Lexington County Sheriff's Department.

7 Q. And what do you do there now?

8 A. I'm currently a patrol sergeant, North Region.

9 Q. Does that mean you drive a marked car?

10 A. I do.

11 Q. And you said sergeant, full sergeant?

12 A. Yes, sir.

13 Q. So a shift supervisor --

14 A. Yes.

15 Q. -- for deputies on the road?

16 A. Yes, sir.

17 Q. How long have you been in law enforcement?

18 A. In law enforcement, roughly thirteen years.

19 Q. Back on April 10th of 2013, what were you doing?

20 A. I believe I was a field training officer in the patrol
21 division still.

22 Q. And did you receive a call for service for Lumberjack
23 Road?

24 A. I did.

25 Q. Do you remember what time that was?

1 A. I believe it was about 11:20, 11:19, somewhere along
2 in there.

3 Q. And when you arrived on-scene, which way were you
4 coming into the area, do you remember?

5 A. I came from South Congaree headed towards Pelion on
6 Highway 302, which is Edmund Highway, turned left onto
7 Gator Road, and then our initial dispatch gave it as Gator
8 Road near the railroad tracks, which Lumberjack runs
9 parallel, and I had pulled up to the railroad tracks and
10 then was flagged down by a gentleman standing in the
11 roadway and I backed up and then turned into Lumberjack.

12 Q. Let's talk about the area a little bit. That's in
13 Lexington County where Ms. Justice's body was found?

14 A. Yes, sir.

15 Q. Gator Road, is that a paved road or a dirt road?

16 A. It's a paved road.

17 Q. Lumberjack Road, is that a paved road or a dirt road?

18 A. It's a dirt road.

19 Q. How do they join into each other?

20 A. They intersect.

21 Q. Is it -- are there crossroads or is it a T?

22 A. It comes to a T because there's nothing across Gator
23 Road from Lumberjack, so it forms a T intersection.

24 Q. All right. So which road T's into the other road?

25 A. Lumberjack T's into Gator Road.

1 Q. And the railroad track that you talked about goes
2 along either Gator Road or Lumberjack?

3 A. It runs parallel with Lumberjack.

4 Q. And crosses over?

5 A. Crosses over Gator, yes, sir.

6 Q. When you arrived on-scene, what did you see?

7 A. I initially remember two people. An EMS unit was
8 pulling up just ahead of me because, like I said, I
9 actually overshot it because of where dispatch originally
10 gave us the call, so they pulled in behind me and started
11 making contact. As I walked up to the scene, I could
12 visibly see what appeared to be a female laying on the
13 ground. As I walked up, I remember something to my right
14 just kind of catching my eye in the light as I walked up
15 and -- because I originally responded for a person down in
16 the roadway, we thought they probably got hit by a car or
17 a train given the location. I could visibly see a lot of
18 blood around her facial area and her head and ears. As I
19 walked up, like I said, something caught my eye. About
20 the time I looked down to realize what that was, it was a
21 shell casing from a bullet, there was a gentleman standing
22 up on the railroad tracks and said, you know, we found a
23 shell casing right here. That's the initial, what I saw,
24 and then EMS started treating the victim laying on the
25 ground.

1 Q. And did you establish the crime scene?

2 A. I did.

3 Q. What does that mean?

4 A. Initially what I'll do is I'll -- anybody in the
5 immediate area that are potential witnesses, I set them
6 off to the side, which is actually I sat them off near my
7 patrol car which was the closest controlled environment
8 where I could still see them since it was very dark out.
9 I then called for extra units and then I started going
10 back to my car, getting crime scene tape and starting what
11 we call a crime scene log, which identifies anybody and
12 everybody that's been on the scene that's currently inside
13 the restricted area, if you will, and then, like I said, I
14 separated the witnesses.

15 Q. Do you know whether Paula Justice was still alive on
16 the scene?

17 A. I do remember when I first got there, there was an EMS
18 -- like I said, an EMT and a paramedic tending to her. I
19 remember one them, I'm not sure if it was the EMT or the
20 paramedic, saying that they had a pulse.

21 **MR. PHILLIPS:** Your Honor, we're getting into hearsay.

22 **THE COURT:** I'm gonna allow that. Understand you
23 can't say what people said. Keep moving.

24 **BY MR. GRAHAM:**

25 Q. Did they -- did EMS transport her away or are you

1 aware?

2 A. Yes, they did.

3 Q. And after they left, in addition to establishing a
4 crime scene, what other things were your responsibilities
5 on the scene as far as getting help there?

6 A. I had to coordinate at that time with my immediate
7 supervisors and other deputies that showed up protecting
8 the crime scene from all directions, roping everything
9 off, establishing, like I said, the crime scene log, making
10 sure that when investigators get there I can identify who
11 was here when I got here, who may have shown up later as
12 onlookers, et cetera. I kind of help coordinate some of
13 that until we get the appropriate people there.

14 Q. And if I talk about crime scene or major crimes, what
15 am I talking about?

16 A. You're talking about a unit that would investigate
17 any potential -- such as murders, kidnappings, armed
18 robberies, crimes of violence, if you will, that are more
19 increased than just a simple, you know, fistfight. You
20 know, it's gonna be some kind of violent crime or some
21 kind of suspicious death. That's what our major crimes
22 unit is tasked with investigating.

23 Q. And did you or somebody with you on-scene contact
24 both crime scene and major crimes in this case?

25 A. Yes.

1 Q. And did they ultimately arrive on-scene?

2 A. Yes.

3 MR. GRAHAM: No further questions. Thank you.

4 MR. PHILLIPS: Good morning, Officer Young.

5 THE WITNESS: Good morning.

6 MR. PHILLIPS: I don't have any questions. Thank
7 you.

8 THE COURT: All right. You can step down.

9 (Witness excused.)

10 MR. GRAHAM: The State calls Shelby Derrick.

11 (State's Exhibit Number 6 through 13 were marked for
12 identification.)

13 (Whereupon, Shelby Derrick was duly sworn by the Clerk
14 of Court.)

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

17 THE WITNESS: Shelby Derrick, D-E-R-R-I-C-K.

18 SHELBY DERRICK,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q. Ms. Derrick, where are you employed, ma'am?

23 A. I work with the Lexington County Sheriff's Department.

24 Q. And how long have you been with the sheriff's
25 department?

1 A. I've been with the sheriff's department now eleven
2 years working as a crime scene investigator for eight
3 years.

4 Q. What is a crime scene investigator?

5 A. A crime scene investigator comes -- or reports to the
6 scene. We document evidence through note-taking, photos,
7 collecting evidence, report writing, measurements and that
8 type of thing.

9 Q. Back on April 10th of 2013, were you working in crime
10 scene at that point?

11 A. Yes, sir, I was.

12 Q. And did you receive a call requiring you to go out
13 and respond to Lumberjack Road?

14 A. I did. I received a phone call approximately 11:45
15 on April 10th.

16 Q. And as result of that call, what did you do?

17 A. Well, actually I was at home at the time and called
18 out from being at home, so I put on my uniform and drove
19 to the scene.

20 Q. When you got on-scene, what did you find?

21 A. I arrived on-scene, excuse me, and there was already
22 officers there. Our first responders, our patrol deputies,
23 had already been there. They had already started a crime
24 scene log and roped off or taped off is how we usually
25 refer to it, put up the yellow crime scene tape around the

1 area.

2 Q. And what did you see? Just in general observations,
3 what did you -- what do you do? When you show up, what's
4 the first thing you do?

5 A. Well, first of all, when I get there I actually make
6 contact with the officers on the scene, either the patrol
7 officers or the detectives if they're there or not already.
8 That way I get all of the information and I know what's
9 going on, what happened, where the scene's at and basically
10 where to start.

11 Q. Okay. And what did you find once you did those
12 things?

13 A. The area of Lumberjack Road, which was the road we
14 were actually on, was a dirt road. I can't do directions
15 with my hand. It was a dirt road with the crime scene
16 tape. There were officers there and everything. In the
17 roadway, there was -- actually I was told that there was a
18 stick on the -- in the embankment where the scraper comes
19 down and scrapes the dirt road, it makes an embankment off
20 to the side on a dirt road, there was a stick that -- I
21 believe it was the -- one of the first responding officers
22 had marked an object, a shell casing, so they told me that
23 there was a stick stuck on the embankment that was marking
24 that. In the roadway or close by that stick and shell
25 casing were -- I guess there was probably a -- probably

1 about the size of a regular sheet of paper, a brown,
2 reddish stain, which was consistent with blood, and there
3 was also a pair of glasses on that pile on the road or in
4 the dirt on the road, so those were the two main things on
5 that area that I saw. There was also a tow truck and at
6 that point we had the tow truck actually wrapped in the
7 crime scene. That way I could get photographs of the
8 tires of the tow truck so we could identify the traffic
9 throughout the dirt road to see if it matched that tow
10 truck and/or the shoes of the two tow truck personnel,
11 they were repo people, I don't know what their actual
12 title is, to see their shoe impressions as well -- or
13 shoes, not impressions.

14 Q. Was the victim on-scene or had she already been taken
15 away?

16 A. The victim was not on-scene. When I got there, the
17 victim had previously been transported and that being they
18 had already been picked up by EMS and they were already on
19 the way to the hospital.

20 Q. You had talked about taking shoe impressions. What
21 was the purpose of that?

22 A. Well, sometimes -- it depends on the surface. It
23 being a sandy dirt road, when you drive over or you step
24 over onto the road you may leave an impression in the dirt
25 or the sand or the mud, depending on the context, I guess,

1 of the road and the material of the road, so we checked
2 for that. This being a dirt road, I looked for any types
3 of shoe wear that could have been left over or tire
4 impressions that could have been left over.

5 Q. And did you find anything?

6 A. Actually there was a lot of foot traffic and a lot of
7 tire traffic because it is kind of a cut-through little
8 area between two roads and also our responding officers
9 were all around the victim because they were rendering aid,
10 as well as emergency personnel, EMS, medical personnel,
11 they were all around in that area, so it was very hard to
12 tell which shoe was which. They were all overlapping.
13 That's what I mean by heavy traffic.

14 Q. Based on that, did you find anything that you thought
15 was of value to the investigation?

16 A. Shoe wear or tire wear, no.

17 Q. Let me show you some -- a map and some photographs and
18 ask you if you recognize them.

19 A. Thank you. Yes, sir, I recognize all these.

20 **MR. GRAHAM:** And the defense has already reviewed
21 these, Your Honor, and I don't believe they have any
22 objection to these photos from the crime scene.

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

24 BY MR. GRAHAM:

25 Q. And would these assist you in explaining to the jury

1 where you were at and what you saw and what you found?

2 A. It would.

3 **MR. GRAHAM:** Your Honor, the State would offer 6
4 through 13 in evidence at this time.

5 **THE COURT:** Without objection?

6 **MR. PHILLIPS:** Without objection on those pictures.

7 **THE COURT:** Okay. Admitted without objection, 6
8 through 13.

9 (State's Exhibit Numbers 6 through 13, photographs,
10 were admitted into evidence.)

11 **MR. PHILLIPS:** While we're in this transition, since
12 the jury has been sworn I'd like to renew all of our
13 pre-trial motions and objections.

14 **THE COURT:** Okay. Mr. Graham, he's renewed his
15 pre-trial motions and it's noted for the record.

16 **MR. GRAHAM:** Yes, sir.

17 BY MR. GRAHAM:

18 Q. Are you able to see State's Exhibit Number 6 up there?

19 A. Yes.

20 Q. I'm gonna hand you a laser pointer. In looking at
21 State's Exhibit Number 6, can you point out to the jury
22 where Lumberjack Road is?

23 A. I'm sorry?

24 Q. Where Lumberjack Drive is.

25 A. Lumberjack? Lumberjack Drive is gonna be right here

1 where this little circle and dot is.

2 Q. How about where's Lexington?

3 A. Lexington would be up here. This is I-20 going this
4 way, Red Bank area, South Congaree, and Lumberjack is right
5 here.

6 Q. State's Exhibit Number 7, do you recognize that as
7 being an aerial close-up --

8 A. Yes, sir.

9 Q. -- of the particular area around Gator Road and
10 Lumberjack Road?

11 A. Yes, sir.

12 Q. All right. State's Number 7, would you explain to the
13 jury where we're at now?

14 A. Okay. This is a paved road, Gator Road, going right
15 here. This is Lumberjack, which is the dirt road, and I
16 can't -- it's Erline or Earline, I'm not sure how to
17 pronounce that, but this is another paved road and this is
18 kind of the cut-through that I was referring to and the
19 victim's location was right -- somewhere around -- right
20 about in here. This area right here is not a road, it's
21 just an offshoot from where the scraper scrapes off to the
22 side of the road, and those are railroad tracks that fall
23 right through here.

24 Q. Have you been to this area before?

25 A. Yes, sir.

1 Q. You're familiar with it?

2 A. Yes, sir.

3 Q. Where does Lumberjack Road go if you keep going that
4 way?

5 A. Like what does it run into?

6 Q. Where does it go if you're driving away from Gator
7 Road?

8 A. I'm not sure if it runs into another road that goes
9 back out this way or if it dead ends, but there's only two
10 or three little roads that shoot off it right here.

11 Q. And, again, where was the -- where was Ms. Justice's
12 body?

13 A. I believe right in here somewhere.

14 Q. That would have been just shortly passed Erline or
15 Earline Drive?

16 A. Yes, sir. Because when I arrived on-scene, I believe
17 we were all pretty much stationed here and here. We had
18 that whole area blocked off.

19 Q. Let me show you State's Number 8. Do you recognize
20 what that photo is showing?

21 A. Yes, sir.

22 Q. What is on there?

23 A. This photo is actually taken where Gator Road is
24 behind me and I'm facing down Lumberjack. This is the
25 stick I was talking about that was placed there by first

1 responders. The tow vehicle. This is the location on the
2 sand where the sunglasses -- or the glasses were and the
3 brown, reddish substance appearing to be blood and the
4 shell casing right here on the embankment.

5 Q. To the right of your placard with "1" and the stick,
6 there's an embankment. What's up on top of that
7 embankment?

8 A. That embankment goes over to a little gravelly area
9 where the railroad track is.

10 Q. State's Number 9, what does that show?

11 A. This is just a closer photo of my -- my Number 1 where
12 the stick is and the shell casing that was located on the
13 embankment.

14 Q. Let me hand you an envelope and ask you to open that.
15 And let me get you some scissors. And right now that
16 envelope is sealed with evidence tape?

17 A. Yes, sir.

18 Q. And does it look like it's been tampered with?

19 A. No, sir.

20 Q. There are several things inside there?

21 A. I have Item Number 1, or what I labeled Item Number 1
22 to be, is the casing, the shell casing, that was on-scene
23 there, and this is a bullet projectile from autopsy of the
24 victim.

25 Q. The first one you said was the shell casing; is that

1 correct?

2 A. Yes, sir.

3 Q. And how do you know that that's the shell casing that
4 you collected?

5 A. This is my writing, my initials and date, and my
6 handwriting on it.

7 Q. So once you picked it up from the scene, what did you
8 do with it?

9 A. Once I photographed and collected it here, I secured
10 it in my vehicle, transported it back to the sheriff's
11 department where I performed -- with any evidence, we take
12 it back the same way, secure it, take it back, and if I
13 need to perform anything else on it, such as fingerprinting
14 or DNA, if that's available or if that's something we're
15 looking for, and then after I process it further, I package
16 it, seal it and turn it into our evidence room.

17 Q. All right. So what is a shell casing?

18 A. The shell casing is -- it is the housing, I guess
19 you could call it, the housing of the actual powder. The
20 bullet sits on top, the casing holds the bullet, the
21 primer, and all the powder inside the casing.

22 Q. So once a gun fires a bullet or a cartridge, what
23 happens?

24 A. When the firing pin is hit on the back, it creates a
25 spark or basically a small explosion starts to burn the

1 powder and because it's sealed off with the bullet it's
2 a compressed area, so it builds pressure and when that
3 pressure hits its maximum load that's when it actually
4 pushes the bullet out of the casing down the rifle or
5 muzzle of whatever gun it's in and that's what propels it.

6 Q. And the casing is --

7 A. The casing is left over. It is the housing of the
8 powder, so it's either still in the gun -- if it was a
9 revolver, it would most likely still be in the cylinder or
10 it's ejected out of the chamber if it was a semiautomatic.

11 Q. What was the caliber in this casing?

12 A. This is actually an R&P, which is a Remington make,
13 45 auto.

14 Q. And do you know whether that would have been fired
15 from a revolver or was that fired from a semiautomatic?

16 **MR. PHILLIPS:** Objection, Your Honor. It's starting
17 to go into Rule 6, expert testimony. If they can qualify
18 her, that's fine.

19 **THE COURT:** I think she's allowed, if she knows. If
20 she knew.

21 **MR. PHILLIPS:** I don't have any problem with it,
22 just --

23 **THE COURT:** If she knows.

24 **MR. PHILLIPS:** I'm just following proper protocol.

25 **THE COURT:** All right. If she knows.

1 BY MR. GRAHAM:

2 Q. How familiar are you with firearms?

3 A. I've had extensive training in firearms. I have
4 probably over a hundred hours in advanced training.

5 Q. And does part of that include the differences between
6 a revolver and a semiautomatic?

7 A. Yes.

8 Q. Have you fired both?

9 A. I have fired them, yes, sir.

10 Q. And have you actually done classes dealing with
11 firearms and ballistics and things like that?

12 A. Yes, sir, I have.

13 MR. GRAHAM: All right. Your Honor, the State
14 would offer Ms. Derrick as an expert in the field of
15 differentiating between a revolver cartridge and a
16 semiautomatic cartridge.

17 MR. PHILLIPS: I have no objection to that capacity,
18 that limited scope.

19 THE COURT: Okay. She's so qualified in that limited
20 scope.

21 BY MR. GRAHAM:

22 Q. So, Ms. Derrick, what kind of a gun was that casing
23 that you found on Lumberjack Road on April 10th fired from?

24 A. From my experience I would say a semiautomatic due to
25 the -- it being expelled from the gun.

1 Q. And you said it was a 45 caliber?

2 A. 45 auto yes, sir.

3 **MR. GRAHAM:** Your Honor, the State would mark the
4 cartridge itself into evidence and would mark the envelope
5 and all the other contents for ID.

6 **MR. PHILLIPS:** No objection.

7 **THE COURT:** All right. Do you have them already
8 marked or do you want to mark them now?

9 **MR. GRAHAM:** Those have not been marked yet.

10 **THE COURT:** All right. Would that be -- the next
11 marked would be 14?

12 **MR. GRAHAM:** I guess one -- the casing would be 14
13 and the package and the rest of the contents would be 15
14 for ID.

15 **THE COURT:** All right. So 14's in and 15 is marked
16 for ID.

17 (State's Exhibit Number 14, a shell casing, was marked
18 and admitted into evidence.)

19 (State's Exhibit Number 15 was marked for
20 identification.)

21 BY MR. GRAHAM:

22 Q. State's 14, the casing, did you do anything to process
23 it?

24 A. I did. After collecting the item, when I got back
25 to the sheriff's department I processed the shell casing

1 using superglue. It's a fuming-type. We heat up
2 superglue, it forms a gas and actually sticks to the
3 surface of an object, which it makes the finger -- if
4 there is a fingerprint available, it makes it stronger
5 because it holds it together better so we can --

6 **MR. PHILLIPS:** Your Honor, we're going down the same
7 road again. Rule 701 and 702.

8 **THE COURT:** I'm gonna allow her to testify because
9 it's what she did. I understand she's not an expert.

10 BY MR. GRAHAM:

11 Q. Have you had training in processing items for latent
12 prints?

13 A. Yes, sir.

14 Q. How much training have you had?

15 A. Eight years of it. I do it every day and I've had
16 probably over 100 to 200 hours of advance training in
17 latent fingerprinting.

18 **MR. GRAHAM:** Your Honor, the State would offer
19 Ms. Derrick as an expert in latent prints examination
20 and developing.

21 **THE COURT:** Is that necessary?

22 Let's take a break. I've got to step in the back.
23 Y'all step in the jury room. We'll take a short break and
24 I'll have you back in here. You can't begin discussing
25 the case.

1 (Whereupon, the jury retires to the jury room at
2 10:36 AM.)

3 **THE COURT:** All right. I need a short break. Guys,
4 we can go through this real tediously like this, but what
5 she did is what she did. She can testify to any part of
6 her investigative function and if she's not an expert, so
7 be it. But you don't have to challenge everything because
8 she's testifying about superglue and -- I mean, she did
9 that. Don't -- let's try and get through this. If y'all
10 are gonna be this tedious, we're gonna be here a long time,
11 and I think that's needless. I think we can move forward
12 more efficiently with things we can agree on. I mean, if
13 the casing was fingerprinted, she looked for fingerprints
14 and somebody else analyzed it, let's get to that. Let's
15 don't challenge every single thing she does if she's not
16 an expert in the field. I know you've got to protect your
17 client, but that's just too tedious, isn't it? Do you
18 agree with me?

19 **MR. PHILLIPS:** I understand, Your Honor. I just --

20 **THE COURT:** I mean, she said I acquired a casing, I
21 took it back to the station, I --

22 **MR. PHILLIPS:** She -- and she was explaining that,
23 but then she started also providing the why.

24 **THE COURT:** I don't think so. You jumped up and
25 stopped her.

1 **MR. PHILLIPS:** Well, she started to go into the why,
2 but that's just my point of contention.

3 **THE COURT:** Well, let's take a few minutes break and
4 y'all decide how tedious you want to be.

5 All right. You can't talk about your testimony.

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

7 (Recess taken.)

8 **THE COURT:** All right. Are y'all ready?

9 **MR. GRAHAM:** The State's ready, Your Honor.

10 **THE COURT:** All right. Bring them in.

11 (Whereupon, the jury returns to the courtroom at
12 10:55 AM.)

13 **THE COURT:** All right. Mr. Graham, it's still your
14 witness.

15 **MR. GRAHAM:** Thank you, Your Honor.

16 BY MR. GRAHAM:

17 Q. Ms. Derrick, we were talking about you processing
18 the cartridge case that you found on the scene. When
19 processing for latent prints, what are you looking for,
20 what do you do?

21 A. Well, at first processing we visually look at it.
22 Sometimes you can see something right off the bat,
23 sometimes you can't. We do have all different types of
24 techniques that we can use. I performed a technique which
25 we call fuming or superglue fuming and then I dusted the

1 casing with black powder, which helps develop or bring out
2 what fingerprints, if they are present, are on an item, and
3 I did that in the lab and my results were negative. I had
4 no -- no fingerprints.

5 Q. You didn't find any fingerprints on the casing?

6 A. That's correct. Yes, sir.

7 Q. After you processed the casing and it was negative
8 for fingerprints, what, if anything, did you do with the
9 casing? And we're talking about State's Number 14. How do
10 you -- once you're done with it, where does it go?

11 A. Well, once I'm completed with it, I package and seal
12 it and turn it into our evidence room.

13 Q. Other than dusting it and fuming it for prints, did
14 you do anything to change the casing itself?

15 A. No, sir.

16 Q. All right. Do you know who you actually gave -- how
17 did you turn this into the evidence department?

18 A. We log it into a computer system and we can either
19 put it -- depending on what time of day it is, usually the
20 evidence custodians are there during the day from eight to
21 five and when they're there I can hand it directly over to
22 them; otherwise, we have the means of putting it into a
23 locker or something like that to store it overnight. In
24 this case, I was able to turn it over to one of the
25 evidence custodians.

1 Q. Do you know which custodian it was?

2 A. I believe it was Ms. Candy Kyzer. I'm not sure who
3 signed it in though. I apologize for that.

4 Q. State's Number 10 -- well, if we go back to State's
5 Number 8, the cartridge case is here where it's marked "1",
6 correct?

7 A. Yes, sir.

8 Q. In the background, the vehicle, what is that?

9 A. It's a tow truck. It's a white in color tow truck.

10 Q. This area right here where my finger is, what is
11 that?

12 A. That is a -- I guess a pile -- it's sand, but it's
13 a brownish, red basic substance, blood, in other words.
14 It's where blood was or -- yeah, blood and sand. I'm
15 sorry.

16 Q. State's Number 10, is that a close-up of that area?

17 A. Yes, sir.

18 Q. State's Number 11, what does that show?

19 A. This is actually showing basically from the opposite
20 way. The one prior to this, my back was towards Gator
21 looking forward and this would be my front towards Gator
22 looking. So Gator Road and the railroad tracks is on your
23 left -- or here, I have a pointer. The railroad tracks are
24 here, this is Gator Road right here, Lumberjack and Earline
25 or Erline pulls right in here.

1 Q. And is that your vehicle?

2 A. Yeah. You might be able to see that my vehicle is
3 actually parked right there. I took this the day after or
4 the next day.

5 Q. All right. Right here there's a stick. Can you see
6 that?

7 A. Yeah.

8 Q. What is that?

9 A. That is actually the stick I left in place where I
10 found -- where we found the casing, where the casing was.
11 I didn't remove the stick.

12 Q. State's Number 12?

13 A. It's the same angle basically photographed. I'm just
14 on the road now instead of up on the embankment where I was
15 before, but railroad tracks, Gator Road, and I believe the
16 stick might be somewhere in here. I can't really see from
17 here.

18 Q. The disturbance that's right here, what is that?

19 A. Okay. In the last couple of pictures you saw the
20 sunglasses. Actually, after I collected the sunglasses,
21 they were my Item Number 2, after I collected those I
22 actually physically went through the sand in that area,
23 through the stained sand with my hands to check to see if
24 anything was in the sand such as fragments or projectiles
25 or other casings that had maybe been underneath the sand

1 or seeped into the sand.

2 Q. Did you find any?

3 A. No, sir, I did not find anything.

4 Q. State's Number 13?

5 A. I -- basically this is the same photo. Before I was
6 over here shooting that way and now I'm shooting right here
7 and this is the disturbance. And I did go through the
8 sand, like I said, and covered it up. That way it wouldn't
9 be visible, I guess, for animals or other people just to
10 drive by. Kind of cleaning sort of.

11 Q. The stick that's right there, is that --

12 A. Yes, sir. That is the stick I left on-scene where,
13 Number 1, the casing was found.

14 Q. And then up here above that embankment where the
15 gravel is, what is that?

16 A. Railroad tracks.

17 Q. And is that all of the evidence that you did at the
18 scene?

19 A. Yes, sir. I took -- well, I took photographs of the
20 tow truck and we actually did a consent to search basically
21 on the tow truck and there was nothing I found relevant in
22 the tow truck or around the tow truck or anything. Those
23 two items were the only two items that were collected on
24 the scene, the glasses and the casing.

25 **MR. GRAHAM:** Thank you, Ms. Derrick. Please answer

1 any questions the defense has for you.

2 CROSS-EXAMINATION.

3 BY MR. PHILLIPS:

4 Q. Good morning, Ms. Derrick.

5 A. Good morning.

6 Q. How are you?

7 A. I'm okay.

8 Q. You said there was a lot of foot traffic?

9 A. I'm sorry?

10 Q. You said there was a lot of foot traffic?

11 A. Yes, sir. There was a lot of foot traffic, a lot of
12 shoe impressions, tire wear in the dirt.

13 Q. That is heavy traffic, isn't it?

14 A. Yes, sir.

15 Q. So you weren't able to determine individual footprints
16 because of that?

17 A. Yeah, they were all either all on top of each other or
18 they were consistent with the first responders' shoes.

19 Q. Did you take pictures of shoe prints, individual ones?

20 A. Not individual shoe prints on the dirt because we kind
21 of eliminated them out. I took photographs of people's
22 shoes so I could have references obtained if they matched,
23 but we didn't have any that we could actually compare to on
24 the dirt. They were too disturbed.

25 Q. Okay. But no photographs of any prints?

1 A. Yes, sir.

2 Q. And obviously with taking the pictures that you had,
3 these being the following day, and the ones from --

4 A. Yeah, the daylight ones were taken the day of since it
5 happened at night or occurred at night.

6 Q. So you took it because it was dark out there?

7 A. Yes, sir. Usually if it's a night scene, I'll go back
8 the next day or whatever or the day after to take during
9 the daylight hours.

10 Q. And when you took those pictures obviously the light
11 that you see from the night of is the flash? I mean, it
12 was -- it's pitch black --

13 A. Yes, sir. Yes, sir. It's any kind of ambient light,
14 like if there's street lights or headlights and mainly
15 flashes, flashes from my camera.

16 Q. All right. And so it's pitch black and you didn't
17 find any fingerprints on the shell casing?

18 A. Fingerprints on the shell casing, no, sir.

19 **MR. PHILLIPS:** No further questions. Thank you.

20 **MR. GRAHAM:** Nothing else, Your Honor.

21 **THE COURT:** You may step down.

22 (Witness excused.)

23 **MR. GRAHAM:** The State calls Brian Travis.

24 (Whereupon, Brian Travis was duly sworn by the Clerk
25 of Court.)

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

3 **THE WITNESS:** Brian Travis, T-R-A-V-I-S.

4 BRIAN TRAVIS,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q. Mr. Travis, where are you employed and what do you do?

9 A. I'm a detective at the Lexington County Sheriff's
10 Department.

11 Q. How long have you been in law enforcement?

12 A. Ten years.

13 Q. Currently what do you do?

14 A. I work in the criminal intelligence unit as a law
15 enforcement intelligence analyst.

16 Q. What does that mean?

17 A. I look for patterns and recognition, process cell
18 phone data, workflow, and I assist in investigations and
19 with the command staff procedures.

20 Q. Back on April 10, 2013, what did you do for the
21 sheriff's department?

22 A. I was an investigator in the major crimes unit.

23 Q. And were you notified about a shooting or some kind of
24 incident on Lumberjack Road on the night of April 10, 2013?

25 A. I was.

1 Q. And how were you notified and what did you do?

2 A. My sergeant called us to advise us that we had a scene
3 and told me to go to the hospital and meet EMS there.

4 Q. When you say the hospital, which hospital was that?

5 A. Lexington Medical Center.

6 Q. What did you find when you got there?

7 A. There was a female victim with a gunshot wound to the
8 head that they were at that time trying to see if they
9 could revive.

10 Q. And were they successful in doing that?

11 A. No, they were not.

12 Q. And do you know from your personal experience of being
13 there whether she was pronounced dead and at what time?

14 A. The doctor pronounced her dead in the room, but I
15 don't know the time off the top of my head.

16 Q. While you were at the hospital, what, if anything,
17 unusual did you notice?

18 A. Well, initially we didn't have any kind of identity on
19 the victim and after the doctor had pronounced her dead and
20 they were clearing out the room, a phone started ringing
21 and the nurses were able to find a phone in her C-collar
22 that was around her neck.

23 Q. Let me show you an item and ask if you recognize this?

24 A. This was the phone that was found in her C-collar.

25 **MR. GRAHAM:** Your Honor, the State would offer this

1 into evidence.

2 **THE COURT:** Any objection to the phone?

3 **MR. PHILLIPS:** No objection to the phone, Your Honor.

4 **THE COURT:** It's going to be marked as 16?

5 **MR. GRAHAM:** Yes, Your Honor.

6 (State's Exhibit Number 16, a cell phone, was marked
7 and admitted into evidence.)

8 BY MR. GRAHAM:

9 Q. Detective Travis, you said her phone was ringing and
10 it was where?

11 A. It was in the collar, the C-collar, that was around
12 her neck.

13 Q. What is a -- for people who don't know, what's a
14 C-collar?

15 A. It's a medical device used to stabilize the neck in
16 case there's a head injury or a neck injury. EMS puts it
17 on them when they go to transport them.

18 Q. And based on that, when you heard the phone, what did
19 you do?

20 A. The nurse was able to find it and retrieve it and give
21 it to me and we were -- the second time it rang I answered
22 it and spoke to a gentleman who identified himself as Chris
23 who then stated he was a bondsman and I got him to ask who
24 he was trying to call and he gave me the name Paula and
25 when I asked for a last name he said he would have to call

1 me back and I provided him with my phone number so he could
2 call me back, which he did shortly thereafter, and said
3 that she went by Paula Justice and Paula Black.

4 Q. After you did that, what did you do with that
5 information?

6 A. Once I got the names, I used my smart phone to look up
7 the South Carolina Department of Motor Vehicle website to
8 check for a driver's license for both those names. I was
9 able to find one under Paula Justice with a previous name
10 of Paula Black. I pulled up the picture and compared it to
11 the victim that was on the gurney and was able to say it
12 was the same person.

13 Q. After you figured out the lady there was Paula
14 Justice, what else did you do with the phone?

15 A. We were going through checking the phone to see who
16 she had talked to and trying to get ahold of the most
17 recent contacts that had happened since we were notified of
18 the incident to try and get more identification information
19 and where she had come from and what may have happened to
20 her. And there were a few numbers -- a few different
21 numbers we tried to call that we weren't able to get
22 through. One was to a KG, one was to someone in her phone
23 named Sexy and one came through from the Americas Value
24 Inn, which was where we went to next.

25 Q. You said one of them was KG. How do you know it was

1 KG in the phone?

2 A. On her caller ID it said KG.

3 Q. And were you able to determine the telephone number
4 that belonged to the KG contact on her phone?

5 A. Yes.

6 Q. And do you know what that is?

7 A. 803-348-5324.

8 Q. And did you attempt to call that number?

9 A. I did.

10 Q. And were you able to get anybody?

11 A. I was not able to get anybody to answer the phone.

12 Q. After you had her name and also you said there was a
13 telephone -- a recent phone number for Americas Value Inn?

14 A. Correct.

15 Q. Where's that located?

16 A. It's on McSwain Drive on the other side of the highway
17 from Lexington Medical Center.

18 Q. Based on that information that you had at that time,
19 what, if anything, did you do?

20 A. I talked to Sergeant Mefford and then Sergeant Spivey
21 and I went to Americas Value Inn.

22 Q. When you got to Americas Value Inn, what, if anything,
23 did you find out?

24 A. We saw a black male walking through the parking lot
25 and we approached him to try and talk to him about if he

1 knew who the victim was. He was apprehensive I'll say and
2 so then we asked him why he was calling the victim if he
3 didn't know who she was and then he told us that he knew --
4 he said she stayed there, but didn't know -- he didn't give
5 us a whole lot of information. We then met with his sister
6 and she told us what room she was in, that the victim had
7 stayed in, and told us that Briteny, who stayed on the
8 first floor, would know more information than that.

9 Q. And did you make contact with Briteny?

10 A. We made contact with different people. I think
11 Sergeant Spivey is the one that actually talked to Briteny.

12 Q. What did you do when he was making contact?

13 A. We went up to the room. We verified that she was
14 staying at the hotel with the clerk, although he said she
15 wasn't the one who booked the room, and we went up to make
16 -- try and make contact with any of the occupants, we
17 didn't receive any response, so I stood by there while
18 Sergeant Mefford worked on getting a search warrant.

19 Q. And was a search warrant obtained?

20 A. It was.

21 Q. Were you present when the search was conducted?

22 A. Our CSIs Derrick and Day came out and I was there when
23 they entered the room, but then Detective Spivey and I
24 relocated.

25 Q. Where did you relocate to?

1 A. The Delta Motel.

2 Q. And what was your understanding of why you were going
3 to the Delta Motel?

4 A. While Detective Spivey was interviewing people,
5 another person came up and she told him that --

6 **MR. PHILLIPS:** Your Honor, it's a lot of hearsay.

7 **MR. GRAHAM:** It's offered to explain police action
8 and why the police were doing what they were doing, not
9 for the truth of the matter, Your Honor.

10 **THE COURT:** All right. Be aware you can't testify as
11 to what other people said. He can testify to what he did,
12 so I'm gonna sustain it as hearsay in the future, but I
13 understand the reason we're trying to get through this.

14 BY MR. GRAHAM:

15 Q. Based on the information that Detective Spivey
16 received, where did y'all relocate?

17 A. To the Delta Motel.

18 Q. What was your purpose of going there?

19 A. To investigate a vehicle that was on-scene at the
20 Delta and talk to a witness that was there.

21 Q. And did you locate the vehicle when you and Detective
22 Spivey went there?

23 A. I did.

24 Q. Do you remember what kind of vehicle it was?

25 A. A Lincoln Town Car. And then I got the vehicle

1 identification number and had it run through dispatch and
2 got the owner information.

3 Q. Do you remember who it came back to?

4 A. It just left me.

5 Q. If I hand you your report, would it refresh your
6 memory?

7 A. Yes, sir. Robert Wesley Justice of [REDACTED] Jimmy Martin
8 Circle in Gaston.

9 Q. Was there or was there not a license plate on the car?

10 A. There was not.

11 Q. In addition to locating the Lincoln Town Car, what
12 else did you do while you were there?

13 A. We spoke to Tina Perry, which was one of -- the
14 witness we were given by Crystal Hartless, who was the one
15 that we spoke with at Americas Value, because she had
16 spoken to the person who got out of the car that we -- our
17 investigation had told us was KG.

18 Q. Based on your conversations with Ms. Perry, what, if
19 anything, did you do?

20 A. Once we found out that -- Ms. Perry told us that KG
21 had previously stayed --

22 **MR. PHILLIPS:** Objection.

23 **THE COURT:** You asked a good question. He just gave
24 you a hearsay answer. You've got to testify as to what you
25 did in response to the question, not what you were told.

/

1 BY MR. GRAHAM:

2 Q. Detective, without saying what you were told, let's
3 talk about what you did.

4 A. Okay.

5 Q. So after the information that Ms. Perry provided to
6 you or Detective Spivey, what did you do and what were you
7 looking for after that conversation?

8 A. I went to the hotel office -- or motel office and
9 collected the renter information for the people that had
10 stayed in Room 3 at the Delta Motel for about a month
11 prior.

12 Q. And did you have a physical description that you were
13 looking for that was given for KG?

14 A. We did.

15 Q. And what was that?

16 A. We were told it was a black male, approximately
17 six feet tall and 180 pounds, older than eighteen, younger
18 than thirty.

19 Q. Let me show you another piece of paper and ask if you
20 recognize that?

21 A. I do.

22 Q. And what is that?

23 A. It's the room card from the Delta Motel that I got
24 from the motel for John Christopher Hart.

25 MR. GRAHAM: Your Honor, the State would offer that

1 into evidence at this time.

2 **MR. PHILLIPS:** Not properly authenticated, Your Honor.
3 It's a hearsay document.

4 **THE COURT:** How do you figure that?

5 **MR. PHILLIPS:** It's a business record of the hotel.

6 **THE COURT:** It can be. He's identified it's what he
7 had. I understand your objection. I'm gonna allow it.

8 (State's Exhibit Number 17, Delta Motel room card, was
9 marked and admitted into evidence.)

10 BY MR. GRAHAM:

11 Q. So you were looking for a particular individual in a
12 particular room at a particular time; is that correct?

13 A. Correct.

14 Q. And based on your criteria of what you were looking
15 for when you were looking through records, you developed
16 one person who matched that?

17 A. Correct.

18 Q. What other information were you given about KG and
19 possible people that might have been with him?

20 A. We were given the information that he had a girlfriend
21 that was staying with him that was a white female that was
22 approximately nine months pregnant or may have already had
23 the baby.

24 Q. So once you developed the name John Christopher Hart
25 from Delta Motel records and you had information that he

1 had a -- he was seen in the company of a white female who
2 was approximately nine months pregnant, what, if anything,
3 did you do to further the investigation?

4 A. I checked through the sheriff's department's records
5 to see if we'd had any involvements with Mr. Hart and I was
6 able to find a report --

7 **MR. PHILLIPS:** Objection, Your Honor. Rule 404(b).

8 **THE COURT:** I didn't hear his answer. I was looking
9 at something else. Rephrase your question. I didn't hear
10 Mr. Graham's question. Rephrase that question. Let me
11 hear it again.

12 BY MR. GRAHAM:

13 Q. Based on the name John Christopher Hart and the
14 description of a white female that was accompanying him who
15 was nine months pregnant, were you able to further the
16 investigation and figure out who that female was?

17 A. Yes.

18 Q. And did you come up with a name for her?

19 A. Yes.

20 Q. And an address and information to contact her?

21 A. Correct.

22 Q. And what did you do with that information?

23 A. Provided it to Sergeant Mefford.

24 Q. What was the name of the individual that you came up
25 with?

1 A. Jessica Ussery.

2 Q. And in addition to that, did you review video from the
3 Delta Motel?

4 A. Yes, I did.

5 Q. Let me show you two photographs and ask if you
6 recognize these as still shots from that video?

7 A. Yes, they are.

8 Q. And those fairly and accurately represent what you
9 saw?

10 A. Yes, they do.

11 Q. And did you actually see those on the screen at the
12 Delta Motel?

13 A. Yes, sir.

14 **MR. GRAHAM:** The State would offer these into
15 evidence.

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

17 **THE COURT:** 18 and 19?

18 **THE COURT REPORTER:** Yes.

19 **THE COURT:** Okay.

20 (State's Exhibit Number 18 and 19, photographs, were
21 marked and admitted into evidence.)

22 BY MR. GRAHAM:

23 Q. State's Number 18, and I realize that it's not the
24 best quality, but do you recognize that photo from the
25 videocamera?

1 A. Yes.

2 Q. The vehicle with the headlights on right there, do you
3 know what vehicle that was?

4 A. That was the Lincoln, I believe.

5 Q. That's where you found the Lincoln Town Car was
6 parked, in that spot?

7 A. It was in front of Room 9. It was backed in in front
8 of Room 9.

9 Q. And were you parked -- you were involved in collecting
10 the video from the Delta, correct?

11 A. I watched the video and then CSI is the one that came
12 in afterwards to try and make a copy of it.

13 **MR. GRAHAM:** Your Honor, I think that's all I have
14 for the witness at this time. He is subject to recall on
15 a different matter though.

16 **THE COURT:** All right. Mr. Phillips.

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

18 CROSS-EXAMINATION

19 BY MR. PHILLIPS:

20 Q. Good morning. How are you?

21 A. Good morning. Fine.

22 Q. And when you arrived, it was at the emergency room?

23 A. That was where I responded first.

24 Q. Okay. And at that point you had been advised that

25 Ms. Justice was found on-scene with a condom and a crack

1 pipe?

2 A. We didn't know who she was at first, but that was all.
3 She was found with a condom and a crack pipe on the scene.

4 Q. And at that point y'all were trying to identify --
5 that was the first goal was to identify her; is that
6 correct?

7 A. Correct. Yes.

8 Q. And during the course of your investigation and
9 speaking to Tina Perry and other people, you said it was
10 clear that they knew who KG was?

11 A. Yes.

12 Q. And that -- I mean, they knew who the person was?

13 A. Correct.

14 Q. Right. And that they knew Paula?

15 A. Correct.

16 Q. And these were all people from -- transient from hotel
17 to motel you would say?

18 A. Yeah.

19 Q. And they were consistent in knowing both KG and Paula?

20 A. Tina and Crystal were consistent in what they knew --
21 what they knew about him and how they identified him.

22 Q. You said the initial individual, was that Marquis
23 Kelly?

24 A. The initial individual that what, that we talked to at
25 the --

1 Q. That you spoke to.

2 A. Yes.

3 Q. And initially he said he didn't know who Paula was?

4 A. Initially he said he did not know who she was.

5 Q. But then later he said he did know her?

6 A. Correct. When we continued to question him, he knew
7 of her. I wouldn't say that he was tremendously -- not
8 like Crystal and Tina who claimed to know her well.

9 Q. He knew her well enough that she was a prostitute?

10 A. I don't believe he specifically told that to me, but
11 he might have told that to a different --

12 Q. Investigator Spivey was also there, so it could have
13 been to him?

14 A. It could have been.

15 Q. And at this point your role was identifying
16 Ms. Justice and then, of course, just tracking down
17 witnesses, following the leads?

18 A. Correct.

19 Q. Okay.

20 **MR. PHILLIPS:** No further questions. Thank you.

21 **MR. GRAHAM:** Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q. Prior to your work on this case when you were at the
25 hospital, you developed the name KG; is that correct?

1 A. Correct.

2 Q. When you first started talking to people, you talked
3 to Marquis Kelly, correct?

4 A. Correct.

5 Q. And then his sister?

6 A. Correct.

7 Q. You talked to -- or officers talked to Briteny Baker?

8 A. Correct.

9 Q. They talked to Tina Perry?

10 A. Yes.

11 Q. They talked to Crystal Hartless?

12 A. Yes.

13 Q. And others at the hotel?

14 A. Correct.

15 Q. Did any of those people provide law enforcement with
16 the name of John Christopher Hart?

17 A. No.

18 Q. How did you -- who figured that out?

19 A. I did.

20 **MR. GRAHAM:** Thank you.

21 **MR. PHILLIPS:** Just a quick redirect {sic}, Your
22 Honor.

23 **THE COURT:** All right.

24 **RE CROSS EXAMINATION**

25 **BY MR. PHILLIPS:**

1 Q. And how long have you been an officer -- or
2 investigator? Excuse me.

3 A. Investigator since 2010. Law enforcement since 2007.

4 Q. And based on your training and experience in
5 investigating crimes, is it unusual for people in this,
6 say, lifestyle to have nicknames that people do not know
7 their actual name?

8 A. Is it unusual?

9 Q. Right. In investigating a case when you interview
10 witnesses, it's not unusual for people to not know their
11 normal name, but know their nickname on the street?

12 A. Correct.

13 Q. I mean, that's a very common thing?

14 A. It's fairly common, yes.

15 Q. Right. There's nothing unusual about that?

16 A. No.

17 **THE COURT:** You can step down.

18 (Witness excused.)

19 **MR. McNAIR:** Your Honor, the State calls Jessica
20 Ussery.

21 **MR. PHILLIPS:** Your Honor, while they get the witness,
22 may we approach on a quick matter?

23 **THE COURT:** Yeah, come up.

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

25 (State's Exhibit Number 20 and 21 were marked for

1 identification.)

2 (Whereupon, Jessica Nicole Ussery was duly sworn by
3 the Clerk of Court.)

4 **THE CLERK:** Have a seat right up there. Ma'am, once
5 you're seated, state your full name, spelling your last,
6 please.

7 **THE WITNESS:** I'm Jessica Nicole Ussery, U-S-S-E-R-Y.

8 JESSICA NICOLE USSERY,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. McNAIR:

12 Q. Ms. Ussery, do you know John Christopher Hart?

13 A. Yes, I do.

14 Q. Will you tell the jury how you know him?

15 A. We have a child together and we've known each other
16 since we were fifteen years old.

17 Q. All right. And at some point were y'all actually in
18 a relationship?

19 A. Yes, we were.

20 Q. Okay. How long were you in a relationship with him
21 for?

22 A. About a year and a half.

23 Q. And were you in a relationship with him back in April
24 of 2013?

25 A. Yes.

1 Q. What name did you call him by?

2 A. I called him Chris.

3 Q. Did you know of any other names that he went by?

4 A. Bhريس and possibly KG.

5 Q. Okay. Now back when y'all were in a relationship in
6 April of 2013, were y'all living together at that time?

7 A. Yes.

8 Q. Where did y'all live?

9 A. At my grandparents' house.

10 Q. Now you mentioned you had a child together. Named

11 M. ?

12 A. (Nods head.)

13 Q. When was M. born?

14 A. [REDACTED].

15 Q. Of what year?

16 A. 2013.

17 Q. And when were you admitted to the hospital for his
18 birth?

19 A. That same day.

20 Q. That same day. All right. And how long did you stay
21 in the hospital after he was born?

22 A. You essentially stay three days, so it was 8th, 9th --
23 the 10th.

24 Q. Now during the time that you were in the hospital, was
25 Mr. Hart with you?

1 A. Yes.

2 Q. He was present on the 8th and the 9th?

3 A. (Nods head.) Yes.

4 Q. And you were set to be discharged on the 10th; is that
5 correct?

6 A. Yes, it is.

7 Q. All right. And what time were you supposed to be
8 discharged?

9 A. It was probably about 7 or 8:00.

10 Q. Now let's just talk about the 10th. At some point
11 during that day, did Mr. Hart leave the hospital?

12 A. Yes, he was supposed to be going to get me food.

13 Q. All right. After he left, do you know what he was
14 wearing when he left at that point?

15 A. I don't know what he was wearing at that point when
16 he left.

17 Q. Okay. Did he come back?

18 A. Yes.

19 Q. Did he have food with him?

20 A. No.

21 Q. Did you see him?

22 A. Yes, I did. He dropped my grandmother's keys off to
23 me.

24 Q. All right. Was that the vehicle that y'all had driven
25 to the hospital?

1 A. Yes, it is.

2 Q. All right. When you saw -- when he came back to bring
3 you your keys, was he wearing something different than he
4 was wearing earlier in the day?

5 A. No.

6 Q. He was not?

7 A. (Shakes head.)

8 Q. Okay. When he dropped your keys off, what happened
9 then? Did he stay around the hospital or did he leave
10 again?

11 A. He left.

12 Q. Now do you know approximately what time that was when
13 he left?

14 A. I mean, I had about two more hours, I think, before I
15 was supposed to be discharged.

16 Q. And how were you supposed to get home from the
17 hospital that day?

18 A. He was supposed to pick me up.

19 Q. Was he aware of that?

20 A. Yes.

21 Q. So he was your ride home from the hospital?

22 A. Yes.

23 Q. When you were discharged, was he there at the
24 hospital?

25 A. No.

1 Q. And what time do you say you think you were
2 discharged?

3 A. Because they knew I didn't have a ride, they let me
4 stay until 12 AM and then my friend Rachel picked me up.

5 Q. So you were ready to be discharged prior to that, but
6 nobody was there to take you home?

7 A. Yes.

8 Q. And your friend Rachel ended up coming to get you?

9 A. Yes.

10 Q. Did you call Mr. Hart to ask where he was and why he
11 wasn't there to pick you up?

12 A. Yes, I was calling him the whole time.

13 Q. Was he answering?

14 A. No.

15 Q. After you were discharged, when was the next time you
16 saw Mr. Hart?

17 A. At some point later that night, I don't recall what
18 time -- because our son had juandice, so even after I got
19 discharged I was still having to go up to the hospital for
20 the feedings, and at some point Chris and me went up there
21 for one of the feedings.

22 Q. Okay. So your child was not released from the
23 hospital because he had juandice?

24 A. Yes.

25 Q. So after being discharged around midnight or whenever

1 it was the night of the 10th --

2 A. It was very shortly after.

3 Q. Okay.

4 A. The feeding was like at one, maybe two, and that's
5 when we went up there.

6 Q. Okay. And you're saying the next time you saw him was
7 where, at your house?

8 A. Yes, besides the hospital the next time I saw him was
9 that -- the previous morning.

10 Q. So that would have been the early morning hours of the
11 11th?

12 A. Yes.

13 Q. You're not sure exactly what time?

14 A. It was early. Maybe 8:00.

15 Q. Was he by himself?

16 A. No, he was with Tevin.

17 Q. Was he with Tevin at that point?

18 A. Yes, when they came to my house. Not at the hospital.
19 When they came to my home in the morning to grab their
20 belongings, Tevin was with him.

21 Q. All right. And you recall giving a written statement
22 to law enforcement, correct?

23 A. Yes.

24 Q. All right. And in that statement didn't you say they
25 came by the next morning around 6 or 7 AM?

1 A. Yes, I did.

2 Q. Okay. So I'm confused as to what we're referring to
3 right now. When you say you saw Tevin, was it when
4 Mr. Hart came by your house after you were discharged from
5 the hospital --

6 A. Yes.

7 Q. -- or was it the next morning?

8 A. It was the next morning.

9 Q. Okay. So I'm still talking about when he came to your
10 house after you were discharged. He was by himself at that
11 point?

12 A. Okay. Yeah, no, he's not with Tevin at that point,
13 no.

14 Q. Okay. And what did y'all do when he came by the
15 house?

16 A. We went up to the hospital for the feeding.

17 Q. Did you drive?

18 A. Uh-huh.

19 Q. All right. And did you stay in the hospital?

20 A. Uh -huh. We both stayed.

21 Q. Did you go back home after that?

22 A. (Nods head.) Yes.

23 Q. Okay. So I'm just trying to understand, so tell me
24 if I'm wrong. After you were discharged from the hospital,
25 Mr. Hart came by your house and y'all went back to the

1 hospital to see the baby?

2 A. Uh-huh.

3 Q. And then you went back home?

4 A. Uh-huh.

5 Q. Now once you get back home, does Mr. Hart stay there
6 at your house or does he leave again?

7 A. He leaves.

8 Q. And when is the next time you saw Mr. Hart?

9 A. In the morning when him and Tevin came and picked up
10 whatever belongings they picked up.

11 Q. Okay. And that was at six or seven the morning of the
12 11th?

13 A. Yes, it was very early.

14 Q. And at that time he had been -- he was with Tevin
15 Deloach, correct?

16 A. Yes.

17 Q. Is Tevin somebody that you recognized, that you knew?

18 A. Yes.

19 Q. How many times had you met Tevin prior to that?

20 A. Five, six times.

21 Q. Now when you saw them -- saw Tevin and Mr. Hart around
22 six or seven the morning of the 11th, what were they doing?

23 A. They -- we had a foyer with all of Chris's belongings
24 in it and they were just in there grabbing things and so
25 they were leaving.

1 Q. How would you describe Mr. Hart's demeanor or
2 appearance at that time?

3 A. In a hurry.

4 Q. Was that usual or unusual based on your dealings with
5 him?

6 A. It wasn't unusual.

7 Q. All right. And you're saying he came and gathered his
8 things?

9 A. Yes.

10 Q. And did he leave?

11 A. Yes.

12 Q. Did you ever see him again in person after that?

13 A. No.

14 Q. Did you know where he was going?

15 A. I did not. I had speculations, but --

16 Q. Okay. Now at some point did the police come by your
17 house and speak to you?

18 A. Yes, the -- that morning that I saw Tevin and Chris,
19 the detectives came that prior morning like at 2:00 in the
20 morning.

21 Q. Okay. Now do you remember talking to some female
22 detectives?

23 A. Yes.

24 Q. All right. Did you tell them about Mr. Hart leaving
25 the hospital?

1 A. Which time?

2 Q. Prior to you being discharged.

3 A. No.

4 Q. You gave a written statement that he wasn't there
5 when you were discharged from the hospital to pick you up,
6 correct?

7 A. No, I'm saying -- are you asking me about the time
8 that we went and saw M. ?

9 Q. No, I'm asking about when you were discharged. Prior
10 to you getting discharged --

11 A. Yes. I did tell them that, yes.

12 Q. And did they ask you about some phone numbers
13 belonging to Mr. Hart?

14 A. Yes.

15 Q. And did you provide them with those phone numbers?

16 A. Yes.

17 Q. And do you remember how you provided them with those
18 numbers?

19 A. They were logged into my phone.

20 Q. All right. Did you show the detectives your phone?

21 A. Yes.

22 Q. And your contact list?

23 A. Yes.

24 Q. And as you sit here today, do you remember what those
25 numbers are?

1 A. I couldn't tell you right now, but at the time.

2 Q. Can you tell me how they were saved in your phone?

3 A. One was under "My Baby" and then the other one was
4 under "Hart".

5 Q. All right. And which phone would you primarily call
6 Mr. Hart on?

7 A. "My Baby".

8 Q. Okay. Why was that?

9 A. Because that wasn't his work phone. That was my
10 phone. That was the number that I called him.

11 Q. You mentioned the other phone was his work phone?

12 A. Yes.

13 Q. Did he have a job?

14 A. Not legally that you get taxed for, no.

15 Q. Now have you ever been to the Delta Motel with
16 Mr. Hart?

17 A. Yes.

18 Q. And had you met some people at the Delta Motel who
19 lived there?

20 A. Yes.

21 Q. And did you know Paula Justice?

22 A. Yes, I did.

23 Q. And you'd been with Mr. Hart when he dealt with Paula
24 Justice in the past?

25 A. Yes.

1 Q. When you would ride with Mr. Hart, what car would you
2 typically ride in when y'all were together?

3 A. My grandmother's car, a Solara.

4 Q. Okay. What color was it?

5 A. Blue.

6 Q. Was it a convertible?

7 A. Yes.

8 Q. Did you know whether or not Mr. Hart drove a Lincoln
9 Town Car?

10 A. Yes.

11 Q. Okay. Do you know who that belonged to?

12 A. He just bought it off of someone. I didn't ask any
13 questions.

14 Q. But that was a car he drove back in April of 2013?

15 A. Yes.

16 Q. Have you seen Mr. Hart and Mr. Deloach obviously
17 together before?

18 A. Yes, I have.

19 Q. Between those two, who would you consider the leader
20 and who would you consider the follower?

21 **MR. PHILLIPS:** Objection, Your Honor. That's
22 speculation. And relevance, 401.

23 **THE COURT:** I'm gonna overrule your objection. She
24 can answer, if she knows.

25 **THE WITNESS:** I mean, Tevin seemed like a sweet

1 person, so I don't feel like he was the leader.

2 BY MR. MCNAIR:

3 Q. All right. Have you had conversations with Mr. Hart
4 where Tevin was brought up before?

5 A. Since he's been --

6 Q. No, just how would -- how would Mr. Hart refer to
7 Tevin if he ever brought him up to you?

8 A. Like the "dude boy". We didn't talk much about him
9 though.

10 Q. Okay. After the police came by your house, did you
11 ever speak to Mr. Hart again on the phone?

12 A. Yes, I did.

13 Q. And what was that conversation about?

14 A. We communicated for about six months after he went
15 into jail, so we had multiple conversations.

16 Q. Prior to that, did you ever talk to him again on the
17 phone?

18 A. No.

19 Q. Prior to his arrest.

20 A. Yes, that's what I'm saying. Once he got into jail,
21 we communicated for about six months.

22 Q. All right. I'm gonna show you what's been premarked
23 as State's Exhibit 20. And do you recognize the initials
24 on that disk?

25 A. Yes, that's mine.

1 Q. And have you previously listened to this disk?

2 A. Yes.

3 Q. Is that an accurate recording of a conversation that
4 you had with Mr. Hart?

5 A. Yes, it is.

6 **MR. McNAIR:** Your Honor, we offer State's 20 into
7 evidence at this point.

8 **MR. PHILLIPS:** No objection.

9 **THE COURT:** State's 20 is in evidence without
10 objection.

11 (State's Exhibit Number 20, CD of phone call, was
12 admitted into evidence.)

13 **THE COURT:** It's a DVD?

14 **MR. McNAIR:** It is, Your Honor. Permission to
15 publish?

16 **THE COURT:** Sure.

17 (Whereupon, State's Exhibit 20, a CD, was played.)

18 BY MR. McNAIR:

19 Q. What did you just tell him just then?

20 A. They have my phone records.

21 Q. All right. Did you know him to have a 348 number at
22 that time?

23 A. Yes, I did.

24 Q. When he's making these comments to you about I never
25 had no 348 number, how are you perceiving those comments?

1 A. I'm just perceiving them as he probably thinks they're
2 listening to our phone conversations.

3 Q. All right. And you brought your phone records, they
4 have your phone records. Why did you tell him that?

5 A. I guess at the time I was trying to say it in a nice
6 way that you know that's your number.

7 Q. And if they have your phone records, they already have
8 that number, correct?

9 A. Yes.

10 (Whereupon, State's Exhibit Number 20, a CD, continued
11 playing.)

12 BY MR. MCNAIR:

13 Q. Now you were in a relationship with Mr. Hart, so
14 obviously you know him better than anybody here. What is
15 his -- is he mad -- is that him being mad at you or what
16 the way he's talking to you there? Is he angry?

17 A. I mean, yes, angry, threatening.

18 Q. Okay. And why was he angry?

19 A. Because he knew that I had given y'all information --

20 **MR. PHILLIPS:** Objection.

21 **THE COURT:** I'll sustain that.

22 BY MR. MCNAIR:

23 Q. Did he mention anything else to you about you
24 cooperating with the police?

25 A. No, because I told him that I was gonna cooperate

1 because I have children, but he would definitely remind me
2 when he knew that I had signed statements.

3 Q. And when he reminded you of that, was that in a
4 threatening manner?

5 A. It definitely wasn't in a nice manner.

6 Q. Before I move on, I'm gonna read a phone number to you
7 and I want you to tell me who that number belongs to.
8 404-4793.

9 A. I -- I couldn't remember right now.

10 Q. Do you remember whether or not that was your phone
11 number at the time?

12 A. It might have been.

13 Q. I'm gonna show you a statement that you wrote to the
14 police and look at this top portion. Is that -- did you
15 fill out that section?

16 **MR. PHILLIPS:** And, Your Honor, as we discussed during
17 our sidebar prior to the witness, all this subject to the
18 prior objections and pre-trial motions.

19 **THE COURT:** It's not been offered into evidence yet,
20 but subject to your objections he can show it to the
21 witness.

22 BY MR. McNAIR:

23 Q. Did you fill out the top portion of that statement
24 form?

25 A. Yes.

1 Q. And you did you write that phone number there?

2 A. Yes.

3 Q. And what is that phone number?

4 A. 404-4793.

5 Q. And that was your phone number at the time back in
6 April of 2013, correct?

7 A. Yes.

8 Q. I'll show you what's been marked as State's Exhibit 21
9 for ID. I want you to take a look at this handwritten
10 letter and tell me whether or not you can recognize the
11 handwriting.

12 **MR. PHILLIPS:** Same -- same objections based on
13 pre-trial motions.

14 **THE COURT:** She didn't identify it yet.

15 **MR. McNAIR:** I'm not putting it into evidence right
16 now.

17 **THE COURT:** Subject to your objection.

18 **THE WITNESS:** Yes.

19 BY MR. McNAIR:

20 Q. All right. Who's handwriting is that in that letter?

21 A. Chris's.

22 Q. Chris Hart's?

23 A. Yes.

24 **MR. McNAIR:** I beg the Court's indulgence.

25 I think that's all the questions I have at this time.

1 Please answer any questions Mr. Phillips has.

2 CROSS-EXAMINATION

3 BY MR. PHILLIPS:

4 Q. Good morning, Ms. Ussery.

5 A. Good morning.

6 Q. In speaking with the police, you provided statements;
7 is that right?

8 A. Yes.

9 Q. I'm gonna walk through a series of questions. You
10 tell me whether they're true or false and if it's what you
11 told the police.

12 A. (Nods head.)

13 Q. And you would admit that you provided inconsistent
14 information to the police; is that right?

15 A. I -- I probably did.

16 Q. When asked what does Chris do for money, your answer
17 was sell drugs?

18 A. Yes.

19 Q. You were well aware of what he did for a living?

20 A. Yes.

21 Q. It says: 'Where and who does he sell to? Your answer:
22 Women and men in hotels or to prostitutes.

23 A. Yes.

24 Q. Which hotels does he like to go to and you say the
25 cheap ones near the hospital?

1 A. Yes.

2 Q. Do you know of any names of the women at these hotels?

3 Your answer: Tina. Paula, blond hair, missing a tooth.

4 A. Yes.

5 Q. So you knew that he knew Paula Justice?

6 A. Yes, I did.

7 Q. When asked where do they stay, you said Tina, tooth,
8 at Delta; Paula near hospital?

9 A. Yes.

10 Q. When asked how do you know about these hotels and the
11 women, your answer: I've driven him to the motels to sell
12 his stuff.

13 A. Yes.

14 Q. So you've participated in him selling the drugs?
15 You've been with him?

16 A. Yes.

17 Q. In providing all this testimony about these numbers,
18 even today when asked first by the solicitor do you
19 remember the numbers, you said I don't remember the
20 numbers, then when asked later a specific number, you said
21 yes, I remember that number. Is that true?

22 A. Which two numbers?

23 Q. Well, when asked earlier do you remember which numbers
24 were John's and you said no?

25 A. Yeah, but I also said I didn't know my own number.

1 Q. But then later when the solicitor asked you a specific
2 number, you said yes, that's his number?

3 A. Yes.

4 Q. And you provided written statements to the police?

5 A. Yes.

6 Q. Would you dispute that when asked about the two cell
7 phones you denied knowing either numbers?

8 A. At the time I knew them because they were in my phone.
9 Right now I wouldn't remember either one.

10 Q. And would you dispute that you told police your answer
11 not by heart, I deleted the number?

12 A. Yes.

13 Q. For both?

14 A. (Nods head.)

15 Q. So those are lies?

16 A. No, I did delete the numbers.

17 Q. You told police you didn't know the numbers by heart
18 and you had deleted them?

19 A. Yes, but they also had my phone records which were --
20 you know, that's what triggered my memory.

21 Q. Thirty seconds before I asked that question, you said
22 because the numbers weren't deleted?

23 A. No, I deleted everything. I've deleted like
24 everything out of my memory about this situation.

25 Q. And in your written statement when the police

1 specifically asked you about this 348 number, you said
2 don't know the other numbers by heart?

3 A. I don't.

4 Q. That's what you told the police?

5 A. I don't know any numbers by heart.

6 Q. And when not knowing the numbers earlier during your
7 testimony today --

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

9 BY MR. PHILLIPS:

10 Q. You don't know the numbers?

11 A. Not by heart. I didn't even know my own number by
12 heart.

13 Q. You listed to the police that a 45 number was Rachel,
14 your nana 467, your mom was 622. You know numbers.

15 A. I have those numbers because they're still in my phone
16 because I still have contact with them.

17 Q. The ones that were deleted?

18 A. No, Rachel, my mother.

19 Q. The ones you deleted, all the phones, you deleted all
20 the contacts?

21 A. I didn't delete all the contacts. I deleted his
22 contacts because I didn't want contact with him.

23 Q. And you would agree something's either true or it's
24 false, correct?

25 A. Yes.

1 Q. And that when you provide one answer and then a
2 different answer, one's true and one's false?

3 **THE COURT:** If you're gonna use the statements against
4 her, show her the statements. You're making her remember
5 every statement she's given and nobody's aware of how many.

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

7 **THE COURT:** I mean, you're -- come up here.

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

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

10 **THE COURT:** Sure.

11 BY MR. PHILLIPS:

12 Q. Please take your time and read over your statements.
13 Is those your statements?

14 A. Yes.

15 Q. And what we -- the questions I asked you, is it fair
16 to say that those were all your answers?

17 A. Yes. You asked me if I had deleted the numbers. I
18 did because when I'm being questioned and when he's on the
19 run, why do I need his numbers, but they also had pulled my
20 phone records and I also know who I texted and at that time
21 is when my memory came back.

22 Q. And it's fair to say that you provided multiple
23 statements?

24 A. Yes.

25 Q. And they weren't consistent with each other?

1 A. Well, nothing was consistent. It was, you know, a
2 pretty tragic situation.

3 Q. And you initially -- there was discussion about the
4 nickname KG?

5 A. Yes.

6 Q. You initially told Investigator Spivey that you didn't
7 know him as KG?

8 A. I didn't know him as KG. I called him Chris. Bhريس
9 and KG was his drug runner names.

10 Q. So, again, you said you didn't know him as KG, but
11 you've now testified that KG is his drug runner name?

12 A. I didn't know him as KG.

13 Q. Okay.

14 A. I called him Chris.

15 Q. And when asked multiple times by the police --

16 A. Yes.

17 Q. -- you initially denied knowing anything about the
18 348 number?

19 A. I didn't initially deny anything. I said I deleted
20 it. When they showed me my phone records, I immediately
21 know. There's three numbers I remember and that's only
22 because they're my mother's and she's had them the whole
23 time and I could look in my phone at the time and see that
24 it's still the same number.

25 Q. The first time you say that you know about the 348

1 number is in 2017 in a written statement to the police?

2 A. Yes.

3 Q. Four years later?

4 A. But that was also after they showed us our phone
5 conversations.

6 Q. So you were lying to the police?

7 A. No, I wasn't lying. I was trying to remove everything
8 about him out of my life.

9 Q. You said he was wearing the same clothes?

10 A. At what point?

11 Q. The solicitor asked if he had changed clothes and you
12 said he had not.

13 A. At which point? He did change clothes. He changed
14 into all black clothes.

15 Q. The solicitor asked you when he came to the hospital
16 the second time had he changed clothes and your answer was
17 he had not changed clothes.

18 A. He was in all black.

19 Q. So now --

20 A. He left to go -- to supposedly get me Bojangles', went
21 to my grandparents' house, changed into all black, brought
22 my grandmother's car back up to the hospital because I
23 guess they didn't want to, you know, have that car, then he
24 left, never came back until later that night to see M.

25 Q. So when the solicitor asked you had he changed clothes

1 and you said he had not --

2 A. He was in all black.

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

4 **MR. McNAIR:** Very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. McNAIR:

7 Q. Ms. Ussery, is there a reason you have trouble
8 remembering Mr. Hart's phone numbers? Did he change
9 numbers frequently?

10 A. Yes, he did.

11 Q. Now Mr. Phillips -- you mentioned you deleted your
12 phone numbers, but you testified earlier that you showed a
13 female detective your phone with those contacts with his
14 numbers, correct?

15 A. You said Phillips. I'm sorry.

16 Q. You showed a female detective --

17 A. Oh, okay.

18 Q. I called you Phillips?

19 A. Yeah, you called me Phillips.

20 Q. I'll apologize. But you showed your physical phone to
21 a female detective, correct?

22 A. Yeah, because --

23 Q. And that was --

24 A. That was -- they got to me, you know, a day and a half
25 after this has happened and I'm still calling him at this

1 point.

2 Q. All right. And that was prior to you deleting any
3 contacts off of your phone?

4 A. Yes.

5 Q. And I asked you about the 34 number -- the 348 number
6 that he is talking to you about on that recording?

7 A. Yes.

8 Q. When he's talking to you about that 348 number, do you
9 know what number he's talking about?

10 A. Yes.

11 Q. All right. And which phone was that? Was that his
12 family phone or was that his serve phone?

13 A. I mean, I couldn't tell you which phone it was, but I
14 think it probably was the family phone because if I was
15 repeatedly calling him on that one, then that might be the
16 one.

17 Q. But at the time he's talking to you about that number,
18 you knew that was a number that belonged to him, correct?

19 A. Yes.

20 **MR. McNAIR:** Thank you.

21 **MR. PHILLIPS:** Just very brief, Your Honor.

22 **RE CROSS EXAMINATION**

23 **BY MR. PHILLIPS:**

24 Q. And when initially asked, you said you didn't know the
25 number was his?

1 A. Yes, once I deleted it.

2 Q. And then four years later the first time we have it
3 in your written statement that's different from your
4 first -- and I can bring your statements back up there, is
5 four years later in preparation for trial?

6 A. They also haven't had contact with me these like whole
7 four years. It's once in a blue moon that I'm able to see
8 evidence or anything. At the time of this going on, I was
9 very out of it because we had just had a child. I wasn't
10 expecting to have to be going through a murder case.

11 Q. Of course.

12 **MR. PHILLIPS:** Thank you.

13 **THE COURT:** All right. You may step down, ma'am.

14 (Witness excused.)

15 **MR. McNAIR:** Your Honor, the State calls Renee
16 Strickland.

17 (Whereupon, Marsha Renee Strickland was duly sworn by
18 the Clerk of Court.)

19 **THE CLERK:** Have a seat, ma'am. Once you're seated,
20 state your full name, spelling your last, please.

21 **THE WITNESS:** My name's Marsha Renee Strickland,
22 S-T-R-I-C-K-L-A-N-D.

23 MARSHA RENEE STRICKLAND,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MCNAIR:

2 Q. Ms. Strickland, where are you currently working?

3 A. I currently work for the Office of the Attorney
4 General where I'm a special investigator.

5 Q. Okay. How long have you been with the Attorney
6 General's office?

7 A. I've been with the Attorney General's office since
8 August of 2015.

9 Q. And where were you working back in 2013?

10 A. The Lexington County Sheriff's Department.

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

12 A. I was a major crimes detective.

13 Q. Now on April 10, 2013, did you become involved in the
14 investigation of Christopher Hart?

15 A. I did, yes, sir.

16 Q. All right. And where did you respond to initially?

17 A. To the crime scene, which was located on Lumberjack
18 Road.

19 Q. Was the victim still on the scene when you got there?

20 A. No, I believe she had been transported at that time.

21 Q. What was your role at the crime scene?

22 A. At the crime scene, I was responsible for interviewing
23 some witnesses that were there.

24 Q. All right. Were those witnesses that had just pulled
25 up on the body?

1 A. Correct, yes.

2 Q. All right. Was there any indication any of those
3 witnesses had been involved in the killing?

4 A. No, sir.

5 Q. Where did you go after leaving the crime scene?

6 A. After the crime scene, I was directed to respond to
7 the Americas Value Inn, which is located just off I-26 in
8 the West Columbia area near Lexington Medical Center.

9 Q. All right. And had you learned the victim's name at
10 that point?

11 A. Yes, I was advised that her name was Paula Justice.

12 Q. All right. And why did you go to the Americas Value
13 Inn?

14 A. I was provided with information that was gathered by
15 other detectives that she had -- had been staying at that
16 particular hotel.

17 Q. All right. After you got to the Americas Value Inn,
18 did you develop the name of a potential suspect?

19 A. I did. Yes, sir.

20 Q. What name was that?

21 A. The name was KG.

22 Q. And why was that person a suspect?

23 A. KG was identified as a suspect because he was the last
24 person that was seen with Paula Justice that day.

25 Q. And did you ultimately during the course of your

1 investigation learn KG's real name?

2 A. Yes.

3 Q. And what was that?

4 A. Christopher Hart.

5 Q. All right. Now during the course of your
6 investigation, what else did you learn about KG? Did you
7 talk to other witnesses that advised you of additional
8 information about KG?

9 A. Yes.

10 Q. All right. What information was that?

11 A. I was advised that he had a girlfriend who was
12 described as a white girl who had children and had just
13 given birth to a baby whose name was M.

14 Q. All right. And did you identify her name?

15 A. Yes. Her name was Jessica Ussery.

16 Q. All right. And did you figure out where she lived?

17 A. Yes.

18 Q. And did you go speak with Ms. Ussery?

19 A. I did. Yes, sir.

20 Q. Now when you spoke to Ms. Ussery, did you ask her for
21 any phone numbers she had for Christopher Hart?

22 A. I did, yes.

23 Q. And did she provide you with numbers?

24 A. She did.

25 Q. And how did you she provide you with those?

1 A. She actually showed them to me on her phone.

2 Q. All right. And did you document how those numbers
3 were saved in her phone?

4 A. I did. I documented those in my report.

5 Q. All right. And would you refer to your report and
6 tell me what numbers you observed on her phone and under
7 what names those numbers were stored as?

8 A. The first number I recorded was under the name "Hart",
9 H-A-R-T. That number was 803-348-5324. The second number
10 was stored under the name "My Baby", and that number was
11 603-498-3318.

12 Q. And you said the number saved under Hart was
13 803-348-5324; is that correct?

14 A. Correct.

15 Q. All right.

16 **MR. McNAIR:** That's all the questions I have. Thank
17 you.

18 CROSS-EXAMINATION

19 BY MR. PHILLIPS:

20 Q. Good morning?

21 A. Good morning.

22 Q. Did you take screen shots of how it was listed in the
23 contacts?

24 A. No, I did not. We did not have access to a camera and
25 our county phones were not -- did not have the capability

1 to do that.

2 Q. And in having access to her phone, did you ask her to
3 take a screen shot?

4 A. No.

5 Q. And did she provide the written statement to you
6 later?

7 A. The written statement was provided during the same
8 time period, I believe.

9 Q. And in the written statement when she says she doesn't
10 know the 348 number, that would be inconsistent with her
11 showing you?

12 A. I don't have the written statement.

13 Q. But if it was, that would be inconsistent with what
14 she showed you?

15 A. Can you repeat what you just said? I'm sorry.

16 Q. If she gave you a written statement at the same time
17 and said she didn't know who -- the 348 number or didn't
18 have any recollection of it, that would be different than
19 what you've testified to as far as what she showed you?

20 A. I saw the 348 number on her phone.

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

22 **THE COURT:** You may step down.

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

24 (Witness excused.)

25 **MR. GRAHAM:** The State calls Sergeant Sean Spivey.

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

3 **THE WITNESS:** Sean Spivey, and S-P-I-V-E-Y.

4 SEAN SPIVEY,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q. Sergeant, where are you employed and what do you do?

9 A. I'm a sergeant over in Lexington County Sheriff's
10 Department. I've been there for nine years and currently
11 I'm supervisor of our West District property crimes
12 division.

13 **MR. PHILLIPS:** And, Your Honor, I apologize for
14 interrupting. This is subject to that pre-trial motion
15 and objection. I can explain it further, but I know
16 that's --

17 **THE COURT:** Okay. Your objection's noted and we'll
18 explain it further and make a clearer record of it at a
19 later time.

20 All right.

21 BY MR. GRAHAM:

22 Q. Sergeant, back on April 10th of 2013, what were your
23 job responsibilities for the sheriff?

24 A. I was a major crimes detective.

25 Q. And what is a major crimes detective?

1 A. Basically we deal with a lot of violent-type crimes,
2 anything from murder, robberies, assaults, sexual assaults,
3 you know, anything of that nature.

4 Q. And did you receive a call requiring you to respond to
5 Lumberjack Drive?

6 A. I did.

7 Q. And when you got there, what was going on at the
8 scene?

9 A. Sergeant Mefford had already -- he's the one that
10 actually called me. He was my immediate supervisor at the
11 time. He contacted me and asked me to respond. When I got
12 there, he was already there. I believe the ambulance was
13 still on the -- on-scene briefly and then they -- they did
14 leave. There was several people there that -- at the time
15 that we were trying to identify as far as to also talk to.

16 Q. And on-scene were you able to identify who she was?

17 A. No, we did not.

18 Q. What, if anything, were you provided to assist you to
19 try to identify who she was at the scene?

20 A. Sergeant Mefford gave me a hotel key. Like an actual
21 -- kind of, I guess, similar to a credit card-type
22 situation.

23 Q. Based on that, what did you do?

24 A. He asked me to respond to different hotels around the
25 area to see if they could match this as far as to be

1 theirs.

2 Q. And were you able to match that key at that time?

3 A. Not at that time.

4 Q. While you were doing that, what other information did
5 you receive?

6 A. I was told by Sergeant Mefford that Detective Travis,
7 who was at the hospital, basically found a phone, I guess,
8 that was in her C-collar at the time and so he asked me to
9 respond to the hospital.

10 Q. And did you do that?

11 A. I did.

12 Q. And what happened when you got there?

13 A. Detective Travis had already -- I guess he -- it was
14 -- there was a call that came from a guy, I think his
15 name's Chris Cherry, I think that he had spoken to at the
16 time. There was other phone calls that were made. There
17 was one by a guy by the name of "Sexy" and there was also a
18 phone call that came in from Americas Value Inn.

19 Q. Based on the phone call that came in from Americas
20 Value Inn, what did you do and Detective Travis do?

21 A. We immediately went over there to Americas Value Inn.

22 Q. And when you got over there, did you have a suspect
23 name developed for somebody you were looking for?

24 A. We didn't have a suspect name that we were looking
25 for. We were at the time still trying to gather

1 information with regard to the victim.

2 Q. When you arrived on-scene at the Americas Best Value
3 Inn, did you make contact with different individuals?

4 A. We did.

5 Q. Who did you make contact with?

6 A. The first person we made contact with was a Marquis
7 Kelly. He was outside walking into the hotel.

8 Q. And after speaking with him, who did you speak to?

9 A. A female by the name of Briteny Baker, as well as some
10 other people that were staying at the hotel at the time.

11 Q. Were you able to determine or other investigators
12 working under you able to determine which room belonged to
13 the victim?

14 A. We were.

15 Q. And did you develop a name for her at that point?

16 A. We had.

17 Q. And what was that name?

18 A. Paula Justice.

19 Q. After speaking with Ms. Briteny Baker, did you begin
20 to look for another individual?

21 A. We did.

22 Q. And who was that?

23 A. That was KG.

24 Q. And where did you go to begin your search for KG?

25 A. At the time we were talking to Briteny, that's when

1 we learned from them at that point in time that Paula was
2 supposed to be meeting a guy by the nickname of KG at that
3 time. Briteny at some point contacted a female by the name
4 of Tina Perry, who was staying at the Delta. At that point
5 in time Tina told Briteny that KG was over there recently
6 and left his vehicle there.

7 Q. Based on that conversation, where did you go?

8 A. At that point in time Detective Travis went over to
9 the Delta, I stayed behind for a little while at the
10 Americas Value Inn while we were conducting a search
11 warrant.

12 Q. Anything of value found during the search warrant of
13 Paula's room?

14 A. I ended up leaving in the middle of the search
15 warrant, so I know they collected some paperwork and
16 everything.

17 Q. Where did you go when you left?

18 A. At that time I went over to the Delta as well because
19 I got word from Sergeant Mefford that they were trying to
20 -- there was a possibility that KG may still be there and
21 Detective Travis was wanting to attempt to make contact at
22 that moment to see if that was him.

23 Q. When you got to the Delta Motel, what did you find?

24 A. We did not find anybody by the name of KG, we didn't
25 find the individual we were looking for, and then we

1 started talking to, you know, different people there; Tina
2 Perry and some others.

3 Q. Based on people you talked to, was there a vehicle
4 that you were interested in?

5 A. It was a Lincoln Town Car that was left there by KG.

6 Q. And what was the next thing -- you were in the
7 courtroom and you heard Detective Travis talk about
8 developing KG. You were aware of that as part of the
9 investigation, too?

10 A. Yeah, throughout the investigation there was a lot of
11 moving parts, a lot of people involved in a case, you know,
12 like that. Detective Travis had -- was told information
13 that KG previously stayed at the Delta. At that point in
14 time he started kind of -- in Room Number 3 and at that
15 point in time he started trying to identify who it was that
16 stayed in Room Number 3.

17 Q. All right. And what was the next thing you did in the
18 investigation?

19 A. At that point I believe it was that once -- I went to
20 a different location, I'd have to refer back to my notes as
21 far as where I went to at that point, but at some point we
22 ended up over at Jessica Ussery's house.

23 Q. Based on your conversations with Jessica, did the
24 police obtain two different phone numbers?

25 A. We did.

1 Q. Okay. And what, if anything, did you do with that
2 information?

3 A. At that point in time, we were told by Jessica that he
4 was supposedly -- I guess during the conversation that she
5 had with him that he was somewhere over in the Piney Grove
6 area, so myself and Detective Stout went over to look for
7 -- look in an area that he supposedly, I guess, previously
8 stayed. It may have been on his driver's license or
9 something at that time. We went over there and it turned
10 out that place was abandoned. At that point in time we met
11 back up with Detective Stoner and Detective Strickland in
12 the parking lot of Sportsman's Warehouse.

13 Q. And at that point did they have two phone numbers that
14 they had gotten from Jessica Ussery for Mr. Hart?

15 A. They did.

16 Q. And what, if anything, did you do at that time?

17 A. At this point I attempted to contact Hart to see if I
18 can get him on the phone and by chance see if I can get him
19 to come meet us.

20 Q. Which phone was did you call him on?

21 A. It was a 603 number.

22 Q. Do you remember the entire number?

23 A. I have it written in my report. 603-498-3318.

24 Q. Tell me about the conversation -- or did you have a
25 conversation? Did somebody answer the phone?

1 A. Yes. Whenever -- whenever I -- based on the
2 information we had, the phone number belonging to Hart,
3 I contacted that number and an individual answered the
4 phone. I -- at that point in time, I told him -- I said
5 Chris, this is Sergeant -- you know, Detective Spivey, at
6 the time, and his response at that moment was how did I
7 get this -- the number.

8 Q. And what did you respond?

9 A. When talking with him, I told him I needed to speak
10 with him, that his name came up in a case that we were
11 working. I never mentioned what kind of case at that time
12 we were working. I just told him we needed to speak with
13 him in reference to that.

14 Q. And what was his response?

15 A. This must be important if I'm calling him this late.

16 Q. And what else did you tell him?

17 A. I told him we did not have any warrant for his arrest
18 and that I needed to speak to him at that point in time in
19 regards to the case that we were working.

20 Q. And what did he say?

21 A. He asked me if -- if we could -- if we could talk over
22 the phone. I told him at that moment that I'd rather do it
23 in person. At that point in time, he asked me if he could
24 meet later. I told him that we'd rather do it right now.
25 At some point he asked me can he bring his family with us

1 and I told him yes. At that point we were just trying to
2 get him to come talk to us and at that moment after I said
3 that, he hung up. When I responded to that question, he
4 hung up on me or the phone disconnected.

5 Q. And what did you do after the -- he hung up?

6 A. At that moment, I -- I attempted to call him back
7 several times, but the phone appeared to be turned off. It
8 just kept going straight to voicemail.

9 Q. Were you ever able to reach him by phone again?

10 A. No.

11 Q. Did you have subsequent conversations with Mr. Hart?

12 A. I did.

13 Q. After that, looking back, the voice that you heard in
14 the phone call -- and what day was that that you had this
15 -- that phone call happened?

16 A. That would have been on the 12th around -- based on
17 phone records, around 3:01 in the morning.

18 Q. Do you recognize whose voice that was you talked with?

19 A. Yes.

20 Q. Who was it?

21 A. It's gonna be Hart.

22 Q. As far as your investigation, what was the next thing
23 that you did?

24 A. At that point we -- we learned in regards to a guy by
25 the name of Chance Belton. At that point we made contact

1 with him the second time. Other investigators had already
2 previously made contact with Chance. I had some additional
3 questions I wanted to ask him, so myself and Detective
4 Stout went and met him.

5 Q. What were you trying to find out?

6 A. We were trying to find out a little bit of information
7 about the vehicle. We were told that while they were at
8 the Delta, investigators were at the Delta, a guy by the
9 name of Anthony Richardson came there trying to attempt
10 to tow the vehicle from the Delta. So we contacted --
11 we contacted this individual by the name of Anthony
12 Richardson. He said that he was sent out there by Chance
13 Belton to come get -- come pick up the vehicle.

14 Q. And we're talking about the Lincoln Town Car?

15 A. We are.

16 Q. And were you able to get Mr. Belton's number?

17 A. I'm sorry?

18 Q. Were you able to get Mr. Belton's number?

19 A. His phone number?

20 Q. Yes.

21 A. I believe we made contact -- yes, we did made contact
22 because we asked him to come -- if he would meet us and
23 that's where we met him at was at the Flying J right off
24 the interstate, a gas station.

25 Q. Do you remember what his number was?

1 A. Not off the top of my head. I don't have his phone
2 number handy with me.

3 Q. After speaking -- did you have an opportunity to look
4 through Mr. Belton's phone?

5 A. I did.

6 Q. When you looked through his phone, what did you find?

7 A. There was numerous phone calls that were made between
8 Chance and Mr. Hart that was all during the night of the
9 -- I think it was the 11th by this time. Actually, it
10 would have been from the 10th all the way to the 12th. I
11 actually documented each phone call that came in my report.

12 Q. Running through them briefly, will you tell the jury
13 what you observed on Mr. Belton's phone?

14 A. He had -- he had several phone calls from the
15 603-498-3318 number. He had told me that Mr. Hart
16 contacted him because they got -- they got pulled over by
17 law enforcement off the Interstate and the vehicle didn't
18 have a tag and so he kept calling in regards to that.
19 Mr. Belton was asking if he needed to respond and come out
20 there because, I guess, based on some of the circumstances
21 they needed some paperwork handy or something of that
22 nature to be able to identify information about the vehicle
23 during the traffic stop.

24 Q. Could you briefly tell the jury as you looked at his
25 phone the number of calls, the time of the calls, the

1 duration of the calls?

2 A. I've got nineteen calls between the 10th and the 12th.

3 Q. And what time is the first call?

4 A. The first call came in at 11:19 PM. It was Chris
5 calling Chance. The call lasted for about twenty-one
6 seconds.

7 Q. And then you said there were nineteen calls?

8 A. Yes, sir.

9 Q. Looking at the 11th, what are the next, say, six calls
10 in a row?

11 A. On 11th, 12:09 AM, Chris calling Chance. The call
12 lasting about thirty-eight seconds. There was another one
13 at 12:09 on the 11th with Chance calling Chris. The call
14 lasting about twenty-three seconds. There was another one
15 on the 11th at 12:50 AM with Chris calling Chance. The
16 call lasting three minutes and thirteen seconds. There was
17 another one on the 11th at 12:59, Chris calling Chance,
18 lasting about thirty-eight seconds. On the sixth -- the
19 sixth call was on the 11th at about 1:27 AM with Chris
20 calling Chance showing a missed -- it was a missed call on
21 there and the sixth call that you had asked me about was on
22 the 11th as well about 2:21 AM with Chris calling Chance.
23 The call lasted about eight seconds. That was six calls
24 excluding the call that was originally made on the 10th at
25 11:19.

1 Q. Let me show you a document and ask if you recognize
2 that?

3 A. I do. It's a voluntary statement form that we do with
4 Lexington County Sheriff's Department.

5 Q. Based on that, does it refresh your information as to
6 your knowledge -- your personal knowledge of Mr. Belton's
7 phone number?

8 A. It does.

9 Q. What is Mr. Belton's phone number?

10 A. 803-479-1468.

11 Q. After speaking with Mr. Belton, what else did you do
12 in the investigation?

13 A. There was a lot of -- there was a lot of moving parts.
14 At that point, you know, we learned about the 44 and the
15 traffic stop and everything and we continued to -- we asked
16 -- we were asking Chance about the vehicle. Chance had
17 told us that the trunk to his Lincoln wouldn't open and a
18 spare tire was in the back seat as well.

19 Q. After speaking with Mr. Bolton, where did you go next?

20 A. We spoke with Crystal. A girl name Crystal Hartless.
21 She was one of the females that stayed between the Delta
22 and some of the other hotels at the time.

23 Q. After speaking to her, what did you do?

24 A. We were asking -- we were asking Crystal about an
25 individual that was -- she told us about a white male that,

1 I guess, that was with KG and Mr. DeLoach. I think at the
2 time the nickname we had was KB, but she started basically
3 describing about a white male that dropped Mr. Hart off at
4 the Delta Motel.

5 Q. So at this point how many people were you looking for?

6 A. At this point we were looking at two different people
7 and -- as far as with the nicknames KG and KB, but we
8 were also now looking for a white male as well that was
9 described.

10 Q. So what did you do to further the investigation at
11 that time?

12 A. Well, one of the things we actually did is I went to
13 the Holiday Inn because with her staying at the Americas
14 Value Inn there was a Holiday Inn right directly next to
15 the Americas Value. We actually went over there to see if
16 we could locate the victim walking through the parking lot
17 at any point in time as far as maybe getting into a vehicle
18 or anything of that nature and at that point we did -- I
19 did see the victim walking across the parking lot and she
20 was walking towards McSwain Drive.

21 Q. And what else did you do?

22 A. I also went over to the Waffle House to see at that
23 moment if we could actually see her continue to walk --
24 because we lost sight of her on the Holiday Inn cameras,
25 so we went over there because Waffle House was a short

1 distance away from there. At that point whenever I was
2 looking at the cameras, I did see the victim walk up.

3 Q. Let me show you a photograph and ask you if you
4 recognize this?

5 A. I do.

6 Q. And is that a still shot from the security camera from
7 the Waffle House?

8 A. It is.

9 Q. And is that a view of when you're talking about the
10 victim?

11 A. It is. The quality is not as good in the picture, but
12 the quality was a lot better on the video, on the actual
13 video itself.

14 **MR. GRAHAM:** The State would offer this into evidence
15 at this time.

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

17 **THE COURT:** What's the number?

18 **THE COURT REPORTER:** It will be 22.

19 (State's Exhibit Number 22, a photo, was marked and
20 admitted into evidence.)

21 BY MR. GRAHAM:

22 Q. Sergeant, you said the quality is not as good as it
23 is when you viewed it on the screen. When you viewed the
24 security camera, would you describe to the jury what the
25 video showed?

1 A. The video shows her walking up around -- based on
2 military time, 22:32, which is gonna be 10:32 PM. It shows
3 her walk up and you'll see her -- you know, you can kind of
4 see her from -- you see her right now, but she walked up
5 from the corner of the left side of the picture.

6 Q. (Handing.)

7 A. Let's see if I can figure out how this works. All
8 right. She walks up. This is McSwain Drive right here.
9 It actually goes to a red light right, I guess -- you can't
10 see the Holiday Inn from here, but it's basically about
11 right here. So we went from the Holiday Inn and just by
12 chance to see if she continued walking if we maybe could
13 pick her up on the Waffle House video. We see her walk up
14 right here. There's cameras -- there's two cameras on the
15 out side of the Waffle House. One points in this direction
16 and one points to the other direction towards 378. She
17 really -- she comes here and she parks herself basically
18 right underneath the cameras. At some point she's on the
19 phone. She actually goes inside. We get her on camera
20 going inside as well. I think she goes to the restroom and
21 then she comes back out and then she's back underneath the
22 camera as well.

23 At that point in time it's around 10:48 PM. She picks
24 her phone up like she's making a phone call or either
25 receiving a phone call and the next thing you know this

1 Lincoln car comes in and picks her up. She immediately --
2 she goes up to the car, she gets into the backseat of the
3 car, but she appears to be talking to somebody that's
4 sitting in the passenger side seat because she's not
5 leaning in the car at that time, she's actually --
6 basically she's sitting right here where the backseat is
7 and she actually appears to be talking to somebody that's
8 sitting right there.

9 Q. After the Waffle House, where did you go next in your
10 investigation?

11 A. After Waffle House, we went over to Lexington Medical
12 Center and we picked up some video and everything from
13 there, but we ended up going back to the office at that
14 point in time to start looking at some phone records. We
15 started getting some phone records in at that moment from
16 different carriers.

17 Q. Let me show you another photograph and ask if you
18 recognize this?

19 A. I do. This is the lobby area of Lexington Medical
20 Center.

21 Q. Is that a still shot from the security camera that you
22 saw relating to this investigation?

23 A. It is.

24 **MR. GRAHAM:** The State would offer this into evidence
25 at this time.

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

2 **THE COURT:** No objection to State's 23.

3 (State's Exhibit Number 23, a photograph, was marked
4 and admitted into evidence.)

5 BY MR. GRAHAM:

6 Q. Looking at State's number 23, what does it show?

7 A. This guy right here, we see him coming in. This is
8 gonna be who we latter identify at the time as being Tevin
9 Deloach, who is the co-defendant we charged in the
10 homicide. This will be Mr. Chris Hart.

11 Q. After going to Lexington Medical Center, where did you
12 go next?

13 A. At some point we ended up back at the office.

14 Q. You said you were looking at phone records, I believe,
15 at the time?

16 A. That's correct.

17 Q. What did you do when you were looking at the phone
18 records?

19 A. We had the victim's phone number, we had the two
20 numbers that we had for Mr. Hart and we started basically
21 looking at Google Maps and started tracking from the known
22 location that we had them both together at a starting point
23 all the way to the incident location where we found the
24 victim at.

25 Q. Were you able to develop -- from looking at Lexington

1 Medical Center and seeing these two people, were you able
2 to develop some kind of a vehicle that you were looking
3 for?

4 A. Yes, we also -- there was a -- Mr. DeLoach -- we were
5 able to identify there was a brown, I believe it was a
6 Marquis, that came and picked them up at that point.

7 Q. At that time when you were developing who you thought
8 was Mr. Hart here at -- there with another unknown person,
9 that's when you developed the brown Marquis?

10 A. That's correct.

11 Q. And did you have Mr. DeLoach's name at that time?

12 A. We did not know him.

13 Q. All right. So at that time you were looking for
14 John Christopher Hart and you were looking for a brown
15 Marquis?

16 A. That's correct.

17 Q. Based on that information, what did you ask other
18 people in your department to help you do?

19 A. Once we -- once we obtained a warrant for Mr. Hart,
20 at that moment we reached out to the fugitive task force
21 team who basically is there to look for people that have
22 charges to attempt to apprehend them.

23 Q. And you asked them to help you look for John
24 Christopher Hart and to look for --

25 A. And the vehicle we were looking for as well, yes.

1 Q. Were they able to find John Christopher Hart in the
2 Lexington, Columbia, South Carolina area?

3 A. No.

4 Q. How about the vehicle?

5 A. They located the vehicle over off of Broad River Road.
6 I think it was an address at [REDACTED] Seminole Road.

7 Q. And once they found the vehicle, what, if anything,
8 else or who, if anybody else, did they find?

9 A. They also located an individual that basically matched
10 the description in here and was later identified as
11 Mr. Tevin Deloach.

12 Q. And did you have an opportunity to speak to
13 Mr. Deloach?

14 A. I did. I got a phone call from Detective Barkley at
15 the time and he contacted me and said they'd located a
16 vehicle matching the same description who they believed to
17 be in that video as well and so myself and Sergeant Laintz
18 at the time responded out there.

19 Q. And did you have an opportunity to speak to
20 Mr. Deloach?

21 A. I did.

22 Q. Based on your conversations with Mr. Deloach, did you
23 ultimately obtain arrests warrants for him, as well, for
24 murder?

25 A. We did.

1 **MR. GRAHAM:** Your Honor, that's all the questions at
2 this point. He's subject to recall on other issues.

3 **THE COURT:** Okay.

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

5 CROSS-EXAMINATION

6 BY MR. PHILLIPS:

7 Q. Hey, Detective Spivey.

8 A. How are you?

9 Q. Good. Good. How are you?

10 A. Good.

11 Q. In the course of your investigation at the very
12 beginning, you were talking about what was collected, the
13 evidence that was collected, and Ms. Paula, candidly, she
14 was found with five condoms in her possession; is that
15 correct?

16 A. I believe that's correct. I believe she was found
17 with some condoms at the time. That was -- I wasn't the
18 one -- pretty much immediately after we started talking to
19 the individuals out there, I immediately responded to the
20 hotels.

21 Q. And in talking with Briteny Baker, Marquis Kelly, Tina
22 Perry, Crystal Hartless, it was all consistent that they
23 all knew Chris Hart as KG, they all knew Paula Justice; is
24 that right?

25 A. I believe Tina Perry didn't really -- didn't know

1 Paula as well as Crystal did, but they did know who KG
2 was. They didn't know his legal name or anything at the
3 time.

4 Q. But even Tina knew Paula?

5 A. They knew who she was, yes.

6 Q. Right.

7 A. They just didn't know her very -- as well. She
8 didn't know her as well as, I guess, Crystal knew her.

9 Q. And they all saw KG at the hotel or the motel that
10 day?

11 A. After the incident location took place whenever he
12 arrived with that Lincoln and the white male, they did see
13 him.

14 Q. And Paula had told everybody that she was going with
15 KG?

16 A. She had told Briteny Baker and some other people at
17 the Americas Value Inn that she was going with KG.

18 Q. And Marquis Kelly and Tina?

19 A. Uh-huh. Maybe she did tell Tina as well. I don't
20 recall. I don't know if Tina actually gathered that
21 information from Briteny, you know, through a conversation.
22 Because at some point Briteny and Tina started talking,
23 so, but it may have been she may have knew. It was after
24 a point whenever we were talking to Briteny Baker she
25 contacted Tina Perry and started telling her what was

1 going on.

2 Q. And Tina goes into pretty big detail about how well
3 she knows KG and her contact with him that night?

4 A. That's correct. Yeah, eventually we ended up over
5 there at the Delta and started talking to her further about
6 it and at that point -- I know she knew at that point what
7 was going on because she said she received a phone call
8 from Briteny Baker and she talked to her about what was
9 going on. Briteny Baker is the one that told us that we
10 should talk to Tina Perry.

11 Q. And some of it gets confused because they're all kind
12 of talking at the same time, right?

13 A. Well, when we showed up at the Americas Value Inn, we
14 started talking to Briteny, as well as some other people.
15 At some point we know Briteny told -- Briteny came up to
16 us and told us we may have to call Tina and at some point
17 Tina told her that well, KG was over here just a little
18 while ago and he left his -- they left their Lincoln here.
19 So I don't know if Tina -- I don't know if -- right now I
20 don't recall if Tina knew that Paula was supposed to be
21 going with KG or not. What I do know is Briteny -- off
22 the top of my head, as far as my recollection, I know that
23 Briteny told us that she contacted Tina and told her that
24 we were here, Paula had been, in fact, killed and, you
25 know, that she was with KG that night and at that point I

1 know that she said well, KG was over here earlier.

2 Q. Right. So there's no dispute that they all knew
3 everybody and they're trying to --

4 A. Sure. Sure.

5 Q. As far as what happened that night?

6 A. Everybody started talking at that point.

7 Q. You did speak to a man named Jason; is that correct?

8 A. Jason Polk?

9 Q. I believe that's correct.

10 A. We did.

11 Q. And he -- he knew of another KG that was a rapper in
12 Cayce; is that right?

13 A. Correct.

14 Q. I guess that was a --

15 A. Yeah, we -- you know, of course, when the name came
16 up as far as KG, we -- we somehow got that name as far as
17 -- I believe it was from when we started going back out to
18 Lumberjack we learned that there was another KG that was
19 a rapper, so we went and talked with the individual. I
20 believe his name might have been Brian Williams, who we
21 found out to be a KG. We did show a picture of Brian
22 Williams to, I think, Tina Perry and also Briteny and we
23 were able to rule him out as being the KG that they knew.

24 Q. And you also know that there's another person that's
25 known as KG?

1 A. Who is that?

2 Q. Alex Wallace.

3 A. That was learned recently, but we've, I think, been
4 able to exclude some of that.

5 Q. Well, we'll certainly address that.

6 A. Sure.

7 Q. With Chance Belton, the car was sold to John in
8 January?

9 A. I think it was January. It may have been 2012. I
10 believe that was the case.

11 Q. And then he ends up selling it back and needing money
12 and then he rents it basically for \$50 a week. Is that a
13 fair and accurate --

14 A. I think that's a pretty fair and accurate statement.

15 Q. And so the whole relationship with Chance Belton, John
16 Hart buys the car, needs money, sells it back and rents it
17 for \$50 a week?

18 A. Correct.

19 Q. And through your investigation Tevin Deloach drives
20 John Hart sometimes. You found that out?

21 A. I'm sorry, say that one more time.

22 Q. Tevin Deloach drives John Hart around sometimes?

23 A. Yes.

24 Q. And the question was asked that after speaking with
25 Tevin Deloach you issued an arrest warrant for him; is that

1 right?

2 A. We actually arrested him right there on the spot.

3 Q. He initially denied having any involvement, correct?

4 A. You've got to understand as far as -- you know, and
5 this kind of goes to everybody, as far as you've got to
6 understand when you're dealing with a situation as far as,
7 you know, a complex case as a murder or any kind of case,
8 I've been doing this for a while --

9 **MR. PHILLIPS:** Your Honor, the question -- that's
10 nonresponsive.

11 **THE COURT:** I'm not sure yet.

12 **MR. PHILLIPS:** Okay. Thank you.

13 **THE COURT:** Re-ask your question.

14 **MR. PHILLIPS:** Sir?

15 **THE COURT:** Re-ask your question.

16 BY MR. PHILLIPS:

17 Q. Tevin Deloach, when you asked him or brought up about
18 your investigation, he denied having any involvement with
19 it, denied knowing what happened to Paula?

20 A. Tevin Deloach at the initial -- at the time he denied
21 -- he denied involvement with it, but he did eventually
22 while we were talking to him, as what a lot of people do
23 in cases, they minimize their role, but the more we talked,
24 especially in cases such as this type, they eventually will
25 come off -- they sometimes will come off with more detail

1 as far as on their involvement, so they further will
2 implicate themselves, which is what Tevin Deloach did. So
3 he did what a lot of people -- the majority of the people
4 when you're interviewing, they minimize some of their
5 involvement, but later as far as they did come out with
6 more involvement.

7 Q. Not a lot of people. We're talking about Tevin
8 Deloach.

9 A. We're talking about Tevin Deloach, but we're also --
10 when I say that, I'm referring to Tevin Deloach, but also
11 how -- you know, I'm just trying -- you're asking the
12 question. I'm trying to explain the process of how people
13 do.

14 Q. Right, but you can't go inside the mind of Tevin
15 Deloach and say that other people are the same as Tevin
16 Deloach.

17 A. Well, based on my experience I can because I've had
18 many -- I've had many people -- I've been doing this for a
19 while, been interviewing many people, as far as I can say
20 that most people minimize their role.

21 Q. They lie a lot, too, right?

22 A. They minimize a lot, so you can call it a lie if you
23 want to.

24 Q. When you say, again, minimize, they provide multiple
25 statements like Deloach that are inconsistent with one

1 another?

2 A. I don't know that necessarily any of his statements
3 were inconsistent. I believe it was more or less, like I
4 was saying, he minimized his role in the beginning, but
5 further came out the more he cooperated as far as talking
6 to us. The more stuff that we brought to his attention
7 based on stuff that we had at the time, the facts of the
8 case, it basically -- at that point in time you could
9 see that was -- he started realizing that we had more
10 information than what he initially thought and I think
11 at that point that helped him kind of move forward and
12 telling more involvement in it.

13 Q. Right. So he had changed his statement multiple
14 times, he wasn't consistent. I mean, that's a fair and
15 accurate statement?

16 A. I would say and you -- we can say he was inconsistent
17 as far as with things, but my thing is I think a lot of his
18 statement was consistent. I think he just further brought
19 the truth out because he didn't -- he wouldn't change maybe
20 some -- certain things, but he would eventually elaborate
21 further in detail about his involvement.

22 **MR. PHILLIPS:** And, Your Honor, we would object to
23 that line of testimony, improper vouching, and move to
24 have it stricken from the record.

25 **THE COURT:** You asked the question.

1 **MR. PHILLIPS:** Right, but it's still improper
2 testimony.

3 **THE COURT:** That was his answer. I'm not gonna
4 strike it.

5 BY MR. PHILLIPS:

6 Q. You don't know what happened that night?

7 A. No, we had -- we had -- based on the facts that we
8 had, we knew certain things.

9 Q. You weren't there.

10 A. I was not there, no. You're correct.

11 Q. And he provided multiple statements?

12 A. He did.

13 Q. And he said one thing before, he said something
14 different later, something's true, something's false.
15 That's fair?

16 **THE COURT:** It's been asked and answered.

17 **MR. PHILLIPS:** Just a moment, Your Honor.
18 No further questions. Thank you.

19 **THE COURT:** Any redirect?

20 REDIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q. Prior -- you said you arrested him then and there?

23 A. We did.

24 Q. Did he implicate himself in the murder then and
25 there?

1 A. He did.

2 **MR. GRAHAM:** Nothing else. Thank you.

3 **THE COURT:** You can step down.

4 **MR. PHILLIPS:** But -- just one.

5 **THE COURT:** Just a quick one.

6 **RE CROSS EXAMINATION**

7 **BY MR. PHILLIPS:**

8 Q. But not initially, correct?

9 A. I'm sorry?

10 Q. Not initially. He didn't come out and say I drove
11 John Hart, we knew we were gonna kill her. That's not how
12 it happened at all?

13 A. No, he's not saying that I knew that. He's saying I
14 -- he did not say initially that I knew he was going to
15 kill -- that John Hart was gonna kill her.

16 Q. Yeah, that didn't happen.

17 A. No, not initially.

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

19 **THE COURT:** Okay. Now you can step down.

20 (Witness excused.)

21 **THE COURT:** It's a good time for a lunch break.

22 All right, folks. Is he subject to recall,

23 Mr. Graham?

24 **MR. GRAHAM:** Subject to recall on another matter,

25 Your Honor.

1 **THE COURT:** Okay. Fair enough.

2 All right, folks. Let's go to lunch. You can't
3 discuss the case. You can put your stuff in the jury room
4 and we'll start -- be back in your jury room by 2:00 and
5 we'll start back as close to 2:00 as we can, all right?

6 (Whereupon, the jury was excused for lunch at
7 12:46 PM.)

8 **THE COURT:** All right.

9 **MR. GRAHAM:** I just have some housekeeping matters,
10 Your Honor. I guess as Mr. Phillips was making the motions
11 for Ms. Ussery, I thought that I would add some Court
12 exhibits because he's talking about late discovery and I
13 wanted to put in everything that was discussed and when it
14 was delivered so that the Court could see it if it goes up
15 on appeal for that reason.

16 **MR. PHILLIPS:** It's marked as State's 3.

17 **THE COURT:** All right. Now you made a motion right
18 when the detective started testifying. You need to
19 elaborate on that motion.

20 **MR. PHILLIPS:** Well, I -- to clarify everything,
21 going back to prior to Ms. Ussery's testimony when we
22 approached, you said we'd put it on the record later, but
23 just to make sure we didn't waive for error preservation
24 purposes the motion for continuance or, in the alternative,
25 the motion to suppress. Knowing that Ms. Ussery's

1 statement was part of some of the discovery that came late
2 that was marked as -- you know, the written motion was
3 Court's Exhibit 2, I believe, and the CD with the discovery
4 was Court's Exhibit Number 3, what should be on that CD
5 are these statements, but he can certainly mark -- I just
6 wanted to make sure that was clear for the record. They
7 should be on that CD as well.

8 **THE COURT:** Well, I was clear on that issue, but I'm
9 talking about at the beginning of this detective's
10 testimony, you said -- is that the same objection?

11 **MR. PHILLIPS:** It's the same objection. As the
12 appellate court says, you've got to keep objecting to it.
13 I wish the rules were different, but the error preservation
14 purpose, you know, it's -- it's tight up there.

15 **THE COURT:** And I'm not sure -- do you know what he's
16 got in as a Court's exhibit or not, Mr. Graham?

17 **MR. GRAHAM:** I don't. I guess my -- my thought was,
18 is that there were three written statements that she gave
19 that Mr. Phillips cross-examined her on. Two of those
20 were obtained and provided in discovery in June of 2013.

21 **MR. PHILLIPS:** And those are good. That wasn't
22 subject to the objection.

23 **MR. GRAHAM:** The only thing that would in be in the
24 new discovery was obtained by Sergeant Spivey on January
25 the 11th of 2017. I don't know when my office got it and

1 we provided it on April 7, 2017.

2 **MR. PHILLIPS:** And to clarify, the discovery packet is
3 dated April 7th. I specifically received them April 12th.

4 **MR. GRAHAM:** I don't know when his office came and
5 picked them up. I mean --

6 **THE COURT:** All right. Y'all are talking semantics.
7 I understand January, early April, mid-April.

8 **MR. PHILLIPS:** April.

9 **THE COURT:** I'm not gonna change my ruling. I'm
10 gonna keep going consistent with it, but it was later than
11 Mr. Phillips wanted and he's asked for a continuance or
12 suppression and the Court hasn't ruled on that because --
13 I denied the continuance, but these statements aren't in.
14 They were used and I got a little bothered by her having
15 multiple statements and you were cross-examining on these
16 statements with phone numbers and memory and that didn't
17 seem entirely fair that you said they can't come in, but
18 she couldn't see what you were questioning her on and
19 there's multiple statements and that just seemed --

20 **MR. PHILLIPS:** And I understand and I apologize.
21 That's why we handed it up and I -- that process was --

22 **THE COURT:** That was fine. It's just tricky when
23 you say that can't come into evidence, but then you ask
24 questions to a lady about a phone number. I mean --

25 **MR. PHILLIPS:** I understand. It's just as a defense

1 attorney you get behind the eight ball when on direct
2 they've already went through this and you have to cross
3 on it.

4 **THE COURT:** I understand you've got to cross on it,
5 but they didn't talk about her statements, they just
6 talked about the phone numbers.

7 **MR. PHILLIPS:** Right. It's all the information
8 contained in the statements is where they -- where they
9 had that information.

10 **THE COURT:** Okay. Well --

11 **MR. GRAHAM:** And just for the record, the other
12 item that she identified the handwriting on is for
13 identification and that was --

14 **THE COURT:** And that was the handwritten letter,
15 which was --

16 **MR. GRAHAM:** Correct.

17 **THE COURT REPORTER:** 21.

18 **THE COURT:** -- 21.

19 **MR. GRAHAM:** 21. That was provided in discovery back
20 in June of 2013.

21 **THE COURT:** Yeah. None of these statements are in,
22 but they've been talked about, which is fine. They can be
23 talked about.

24 **MR. PHILLIPS:** Right. I'm just trying to make sure
25 that issue is preserved, Your Honor.

1 **THE COURT:** It is.

2 All right. See y'all at a few minutes until two.

3 **MR. PHILLIPS:** 2:00 you said, Your Honor?

4 **THE COURT:** I said a few minutes till two.

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

6 (Whereupon, a luncheon recess was taken.)

7 **BAILIFF:** All rise. Court's now in session.

8 **THE COURT:** Y'all be seated.

9 All right. Are you ready to go?

10 **MR. GRAHAM:** We are. The State's next witness will
11 be Tevin Deloach. He's being brought over right now and
12 that's one of the people that Mr. Phillips has a potential
13 conflict with.

14 **THE COURT:** He's on the list?

15 **MR. PHILLIPS:** Yes, sir.

16 **THE COURT:** Okay. Let's bring him in when he gets
17 here and we'll talk to him first and then we'll bring the
18 jury in. That will be easier to manage. Good timing.

19 **MR. PHILLIPS:** Yes, sir.

20 While we're waiting on Mr. Deloach, I did receive an
21 e-mail at 1:27 PM today from Assistant Solicitor Robert
22 McNair that there were additional statements that were said
23 by Mr. Deloach that was provided to -- or that Detective
24 Spivey obtained from Tevin Deloach. I would renew my prior
25 motions and objections and then move, again, to suppress

1 these additional statements that I just received this
2 afternoon.

3 **MR. McNAIR:** Judge, those were statements made by
4 Mr. Deloach during pre-trial interviews with us that
5 we're turning over pursuant to Brady. They're not
6 statements made to Detective Spivey sometime in the past.
7 They were made -- I think we met with him late last week
8 and maybe yesterday, so they're just Brady statements and
9 we're providing them today.

10 **THE COURT:** Your objection's noted.

11 All right. Mr. Deloach, come forward and let the
12 clerk place you under oath.

13 (Whereupon, Tevin Deloach was duly sworn by the Clerk
14 of Court.)

15 **THE CLERK:** Have a seat right up there. Once you're
16 seated, I need you to state your full name, spelling your
17 last.

18 **THE WITNESS:** Deloach. Tevin Deloach -- Xavier
19 Deloach.

20 **THE COURT:** Mr. Deloach, I've got a couple of
21 questions for you under oath. It's come to my attention
22 that you are represented in some fashion by the law firm
23 for which Mr. Phillips works for, the Michael Jeffcoat Law
24 Firm, on some personal injury action. Is that action still
25 going forward?

1 **THE WITNESS:** No, sir.

2 **THE COURT:** Has it ended?

3 **THE WITNESS:** No. I really -- to be honest, sir, I
4 really don't know anything about it.

5 **MR. PHILLIPS:** He was on -- he was on our conflict
6 list listed as a personal injury client and so he was
7 flagged during our audit.

8 **THE COURT:** Okay. So do you have any knowledge of you
9 being a client of Mr. Michael Jeffcoat?

10 **THE WITNESS:** No, sir.

11 **THE COURT:** Have you ever been to his office?

12 **THE WITNESS:** No, sir.

13 **THE COURT:** Do you have any past injury for which you
14 were seeking payment for? Is it from a car wreck?

15 **MR. PHILLIPS:** No, Your Honor. It's a -- I'm trying
16 not to disclose confidential or privileged information,
17 but --

18 **THE COURT:** Okay. Let me ask him again. Do you have
19 any type of civil action against anyone that you have a
20 lawyer for?

21 **THE WITNESS:** No, sir.

22 **THE COURT:** Not that you know of?

23 **THE WITNESS:** No, sir.

24 **THE COURT:** Okay. If you'd did and Mr. Jeffcoat were
25 representing you, perhaps there is an action, you tell me

1 there's not, but Mr. Jeffcoat wants to make certain --
2 this is Mr. Phillips who works with Mr. Jeffcoat. He's
3 representing Mr. Hart, okay? I want to make sure y'all
4 don't have your wires crossed. He can't represent both of
5 you because you may be having competing interests. Do you
6 waive any conflict you may have with Mr. Jeffcoat if there
7 were some representation in the past?

8 **THE WITNESS:** Yes, sir, I waive it.

9 **THE COURT:** Okay.

10 **MR. PHILLIPS:** And I would like to explain that our
11 firm is withdrawing from representation and that obviously
12 with the statute of limitations in personal injury cases,
13 we provided -- and that was sent in a letter that you
14 should seek representation as soon as possible to protect
15 your rights.

16 **THE COURT:** Do you understand that?

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

18 **THE COURT:** If you're the same Tevin Deloach, they may
19 be sending you a letter telling you --

20 **THE WITNESS:** I actually got it yesterday.

21 **THE COURT:** You asked a guy yesterday to help you?

22 **THE WITNESS:** No, to tell me they were gonna withdraw,
23 but I don't -- but, yeah, I got it yesterday.

24 **THE COURT:** Okay. You got a letter yesterday. Fair
25 enough.

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

2 **THE COURT:** All right.

3 **MR. GRAHAM:** One more matter, Your Honor. In addition
4 to the charge here in Lexington and the murder charge he
5 has, he's currently in Alvin S. Glenn on a burglary first,
6 a grand larceny and an unlawful carrying of a weapon.
7 Those are unresolved cases and before -- I don't see a
8 reason to go into it, so I guess I'm asking before
9 Mr. Phillips is going to go into it that the Court address
10 the reasonableness of --

11 **THE COURT:** I don't think pending charges ought to be
12 coming in. What do you say? I mean, pending charges.
13 Co-defendant sure, but --

14 **MR. PHILLIPS:** The issue that I would have is the
15 same as with State versus Mizzell, allowing me to cross on
16 the potential penalty that's being faced and, of course,
17 the Sixth Amendment right that comes with it, the same as
18 what allows me to cross on the thirty years to life on the
19 pending murder, State v. Mizzell, I would say it's also
20 relevant is the fact that he's facing life in prison on
21 another case to be a cooperating witness for the State and
22 that to deny me the ability to cross-examine him on the
23 fact that he's facing two potential life sentences would
24 deny Mr. Hart's right to confrontation of the Sixth and
25 Fourteen amendments and Article 1, Sections 3, 12 and 14,

1 as far as due process right to a fair trial.

2 **MR. GRAHAM:** I don't have anything to do with that
3 case, so he can cooperate on my case and I have -- I mean,
4 that's something between us. What happens there -- I mean,
5 I guess I can tell them that he cooperated under my case,
6 but I have no idea what they're gonna do on that case.

7 **THE COURT:** It's a Richland case?

8 **MR. GRAHAM:** He's already facing life on this.

9 **MR. PHILLIPS:** It -- again, just to make sure that
10 my argument's clear, it will be known to the Richland
11 prosecutor that he cooperated and that can be part of it.
12 That's an inherent bias of the fact that he's facing a
13 separate life sentence and that's pretty compelling that
14 when he gets out on bond on this case that he catches
15 another potential life sentence and he certainly has at
16 that point opportunity, motive and bias to testify in this
17 case in hopes to not receive a life sentence on his new
18 charge as well. And citing State v. Mizzell, I argued the
19 same rationale in State v. Pradubsri successfully at the
20 Court of Appeals, the same thing, and the cases -- the most
21 recent South Carolina Supreme Court case is State versus
22 Gracely, and it's all coming from State v. Brown as well.

23 (Pause in proceedings.)

24 **THE COURT:** All right. I'm not gonna let you go into
25 the Richland County charges. You can go into the ones here

1 and that's enough.

2 **MR. PHILLIPS:** Thank you, Your Honor. And just so
3 the record's clear, it's a two-pronged argument of
4 confrontation and a fair trial.

5 **THE COURT:** You've made you -- you've got a big
6 record. You named off a half a dozen cases and the
7 constitution. You're good.

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

9 **THE COURT:** Bring in the jury.

10 (Whereupon, the jury returns to the courtroom at
11 2:17 PM.)

12 **THE COURT:** All right. The State's called the next
13 witness, which will be Tevin Deloach. He's already been
14 placed under oath.

15 Your witness, Mr. Graham.

16 **MR. GRAHAM:** Thank you, Your Honor.

17 TEVIN XAVIER DELOACH,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q. Mr. Deloach, you're facing a murder charge in relation
22 to the killing of Paula Justice; is that correct?

23 A. Yes, sir.

24 Q. And under the theory of hand of one, hand of all, are
25 you guilty of it?

1 A. Yes, sir.

2 Q. Has either law enforcement or myself or anybody from
3 the Lexington County solicitor's office made you a promise
4 of what will happen to your pending charge of murder?

5 A. No, sir.

6 Q. And are you here today to tell the truth?

7 A. Yes, sir.

8 Q. When did you first meet John Hart or Chris Hart?

9 A. I knew him when I was younger. He stayed right next
10 door to me.

11 Q. How old were y'all then?

12 A. I was roughly about four or five and he was, I'd say,
13 about ten or eleven.

14 Q. Back in April of 2013, had you made contact with him
15 again?

16 A. Yes, sir. We went to the same GED program at Irmo
17 High School.

18 Q. And do you remember when that GED program started?

19 A. March. We started in March.

20 Q. March of 2013?

21 A. Yes, sir.

22 Q. When you met, did you all begin hanging out?

23 A. Sir?

24 Q. When you met him in March of 2013, did you begin
25 hanging out again?

1 A. Yes, sir.

2 Q. And at some point did you figure out that he was
3 selling drugs?

4 A. Yes, sir.

5 Q. Did you help him with that?

6 A. Yes, sir.

7 Q. Did you know Paula Justice?

8 A. I seen her once.

9 Q. Did you know what she did for a living?

10 A. No, sir. I just knew she used crack cocaine.

11 Q. She used crack cocaine?

12 A. Yes, sir.

13 Q. Do you know where -- the type of places she stayed at?

14 A. Hotels. It was mainly by the hospital. That was the
15 place I saw her.

16 Q. How did you go about helping Mr. Hart selling drugs?

17 A. I drove him around.

18 Q. What kind of cars did you use to drive him around?

19 A. I used my car, the gold Marquis!

20 Q. Your car was a gold Marquis?

21 A. Yes, sir.

22 Q. And did you have other cars that he had that y'all
23 drove around?

24 A. Yes, sir. He had a Lincoln Town Car.

25 Q. April 10th -- well, how many phones -- when you first

1 met him in March of 2013, how many phones did he have then;
2 do you know?

3 A. He had one at the time.

4 Q. Do you recognize the number 803-348-5324?

5 A. Yes, sir. That was the phone he had.

6 Q. That was the phone that Mr. Hart had at the time?

7 A. Yes, sir.

8 Q. And what did you call him?

9 A. I called him Bhريس.

10 Q. Bhريس?

11 A. Yes, sir.

12 Q. At some point prior to April 10, 2013, what, if
13 anything, did he ask you about getting a second phone for
14 him?

15 A. Yes, sir. He asked me -- we was talking about
16 iPhones. This was when iPhone 4S had just came out. We
17 was talking about iPhones and I told him it was a real good
18 phone. He asked me to add him onto my line and we went to
19 the Verizon store and I added him on.

20 Q. Why did you do that?

21 A. Because the way it was set up since he didn't have
22 wi-fi or no Internet, he would end up paying more than I
23 was on my bill.

24 Q. Did he buy the phone or did you buy the phone?

25 A. He bought the phone.

- 1 Q. But it was added onto your Verizon account?
- 2 A. Yes, sir.
- 3 Q. Do you recognize the number 603-498-3318?
- 4 A. Yes, sir. That's his iPhone number.
- 5 Q. That was his iPhone number?
- 6 A. Yes, sir.
- 7 Q. For that new phone that you put on your account?
- 8 A. Yes, sir. He asked for an out of state area code.
- 9 Q. Do you recognize the number 803-465-7280?
- 10 A. Yes, sir. That's my number -- or was my number.
- 11 Q. That was your Verizon account number?
- 12 A. Yes, sir.
- 13 Q. So prior to -- sometime between March when you started
- 14 hanging out and April 10th, Mr. Hart ended up with two
- 15 phones, correct?
- 16 A. Yes, sir.
- 17 Q. How many phones did you have?
- 18 A. One.
- 19 Q. Do you know why he had two phones?
- 20 A. He used one to sell drugs off of and he used the other
- 21 one for his family.
- 22 Q. So which one would he have called -- Paula was
- 23 somebody he sold to?
- 24 A. Yes, sir.
- 25 Q. Which one would he have used to talk to Paula on?

- 1 A. 803-348 number.
- 2 Q. April 10, 2013, do you remember that day?
- 3 A. Yes, sir.
- 4 Q. Start off earlier in the day. At that time were you
5 working?
- 6 A. Yes, sir.
- 7 Q. Where were you working at?
- 8 A. Wal-Mart at Ballentine.
- 9 Q. At where? I'm sorry.
- 10 A. Wal-Mart in Ballentine.
- 11 Q. Ballentine. What were your regular work hours?
- 12 A. Four to one.
- 13 Q. 4:00 PM to 1 AM?
- 14 A. Yes, sir.
- 15 Q. What did you do there?
- 16 A. I unload trucks and stocked. I was on the IMS team.
- 17 Q. The day of April 10, 2013, were you supposed to work
18 that day?
- 19 A. Yes, sir.
- 20 Q. So you would have had work scheduled 4 PM to 1 AM?
- 21 A. Yes, sir.
- 22 Q. Did you work the whole shift?
- 23 A. No, sir. I left. I walked out of work.
- 24 Q. Why did you walk out?
- 25 A. Because I was just tired of the job.

1 Q. Were you quitting or were you just done for the day?

2 A. Done for the day.

3 Q. When you left there, where did you go?

4 A. I went home, I changed clothes and I figured I wanted
5 some weed -- or I decided I wanted some weed and I called
6 Chris.

7 Q. You called who?

8 A. Chris.

9 Q. And after you called him, where did you go?

10 A. I went to the hospital, Lexington Hospital, to pick
11 him -- to get the weed, pick up the weed.

12 Q. What car were you driving?

13 A. My gold Marquis.

14 Q. And did you find Mr. Hart -- or you said Bhريس is what
15 you called him. Did you find him at the hospital?

16 A. Yes, sir.

17 Q. Let me show you what's in evidence as State's Number
18 23 and ask if you recognize that?

19 A. Yes, sir. That's Chris.

20 Q. Is that fair and accurate?

21 A. Yes, sir.

22 Q. And who are we seeing on there?

23 A. Chris walking towards the door and me standing by the
24 door.

25 Q. Do you remember what time that was?

- 1 A. No, sir, not exactly.
- 2 Q. After you met up with Chris at the hospital, what
3 happened next?
- 4 A. He asked me to drive him around to make some more
5 serves.
- 6 Q. When you say "serves", what does that mean?
- 7 A. Drug deals.
- 8 Q. Do you remember where you went?
- 9 A. I remember going to the Exxon on St. Andrews then we
10 went over like by Farrow Road.
- 11 Q. How many different serves did you do?
- 12 A. Three.
- 13 Q. All right. And what car were you using for those
14 three?
- 15 A. We used my car, the gold Marquis.
- 16 Q. What, if anything, happened on the way to the third
17 drug deal with your car?
- 18 A. It started jerking real bad, so he -- he told me we
19 can use his car and that's -- after the third drug deal we
20 went to get the Lincoln Town Car from his friend Black's
21 house.
- 22 Q. Black?
- 23 A. Yes, sir.
- 24 Q. Do you know Black's real name?
- 25 A. No, sir.

1 Q. Once you got over -- do you know what part of the --
2 where Black's house was?

3 A. It was off Two Notch.

4 Q. Off Two Notch?

5 A. Yes, sir.

6 Q. Was that in Richland County?

7 A. Yes, sir.

8 Q. Once you went there, what, if anything, did he say to
9 you next?

10 A. Once we got there, he had said could I take him --
11 take a female to go prostitute and that he'll give me some
12 more gas money.

13 Q. He asked you if you would take him to take a female to
14 go prostitute?

15 A. Yes, sir.

16 Q. And what did you say after that?

17 A. I said yeah, I will.

18 Q. Okay. Where did you end up going?

19 A. To the Waffle House off Sunset.

20 Q. Sunset Boulevard in Lexington over by the hospital?

21 A. Yes, sir.

22 Q. And did you pick up somebody?

23 A. Yes, sir.

24 Q. Prior to picking her up, did he tell you something
25 different about what the plan was?

- 1 A. Yes, sir. While we was turning off of Sunset and
2 turning into the Waffle House he said he was gonna set her
3 up to kill her.
- 4 Q. He was gonna do what?
- 5 A. Set her up to kill her.
- 6 Q. Set her up to kill her?
- 7 A. Yes, sir.
- 8 Q. And did you, in fact, pick up Paula Justice?
- 9 A. Yes, sir.
- 10 Q. At the Waffle House?
- 11 A. Yes, sir.
- 12 Q. Who was driving the car?
- 13 A. I was.
- 14 Q. Who was in the front passenger seat?
- 15 A. Chris.
- 16 Q. And when Paula got in the car, where did she go?
- 17 A. The back seat behind him.
- 18 Q. State's Number 22, do you recognize that?
- 19 A. Yes, sir.
- 20 Q. What does that show us?
- 21 A. Paula walking to the car.
- 22 Q. When Paula got in the car, did you know where to drive
23 her?
- 24 A. No, sir. Chris gave me directions as we was going.
- 25 Q. What, if any, conversation did you hear between

1 Mr. Hart and Ms. Justice in the car?

2 A. She -- they started talking about her prostituting
3 and then he asked her about a case she had going on with
4 Munchkin, Fat Boy.

5 Q. Do you know who Munchkin or Fat Boy's real name is?

6 A. No, sir.

7 Q. What do you remember Mr. Hart talking about with her
8 about her case at that point?

9 A. He asked her a question and she said that he told on
10 her -- that Munchkin told on her and that he said if he
11 ran into him he wasn't gonna fuck with him.

12 Q. Mr. Hart said that if he ran into Munchkin that he
13 wasn't gonna mess with him?

14 A. Yes, sir.

15 Q. And Paula said that Munchkin set her up?

16 A. Yes, sir. Set her up and told on her and got her
17 locked up.

18 Q. Did she appear -- what was her attitude in the car?

19 A. Carefree. She didn't -- she was just carefree.

20 Q. During the time that she was in the car with you, do
21 you think she had any idea what was getting ready to
22 happen?

23 A. No, sir.

24 Q. Did Mr. Hart -- what, if anything, did Mr. Hart say
25 about snitches during the car ride?

1 A. He said he don't -- he don't like snitches.

2 Q. Are you familiar with the Lumberjack area of Lexington
3 County?

4 A. No, sir.

5 Q. Had you ever been there before?

6 A. No, sir.

7 Q. When he said that he was going to set her up and kill
8 her, do you know how he intended to kill her?

9 A. No, sir.

10 Q. Did you know if he had a gun on him at the time before
11 Paula was picked up?

12 A. No, sir.

13 Q. Had you seen him with a gun before?

14 A. No, sir.

15 Q. State's Number 7, do you recognize that?

16 A. Yes, sir.

17 Q. Does that show the roads around where you went?

18 A. Yes, sir.

19 Q. And you said you weren't familiar with the area,
20 right?

21 A. No, sir.

22 Q. This is a laser pointer. If you'd point over there,
23 can you tell -- can you point out to the jury -- do you
24 remember which way you got there, which way you were coming
25 from?

1 A. Yes, sir. I -- can I stand up?

2 Q. Yes, sir.

3 **THE COURT:** Sure. He can stand up.

4 A. I came from that way and turned right there and parked
5 right there.

6 Q. You parked right there. Do you remember that being a
7 paved road or a dirt or a sand road?

8 A. Dirt road.

9 Q. So which way was the front of your car facing?

10 A. That road.

11 Q. Okay. Anything else unusual happen in your
12 conversation or in the conversation between Mr. Hart or
13 Ms. Justice during the car right over there?

14 A. Yes, sir. He got a phone call and they said hurry up,
15 buddy. We're restless.

16 Q. He said what? I'm sorry.

17 A. Hurry up, buddy. We're restless. That's what the
18 person on the phone said.

19 Q. Do you know what Mr. Hart said back?

20 A. I can't remember exactly. He just said we was on the
21 way.

22 Q. Do you know who he was talking to?

23 A. Yes, sir. It was a white man named Zeke.

24 Q. A white man named Zeke?

25 A. Yes, sir.

1 **MR. PHILLIPS:** Subject to the prior objection, late
2 discovery.

3 **THE COURT:** Subject to your objection.

4 BY MR. GRAHAM:

5 Q. Did you know who Zeke was at that time?

6 A. No, sir.

7 Q. Did you figure out who Zeke was later?

8 A. Yes, sir.

9 Q. Who -- who was -- how did you figure out who Zeke was?

10 A. I started selling him weed once Chris left and went to
11 New York.

12 Q. Within a couple of days of Paula being killed --

13 A. Yes, sir.

14 Q. -- you sold weed to a white guy named Zeke?

15 A. Yes, sir.

16 Q. And what was your understanding -- how old was Zeke?

17 A. If I had to guess, I'd say in his thirties.

18 Q. In his thirties?

19 A. Yes, sir.

20 Q. What did he look like?

21 A. He was a construction worker; a white guy, beard.

22 Q. Do you know where he lived?

23 A. No, sir.

24 Q. And that conversation happened on the way to this area
25 on Lumberjack?

1 A. Yes, sir.

2 Q. What happened after you got to Lumberjack?

3 A. Once I parked the car, both of them got out of the car
4 and walked up the road and I heard the gunshot and he ran
5 back to the car with the gun in his hand.

6 Q. So when you say run up the road, can you show the jury
7 what you're talking about?

8 A. I was parked there. They went up that way.

9 Q. Were you able to see how long -- how long after they
10 left the car was it before you heard the gunshot?

11 A. Roughly three minutes tops, if that long.

12 Q. Were you able to see in your rearview mirror or side
13 mirror? Did you turn around to see what was going on?

14 A. No, sir.

15 Q. Why not?

16 A. Because I was scared.

17 Q. How many gunshots did you hear?

18 A. One.

19 Q. When you heard the gunshot, what was the next thing
20 that happened?

21 A. He ran back to the car, got in the car and said go,
22 go, go.

23 Q. And what did he have with him at that time?

24 A. A gun.

25 Q. Had you ever seen that gun before?

1 A. No, sir.

2 Q. After you left -- well, he told you to go, go, go.

3 Where did you go?

4 A. I made a left and went all the way around the world it
5 felt like.

6 Q. Did you know where you were going or was he telling
7 you where to go?

8 A. No, sir. He pulled up Google maps on the phone and
9 that's how he was trying to get back to Columbia.

10 Q. At some point did you get stopped by the Lexington
11 County Sheriff's Department and the highway patrol?

12 A. Yes, sir.

13 Q. Is where was that at?

14 A. On the highway.

15 Q. Why were you stopped?

16 A. They said the tag was hanging off the bumper.

17 Q. What, if anything, did Mr. Hart say to you as you were
18 getting pulled over?

19 A. He just said be calm. He said if they find the gun to
20 take the charge for him.

21 Q. He said if they found the gun that you should take the
22 charge for him?

23 A. Yes, sir.

24 Q. As you were driving away before the traffic stop, did
25 Mr. Hart make any phone calls?

1 A. No, sir, not to my knowledge. I can't remember. I'm
2 sorry.

3 Q. You don't remember him making a phone call and saying
4 something on the speakerphone?

5 A. No, sir.

6 Q. Let me clarify and back up. I'm talking about after
7 he jumped in the car and said go, go, go before the traffic
8 stop.

9 A. Oh, yes, sir.

10 Q. Do you remember him -- that's my fault. I'm sorry I
11 confused you. After he jumped in the car and said go, go,
12 go, do you remember Mr. Hart making any phone calls?

13 A. Yes, sir.

14 Q. Do you know -- tell me about that phone call.

15 A. He just said it was done. He didn't -- he didn't put
16 much detail into the phone call.

17 Q. So he called somebody and said something like it's
18 done?

19 A. Yes, sir.

20 Q. Did he tell you who he was talking to?

21 A. No, sir.

22 Q. Prior to the car stop, what, if anything, did he tell
23 you about why he killed Paula?

24 A. Because she was a CI and that Munchkin hired him to
25 kill her for him so he wouldn't have to go to jail.

1 Q. So he told you -- that was prior to the traffic stop?

2 A. Yes, sir.

3 Q. He said that Munchkin hired him to kill Paula because
4 she was a CI?

5 A. CI, yes, sir.

6 Q. To stop Munchkin from going to jail?

7 A. Yes, sir.

8 Q. Did he say if he was getting paid to do it?

9 A. Yes, sir.

10 Q. Do you remember what he said?

11 A. He said he was getting paid \$10,000.

12 Q. And what, if anything, did he offer you?

13 A. He offered me five.

14 Q. Did you ever get any money from him?

15 A. No, sir.

16 Q. Was there any other conversation prior to the traffic
17 stop about why he killed Paula?

18 A. Basically she was -- because she was a snitch.

19 Q. Did he tell you anything about how it happened?

20 A. No, sir.

21 Q. About what he did on the road?

22 A. No, sir.

23 Q. So on I-20 when you get stopped by the police, he told
24 you be calm and if they find a gun you take the charge?

25 A. Yes, sir.

1 Q. Let me show you a photograph and ask if you recognize
2 this?

3 A. Yes, sir.

4 Q. Does that fairly and accurately represent a still shot
5 of the traffic stop on I-20?

6 A. Yes, sir.

7 **MR. GRAHAM:** Your Honor, the State would offer this
8 into evidence.

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

10 **THE COURT:** State's 23?

11 **THE COURT REPORTER:** No, 24.

12 **THE COURT:** 24. I'm sorry.

13 (State's Exhibit Number 24, a photograph, was marked
14 and admitted into evidence.)

15 BY MR. GRAHAM:

16 Q. Tevin, State's Number 24, I think, what is it we're
17 looking at?

18 A. The traffic stop of me and Chris sitting on the hood
19 of the police car.

20 Q. The vehicle in the background of the picture is?

21 A. Chris's Lincoln Town Car.

22 Q. The Lincoln Town Car. Which one is you? The one on
23 the left or the right?

24 A. On the left facing -- well, my head to the side right
25 there.

1 Q. And who is the individual on the right?

2 A. Chris.

3 Q. And when we're talking about Chris, we're talking
4 about the Defendant sitting over there, Chris Hart, right?

5 A. Yes, sir.

6 Q. What name did he use in his drug dealings?

7 A. KG.

8 Q. And did you have a name that you used when you were
9 with him dealing?

10 A. No, sir. People just -- my name is TD on the street,
11 but I guess somebody got it confused and they call me KB.

12 Q. Do you know where the gun was during the traffic stop?

13 A. Yes, sir. Under the passenger seat.

14 Q. Did the police find it?

15 A. No, sir.

16 Q. What were the police doing during this traffic stop?

17 A. Searching the car, but they were more focussed on the
18 trunk than anything because the trunk couldn't open.

19 Q. Did they bring out a drug dog?

20 A. Yes, sir.

21 Q. Do you know whether the drug dog alerted? I mean, did
22 they -- tell me about the search of the car by the police.
23 What were they doing?

24 A. They were searching around the car with the dog and
25 the dog sat down, but they didn't find anything. And, like

1 I was saying, they was more focussed on the trunk because
2 the truck couldn't open, so they were trying to get back
3 there.

4 Q. Prior to getting to the 44 when you were on the road
5 after Bhريس jumped in and said go, go, go and made a phone
6 call, do you know which phone he used to make that phone
7 call?

8 A. Yes, sir. The black flip phone.

9 Q. Do you know what happened to that black flip phone?

10 A. Yes, sir. He took the battery out and threw it out
11 and then like twenty minutes down the road, we were going
12 down this long road, he threw the rest of the phone out.

13 Q. Was that -- did he throw the phone out before or after
14 the traffic stop?

15 A. Before.

16 Q. At the time of the traffic stop, do you know if he
17 made any phone calls?

18 A. No, sir.

19 Q. After -- well, did y'all get arrested at the traffic
20 stop?

21 A. No, sir.

22 Q. They let you go?

23 A. Yes, sir, with a warning ticket. They just took the
24 license plate.

25 Q. They took the license plate?

1 A. Yes, sir.

2 Q. Once you got done at the traffic stop and let go,
3 where did y'all go?

4 A. The truck stop, 44. We got off on the next exit and
5 it was right there.

6 Q. Just a little further up from the traffic stop right
7 there on I-20?

8 A. Yes, sir.

9 Q. Who told you to go there?

10 A. Chris.

11 Q. Did he tell you why he wanted to go there?

12 A. No, sir, but I figured because we didn't have a
13 license plate so we couldn't drive the rest of the way to
14 Columbia.

15 Q. When you got to the 44 Truck Stop, what happened?

16 A. Chris met this white dude and got in the car with him
17 and they followed behind me.

18 Q. I'm gonna show you another photograph from a different
19 security camera and ask if you recognize that one?

20 A. Yes, sir.

21 Q. And does that fairly and accurately represent what you
22 remember happening at the 44 Truck Stop?

23 A. Yes, sir.

24 **MR. GRAHAM:** Your Honor, the State would offer that
25 into evidence.

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

2 **THE COURT:** State's 25.

3 (State's Exhibit Number 25, a photograph, was marked
4 and admitted into evidence.)

5 BY MR. GRAHAM:

6 Q. Let me hand you that back again and get you to stand
7 up. Do you see the Lincoln Town Car that you drove?

8 A. Yes, sir. Back there.

9 Q. Okay. The white boy that you say that you met at the
10 44 Truck Stop, where is he?

11 A. Right there on the driver's side of the vehicle.

12 Q. Do you see Mr. Hart in that photograph?

13 A. Yes, sir. He's standing right there.

14 Q. Do you see yourself?

15 A. Yes, sir. I'm right there.

16 Q. Okay. What was the plan -- was the plan to leave the
17 car there or was the plan to drive the car away?

18 A. As far as my understanding, he just told me to drive
19 the car and they was gonna follow behind me because I
20 didn't have a license plate on the car.

21 Q. So after y'all were at the 44, who left the 44 and in
22 what kind of vehicle was everybody in?

23 A. I was driving the Lincoln Town Car and he was riding
24 with the white guy.

25 Q. And where did y'all go from there?

1 A. To the Delta Motel.

2 Q. Tell me about what happened when you got to the Delta
3 Motel.

4 A. I backed the car in and they pulled up and parked in
5 the front of Tina's room and got out of the car. Chris
6 said something to the white guy as I was walking up and
7 both of us went into Tina's room.

8 Q. Do you know -- who told you to go to the Delta Motel?

9 A. Chris.

10 Q. Do you know why?

11 A. No, sir.

12 Q. What was your understanding about going to the Delta
13 Motel as relates to the Lincoln?

14 A. It was the closest place, I guess, is all I know.

15 Q. I want to show you State's 18 and 19 that are in
16 evidence and ask you if you recognize those two photos?

17 A. Yes, sir.

18 Q. Do they fairly and accurately represent what you
19 remember that night?

20 A. Yes, sir.

21 Q. State's Number 18 at the Delta Motel, there's a
22 vehicle here with the headlights on. What is that?

23 A. The Lincoln Town Car. That's me backing it in.

24 Q. And who's driving that?

25 A. Me.

1 Q. This car over here?

2 A. That's the white guy's car.

3 Q. And who is that standing right there?

4 A. Chris.

5 Q. State's Number 19, do you recognize that?

6 A. Yes, sir.

7 Q. The Town Car's lights are off. Who is that walking
8 across the lot?

9 A. Me.

10 Q. And who is that?

11 A. The white guy.

12 Q. So where did Bhريس go after he got out of the car?

13 A. To Tina's room.

14 Q. Do you know Tina's last name?

15 A. No, sir.

16 Q. Is Tina -- what do you know about Tina?

17 A. I just know that she use crack.

18 Q. Is that somebody that Mr. Hart sold to?

19 A. Yes, sir.

20 Q. That KG sold to?

21 A. Yes, sir.

22 Q. Did the people that he sold drugs to, to the best of
23 your knowledge, what name did they know him by?

24 A. KG.

25 Q. And which phone did he use with those people?

- 1 A. The black flip phone. The 803-348 number.
- 2 Q. Do you know what happened inside -- did you go in
- 3 Tina's room?
- 4 A. Yes, sir.
- 5 Q. What was going on in there?
- 6 A. Nothing. We was just trying to find a ride home and
- 7 basically we were stranded, so I called my friend Vince to
- 8 come get us.
- 9 Q. So whose idea was it to leave the Town Car there?
- 10 A. Chris.
- 11 Q. You called your friend Vince?
- 12 A. Yes, sir.
- 13 Q. And did Vince come and pick you up?
- 14 A. Yes, sir.
- 15 Q. And who else was with you?
- 16 A. Chris.
- 17 Q. Did you tell Vince about what happened?
- 18 A. No, sir.
- 19 Q. So after Vince picked you up, where did y'all go?
- 20 A. We went to the mother of my child's. We went to her
- 21 house.
- 22 Q. And what's her name?
- 23 A. Jocelyn.
- 24 Q. Who went there?
- 25 A. Me and Chris. Vince dropped us off.

1 Q. Vince dropped you both off there?

2 A. Yes, sir.

3 Q. What happened next?

4 A. That's when Jocelyn took us to get my car from Black's
5 house and then I took Chris home to Jessie's house and I
6 went back to Jocelyn's house.

7 Q. Where did you take Mr. Hart to?

8 A. Jessie's house.

9 Q. That's his baby's momma?

10 A. Yes, sir.

11 Q. And what, if anything, did he say to you when y'all
12 were alone about what happened? After Vince dropped the
13 two of y'all off until you dropped him off when you guys
14 were alone in the car and you ended up dropping him back
15 off at Jessica's house, what did y'all talk about?

16 A. It was really just silence. We just really didn't
17 talk about anything.

18 Q. When's the next time that you remember hearing from
19 Bhris?

20 A. The next day.

21 Q. Was that you calling him or him calling you or how did
22 you get in touch?

23 A. I think he called -- to be honest, I can't remember
24 who called who. I don't know if I called him or he called
25 me, but he ended up coming over and I helped him throw away

1 the gun.

2 Q. He called you or you called him, you don't remember?

3 A. No, sir, I don't.

4 Q. But the conversation was about what?

5 A. Throwing away the gun.

6 Q. Throwing away the gun?

7 A. Yes, sir.

8 Q. So tell me about throwing away the gun.

9 A. He asked me if I knew a place, I told him yeah and
10 that's when we went to Chestnut Hill Plantation and back by
11 the clubhouse.

12 Q. So what vehicle -- who drove?

13 A. I drove.

14 Q. Which car did you take?

15 A. I used the mother of my kid's, Jocelyn's. I used her
16 car.

17 Q. And did you pick Mr. Hart up or did he come to your
18 girlfriend's place where you were at?

19 A. He got dropped off over there.

20 Q. All right. And then you said that you drove him in
21 your girlfriend's car to where?

22 A. To Chestnut Hill Plantation to the clubhouse to throw
23 away the gun.

24 Q. Whose idea -- well, you threw it in where?

25 A. In the pond.

1 Q. Whose idea was that?

2 A. It was his idea to throw it in the pond, but it was my
3 idea to go to Chestnut Hill Plantation that day.

4 Q. Let me show you another photograph and ask you if you
5 recognize this?

6 A. Yes, sir.

7 Q. And would that help you -- is that fair and accurate
8 for the Chestnut Hill Plantation area?

9 A. Yes, sir.

10 **MR. GRAHAM:** Your Honor, the State would offer this
11 into evidence at this time.

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

13 **THE COURT:** 26 is admitted without objection.

14 (State's Exhibit Number 26, a photograph, was marked
15 and admitted into evidence.)

16 BY MR. GRAHAM:

17 Q. State's 26, you recognize that, correct?

18 A. Yes, sir.

19 Q. When you drove to the Chestnut Hill Plantation, which
20 way did you come in?

21 A. The -- from that way.

22 Q. And which way did you go?

23 A. To there.

24 Q. And where did you stop at?

25 A. I stopped right there. I circled around the parking

1 lot and stopped right there.

2 Q. And where is the pond that Mr. Hart threw it in?

3 A. Right there.

4 Q. Did he say anything to you about throwing the gun
5 other than he wanted to get rid of it?

6 A. No, sir.

7 Q. Did he ever say anything about that gun belonging to
8 anybody else?

9 A. No, sir.

10 Q. Did he say why he was concerned about throwing the gun
11 away?

12 A. No, sir.

13 Q. After throwing the gun away, you were in Jocelyn's
14 car, where did y'all go?

15 A. Went back to Jocelyn's house.

16 Q. And what did y'all do next?

17 A. Well, we smoked. I went back to work later on and
18 ended up leaving -- walking out again.

19 Q. You went back to work at Wal-Mart?

20 A. Yes, sir, and I walked out.

21 Q. And that would have been the day of the 11th right
22 after the murder?

23 A. Yes, sir.

24 Q. And your hours, again, were four to one?

25 A. Yes, sir.

1 Q. So you would have gone to work at four, but you walked
2 out again?

3 A. Yes, sir.

4 Q. Do you know what Mr. Hart was doing during that time?

5 A. No, sir.

6 Q. So after you went to work, do you know where you left
7 him?

8 A. Yes, sir, at Jocelyn's house.

9 Q. When you got off work, where did you go?

10 A. Back to Jocelyn's house.

11 Q. And when you got there, who was there?

12 A. Chris.

13 Q. And what, if anything, did he talk to you about?

14 A. He was talking about getting a motel room.

15 Q. Who wanted a hotel room?

16 A. Chris did.

17 Q. Did he tell you why?

18 A. No, sir.

19 Q. How was he acting?

20 A. He was acting like nothing happened.

21 Q. So tell me about getting a hotel room.

22 A. We had went -- Jocelyn went with us. I had talked her
23 into getting it in her name, she didn't want to, but -- I
24 didn't make her do it, but I told her just don't ask no
25 questions and just do me this favor. She did it. She got

1 the -- he paid for the -- he gave her the money for the
2 room and she went and paid for it.

3 Q. So Jocelyn went and got a room for Mr. Hart?

4 A. Yes, sir.

5 Q. Do you remember where at?

6 A. I don't remember the exact name of the hotel, but it's
7 off of Fernandina right over there by Piney Grove behind
8 the Sunoco.

9 Q. And who paid for it?

10 A. Chris did.

11 Q. How did he pay for it?

12 A. Cash.

13 Q. To Jocelyn?

14 A. Yes, sir.

15 Q. And then Jocelyn went and got the room in her name?

16 A. Yes, sir.

17 Q. Did he tell you why he needed a room?

18 A. No, sir.

19 Q. Now he had just had a baby, right?

20 A. Yes, sir.

21 Q. Did he tell you why he wasn't spending time with
22 Jessica and his new baby, M. ?

23 A. No, sir.

24 Q. Did he ever tell you that the police had contacted
25 him?

1 A. No, sir.

2 Q. What were you thinking about your relationship with
3 him at this point?

4 A. It was -- it was a messed up relationship.

5 Q. What's the next thing that happened? You got him a
6 room. That would have been the evening of the -- or
7 sometime on the 11th after you got off of work from
8 Wal-Mart, right?

9 A. Yes, sir.

10 Q. When's the next time you saw him again?

11 A. The next day.

12 Q. I'm sorry?

13 A. The next day.

14 Q. The next day, the 12th?

15 A. Yes, sir.

16 Q. And tell me about that. When did you see him?

17 A. I seen him early that morning. He asked me to get him
18 a bus ticket.

19 Q. All right. So tell me about that. What, if any,
20 conversations happened between you and Mr. Hart about a bus
21 ticket?

22 A. He said he was hot. He had to go to New York.

23 Q. He said what?

24 A. He said he was hot. He needed to go to New York.

25 Q. Did he say why he needed to go to New York?

- 1 A. He just said he was hot. Like the police were on him.
- 2 Q. Did he give you any details about that?
- 3 A. No, sir.
- 4 Q. Who bought the ticket?
- 5 A. I did.
- 6 Q. Who paid for the ticket?
- 7 A. I did.
- 8 Q. Whose ID got used to buy the ticket?
- 9 A. Mine.
- 10 Q. He bought a ticket in your name, Tevin Deloach?
- 11 A. Yes, sir.
- 12 Q. And you gave the ticket --
- 13 A. To Chris, yes, sir.
- 14 Q. And then what did he do?
- 15 A. He got on the bus later on that night and went to
- 16 New York.
- 17 Q. Do you remember the first time the police contacted
- 18 you?
- 19 A. No, sir -- well, yes, sir. I was sitting in the
- 20 parking lot with Jocelyn when they pulled up on me.
- 21 Q. Where was that at?
- 22 A. Off Broad River. I can't -- it's off of Broad --
- 23 behind the old bowling alley.
- 24 Q. And did you -- what vehicle were you in?
- 25 A. My gold Marquis.

1 Q. Your car, your Marquis?

2 A. Yes, sir.

3 Q. At some point after that, did you end up being
4 interviewed by Detective Spivey?

5 A. Yes, sir.

6 Q. Did you tell him the whole story the very first time
7 he started asking questions?

8 A. No, sir, I didn't. I lied.

9 Q. Why did you lie?

10 A. To be honest, because I tried to stick to the code of
11 the streets, no snitching, but I ended up snitching anyway.

12 Q. Have you had any more conversations with Mr. Hart
13 since he went to New York?

14 A. No, sir.

15 Q. You made bond and got out of jail on the murder
16 charge; is that right?

17 A. Yes, sir.

18 Q. After you got out, at some point you got arrested
19 again, didn't you?

20 A. Yes, sir.

21 Q. That was over in Richland County?

22 A. Yes, sir.

23 Q. Which is where you're at now?

24 A. Yes, sir.

25 Q. That was a -- you were charged with burglary?

- 1 A. Yes, sir.
- 2 Q. Grand larceny?
- 3 A. Yes, sir.
- 4 Q. And a weapons charge --
- 5 A. Yes, sir.
- 6 Q. -- is that right? Possession of a weapon?
- 7 A. Unlawful carrying, yes, sir.
- 8 Q. Did you confess to that?
- 9 A. Yes, sir.
- 10 Q. What did you confess to?
- 11 A. Of being in the area when the burglary happened, but
- 12 like I had on an ankle monitor, so they know I wasn't in
- 13 the house or the yard.
- 14 Q. Are you guilty of that burglary?
- 15 A. By the hands of one, the hands of all, yes, sir.
- 16 Q. And you have a different prosecutor on that case?
- 17 A. Yes, sir.
- 18 Q. Has that person made any promises to you about
- 19 testifying in this trial today?
- 20 A. No, sir. I never talked to them.
- 21 Q. You haven't even talked to them?
- 22 A. No, sir.
- 23 Q. And you understand that those charges aren't under
- 24 control by the Lexington County Solicitor's Office?
- 25 A. Yes, sir.

1 Q. Is everything you said the truth today?

2 A. Yes, sir.

3 Q. Let me show you a phone and ask if you recognize this
4 one?

5 A. Yes, sir. That one's mine.

6 Q. That's your phone?

7 A. Yes, sir.

8 Q. When you got arrested, did that phone go to Detective
9 Spivey there?

10 A. Yes, sir.

11 Q. And you only had one phone?

12 A. Yes, sir.

13 **MR. GRAHAM:** The State would offer this into evidence,
14 Your Honor.

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

16 **THE COURT:** State's 27 is in evidence.

17 (State's Exhibit Number 27, a cell phone, was marked
18 and admitted into evidence.)

19 **MR. GRAHAM:** Thank you, Mr. Deloach. Please answer
20 any questions Mr. Phillips has for you.

21 CROSS-EXAMINATION

22 BY MR. PHILLIPS:

23 Q. Good afternoon, Mr. Deloach.

24 A. Good afternoon.

25 Q. You're facing life in prison without parole on this

1 charge?

2 A. Yes, sir.

3 Q. You could die in prison?

4 A. Yes, sir.

5 Q. The solicitor brought up the fact that you were out on
6 bond.

7 A. Yes, sir..

8 Q. While out on bond you picked up a burglary first,
9 grand larceny and possession of a weapon charge?

10 A. Yes, sir.

11 Q. On that burglary first charge, you're also facing life
12 in prison without parole?

13 A. Yes, sir..

14 Q. So you have two charges for which you could die in
15 prison?

16 A. Yes, sir.

17 Q. Two charges where you're not guilty of anything, just
18 wrong place, wrong time, wrong crowd, somebody else's
19 fault?

20 **MR. GRAHAM:** Your Honor, he's misstating what the
21 testimony was. I would object that the wording of that
22 question is not what he testified to.

23 **THE COURT:** Rephrase your question. I sustain that.

24 BY MR. PHILLIPS:

25 Q. You said you weren't even there for the burglary,

1 right?

2 A. I was -- I was in the area.

3 Q. In the area. You said also you confessed to it?

4 A. Yes, sir.

5 Q. Burglary is a breaking and entering, crossing the
6 threshold. How can you be --

7 **THE COURT:** Let's don't try that case.

8 **MR. PHILLIPS:** I know.

9 BY MR. PHILLIPS:

10 Q. But on trustworthiness you said you confessed, but
11 you also said you didn't do it or you weren't in the --
12 you were just in the area?

13 A. Hands of one, hands of all.

14 Q. And that seems to be the theme with you. As it just
15 so happens, both cases that you're facing life in prison
16 without parole it's someone else who did the crime?

17 A. Yes, sir.

18 Q. And that you've confessed to both of them?

19 A. Yes, sir.

20 Q. And that you initially in this case denied knowing
21 anything about Paula being killed?

22 A. Not until right before it happened when we was turning
23 into the Waffle House.

24 Q. Now you've told police before that that wasn't the
25 case, you didn't know anything was gonna happen until

1 afterwards?

2 A. I lied.

3 Q. That being the case, it's your story that you called
4 Chris Hart for weed?

5 A. Yes, sir, I did.

6 Q. You met with him, you bought weed, you smoked it, he
7 paid you \$50 to drive around; is that right?

8 A. Yes, sir.

9 Q. That wasn't unusual?

10 A. No, sir.

11 Q. You drove him around all the time?

12 A. Yes, sir..

13 Q. And after being paid \$50 to drive around numerous
14 places and sell drugs out of nowhere as you're pulling into
15 the Waffle House he looks over to you and says he's going
16 to kill someone?

17 A. Yes, sir. He said he was gonna set her up to kill
18 her.

19 Q. And he didn't know you'd be okay with it, he paid you
20 fifty bucks and y'all had been selling marijuana and out
21 of the blue he's gonna say he's taking them there to kill
22 someone?

23 A. Are you done with your question?

24 Q. Yes.

25 A. Yeah.

1 Q. And you testified that when going to the scene you
2 parked right here where my finger is?

3 A. No, sir, farther back.

4 Q. How far back? Right here?

5 A. Yes, sir.

6 Q. And that you were facing the opposite direction than
7 what Chris Hart and Paula Justice walked away from?

8 A. Yes, sir.

9 Q. And you didn't see Paula get shot?

10 A. No, sir.

11 Q. And you testified that three minutes pass by the time
12 they got out of the car?

13 A. That's what it seemed like. It wasn't exactly
14 three minutes, but they walked up the dirt road.

15 Q. But it definitely wasn't instant?

16 A. No.

17 Q. And not being able to see and having that amount of
18 time, you don't know what happened out there other than
19 you heard a gunshot and Chris Hart came back to the car?

20 A. With a gun.

21 Q. And you didn't see that gun before?

22 A. No, sir.

23 Q. He didn't say anything about a gun and you never saw
24 the gun?

25 A. No, sir.

1 Q. Let's talk about the phone call since we're on the
2 issue of lying. You said that it was on the speakerphone
3 and you heard someone say we're almost there, buddy, and
4 that they said hurry up, we're getting restless. The
5 first time you ever testified -- or the first time you ever
6 let anybody know about this Zeke fellow being the one on
7 the phone was within the last week, four years later?

8 A. When I recognized his voice. They asked me did I
9 recognize his voice. I told them yes.

10 Q. That's interesting you say that. You told
11 Investigator Spivey four years ago specifically that you
12 didn't know Zeke that well and it didn't sound like him
13 when Chris was on the speakerphone?

14 A. I did. I did lied.

15 Q. So four years ago when you said it didn't sound like
16 Zeke on the speakerphone, that was a lie?

17 A. Yes, sir.

18 Q. And now today for the first time or within the last
19 week, four years later in preparation for trial with the
20 solicitor's office, it does sound like Zeke?

21 A. Yes, sir.

22 Q. And you said you didn't get any deals in this case?

23 A. No, sir.

24 Q. No talk about accessory after the fact?

25 A. No, sir.

1 Q. Not trying to limit your liability?

2 A. No, sir.

3 Q. No talking about it? It never came up?

4 A. No, sir. My job is just to tell the truth.

5 Q. You never discussed that with your attorney?

6 A. No, sir.

7 Q. Accessory after the fact never came up?

8 A. No, sir.

9 **MR. GRAHAM:** Asked and answered.

10 **MR. PHILLIPS:** Yes, sir. I'm moving on.

11 **THE COURT:** All right.

12 BY MR. PHILLIPS:

13 Q. With the traffic stop with highway patrol, did John
14 Hart have any blood on him?

15 A. No, sir.

16 Q. Because you had two police officers right there.
17 Y'all were out of the car.

18 A. Yes, sir.

19 Q. It's all on video.

20 A. Yes, sir.

21 Q. But there's no blood on John Hart?

22 A. No, sir.

23 Q. And this traffic stop, how long was that after this
24 happened?

25 A. Roughly an hour.

1 Q. Did he go change clothes?

2 A. No, sir.

3 Q. And he never had blood on him?

4 A. Not that I saw.

5 **MR. PHILLIPS:** I beg the Court's indulgence.

6 I think that's enough questions. Thank you.

7 **THE COURT:** Redirect?

8 **MR. GRAHAM:** No, Your Honor.

9 **THE COURT:** Mr. Deloach, you may step down.

10 (Witness excused.)

11 **MR. McNAIR:** The State calls Jozelyn Smith.

12 **THE COURT:** Wait a minute. It's time for a break.

13 **MR. McNAIR:** Okay. Sorry, Your Honor.

14 **THE COURT:** That's okay. I didn't give you any
15 warning.

16 All right. Let's step in the jury room and have a
17 short break and I'll get y'all right back in here in a few
18 minutes. Don't discuss the case.

19 (Whereupon, the jury retires to the jury room at
20 3:10 PM.)

21 **THE COURT:** All right. We'll stand at ease for about
22 ten minutes.

23 (Recess taken.)

24 **THE COURT:** All right. Are we ready for the jury?

25 **MR. GRAHAM:** Yes.

1 **THE COURT:** All right. Bring them in, please.

2 (Whereupon, the jury returns to the courtroom at
3 3:19 PM.)

4 **THE COURT:** All right. Call your witness.

5 **MR. McNAIR:** Thank you, Your Honor. The State calls
6 Jozelyn Smith.

7 (Whereupon, Jozelyn Smith was duly sworn by the Clerk
8 of Court.)

9 **THE CLERK:** Have a seat right there, ma'am. Once
10 you're seated, state your full name, spelling your last,
11 please.

12 **THE WITNESS:** My name is Jozelyn Smith, S-M-I-T-H.

13 JOZELYN SMITH,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. McNAIR:

17 Q. Ms. Smith, how are you doing today?

18 A. I'm fine.

19 Q. Can you tell the jury how you know Tevin Deloach?

20 A. He's my babies' father.

21 Q. All right. How long have you known Tevin for?

22 A. We went to middle school together, so about a while.
23 Like six, seven years.

24 Q. How many kids do you have together?

25 A. Two.

1 Q. Now back in April of 2013, were you and Tevin together
2 at that time?

3 A. Off and on.

4 Q. All right. Was he living with you at that time?

5 A. He had things at my place here and there, but, no, he
6 resided at his mom's.

7 Q. He stayed there sometimes, but not all the time?

8 A. Yes, sir.

9 Q. Back in April of 2013, did you know a friend of his
10 named Chris Hart?

11 A. Yes, sir.

12 Q. All right. What name did you know him by?

13 A. Bhريس.

14 Q. Now do you know how Tevin and Bhريس connected back
15 during that time?

16 A. I think they were going to the GED school together.

17 Q. All right. Now when did you first meet Bhريس?

18 A. I was asked to get a room for them.

19 Q. That was the first time that you had ever met him face
20 to face?

21 A. Yes, sir.

22 Q. Tevin, I guess, had talked about him before, but that
23 was the first time you met him face to face?

24 A. Yes, sir.

25 Q. And, I guess, tell us more about him wanting you to

1 get them a room.

2 A. Well, I guess, both of them didn't have any
3 identification and at that time I probably didn't have any
4 money or whatever, so they asked if I could get the room.
5 and I did.

6 Q. Do you remember where that conversation took place?

7 A. Outside the hotel.

8 Q. All right. Do you remember what hotel?

9 A. Quality Inn or Quantity, something like that.

10 Q. And who asked you to get the room?

11 A. His friend did. Bhريس did.

12 Q. Bhريس did?

13 A. Uh-huh.

14 Q. What was your response?

15 A. I got it, but I wasn't sure. I was like why are you
16 asking me to get it, why isn't he asking me? Why isn't my
17 babies' father asking me to get the room.

18 Q. And did you, in fact, get a room for them?

19 A. Yes, I did.

20 Q. And who did you give the key to?

21 A. Tevin.

22 (State's Exhibit Number 28 was marked for
23 identification.)

24 BY MR. McNAIR:

25 Q. All right. I'm gonna show you what's been premarked

1 as State's Exhibit 28 and can you tell me whether this is
2 a copy of the room receipt you got?

3 A. Yes, sir, it is.

4 **MR. McNAIR:** All right. Your Honor, we'd offer
5 State's 28 into evidence at this point.

6 **MR. PHILLIPS:** No objection.

7 **THE COURT:** State's 28, a copy of the room receipt.

8 (State's Exhibit Number 28, a room receipt, was
9 admitted into evidence.)

10 BY MR. McNAIR:

11 Q. And that is your name and address on that receipt?

12 A. At the time, yes, sir.

13 Q. And the arrival date on this receipt is April 11,
14 2013?

15 A. Yes, sir.

16 Q. All right. The departure date was April 12, 2013,
17 correct?

18 A. Yes, sir.

19 Q. All right. And you paid for that room?

20 A. No, the cash was given to me.

21 Q. All right. Who gave you the cash for the room?

22 A. Bhريس did.

23 Q. After you got the room at the Quality Inn, did Tevin
24 come stay with you at your house?

25 A. Yes, sir.

1 Q. And was that something new? I guess, had he been
2 staying with you consistently prior to that?

3 A. I'm not sure at that date, at that time, but he's been
4 off and on. That's always.

5 Q. Well, after they got the room, did he, in fact, come
6 and stay at your house?

7 A. Yes, sir.

8 Q. And did he stay with you up until the time of his
9 arrest?

10 A. Yes, sir.

11 Q. Now at some point in time, did you see something
12 in his possession that made you believe he was going
13 somewhere?

14 A. Yes, sir. I saw a Greyhound ticket.

15 Q. Okay. Did you ask him about that?

16 A. Yes, sir.

17 Q. Who was that ticket for?

18 A. He said it wasn't for him, it was for his friend
19 Chris.

20 Q. Did you ask anymore questions about that?

21 A. He didn't want to answer them.

22 Q. Okay.

23 **MR. McNAIR:** That's all the questions I have. Thank
24 you.

25 **MR. PHILLIPS:** I don't have any questions.

1 **THE COURT:** You can step down, Ms. Smith.

2 **THE WITNESS:** Thank you.

3 (Witness excused.)

4 **MR. McNAIR:** Your Honor, the State calls Briteny
5 Baker.

6 (Whereupon, Briteny Baker was duly sworn by the Clerk
7 of Court.)

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

10 **THE WITNESS:** My name is Briteny Baker, B-A-K-E-R.

11 BRITENY BAKER,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. McNAIR:

15 Q. Ms. Baker, where are you currently working?

16 A. KFC.

17 Q. Do you have an interview for today at 3:30 for another
18 job?

19 A. Yes, sir.

20 Q. I apologize for messing that up.

21 A. Yes, sir.

22 Q. All right. Where you were you living back in April of
23 2013?

24 A. America's Best Value.

25 Q. And did you know Paula Justice at that time?

1 A. Yes, sir.

2 Q. Where did she live?

3 A. At America's Value.

4 Q. All right. When did you first meet Paula?

5 A. It was like two or three days before she was killed.

6 Q. All right. Now I guess at some point -- or did you
7 learn she was killed?

8 A. She had -- the day she had got killed she had told
9 me that -- you know, I had been hanging out with her
10 throughout the day. She told me some guys were coming to
11 pick her up and I had let her -- she didn't have money to
12 pay for her room that morning, I had let her borrow the
13 money to pay for her room. And I kept calling her phone
14 that night. She told me she was bringing me the money
15 back. I kept calling her phone, she didn't answer her
16 phone. I walked to go knock on her room door and when I
17 walked to knock on her room door investigators and
18 detectives were all outside in the lobby and I guess just
19 me being nosey, I started asking what they were there for,
20 and that's when they told me.

21 Q. Okay. So the day you learned that she had died or
22 been killed, you had seen her earlier that day?

23 A. Yes, sir.

24 Q. Where did you see her earlier that day?

25 A. At America's Best Value.

1 Q. In your room or her room or somebody else's room?

2 A. We was in the -- back and forth between the lobby, my
3 room and her room.

4 Q. Now were you with her when she left to go somewhere?

5 A. Yes, sir.

6 Q. Did you know where she was going?

7 A. She told me she was going with a guy named KG.

8 Q. And for what reason was she going with a guy named KG?

9 A. She had told me that she was going with him because
10 they had lined up some guys for her to go trick with.

11 Q. And you said you had paid her rent, she owed you
12 money?

13 A. Yes, sir.

14 Q. So she was gonna go with KG?

15 A. Yes, sir.

16 Q. To do a trick?

17 A. Yes, sir.

18 Q. Had you ever met a guy named KG?

19 A. No, sir.

20 **MR. McNAIR:** That's all the questions I have. Answer
21 any questions Mr. Phillips has.

22 CROSS-EXAMINATION

23 BY MR. PHILLIPS:

24 Q. Good afternoon, Ms. Baker.

25 A. Hey.

1 Q. You were very familiar with Paula?

2 A. I wasn't very familiar. Like I said before, I only
3 had met her two days, three days prior to her getting
4 killed. So I wasn't very familiar, but I was familiar
5 with her.

6 Q. She was in the same prior line of work, prostitution?

7 A. I was not in the same prior, no. What she did had
8 nothing to do with what I -- I mean, no, I was a single
9 mother. I lived at the motel with my kids and my baby's
10 daddy.

11 Q. You said that Paula told you that KG was coming to
12 pick her up and that they were going to meet two people?

13 A. Yes, sir.

14 Q. That were his friends?

15 A. Whose friends they were, she didn't tell me. She was
16 going to meet two people to trick to get money and she was
17 gonna come back and give me my money for her room.

18 Q. And if you were to say in your statement -- I can
19 certainly bring it to you to refresh your memory, but if
20 you were to tell police that she said that it was two of
21 his friends that they were going to meet, your memory would
22 be better then than it is now?

23 A. Yes, sir.

24 Q. And that she was gonna be paid \$150 for each guy; is
25 that right?

1 A. Yes, sir.

2 Q. And she certainly didn't hide the fact of who she was
3 gonna meet and what she was going to do?

4 A. No, sir.

5 Q. And as far as KG was concerned, had you seen him
6 around the motel?

7 A. No, sir. I had seen him at Crystal Hartless's room
8 prior to even knowing Paula. I had seen him -- never
9 personally seen him, but seen him coming and going.

10 Q. Okay. So you knew who he was?

11 A. From a distance I'd seen his face. Never up close.
12 I've never talked to him, he's never talked to me. Just
13 from knowing Crystal, Paula and Tina is where KG comes in.

14 **MR. PHILLIPS:** Just a moment, Your Honor. No further
15 questions, Your Honor.

16 **THE COURT:** Okay. Anything else?

17 **MR. McNAIR:** Real quick, Your Honor.

18 (State's Exhibit Number 29 was marked for
19 identification.)

20 REDIRECT EXAMINATION

21 BY MR. McNAIR:

22 Q. All right. I'll show you State's 29. Tell me whether
23 or not you recognize this picture.

24 A. That's Paula.

25 **MR. McNAIR:** All right. We offer State's 29 into

1 evidence.

2 **THE COURT:** Any objection?

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

4 **THE COURT:** State's 29 is in with objection.

5 (State's Exhibit Number 29, a photograph, was admitted
6 into evidence.)

7 BY MR. McNAIR:

8 Q. That's the lady you knew as Paula Justice?

9 A. Yes, sir.

10 **MR. McNAIR:** All right. No further questions.

11 **THE COURT:** All right. You can step down.

12 (Witness excused.)

13 **MR. McNAIR:** Your Honor, the State calls William
14 Patterson.

15 (Whereupon, William Patterson was duly sworn by the
16 Clerk of Court.)

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

19 **THE WITNESS:** William Patterson, P-A-T-T-E-R-S-O-N.

20 WILLIAM PATTERSON,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. McNAIR:

24 Q. Deputy Patterson, how long have you been employed by
25 the Lexington County Sheriff's Department?

1 A. Since February of 2006.

2 Q. What's your current position there?

3 A. Senior deputy with the traffic division.

4 Q. All right. And were you on duty the night of
5 April 10, 2013?

6 A. Yes, sir, I was.

7 Q. Who were you working with that night?

8 A. I was appointed as part of a joint task force with
9 another member of the sheriff's department's traffic
10 division, as well as the South Carolina Highway Patrol,
11 assigned to our criminal enforcement unit.

12 Q. Okay. And what are the names of the officers you were
13 working with?

14 A. Deputy Jason Jones and Trooper Sammy Bird.

15 Q. Now that night were you involved in the traffic stop
16 of a Lincoln Town Car?

17 A. Yes, sir. I actually came to work on the 10th, but I
18 actually stopped the vehicle on the morning of the 11th
19 just after midnight.

20 Q. What time was that vehicle pulled over?

21 A. It was about five minutes after midnight on
22 April 11th.

23 Q. Why did you pull that over?

24 A. When the vehicle came past me, the tag was sitting at
25 an angle, it looked like it was possibly gonna fall off the

1 vehicle. South Carolina state law states that a license
2 tag has to be horizontal, so I initiated a traffic stop for
3 the improper display of the tag.

4 Q. All right. And were you able to identify the driver
5 of that vehicle?

6 A. Yes, sir, I was. It was a Tevin Deloach.

7 Q. All right. Did you identify the passenger of that
8 vehicle?

9 A. Yes, sir. The passenger did not have an ID on him,
10 but he did give me his information and identified himself
11 as Christopher -- or I'm sorry. Excuse me one second.
12 John Hart with a date of birth of [REDACTED], 1988.

13 Q. And he verbally gave you that information?

14 A. Yes, sir, that's correct.

15 Q. What, if anything, did you ask the passenger of the
16 vehicle, Mr. Hart?

17 A. Once I got him out of the vehicle -- or actually while
18 he was at the vehicle I asked him where he was going. He
19 stated he was going home to his house in Columbia. He
20 stated that he was coming from Wagner. I don't remember
21 the exact location. I asked him whose vehicle it was that
22 he was riding in and he said he did not know, he was just a
23 passenger in the vehicle. And then, like I say, I asked
24 him for his identification once I actually got him out of
25 the vehicle and that's when he gave me his name and date of

1 birth.

2 Q. Okay. So he said he did not know who the vehicle
3 belonged to?

4 A. Yes, sir, that's correct.

5 Q. Did you ask the driver a similar question about where
6 they were going?

7 A. Yes, sir, I did.

8 Q. Was his answer consistent or inconsistent with
9 Mr. Hart's?

10 A. His answer was different.

11 Q. At the time you pulled them over, did you have any
12 idea that they may have been involved in a murder?

13 A. No, sir, I did not.

14 Q. It was purely a traffic stop?

15 A. Yes, sir, that's correct.

16 Q. At some point did y'all search the vehicle?

17 A. Yes, sir. Deputy Jones and Trooper Sammy Bird did.

18 Q. Okay. And why was the vehicle searched?

19 A. Trooper Bird while I was conducting my traffic stop
20 deployed his K-9. He had a narcotics-detecting K-9 with
21 him and he stated that his dog had alerted on the vehicle
22 and we did a probable cause search on the vehicle based on
23 the odor of narcotics from the K-9 alert.

24 Q. All right. Were you present for that search?

25 A. Yes, sir, I was.

1 Q. And have you reviewed the video of that search?

2 A. Yes, sir, I have.

3 Q. Was the passenger -- under the passenger seat of that
4 vehicle ever search?

5 A. No, sir, it was not.

6 Q. All right. Where was the focus of the search?

7 A. The trunk of the car.

8 Q. Was that due to where the dog alerted?

9 A. Yes, sir. The dog alerted on the trunk area of the
10 vehicle and the trunk, we were unable to open it, the
11 automatic trunk release button would not work and the keys
12 would not work, so Trooper Bird felt that was where the
13 search had been focussed.

14 Q. And to your knowledge, was that dog trained to detect
15 anything other than drugs?

16 A. No, sir, only narcotics.

17 **MR. McNAIR:** That's all the questions I have. Please
18 answer any questions Mr. Phillips has.

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

20 CROSS-EXAMINATION

21 BY MR. PHILLIPS:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. During the traffic stop you had them get out of the
25 vehicle and stand off to the side?

1 A. I'm sorry?

2 Q. During the traffic stop you had both people that were
3 in the vehicle get out and stand off to the side of the
4 road?

5 A. Yes, that's correct.

6 Q. While the search was being conducted?

7 A. Yes, sir.

8 Q. Did you see any blood on John Hart's clothes?

9 A. No, sir. I didn't look.

10 Q. All right. But, I mean, if there would have been
11 blood you possibly --

12 A. I didn't see anything obvious, no, sir.

13 Q. And he didn't conceal his identity. He gave you his
14 name and date of birth?

15 A. Yes, sir. The only thing he said he didn't have a
16 middle name, which he did, but it did come back with the
17 information he gave me.

18 Q. It wasn't a fake name?

19 A. No, sir.

20 Q. And you let him go?

21 A. Yes, sir. That's correct.

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

23 **MR. McNAIR:** Real quick, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. McNAIR:

1 Q. Let me show you State's Exhibit 24. Are those the two
2 individuals you stopped that night?

3 A. Yes, sir.

4 Q. Can you identify which one is Mr. Hart?

5 A. He's the gentleman standing on the right.

6 Q. All right. And he's wearing all black; is that
7 correct?

8 A. Yes, sir. That's correct.

9 **MR. McNAIR:** Thank you.

10 **THE COURT:** You can step down.

11 **THE WITNESS:** Thank you.

12 (Witness excused.)

13 **MR. McNAIR:** Your Honor, the State calls Jason Jones.

14 (Whereupon, Jason Jones was duly sworn by the Clerk of
15 Court.)

16 **THE CLERK:** Have a seat right up there, sir. Once
17 you're seated, state your full name, spelling your last,
18 please.

19 **THE WITNESS:** My full name is Jason Jones. The
20 spelling of the last name is J-O-N-E-S.

21 JASON JONES,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. McNAIR:

25 Q. Deputy Jones, how long have you been with the

1 sheriff's department?

2 A. The sheriff's department will soon be twelve years.

3 Q. What's your current position over there?

4 A. I work the sheriff's office traffic division.

5 Q. Okay. Now were you on duty working with Deputy
6 Patterson the night of April 10th or the early morning
7 hours of April 11, 2013?

8 A. Yes, sir.

9 Q. All right. And were you involved in the traffic stop
10 of a Lincoln Town Car?

11 A. Yes, sir.

12 Q. And did you help conduct a search of that vehicle?

13 A. I did.

14 Q. And what area of the vehicle did you search?

15 A. I searched the driver's side, driver's seat area and
16 the driver's side passenger seat area.

17 Q. All right. Did you find anything under the driver's
18 seat of that vehicle?

19 A. I did not.

20 Q. Okay.

21 **MR. McNAIR:** I have no further questions, Your Honor.

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

23 **THE COURT:** You can step down.

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

25 (Witness excused.)

1 **MR. McNAIR:** Your Honor, if I can approach?

2 **THE COURT:** Sure.

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

4 **THE COURT:** All right, folks. I've got to take
5 something up and then have y'all right back in here. So
6 step in the jury room and we'll get you back in here in
7 just a few minutes.

8 (Whereupon, the jury retires to the jury room at
9 3:41 PM.)

10 **THE COURT:** All right. Call your witness.

11 **MR. GRAHAM:** Thank you, Your Honor. For the second
12 witness in the Neil versus Biggers. We have two. The
13 State would call Jeffrey Behymer.

14 (Whereupon, Jeffrey Behymer was duly sworn by the
15 Clerk of Court.)

16 **THE CLERK:** Once you're seated, state your full name,
17 spelling your last for us.

18 **THE WITNESS:** Jeffrey Clinton Behymer, B-E-H-Y-M-E-R.

19 JEFFREY CLINTON BEHYMER,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION (In-Camera)

22 BY MR. GRAHAM:

23 Q. So that I pronounce it right, Behymer?

24 A. Sir?

25 Q. Pronounce your last name again for me.

1 A. Behymer.

2 Q. Mr. Behymer, briefly because we're just here with the
3 judge for a hearing, you were at the 44 Truck Stop the late
4 part of April 10th and beginning of April 11th, around that
5 timeframe?

6 A. Yes, sir.

7 Q. And while you were there, tell me what happened. You
8 parked the car. You'd actually been, I think you told me,
9 smoking marijuana and then went there to get something to
10 eat. In the process of coming in and out of the building,
11 when you were coming outside, what happened?

12 A. I was briefly asked could I give a ride to two fellas.

13 Q. Okay. Those two fellas -- where did you talk to those
14 two fellas at?

15 A. Right outside of the truck stop as soon as you leave
16 the exit door right to the right, right directly in front
17 of my little black car.

18 Q. Let me show you State's Number 25. Do you recognize
19 that?

20 A. Yes, sir. Yes, sir.

21 Q. And what does that show?

22 A. Me and two fellas beside my black car in front of the
23 truck stop.

24 Q. How long of a conversation did you have with those two
25 fellas?

1 A. Between five and ten, fifteen minutes. Not too long.

2 Q. Can you describe them?

3 A. Shorthaired, tall, black.

4 Q. How did they compare to each other?

5 A. Brothers.

6 Q. They were brothers?

7 A. From what I believe so, yes, sir.

8 Q. How about ages compared to each other?

9 A. Late twenties, early thirties maybe.

10 Q. Was one older than the other or were they near the

11 same age?

12 A. I believe one was older than the other.

13 Q. Of those two, was one -- were they talking equally to

14 you or was one talking -- leading the conversation?

15 A. The older one, yes, sir.

16 Q. And what did the older one ask?

17 A. Could I give them a ride to exit -- well, the Delta

18 Motel off, I believe, it's 58.

19 Q. And what was the lighting like outside?

20 A. Sir?

21 Q. The lighting in the parking lot where you had the

22 conversation at the 44?

23 A. Half-lit.

24 Q. Any problem seeing the people you were talking to?

25 A. No, sir.

1 Q. And the person who was mainly doing the talking was
2 the older one?

3 A. Yes, sir.

4 Q. All right. Did you agree to give them or him a ride?

5 A. Yes, sir.

6 Q. And tell me about the ride.

7 A. It was short, sixty mile an hour up I-20 towards the
8 West Columbia Wal-Mart off of 58, I believe that's correct,
9 but off 58 to the Delta. A quick ride. We didn't talk
10 about much.

11 Q. And how long did that ride take?

12 A. Sir?

13 Q. How long did that ride take?

14 A. Fifteen, twenty minutes, give or take.

15 Q. Then when you got to the Delta Motel, did you have any
16 more contact with the older one who was in your car?

17 A. Only to get the money.

18 Q. And he gave you \$20?

19 A. \$20 to give him a right to the Delta.

20 Q. Later on did the police come and show you a photo
21 lineup?

22 A. Yes, sir.

23 Q. Let me show you what's been marked State's Number 2
24 and ask if you recognize that.

25 A. Yes, sir, I recognize it from the date that I done it.

1 Q. The handwriting there in the blue ink, is that all
2 your handwriting?

3 A. That's my chicken scratch. Yes, sir.

4 Q. Do you remember the officer who showed that to you?

5 A. Yes, sir.

6 Q. Okay. Do you see him in the courtroom?

7 A. I do.

8 Q. Okay. And who is that?

9 A. The fella setting up front to the right.

10 Q. Detective Spivey, the one raising his hand up at you
11 right now?

12 A. Yes, sir, that's him.

13 Q. When he showed you this photo lineup, did he tell you
14 anything to make you pick somebody, do anything to indicate
15 that?

16 A. No, sir.

17 Q. All right. So he flipped it over and you looked at
18 it?

19 A. Yes, sir.

20 Q. And he asked you did you see anybody you recognize?

21 A. Just asked did I notice anybody -- from the people
22 in the photographs, that did I give any of them fellas a
23 ride.

24 Q. And how long did it take you to look at it?

25 A. I took my time. Probably ten, fifteen minutes.

1 Q. And you selected somebody?

2 A. Yes, sir.

3 Q. And which number did you select?

4 A. Number 2.

5 Q. And you wrote a number beside that. What's that
6 number?

7 A. 75 percent positive.

8 Q. Okay. Why were you only 75 percent positive?

9 A. I was high that night to the point I didn't want to
10 say I was a hundred percent positive on somebody not being
11 a hundred percent positive, so I was about 75 percent
12 positive.

13 Q. Let me hand you a statement and ask if you recognize
14 this statement? Is that your chicken scratch on there,
15 too?

16 A. Yes, sir, that's my chicken scratch.

17 Q. And this is a written statement that you gave to
18 the police, I guess, on the same day that you did the
19 identification?

20 A. Yes, sir, the same day.

21 Q. Let me show you page 3 of that and the questions
22 there. Now this was actually done on April 30th, so two,
23 three weeks from when the incident at the 44 happened,
24 right?

25 A. Yes, sir. It took about two or three weeks before I

1 was even notified.

2 Q. One of the questions that was asked of you is you
3 picked the one guy out in the photo lineup. Tell me about
4 your decision on this guy. Would you review your answer
5 and see if that refreshes your memory?

6 A. Yes, sir.

7 Q. So why did you only write 75 percent?

8 A. Because the fella I had given the ride to had small
9 dreads and that was the only thing different from the
10 picture.

11 Q. Looking in the courtroom today, do you see the
12 individual that was the older person that you met at the
13 44 Truck Stop who rode in the car with you?

14 A. Yes, sir, I believe so.

15 Q. And where is he?

16 A. Sitting over there all the way to the left.

17 Q. That would be the individual at the defense table
18 dressed in -- the black male in the gray suit?

19 A. Yes, sir.

20 **MR. GRAHAM:** Your Honor, that's all we would have for
21 this witness on this matter.

22 **MR. PHILLIPS:** No questions and no motion.

23 **THE COURT:** No questions?

24 **MR. PHILLIPS:** No question and no motion on this one.

25 **THE COURT:** Very well. Do you have any other witness

1 here?

2 **MR. GRAHAM:** We've got the next right up here.

3 **THE COURT:** All right. You can step down and we'll
4 put you back up here in the minute.

5 **MR. McNAIR:** Tina Perry.

6 (Whereupon, Tina Perry was duly sworn by the Clerk of
7 Court.)

8 **THE CLERK:** Have a seat right up there, ma'am. Once
9 you're seated, state your full name, spelling your last,
10 please.

11 **THE WITNESS:** My name is Tina Perry, P-E-R-R-Y.

12 TINA PERRY,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION (In-Camera)

15 BY MR. McNAIR:

16 Q. Ms. Perry, back in April of 2013, did you know a guy
17 that went by the name KG?

18 A. Yes.

19 Q. How did you know him?

20 A. He stayed at the same motel that I did.

21 Q. All right. How often would you see KG?

22 A. I saw him daily.

23 Q. Daily?

24 A. Yeah. He stayed at the -- I mean, after he left the
25 motel, he would still come back to see me.

1 Q. Okay. What was -- what, if any, type of relationship
2 did you have with him? Why would you see him daily?

3 A. He was my drug dealer.

4 Q. Okay. So how long of a period of time do you think
5 you knew KG for?

6 A. Five, six months maybe.

7 Q. And you'd see him almost on a daily basis?

8 A. Yeah, most of the time.

9 Q. Now do you recall being shown a photo lineup in this
10 case?

11 A. Yes.

12 Q. I'm gonna show you State's Exhibit Number 3. Do you
13 recognize that?

14 A. Yes.

15 Q. Is that the photo lineup you were shown?

16 A. Yes.

17 Q. Now prior to being shown that photo lineup, do you
18 remember what you were told? Did anybody suggest to you
19 who to pick out?

20 A. No.

21 Q. Do you recall what their instructions were to you?

22 A. Just pick him out.

23 Q. Pick out the person who you knew as KG?

24 A. Right.

25 Q. They didn't hint or suggest in any way who you should

1 pick out?

2 A. No.

3 Q. And did you circle Number 2 on that?

4 A. I did.

5 Q. And is that your handwriting?

6 A. Yes, sir.

7 Q. And your signature?

8 A. Yes, sir.

9 Q. And that was a person that was known to you, he was
10 not a stranger at the time you saw this photo lineup,
11 correct?

12 A. Correct.

13 Q. Do you see the person you knew as KG in court today?

14 A. Yes.

15 Q. Is that him sitting over at the defense table?

16 A. Yes.

17 Q. Okay.

18 **MR. McNAIR:** Your Honor, no further questions.

19 **THE COURT:** Any cross?

20 **MR. PHILLIPS:** No questions and no motions.

21 **THE COURT:** All right. You may step down.

22 **THE WITNESS:** Thank you.

23 (Witness excused.)

24 **THE COURT:** All right.

25 **MR. GRAHAM:** That's all the -- you heard Sergeant

1 Spivey testify earlier about his showing of it and now
2 you've heard both witnesses.

3 **THE COURT:** All right. Mr. Phillips, are you not --
4 are you withdrawing your motion under Biggers of the
5 identification being unduly suggestive?

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

7 **THE COURT:** Fair enough.

8 **MR. PHILLIPS:** They both did an in-court
9 identification, so I was satisfied.

10 **THE COURT:** All right. Do you want a couple of
11 minutes and then get the jury back in here?

12 **MR. PHILLIPS:** If I could have a moment.

13 (Recess taken.)

14 **THE COURT:** Be seated. Are y'all ready?

15 **MR. GRAHAM:** Yes, sir.

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

17 **THE COURT:** All right. Bring in the jury, please.

18 (Whereupon, the jury returns to the courtroom at
19 4:03 PM.)

20 **THE COURT:** All right. Call your next witness,
21 please, Mr. Graham.

22 **MR. GRAHAM:** I'm sorry?

23 **THE COURT:** Call your next witness.

24 **MR. GRAHAM:** The State re-calls Detective Spivey back
25 to the stand.

1 **THE CLERK:** Still under oath, Your Honor?

2 **THE COURT:** Still under oath.

3 SEAN SPIVEY,

4 having been previously sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q. Sergeant, further on in the investigation after you
8 developed Mr. Hart as a suspect, and actually after he was
9 arrested, did you create some photo lineups?

10 A. I did.

11 Q. What is a photo lineup?

12 A. A photo lineup basically is an individual that we're
13 looking at and we surround it with four -- I'm sorry, five
14 different people on top of that one person we're looking
15 at.

16 Q. And what's the purpose of it?

17 A. The purpose is to show six different people in the
18 lineup to see if the person can identify the person they
19 knew.

20 Q. Let me show you what's been marked as State's Number 2
21 I think for identification at this time. Do you recognize
22 that one?

23 A. I do.

24 Q. And who did you show that photo lineup to?

25 A. His name is Jeffrey Behymer.

1 Q. And when did you show that to him?

2 A. It was on April 30, 2013.

3 Q. What was your purpose of showing it to Mr. Behymer?

4 A. Mr. Behymer is the white guy that we identified as
5 being the guy that actually drove Mr. Hart to the Delta
6 after the traffic stop at the 44 Truck Stop.

7 Q. And when you showed that to him, would you describe
8 to the jury how you went about showing the photo lineup to
9 him.

10 A. Typically what I do is pretty standard. I typically
11 will either hold it face down or either I -- if I have
12 something to set it on, I'll set it down. Before I show
13 it to them I basically tell them there's gonna be six --
14 describe what they're gonna see. There's gonna be six
15 different people on the lineup. The person they saw or
16 know may or may not be on this particular lineup and at
17 that point in time if they do know -- they do recognize
18 somebody at that point in time, you know, I ask them to let
19 me know. If they don't recognize anybody, I also ask them
20 to let me know that as well.

21 Q. Did you do anything to indicate to him who he should
22 select?

23 A. I did not.

24 Q. And how did you actually show the paper to him?

25 A. Typically what I do after I -- after I turn it -- I

1 just turn it over and let them look at it. Sometimes
2 they'll pick it up just so they can kind of -- it's based
3 on wherever they feel comfortable or they may just do it
4 there.

5 Q. And ultimately did he select somebody?

6 A. He did.

7 Q. And who did he select?

8 A. He picked Number 2 on the lineup, which is Mr. Hart.

9 **MR. GRAHAM:** Your Honor, the State would move that
10 into evidence at this time.

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

12 **THE COURT:** No objection.

13 **MR. PHILLIPS:** We did have that curative discussion
14 -- curative instruction discussion.

15 **THE COURT:** Oh, yeah. Okay. I'll give that to the
16 jury now, then if you want to publish it, you can show it
17 to them.

18 Folks, this lineup is utilizing a photograph that was
19 taken at the time of the arrest when he was charged as I
20 understand. That's why all the gentlemen have similar
21 colored garb on in those pictures. Just so y'all
22 understand why they look similarly dressed.

23 (State's Exhibit Number 2, a photo lineup, was
24 admitted into evidence.)

25 BY MR. GRAHAM:

1 Q. In addition to showing the lineup to him, did you also
2 shown a lineup to Tina Perry?

3 A. I did.

4 Q. Let me show you what's marked as State's Number 3 for
5 ID. Is that the photo lineup you showed her?

6 A. I did, yes.

7 Q. And when you showed her the photo lineup, what did you
8 tell her, if anything?

9 A. The same procedure. We were at -- the location that
10 I showed it to her, we basically -- I remember that I
11 actually turned it over as far as on that because we had a
12 table that we were able to do this with. At that point I
13 said the same thing; that the person that you know may --
14 you know, the person that we're talking about may or may
15 not be on this particular lineup. If you do recognize
16 somebody on that lineup, then you're to tell me that you
17 recognize them. If you don't recognize them, you're also
18 to tell me you don't recognize them either.

19 Q. And when you flipped it over to her, did you do
20 anything to indicate who she should select?

21 A. I did not.

22 Q. And when you flipped it over, what, if anything, did
23 she do?

24 A. I circled the entire picture and then to the right of
25 that she wrote "known as KG to me" and then signed her

1 name.

2 Q. And what was the date that you showed that to her?

3 A. This was April 25th.

4 Q. And did she hesitate at all?

5 A. She did not. She actually -- you know, before I could
6 give her instructions on what to do as far as like circle
7 -- because this photo lineup has actually numbers at the
8 bottom right, so after she immediately picked him out she
9 wrote down there she was certainty of a hundred percent.
10 Before I could tell her as far as what to do next as far
11 as on the statement -- or on this photo lineup what she
12 needs to do, she immediately circled, signed her name as
13 an excited-type situation.

14 Q. And the person she selected was who?

15 A. Mr. Hart.

16 **MR. GRAHAM:** Your Honor, the State would offer
17 Number 3 into evidence.

18 **MR. PHILLIPS:** No objection.

19 **THE COURT:** Those are marked as which exhibits?

20 **MR. GRAHAM:** That was 3 that was for ID and now that
21 would be 3 in evidence.

22 **THE COURT:** 3 in evidence and what was the other one?

23 **MR. GRAHAM:** 2.

24 **THE COURT:** Okay. So 2 and 3 are now in without
25 objection.

1 (State's Exhibit Number 3, a photo lineup, was
2 admitted into evidence.)

3 BY MR. GRAHAM:

4 Q. The handwriting on there, whose is that?

5 A. That's Tina Perry's.

6 Q. Is there anything on there that's your handwriting?

7 A. I don't see anything that's mine.

8 **MR. GRAHAM:** Your Honor, that's all the State has for
9 Mr. Spivey -- or Detective Spivey -- Sergeant Spivey on
10 this one. He will be recalled on another matter.

11 CROSS-EXAMINATION

12 BY MR. PHILLIPS:

13 Q. For Mr. Behymer, that night was the first night he had
14 ever met John Hart?

15 A. That's correct.

16 Q. They met for the first time at the 44 Truck Stop?

17 A. That's correct.

18 Q. This is not the Zeke character that was discussed?

19 A. No, sir.

20 Q. And for Ms. Perry, she said she saw him on a daily
21 basis?

22 A. She said she knew him, yes.

23 Q. A daily basis?

24 A. Yes, sir.

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

1 **THE COURT:** All right. You can step down.

2 (Witness excused.)

3 **MR. GRAHAM:** The State calls Jeffrey Behymer.

4 (Whereupon, Jeffrey Behymer was duly sworn by the
5 Clerk of Court.)

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

8 **THE WITNESS:** Jeffrey Clinton Behymer, B-E-H-Y-M-E-R.

9 JEFFREY CLINTON BEHYMER,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. GRAHAM:

13 Q. Mr. Behymer, are you currently employed? Are you
14 employed?

15 A. No, sir.

16 Q. What do you do for a living now?

17 A. Right now?

18 Q. What's your trade?

19 A. Welding.

20 Q. Back on April 10th, the night of April 10th and night
21 of April 11th, where did you go?

22 A. Where did I go?

23 Q. Yeah.

24 A. 44 Truck Stop.

25 Q. And why did you go there?

1 A. To get something to munch on.

2 Q. And why did you have the munchies?

3 A. I was currently smoking marijuana.

4 Q. When you got to the 44 Truck Stop and you got
5 something to eat, what, if anything, happened when you
6 came out in the parking lot?

7 A. There was two fellas standing in front of my car and
8 asked could I give them a ride to the Delta Motel off of
9 Exit, I believe, 58 off of I-20.

10 Q. Can you describe them?

11 A. Two black fellas a little taller than me. One had
12 short hair, young. The older fella had, I believe it was,
13 small dreads.

14 Q. Which one of the two was doing the talking?

15 A. The older one.

16 Q. And what did the older one tell you outside of the 44
17 Truck Stop?

18 A. That he would give me twenty bucks if I could drive
19 them to the Delta Motel.

20 Q. I'm gonna show you two photographs. Let me show you
21 one photograph right now, State's 25 in evidence, and ask
22 if you recognize that?

23 A. Yes, sir.

24 Q. And does that fairly and accurately reflect what
25 occurred at the 44 Truck Stop?

1 A. Yes, sir.

2 Q. So looking at State's Number 25, it appears that there
3 are three individuals here with a black vehicle. Can you
4 tell me about that black vehicle?

5 A. Yes, sir. That black vehicle was my '95 EJ1 two-door
6 coupe Honda, a little Civic.

7 Q. So the older one asked you to give them a ride; is
8 that correct?

9 A. Yes, sir.

10 Q. To the Delta Motel?

11 A. Delta Motel.

12 Q. Did they actually end up both riding with you?

13 A. No, sir. I ended up following a light blue Lincoln
14 Town Car on, I believe it was, twenty-inch rims.

15 Q. Do you see the Lincoln Town Car in State's 25 on the
16 overhead?

17 A. At the very far left-hand corner you can see the --

18 Q. (Pointing.)

19 A. -- yes, sir, light blue Lincoln.

20 Q. Did the older one tell you where they were coming
21 from, where they were going, why they needed the ride?

22 A. I believe it was coming from Augusta or coming from
23 Aiken going to either Augusta or Aiken.

24 Q. So it was Augusta to Aiken or Aiken to Augusta?

25 A. One of the two. I believe it was from Augusta to

1 Aiken.

2 Q. And did he explain to you why he wanted to go to the
3 Delta?

4 A. No, sir.

5 Q. Do you have any idea why they both didn't ride with
6 you?

7 A. No, sir.

8 Q. The older one that was -- which one rode with you from
9 the 44 to the Delta?

10 A. The older fella.

11 Q. Do you remember what he was wearing?

12 A. No, sir.

13 Q. Do you remember giving a statement to law enforcement?

14 A. Three weeks after, yes, sir.

15 Q. Looking on page -- do you recognize this as being your
16 statement?

17 A. Yes, sir.

18 Q. Looking at page 2 at the bottom, does that refresh
19 your memory as to the one who rode with you and what they
20 were wearing?

21 A. Yes, sir.

22 Q. And what was the one -- the older one that rode with
23 you wearing?

24 A. All black.

25 Q. As you were driving back to the Delta Motel -- or not

1 back, but as you were driving from the 44 to the Delta
2 Motel, what, if anything, did you notice that was unusual?

3 A. Going ten miles an hour under the speed limit.

4 Q. And who told you to go ten miles under the speed
5 limit?

6 A. The older fella that was riding with me.

7 Q. When you got to the Delta Motel, what happened?

8 A. I pulled up, parked for a second, the Lincoln backed
9 in on the other side of the parking lot away from the room
10 that I pulled to, I stepped out of the car awaiting twenty
11 dollar payment, got my \$20 and I left.

12 Q. Let me show you State's 18 and 19, which are still
13 shots of video from the Delta Motel. Do you recognize
14 those?

15 A. Yes, sir, I do.

16 Q. State's Number 19 -- no, State's Number 18, the
17 vehicle here on the left, whose vehicle is that?

18 A. That's my two-door black Civic.

19 Q. The individual getting out on the passenger side of
20 your car is who?

21 A. The older fella I gave the ride to.

22 Q. Do you see the Lincoln parked on that photo?

23 A. Yes, sir, I do now.

24 Q. Where is it?

25 A. To the left of the white car, if I'm not mistaken.

1 Q. State's Number 19, do you recognize that and what's
2 going on?

3 A. Yes, sir. That is as I stepped out of my car awaiting
4 to get my payment.

5 Q. Right here?

6 A. Yes, sir.

7 Q. The individual walking across the lot, who is that?

8 A. I believe that's the younger fella that was driving
9 the Lincoln.

10 Q. All right. Let me show you State's Number 2 that's in
11 evidence and ask if you recognize that piece of paper?

12 A. Yes, sir.

13 Q. And that's a photo lineup that was shown to you by
14 Detective Spivey on April 30, 2013?

15 A. Yes, sir.

16 Q. Okay. Did he say anything to influence you in picking
17 anybody out?

18 A. No, sir.

19 Q. Can you describe to the jury how he went about showing
20 it to you?

21 A. I believe it was three glassy lineup pictures, just
22 asked me to circle the one that looked familiar.

23 Q. Okay. Was he looking -- what person was he looking
24 for?

25 A. The fella that was driving with me or driving the

1 Lincoln Town Car.

2 Q. Okay. And in this one you actually selected Number 2;
3 is that correct?

4 A. Yes, sir.

5 Q. So the handwriting on here on State's Number 2 is your
6 handwriting?

7 A. Yes, sir.

8 Q. And you selected Number 2. Which one was Number 2?

9 A. The older fella that rode with me.

10 Q. You wrote down 75 percent on there, correct?

11 A. (Nods head.)

12 Q. What did you mean when you wrote that?

13 A. Because when the fella had rode with me he had about
14 two-inch dreads at the time. That's the only thing that
15 made me only 75 percent positive just because of the
16 haircut.

17 Q. You do see the individual in the courtroom today?

18 A. Yes, sir.

19 Q. And where is he?

20 A. The far left table wearing gray.

21 Q. The gray suit and the tie?

22 A. Yes, sir, the gray suit and the tie.

23 **MR. GRAHAM:** Which is the Defendant, Your Honor.

24 Thank you. Please answer any questions that the defense
25 attorney has for you.

1 **MR. PHILLIPS:** No questions. Thank you, Mr. Behymer.

2 **THE COURT:** You can step down.

3 (Witness excused.)

4 **MR. McNAIR:** The State calls Tina Perry.

5 Your Honor, can we approach real quick?

6 **THE COURT:** Sure.

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

8 **THE COURT:** All right.

9 (Whereupon, Tina Perry was duly sworn by the Clerk of
10 Court.)

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

13 **THE WITNESS:** My name's Tina Perry, P-E-R-R-Y.

14 TINA PERRY,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. McNAIR:

18 Q. Ms. Perry, where were you living back in April of
19 2013?

20 A. At the Delta Motel.

21 Q. And how long had you been at the Delta at that time?

22 A. At that time probably for about nine months.

23 Q. Now did you know a guy that went by the name of KG
24 back then?

25 A. That's correct, I did.

1 Q. How did you know him?

2 A. I knew him -- I had met him there at the hotel and he
3 was my --

4 Q. I'm sorry. I didn't mean to cut you off. How often
5 would you see KG?

6 A. Daily.

7 Q. All right. And why would you see him on a daily
8 basis?

9 A. Because I purchased drugs from him.

10 Q. Okay. Now did you have his phone number at that time?

11 A. Yes, sir.

12 Q. Do you still remember what that phone number was?

13 A. Not right off the top of my head, no.

14 Q. Do you remember giving a statement to law enforcement
15 where you told them what that phone number was?

16 A. I remember it by sound, but --

17 Q. I'm gonna show you your written statement given on
18 April 25, 2013, and look at the top of that. Is that your
19 handwriting?

20 A. It is.

21 Q. And what number did you have for KG back in April of
22 2013?

23 A. 348-5324.

24 Q. And you said you dealt with him almost on a daily
25 basis?

1 A. Yes, sir.

2 Q. And how long of a period did you know him for?

3 A. Maybe about anywhere from three, four, five months.

4 It wasn't for a long period of time.

5 Q. What else did you know about him? Did you know
6 whether or not he had a girlfriend?

7 A. He had a -- yeah, he had like a baby momma.

8 Q. Had you ever met her?

9 A. Not like directly, but, yeah, she would drive -- you
10 know, drive him to the Delta sometimes.

11 Q. You'd seen her before?

12 A. Yeah.

13 Q. And were you aware that she was pregnant?

14 A. Yeah, I could tell she was pregnant.

15 Q. Were you aware that she had a baby?

16 A. I had heard that she had a baby that same day.

17 Q. The same day as what?

18 A. As the incident.

19 Q. Okay. Did you know -- do you know what vehicles the
20 guy you knew as KG drove?

21 A. Yes.

22 Q. Had you seen him in a Lincoln Town Car before?

23 A. Yes.

24 Q. What color was it?

25 A. Gold.

1 Q. Gold?

2 A. Gold.

3 Q. If I asked you whether or not it was blue or
4 silver-ish, would that be incorrect?

5 A. Yes.

6 Q. Do you know -- could it have been blue?

7 A. I don't think so.

8 Q. You remember it being gold?

9 A. Yes.

10 Q. You remember it being a Lincoln Town Car?

11 A. Yes.

12 Q. All right. Now back in 2013, did you know Paula
13 Justice?

14 A. I -- I knew of her and I had a brief encounter with
15 her that lasted maybe about two minutes, two or three
16 minutes.

17 Q. Is that the only time you met her?

18 A. Uh-huh.

19 Q. Do you know whether or not KG knew Paula Justice?

20 A. I did not know anything about KG knowing Paula
21 Justice.

22 Q. Well, did you learn about Paula Justice being killed?

23 A. I did.

24 Q. How did you learn about that?

25 A. I was -- I had had a prior conversation with Briteny

1 Baker and she was with Paula at the time and said that KG
2 was about to pick her up and I even made the comment oh,
3 he knows Paula? And then later on that evening I was told
4 that -- that the motel was surrounded and that it was lit
5 up and that Paula was dead and that KG had shot her and
6 killed her.

7 Q. Prior to learning about Paula's death, had you seen
8 KG that night?

9 A. Prior to -- no, not prior to.

10 Q. After hearing about her death, did you see KG?

11 A. Not after hearing about it, but prior to hearing about
12 it.

13 Q. I'm gonna show you your statement from April 11, 2013.
14 Take a moment and relax.

15 A. Sorry.

16 Q. I know. Just read through that to refresh your
17 memory.

18 A. When he had came to -- when he had called me and asked
19 me if he could drop the car off at the motel because there
20 was not a tag and he wanted to take it home and he didn't
21 want to get pulled over, at that time I did not know about
22 -- I had not gotten the phone call that somebody was dead
23 at that time.

24 Q. Okay.

25 A. So I had seen him after the supposed incident, but --

1 but I did not know about it at that time. I hadn't got the
2 phone call about it.

3 Q. So are we talking about the early morning hours of
4 April 11th?

5 A. Correct.

6 Q. Okay. Approximately what time do you remember seeing
7 him that evening?

8 A. This was like one maybe, 1:00 in the morning.

9 Q. 1:00 AM on the 11th?

10 A. Yeah. Yes, sir.

11 Q. All right. And he had called you prior to showing up?

12 A. Yeah, because I had called the office and asked Tony
13 if it was okay if he -- KG had left -- because we all knew
14 him as that, if it was okay that he had left the car there.

15 Q. Okay. And let's just go back a little bit. Why did
16 he want to leave the car there?

17 A. He said that there weren't a tag on it or something
18 and he didn't want to drive it home and take the risk of
19 getting pulled over.

20 Q. Okay. After you received that call from him, did you
21 see him?

22 A. I did.

23 Q. Where did you first see him?

24 A. He knocked at my door.

25 Q. Okay. Was anybody else with him?

1 A. Actually the other gentleman knocked at the door first
2 and then KG came in afterwards.

3 Q. Was the other gentleman black or white?

4 A. He was black.

5 Q. Had you met him before?

6 A. One time.

7 Q. Do you know what name he went by?

8 A. KB. I want to say KB. I was introduced as that was
9 KG's brother.

10 Q. Is that how KG introduced him?

11 A. I believe so.

12 Q. His brother KB?

13 A. Uh-huh.

14 Q. All right. So they came to your room. Can you
15 describe, I guess, KG's demeanor or attitude at that point
16 and KB's demeanor or attitude at that point? How did they
17 appear to you?

18 A. KB was -- KB was real reserved. He just kind of had
19 his head down, he didn't speak. KG was normal. Normal to
20 me, you know. He was always real frisky and just kind of,
21 you know, be-boppy. He was always full of energy. You
22 know, he was normal to me.

23 Q. Is it fair to say that KB appeared to be scared?

24 A. He did.

25 **MR. PHILLIPS:** Objection, Your Honor.

1 **THE COURT:** What's your objection?

2 **MR. PHILLIPS:** Speculation.

3 **MR. McNAIR:** That's her perception of somebody's
4 demeanor. I think she can testify to that.

5 **THE COURT:** I'm gonna overrule that. I think she
6 can give what she observed. She can't say what he was
7 thinking, but how he appeared.

8 BY MR. McNAIR:

9 Q. How did he appear to you?

10 A. He appeared like a little boy. Like he was -- he was
11 -- he didn't want to say anything. Of course, I had no
12 idea at that time, but he just -- he was just really,
13 really reserved and like he was -- did not want to be where
14 he was at.

15 Q. KG appeared to be his normal self?

16 A. His normal self, yeah.

17 Q. Now when they came into your room, what kind of
18 conversation did y'all have at that point?

19 A. Oh, it wasn't nothing much.

20 Q. Did KG mention anything about his cell phone?

21 A. Yeah, he said that he had a new number for me because
22 he had lost his cell phone. I said well, I just talked to
23 you a little earlier and he said I know, I lost it, and I
24 said well, just leave me the number, but he didn't leave me
25 the number or I had forgot to get it when he walked out the

1 door. I was just ready to get back in the bed. I was real
2 sick and I was ready to get back in the bed.

3 Q. And the number he was referring to was the 348 number
4 that you called him on regularly?

5 A. Yes, sir.

6 Q. And during that four, five, six-month period, however
7 long you knew him, was that the number you always called
8 when you wanted KG?

9 A. Uh-huh.

10 Q. On a daily basis pretty much?

11 A. Uh-huh. Yes, sir.

12 Q. Now you testified earlier that you didn't even know
13 KG knew Paula?

14 A. That's correct.

15 Q. Was it typical for KG to set up people for
16 prostitution engagements?

17 A. Not to my knowledge.

18 Q. You'd never known at the time him to do that?

19 A. No, I never knew him to do anything that, no.

20 Q. So to you that would be an unusual thing for KG to do?

21 A. I think so.

22 Q. All you knew him to do was to sell drugs to people
23 around the Delta Motel?

24 A. Yeah, pretty much, yeah.

25 Q. Now at some point while you were at the Delta, did the