

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED
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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 police show up? The night that you learned of Paula's
2 death, did a bunch of police show up?

3 A. Yeah, a lot of them.

4 Q. Okay. And they were asking you questions about KG?

5 A. Oh, yeah.

6 Q. And did you receive a phone call from KG while the
7 police were on the scene?

8 A. I did.

9 Q. And what was the nature of that conversation?

10 A. He just said is my car still there and I said yeah, I
11 said, and so are the police.

12 Q. All right. And what did he say in response?

13 A. He said for what? And I said well, they said that you
14 killed Paula. He said I don't know what you're talking
15 about. I don't know who Paula is and I don't know -- I
16 don't know -- he said some name or something. I remember
17 him saying some name and saying my name or that's not my
18 name or this is my name or something, but I don't -- I
19 don't -- I couldn't tell you exactly what I said then.

20 Q. Do you recall telling him to come there?

21 A. I said you need to come here and take care of this
22 because they're trying to accuse you of something. Because
23 I never thought that he did that. I never thought he did
24 it. I was in denial or something. You need to come fix
25 this because they think that you killed Paula.

1 Q. Did he show up?

2 A. No, not while I was there.

3 Q. Did he acknowledge his name was KG?

4 A. No, he said that's not my name. He said I don't know
5 who you're talking about.

6 Q. At some point after that, sometime later, did you bump
7 into KG somewhere?

8 A. Only one time.

9 Q. All right. Where was that?

10 A. In jail. In booking.

11 Q. And did you say anything to KG at that point?

12 A. I said the name KG because I heard my name and when I
13 looked I didn't really see him very well, but I recognized
14 the voice.

15 Q. And what did he tell you?

16 A. I said KG and he said no, that's not my name, but
17 that's what you told the police.

18 Q. But you had known him as KG for that whole entire
19 period that you knew him, correct?

20 A. Yes. That's what I knew him as, KG.

21 Q. I'm gonna show you State's Exhibit 3. Do you recall
22 being shown a photo lineup in this case?

23 A. Yes, sir.

24 Q. All right. Is this the photo lineup you were shown?

25 A. Yes, sir.

1 Q. Okay. And did you circle Number 2 on that lineup?

2 A. I did.

3 Q. That's your signature?

4 A. Right there. Yes, it is.

5 Q. And that's the person that you knew as KG?

6 A. That's correct.

7 Q. Did you ever hear of any other names he went by?

8 A. No.

9 Q. I'll show you a picture. Do you recognize that
10 vehicle?

11 A. Yeah. I was thinking it was gold. It's been a long
12 time.

13 (State's Exhibit Number 30 was marked for
14 identification.)

15 BY MR. McNAIR:

16 Q. Is this the -- I'll show you State's Exhibit 30. Is
17 this the vehicle that you were referring to earlier about
18 the Lincoln Town Car?

19 A. Yes, sir.

20 Q. Okay.

21 A. That I know of, yes.

22 Q. That's the one you saw KG drive?

23 A. Yes, sir.

24 **MR. McNAIR:** Your Honor, we offer State's Exhibit 30
25 in evidence.)

25 | A. Hey.

1 Q. Take a deep breath for me. You saw KG on a daily
2 basis?

3 A. Uh-huh.

4 Q. You knew him well?

5 A. Uh-huh.

6 Q. He even stayed at the Delta Motel for a while; did he
7 not?

8 A. He's my friend.

9 Q. He was known by the people that stayed at the Delta
10 Motel, people that work in alternative lifestyles,
11 prostitution; is that right?

12 A. I don't know who all knew him. I knew how I knew him.
13 I was kind of a person to myself.

14 Q. You kept to yourself?

15 A. Yes.

16 Q. You didn't know all the interactions with the other
17 people in the motel?

18 A. Correct. It wasn't my business.

19 Q. Right. So you kept to yourself. You didn't know what
20 he was up to?

21 A. Right.

22 Q. After -- I think you said at 1:00 you get that phone
23 call. He's coming back to the Delta Motel; is that right?
24 He's bringing the car back to the Delta Motel?

25 A. Yes.

1 Q. And this is the same place that Paula frequented?

2 A. I don't know.

3 Q. Well, you certainly heard from Crystal Hart --

4 Hartless that Paula was saying she was meeting KG to go do
5 a run. I mean, you --

6 A. That's not correct. I did not hear that from Crystal
7 Hartless.

8 Q. I'm sorry. Briteny Baker.

9 A. Thank you.

10 Q. I apologize. So from Briteny Baker is how you learned
11 about the connection with Paula?

12 A. That's correct.

13 Q. And about what -- where she was going and what she was
14 gonna do. That they knew each other, that he was coming to
15 pick her up?

16 A. Correct.

17 Q. And you said about him being in jail and you were in
18 jail. I mean, that's something you're familiar with; is
19 that right?

20 A. That's something that I'm familiar with?

21 Q. Being in jail.

22 A. I've been -- I've been in jail, yes.

23 Q. You've got convictions for -- or multiple convictions
24 for bad checks?

25 A. Me? Absolutely not. I've never had one check -- one

1 conviction for a bad check. I don't do checks. Not me.

2 Q. So if it was on your rap sheet, that wouldn't be
3 right?

4 A. No, it sure wouldn't be. I've had no convictions,
5 nor charges for bad checks. Never.

6 Q. Forgery?

7 A. I have one forgery, yes, sir.

8 Q. Willful obstruction of law enforcement?

9 A. I don't know. I'm an old gal. It could be an old
10 conviction. Yeah, I used to be a --

11 Q. Well, the checks are old, too.

12 A. No, I don't have any bad check charges. I'm sorry.

13 Q. Escape?

14 A. Yes, I have an escape.

15 Q. Violation of probation?

16 A. Huh?

17 Q. Violation of probation?

18 A. Sure.

19 Q. A couple of possessions of cocaine?

20 A. I had possession of cocaine.

21 Q. Not two convictions?

22 A. I've not denied anything.

23 **MR. McNAIR:** Judge, I'd object to relevance at this
24 point.

25 **THE WITNESS:** Thank you.

1 **MR. McNAIR:** I don't know how far's he's gonna keep
2 going with this improper subject matter.

3 **MR. PHILLIPS:** I'm familiar with her background.

4 **THE COURT:** All right. Moving on. I sustain the
5 objection.

6 BY MR. PHILLIPS:

7 Q. You talked about their demeanor. They were only in
8 the room for approximately ten minutes. That's what you
9 told the investigator, right?

10 A. That's correct.

11 Q. It was kind of an in and out?

12 A. Correct.

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

14 **THE COURT:** All right. Anything else?

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

16 **THE COURT:** You may step down.

17 **THE WITNESS:** Thank you.

18 (Witness excused.)

19 **MR. GRAHAM:** The State calls Mike Phipps. And I have
20 a few documents I need to mark, Your Honor.

21 (State's Exhibit Number 31 through 44 were marked for
22 identification.)

23 (Whereupon, Michael Stewart Phipps was duly sworn by
24 the Clerk of Court.)

25 **THE CLERK:** Once you're seated, state your full name,

1 spelling your last, please.

2 **THE WITNESS:** Michael Stewart Phipps, P-H-I-P-P-S.

3 MICHAEL STEWART PHIPPS,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q. Mr. Phipps, where are you employed?

8 A. With the Lexington County Sheriff's Department.

9 Q. What do you do there?

10 A. I'm currently assigned to our forensic services unit.
11 I work technology items, evidence, digital evidence,
12 computer, cell phones.

13 Q. Back in April of 2013, what was your job?

14 A. Crime scene investigator.

15 Q. In addition to that, are you -- are you certified as
16 a dive team member?

17 A. Yes, sir.

18 Q. And did you have a role in conducting a dive in this
19 case?

20 A. I did, yes, sir.

21 Q. Do you remember where you went and the date you went
22 there?

23 A. Yes, sir. If I may refer to my notes. The first
24 time we responded to the area in question was April 16,
25 2013, at [REDACTED] Lost Creek Drive in the Chestnut Hill

1 Plantation area of Richland County.

2 Q. Let me show you what's been marked as State's Number
3 26 and ask if you recognize that?

4 A. I do.

5 Q. And does that fairly and accurately represent the
6 Chestnut Hill Plantation area and where you conducted the
7 dive?

8 A. It does, yes, sir.

9 Q. And looking at it on the overhead, where was your
10 understanding that the dive was to be conducted to recover
11 a handgun?

12 A. A small pond just to the right of the tennis courts at
13 the top of the frame.

14 Q. Is that accurate? Right up there?

15 A. Yes, sir.

16 Q. And you said you conducted the dive on two days?

17 A. Yes, sir. We originally went out on the 16th. Dive
18 operations did not produce any evidence on that date, so
19 we came back the next day.

20 Q. So you came back on April 17th?

21 A. Yes, sir.

22 Q. When you came back on April 17th, will you tell the
23 jury about the dive and what you found.

24 A. On the 17th, we -- as far as the dive team goes, we
25 have multiple people. We have one diver who's the active

1 searcher that's in the water.. We have someone else that's
2 geared up as a safety diver ready to go in and they're
3 usually the next person to dive once that first diver has
4 completed his search. I just happened to be the first
5 diver in and during our search that morning I came across
6 an object that by feel felt like a firearm. We marked it,
7 then went back in with a container so that we could collect
8 it and keep it submerged and brought it up and verified it
9 was a handgun, a pistol.

10 Q. Let me show you a few photographs and ask if you
11 recognize these three, State's 28, 31 and 32?

12 A. Yes, sir, I do.

13 Q. State's 28 and 31, what do those show?

14 A. They show the pond that we were diving in.

15 Q. Do they fairly and accurately represent that?

16 A. Yes, sir.

17 Q. State's 32, what does that show?

18 A. It shows a handgun, the one that I recovered from the
19 pond.

20 **MR. GRAHAM:** Your Honor, the State would offer 28, 31
21 and 32 into evidence.

22 **THE COURT REPORTER:** I mis-marked that one. It's not
23 28.

24 **THE COURT:** 28 is a copy of the room receipt.

25 **THE COURT REPORTER:** Yes, I already had that labeled

1 and then it was labeled wrong.

2 **THE COURT:** Okay. So this will be -- 29 was the photo
3 of the victim, Paula Justice, and then you marked all
4 these.

5 **THE COURT REPORTER:** Yeah, these should have started
6 with 31 in sequence, so these are 31 through 42.

7 BY MR. GRAHAM:

8 Q. Detective, the one that I had mistaken and said that
9 it was 28, that's 42. Do you recognize that then?

10 A. Yes, 42, I do.

11 **MR. GRAHAM:** Your Honor, the State would move 31, 32
12 and 42 into evidence.

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

14 **THE COURT:** Without objection 31, 32 and 42 are now
15 in.

16 (State's Exhibit Numbers 31, 32 and 42, photographs,
17 were admitted into evidence.)

18 BY MR. GRAHAM:

19 Q. State's 42, what are we looking at there, Detective?

20 A. We're looking at the driveway that comes around in
21 front of the pond. Just beyond that driveway is the pond
22 itself.

23 Q. To the left of the pond, what do we see in the picture
24 right here?

25 A. We can see the very edge of the tennis courts from

1 that same aerial view.

2 Q. State's 31, what do we see there?

3 A. That's moving up from that same perspective towards
4 the bank of the pond and looking directly at it.

5 Q. And it looks like there are three things floating in
6 the pond. There's a red ball, far away there's a red ball
7 and then it looks like there's some kind of maybe a yellow
8 object. What does that represent?

9 A. Yes, the red balls mark the ends of our search lines.
10 We deployed a search line. In this case, it was
11 perpendicular to the shoreline and we were in this case
12 working left to right. I think the line was a hundred
13 feet long. Once we come across a target that we're gonna
14 recover, we mark it with a buoy, and that yellow marker is
15 the location of the handgun that was retrieved.

16 Q. State's Number 32, what does that show?

17/ A. That shows the handgun in the container and the water
18 collected from the pond.

19 Q. What was the purpose of collecting it in the water?

20 A. SLED requires us to maintain a firearm that's
21 recovered from a wet environment like that in the water
22 that it's found in to cut down on corrosion, we don't want
23 to expose it to air, and it's immediately transported and
24 submitted to SLED to process for ballistics.

25 Q. Let me show you an item and ask if you recognize this

1 item?

2 A. Yes, sir, I do.

3 Q. And what is it?

4 A. This is the container that we placed the firearm in.
5 It was kept submerged within this container. The yellow
6 seals on here have my initials. Those were placed on this
7 container when it was dropped off at SLED.

8 **MR. GRAHAM:** Your Honor, there is a handgun inside and
9 it has been -- for the record has been secured with a cable
10 lock. The State would offer the box and its contents into
11 evidence at this time.

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

13 (State's Exhibit Number 43, box with gun, was admitted
14 into evidence.)

15 **THE COURT:** That will be 43 in evidence.

16 BY MR. GRAHAM:

17 Q. State's Number 43 is a box and contents. Do you
18 recognize the inside?

19 A. Yes, sir, I do.

20 Q. And what are those?

21 A. It is the handgun that I retrieved from the pond.

22 Q. When you retrieved the handgun, is that a revolver or
23 a semiautomatic?

24 A. It's a semiautomatic pistol.

25 Q. A semiautomatic pistol, that has a clip; is that

1 correct?

2 A. Yes, sir.

3 Q. What's a clip?

4 A. It holds the ammunition. The ammunition is loaded
5 in the clip, the clip's inserted into the bottom of the
6 firearm and that's where the ammunition feeds from.

7 Q. Normally a gun when collected is made safe; is that
8 correct?

9 A. Yes, it is.

10 Q. What does that mean?

11 A. It means we want to determine if there's a live round
12 in the chamber, so we'll drop the magazine out and pull the
13 slide back to determine whether it's clear or not.

14 Q. Did you do that in this case?

15 A. Yes, we did.

16 Q. Okay. So what did you find when you did that?

17 A. There was ammunition in the clip when it was removed.

18 Q. So other than -- other than the plastic envelopes
19 that are inside there and the cable lock, the gun itself,
20 the clip and the bullets, is that what you had recovered
21 on the dive at Chestnut Hill Plantation on April 17, 2013?

22 A. Yes, sir, it is.

23 Q. Once you removed this container with the water and the
24 gun and the clip and the bullets in it, what, if anything,
25 did you do with it?

1 A. At that point we transferred it back to our evidence
2 unit at the Lexington County Sheriff's Department, we
3 process it in paperwork-wise with our facility. I then
4 transport that to the SLED headquarters on Broad River Road
5 and submit it to their forensic services unit for further
6 analysis.

7 Q. All right. So you took it from the pond, went and
8 logged it in with the sheriff's department and then you
9 turned and took that to SLED and logged it in with them?

10 A. Yes, sir, the same day.

11 Q. When it goes to SLED, I think you testified earlier,
12 that's when the yellow tape is put on there?

13 A. Yes, sir.

14 Q. And the yellow tape has SLED written on it?

15 A. It does.

16 Q. What's the purpose of the yellow tape?

17 A. It's tamperproof tape just so that you can visually
18 inspect the container to see if anyone's been in it since
19 it was sealed.

20 Q. All right. And the initials on there and the date,
21 whose initials are on there?

22 A. My initials and the date of April 17th, 2013.

23 Q. And then after it was sealed with the tape, you gave
24 it to SLED?

25 A. Yes, sir.

1 Q. Okay. During the time you've had it, other than what
2 you've testified to, did you do anything to alter the box,
3 the gun, the contents or anything like that?

4 A. No, sir.

5 Q. In addition to this, let me show you what's been
6 marked as State's 14 and 15 for identification. Do you
7 recognize 14? And 14 came out of 15.

8 THE COURT: 14's in.

9 MR. GRAHAM: I'm sorry?

10 THE COURT: 14, the casing, is in.

11 MR. GRAHAM: It is in evidence. 15 is the --

12 THE COURT: 15 was the balance of the things that --

13 MR. GRAHAM: 14 came out of 15 during the prior
14 testimony.

15 THE COURT: 15 is marked, but it's not in evidence.

16 BY MR. GRAHAM:

17 Q. Let me ask if you recognize 15?

18 A. Yes. The container has my name, initials and the date
19 of April 17, 2013.

20 Q. In addition to the gun, which was in the box which was
21 State's Number 43, did you also take a package up to SLED
22 -- another package at the same time?

23 A. Yes, sir.

24 Q. And what did you take out on that date?

25 A. It was a cartridge casing, a spent casing. I did not

1 collect this casing, but I transported it to SLED.

2 Q. And it was transported in what's been marked as 15; is
3 that correct?

4 A. Yes.

5 Q. How do you know that 15 -- how do you recognize 15?

6 A. This outer container?

7 Q. Yes.

8 A. It has my tamperproof seal with my name, initials and
9 the date.

10 Q. So similar to the container that we just talked about
11 with the gun, you took this out there and it was sealed?

12 A. Yes, they give us -- they provide the tape, we put it
13 on in their presence and initial and sign it.

14 **MR. GRAHAM:** Your Honor, the State would offer 15 now
15 into evidence and the other contents.

16 **THE COURT:** Any problem with 15?

17 **MR. PHILLIPS:** 15 is just the sealed -- what the
18 casing was in?

19 **THE COURT:** No, no, no. 15 was --

20 **MR. GRAHAM:** 15 was everything that he took to SLED.

21 **THE COURT:** It was all the bullets out of the clip,
22 correct?

23 **MR. GRAHAM:** It was the casing that was collected by
24 the crime scene officer from Lumberjack Road and it also
25 was a projectile collected from autopsy.

1 **MR. PHILLIPS:** No objection.

2 **THE COURT:** No objection. All right. I was confused.
3 14 is in. It was the casing. It came in through the young
4 lady -- the officer that collected.

5 **MR. GRAHAM:** Correct. Number 14 was the casing
6 collected by the crime scene officer from Lumberjack Road.

7 **MR. PHILLIPS:** That's all I was just trying to --

8 **THE COURT:** Okay. 15 is the projectile from the
9 autopsy.

10 **MR. GRAHAM:** And the outside container that everything
11 was in. Or we can do it separately.

12 **THE COURT:** That's fine. 15 will be the projectile --

13 **THE COURT REPORTER:** Well, but I had 15 was just the
14 envelope.

15 **THE COURT:** I had it marked, Stacy, as projectile, but
16 that's okay.

17 **THE COURT REPORTER:** Okay. Well, I can -- hang on.

18 **THE COURT:** Everything that comes into evidence y'all
19 get to see no matter what we number it, okay? But
20 Ms. Johnson and I have got to make sure we keep the numbers
21 straight. That's why I've got my law clerk over here doing
22 the same thing.

23 **MR. GRAHAM:** Let me --

24 **THE COURT:** All right. Hang on. We'll do it how she
25 wants to.

1 **MR. GRAHAM:** That's what I was doing.

2 **THE COURT REPORTER:** All right. So that will be 44.

3 **MR. GRAHAM:** 44 will then be the other contents of
4 15, which is the projectile collected from autopsy. 14 is
5 the casing from the crime scene, previously admitted, and
6 15 is the outer envelope, and 44 is the projectile from
7 autopsy.

8 **THE COURT:** Fair enough.

9 **MR. GRAHAM:** And all of those are now in evidence.

10 (State's Exhibit Number 15, an envelope, and State's
11 Exhibit Number 44, a projectile from autopsy, were admitted
12 into evidence.)

13 BY MR. GRAHAM:

14 Q. Once you took State's 43 and State's 15 out, they were
15 both properly sealed in your presence, labeled with your
16 initials and date and handwriting and you gave them to
17 SLED, correct?

18 A. Yes, sir.

19 Q. In addition to that, did you also have an opportunity
20 -- let me show you State's 16 and ask if you recognize
21 that?

22 A. Yes, sir, I do.

23 Q. And were you asked to do a cell phone extraction and a
24 physical examination of that phone?

25 A. I was. Yes, sir.

1 Q. And what was your understanding of whose phone that
2 was?

3 A. The victim's phone.

4 Q. Let me show you several photographs that are marked
5 33 through 41 and ask if you recognize those photographs?

6 A. Yes, sir, I do.

7 Q. And are those photographs you took of the screen of
8 the victim's phone?

9 A. They are.

10 **MR. GRAHAM:** Your Honor, the State would offer those
11 into evidence at this time.

12 **MR. PHILLIPS:** Can I just have a second to look at
13 them, Your Honor? No objection.

14 **MR. GRAHAM:** That would be State's 33 through 41,
15 Your Honor.

16 **THE COURT:** 33 through 41 are the photographs of the
17 cell phone screen?

18 **MR. GRAHAM:** Screen shot.

19 **THE COURT:** Admitted without objection.

20 (State's Exhibit Number 33 through 41, photographs,
21 were admitted into evidence.)

22 BY MR. GRAHAM:

23 Q. So just to give the jury an idea of what we're talking
24 about, without looking at each one, State's Number 33, what
25 is that? When we say screen shots of the phone, what are

1 we talking about?

2 A. Some of our forensic tools sometimes don't pull
3 certain details out of the phone, so we have to manually
4 power the phone up, lay it on a table and take photographs
5 of the screen and scroll through them, so we do that
6 typically with call histories, text messages, that type of
7 thing, to document them.

8 Q. And the item that you focussed on here in these
9 photographs and these exhibits, what was the contact that
10 was reflected on her phone?

11 A. KG.

12 Q. And what was the phone number associated with that?

13 A. 803-348-5324.

14 Q. So, for instance, on State's Number 33 and 34, 33 is
15 showing a blue phone with an outgoing arrow. What does
16 that mean?

17 A. It indicates that the device we're photographing
18 produced an outgoing call to the number.

19 Q. So the victim's phone was calling the phone KG with
20 that phone number that's listed; is that correct?

21 A. Yes, sir, it is.

22 Q. And there are also dates and times that are reflected
23 on there. What do those mean?

24 A. The date and time that the outgoing call was made.

25 Q. State's 35 through 39, instead of a blue phone with an

1 outgoing arrow, it's a different phone with an incoming red
2 arrow. What does that represent?

3 A. The call history for the phone indicating an incoming
4 call from whoever is KG and the address book for that
5 phone.

6 Q. So these items that we're talking about are only
7 talking about contact between the number with KG, the
8 348-5324 number, and the victim's phone?

9 A. Yes, sir.

10 Q. State's Number 40 and 41 has a red phone with an X.
11 What does that mean?

12 A. Those would be missed calls.

13 Q. And those are also with --

14 A. KG.

15 Q. -- the KG contact. After you were done with your
16 extraction of the -- and the photographing of the victim's
17 phone, State's Number 16, what did you do with it?

18 A. I turned it into our evidence unit.

19 **MR. GRAHAM:** That's all the questions. Thank you,
20 Detective.

21 **MR. PHILLIPS:** No questions... Thank you.

22 **THE COURT:** You may step down.

23 (Witness excused.)

24 **THE COURT:** Do you want to talk about what we've got
25 left?

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

2 **THE COURT:** Folks, we're at a good stopping point.
3 We kind of ran through some witnesses that normally take
4 thirty minutes and took five and so the State timed that
5 right. It's a few minutes after five and so we were able
6 to get them done at few minutes after five instead of six.
7 In any event, we've got more witnesses tomorrow. About the
8 same schedule. Does a 9:15 get here time, 9:30 start time
9 suit everybody? Okay. We'll do the same thing tomorrow
10 then.

11 You can't discuss the case. Ms. Frick's not here.
12 Y'all -- do y'all know whose pads are whose? Y'all take
13 those and put those in the jury room. It may be we stack
14 them all up and Ms. Frick will get a box for all the
15 evidence and she may get another box for that, but those
16 are for y'all's use and nobody's gonna grade them while
17 you're out tonight.

18 Don't discuss the case, put those in the jury room
19 and we'll see you tomorrow morning. Be here about 9:15
20 and as soon as we get everybody ready, we'll try to start
21 at 9:30. Thank y'all.

22 (Whereupon, the jury was excused for the evening at
23 5:07 PM.)

24 (Whereupon, the proceedings were concluded for May 23,
25 2017, at 5:09 PM.)

1 (Whereupon, the following proceedings were held on
2 May 24, 2017, beginning at 9:28 AM.)

3 **THE COURT:** Are y'all ready?

4 **MR. GRAHAM:** We do have a problem.

5 **THE COURT:** Oh, we do?

6 **MR. GRAHAM:** Yesterday when we were scheduling our
7 witnesses for today, one of them is the Verizon -- the
8 records custodian for Verizon. The iPhone that we believe
9 was Mr. Hart's, the iPhone belonging to Deloach and a
10 phone belonging to Washington and they were under
11 subpoena --

12 **THE COURT:** Do you want it on the record?

13 **MR. GRAHAM:** I can tell you -- let's talk about it
14 and you can tell me what you want me to do.

15 **THE COURT:** Okay.

16 (Off the record discussion.)

17 **THE COURT:** All right. Are we ready?

18 **MR. GRAHAM:** Yes, Your Honor.

19 **THE COURT:** Are y'all good, Mr. Phillips?

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

21 **THE COURT:** Okay. Bring the jury in.

22 (Whereupon, the jury enters the courtroom at 9:40 AM.)

23 (Discussion off the record.)

24 **THE COURT:** I'm going to select a foreperson later
25 today and that person then I'd like to be sitting closest

1 to me and the bailiff generally likes that person to be the
2 last one in the courtroom and that way the jury room's
3 clear and that is a good practice that I agree with on
4 that, but that person ends up sitting there. I generally
5 don't let the jury select the foreperson. It's my practice
6 to always pick it and since that's what I started doing,
7 the judge trained me said that's how I do it, and I've
8 adopted his practice. I've always done it that way so I
9 don't have to remember that jury I had in Newberry, did I
10 pick it or did they elect it? I always pick it and that
11 way I don't have to remember how I did it. I do it the
12 same way every time and that's just my practice.

13 So anyway.

14 All right. The State's ready to continue calling
15 witnesses. Mr. Graham.

16 **MR. GRAHAM:** Thank you, Your Honor.

17 The State calls Gabrielle Norwood.

18 (Whereupon, Gabrielle Norwood was duly sworn by the
19 Clerk of Court.)

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

22 **THE WITNESS:** Gabrielle Norwood, N-O-R-W-O-O-D.

23 GABRIELLE NORWOOD,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. GRAHAM:

2 Q. Ms. Norwood, where are you employed, ma'am?

3 A. AT&T Wireless.

4 Q. And how long have you worked there?

5 A. With the company, six years.

6 Q. And what do you do there?

7 A. I am a retail store manager.

8 Q. Have you been designated to be a records custodian for
9 records involved in this case and were you subpoenaed to
10 bring those records here?

11 A. Yes.

12 Q. And what kind of records does AT&T keep in the regular
13 course of business?

14 A. We keep voice, data, any type of outgoing, incoming
15 calls.

16 Q. And those are kept in the regular course of business
17 by your company?

18 A. Yes.

19 Q. And they're made at or near the time of the event that
20 they occurred?

21 A. Yes, sir.

22 Q. And did you specifically bring records for
23 803-348-5324?

24 A. Yes.

25 MR. GRAHAM: Your Honor, the State would offer those

1 in evidence at this time.

2 **THE COURT:** Any questions for the records custodian?

3 **MR. PHILLIPS:** None, Your Honor.

4 **THE COURT:** No objection to the records?

5 **MR. PHILLIPS:** None.

6 **THE COURT:** They'll be Number 45?

7 **THE COURT REPORTER:** 45, yes.

8 (State's Exhibit Number 45, AT&T records, was marked
9 and admitted into evidence.)

10 BY MR. GRAHAM:

11 Q. Ms. Norwood, looking at State's Number 45, I'll ask
12 some general questions about it so the jury knows what you
13 have in your hand. Can you tell me when that account was
14 created?

15 A. It was created on 3-23-2013.

16 Q. March 23, 2013?

17 A. Uh-huh.

18 Q. And what kind of -- what kind of account was it?

19 A. It's a prepaid customer. We call it a Go Phone.

20 Q. A Go Phone?

21 A. Uh-huh.

22 Q. Is there an owner of the phone listed?

23 A. No. A lot of times when you get these devices, they
24 just put prepaid customer.

25 Q. Okay. So whoever had that phone didn't have to

1 register it by name with AT&T?

2 A. Correct.

3 Q. Is there any kind of billing information that would
4 give us any kind of information of who the account belonged
5 to?

6 A. No, sir.

7 Q. Is there any other alternate phone numbers or
8 addresses that would give us any information as to who
9 owned that account?

10 A. No, sir.

11 Q. The records themselves, what dates do they cover?

12 A. It covers from 4-3 to 4-11.

13 Q. 4-3 of 2013 to 4-11 of 2013?

14 A. Correct.

15 Q. And that would be -- does it include voice calls?

16 A. Yes, it includes voice, data, messaging.

17 Q. Okay. Voice is listed, I think, as voice, data is
18 data and messages would be SMS?

19 A. Correct.

20 Q. For voice information, what kind of -- what do the
21 records show? Do they show the number called, the number
22 that received the call?

23 A. Correct. Incoming, outgoing and the time.

24 Q. Okay. Does it also list cell tower location?

25 A. Yes.

1 Q. And provides sector information as well?

2 A. Correct.

3 Q. Okay. Data usage, is that similar as well?

4 A. Yes, sir.

5 Q. And the SMS usage, is that similar as well?

6 A. Yes, sir.

7 **MR. GRAHAM:** That's all the questions the State has
8 for Ms. Norwood.

9 **MR. PHILLIPS:** Just one question.

10 CROSS-EXAMINATION

11 BY MR. PHILLIPS:

12 Q. You said that phone was created on March 23rd?

13 A. Uh-huh.

14 **MR. PHILLIPS:** Thank you.

15 **THE COURT:** Thank you so much, Ms. Norwood.

16 **MR. GRAHAM:** We ask that she may be excused, Your
17 Honor.

18 **THE COURT:** She may be.

19 (Witness excused.)

20 **MR. McNAIR:** Your Honor, the State calls John Lutz.

21 **MR. PHILLIPS:** Your Honor, may we approach for a
22 second?

23 **THE COURT:** Sure.

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

25 (Whereupon, John Paul Lutz was duly sworn by the Clerk

1 of Court.)

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

4 **THE WITNESS:** John Paul Lutz, II, L-U-T-Z.

5 JOHN PAUL LUTZ, II,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. McNAIR:

9 Q. Officer Lutz, where do you work?

10 A. The Richland County Sheriff's Department.

11 Q. And how long have you been with the sheriff's
12 department?

13 A. This August will be twenty-two years.

14 Q. What's your current position over there?

15 A. I'm a supervisor in the narcotics division.

16 Q. All right. Now on May 30th of 2012, were you
17 involved in a drug bust involving Paula Justice and Jeremy
18 Washington?

19 A. Yes, I was.

20 Q. Would you explain to the jury how y'all went about
21 setting up that bust and why?

22 A. We had an informant that was working with us who
23 called to give us information and said that Paula Justice
24 was gonna be bringing two ounces of crack cocaine along
25 with a supplier, who was actually the dealer, Paula

1 Justice would be like the middle person, and they would
2 be coming to the McDonald's on Gervais Street, right
3 there at Gervais and Huger, and they would be in a tan
4 Oldsmobile.

5 Q. All right. Now prior to that time, did you know who
6 Paula Justice was?

7 A. I'd never met her myself, but I had heard about her
8 from the other agents in the sheriff's department.

9 Q. Okay. And why had you heard about her from other
10 agents? Was she working for law enforcement at that
11 time?

12 A. She was an informant for one of the other actual
13 agents.

14 Q. Okay. A confidential informant?

15 A. Yes, sir.

16 Q. And can you explain to the jury what a confidential
17 informant is?

18 A. Well, there's different types of informants. Some
19 of them are citizens that turn from tipsters to becoming
20 informants, some of them are working off charges and some
21 of them are working for money, but they basically provide
22 information on illegal activity.

23 Q. All right. And are these typically people who are
24 familiar with what's going on in the street?

25 A. Oh, yeah.

1 Q. Now when you set up this transaction, another CI
2 called Paula to set up the bust?

3 A. That's right.

4 Q. All right. So at that time Paula was not working in
5 her capacity as a CI, correct?

6 A. No, she wasn't.

7 Q. All right. So why did you set it up through her?

8 A. Basically the information was that Paula had access
9 to large drug dealers that had large amounts of drugs.

10 **MR. PHILLIPS:** Objection, Your Honor. This is all
11 coming through a confrontation clause issue through some
12 individual that's not here in court.

13 **MR. McNAIR:** I thought he was explaining police
14 action, Your Honor, and why --

15 **THE COURT:** I'm gonna overrule it. It's why they
16 did what they did. It's not -- I want to stay on task of
17 what they were doing, what was going on. Let's don't get
18 too far afield of that so we don't have a confrontation
19 issue.

20 **MR. McNAIR:** All right.

21 BY MR. McNAIR:

22 Q. All right. So you call -- you had a CI call Paula to
23 set up a deal at McDonald's where?

24 A. Gervais and Huger.

25 Q. All right. And when they arrived, what happened?

1 A. Well, when we got there, they were already there. We
2 spotted the vehicle. It was a tan Oldsmobile parked far
3 away from the business. We monitored the vehicle. We
4 could tell the front passenger was a white female. She
5 was looking around real hard. I guess she was looking to
6 see our informant pull in, which he did not pull in.

7 Q. All right. At that point did y'all move in?

8 A. Yeah, we did. We approached them and conducted an
9 interview with them.

10 Q. All right. And you identified the driver as being
11 Jeremy Washington?

12 A. Yes, it was.

13 Q. And whose vehicle was it?

14 A. I'm not sure who it was registered to, but he was
15 the one driving. I believe it was actually registered to
16 him.

17 Q. All right. And did y'all end up searching that
18 vehicle?

19 A. Ultimately, yes.

20 Q. What did you find inside?

21 A. Several ounces of crack cocaine in the center
22 console.

23 Q. Do you know what the approximate weight was?

24 A. I think that day we estimated it around fifty
25 something grams, but the lab report came back eighty

1 something grams.

2 Q. And as a result of that, were Jeremy Washington and
3 Paula Justice charged?

4 A. They were.

5 Q. What were they charged with?

6 A. Trafficking crack cocaine.

7 (State's Exhibit Number 46 and 47 were marked for
8 identification.)

9 BY MR. McNAIR:

10 Q. I'm gonna show you State's Exhibit 46 and 47. Can
11 you tell me whether or not those are certified copies of
12 the warrants you obtained for Jeremy Washington and Paula
13 Justice?

14 A. They are.

15 MR. McNAIR: Your Honor, we'd offer these in evidence
16 at this time.

17 THE COURT: Any objection?

18 MR. PHILLIPS: I'm sorry, Your Honor. No objection.

19 THE COURT: They'll be State's 46, --

20 MR. McNAIR: And 47.

21 THE COURT: 46 and 47 admitted without objection.

22 (State's Exhibit Number 46 and 47, arrest warrants,
23 were admitted into evidence.)

24 BY MR. McNAIR:

25 Q. Now when you arrested Paula that day, did she

1 cooperate with your investigation?

2 A. Yes, she did.

3 Q. She talked to you at the time and told you about what
4 had happened?

5 A. Yes, she was truthful. She told us what we already
6 knew. She was coming there to be involved in a crack
7 cocaine deal.

8 Q. All right. Now did you speak to Jeremy Washington
9 that day?

10 A. I did.

11 Q. And did you ask him whether or not he wanted to
12 provide -- cooperate with law enforcement and provide
13 information on other cases?

14 A. I did.

15 **MR. PHILLIPS:** Hearsay. All of this is hearsay.

16 **MR. McNAIR:** I'll rephrase it.

17 **THE COURT:** I don't think that was hearsay. He said
18 did he ask him.

19 **MR. PHILLIPS:** And he said what he said.

20 **THE COURT:** No, he didn't. I think the question was
21 did you ask him if he would do it and I don't think he's
22 asked him what the response was. The response would be
23 improper.

24 **MR. PHILLIPS:** Thank you.

25 **BY MR. McNAIR:**

1 Q. Did you obtain a phone number for Mr. Washington?

2 A. I did.

3 Q. And did you subsequently contact him on that phone
4 number?

5 A. Actually I gave him my number that day for him to
6 contact me and he later contacted me on my number, from a
7 number.

8 Q. So you spoke to him over the phone at some point after
9 his arrest?

10 A. Yes, I did.

11 Q. And did you provide that phone number to Sergeant
12 Spivey with Lexington County Sheriff's Department?

13 A. I did.

14 Q. I'm gonna read you a number and ask whether or not you
15 can identify it. 803-239-6168. Do you believe that number
16 to belong to Jeremy Washington?

17 A. Yes, sir.

18 **MR. McNAIR:** That's all the questions I have. Please
19 answer any Mr. Phillips has.

20 CROSS-EXAMINATION

21 BY MR. PHILLIPS:

22 Q. Good morning.

23 A. Good morning.

24 Q. So you said Ms. Paula Justice was a confidential
25 informant?

1 A. She was for another agent at our sheriff's department.

2 Q. And knowing that she was working for law enforcement
3 and knowing that she was still involved in criminal
4 activity, did you notify that other agent?

5 A. Yeah, he knew.

6 Q. So in that case they know that the case she's working
7 on she's involved in criminal activity?

8 A. Yes, sir.

9 Q. And part of being a confidential informant is that
10 you're not involved in criminal activity; is that right?
11 They have to sign a statement saying that.

12 A. Yes.

13 Q. And you knew that?

14 A. Yes; however, we can't -- we can't control what they
15 do on their own time.

16 Q. Because these are people that are gonna have other
17 people arrested and you can't control that?

18 A. Can't control?

19 Q. The fact that they're involved in criminal activity
20 and you know about it.

21 A. We knew that she was still involved with other people
22 and drugs, yes.

23 Q. And being a confidential informant working for you,
24 your agency, she was still arrested?

25 A. Yes, sir.

1 Q. And charged?

2 A. Yes, sir.

3 Q. Yet she's working for you on other cases?

4 A. At the time no other cases were being made with her.
5 She was doing something on her own. That's what got her
6 arrested.

7 Q. And it's very common for prostitutes to work as
8 confidential informants. That's fair to say, right?

9 A. I haven't had any myself, working prostitutes. I
10 know others have, so maybe.

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

12 **THE COURT:** Any redirect?

13 **REDIRECT EXAMINATION**

14 **BY MR. MCNAIR:**

15 Q. Now prior to the arrest on this day, did you have
16 evidence that -- you suspected that Paula was involved
17 playing both sides as a CI and involved in selling drugs?

18 A. We knew she was because she was telling people that
19 she was an informant.

20 Q. Was that part of the reason that you set up this buy
21 through Paula Justice to catch her that day in a lie?

22 A. Correct.

23 Q. And she didn't work as a CI after that, did she?

24 A. No, she was incarcerated for some time.

25 Q. All right. Do you know of any nicknames that Jeremy

1 Washington has?

2 A. We documented them that day.

3 Q. What were they?

4 A. Fat Boy and Munchie.

5 Q. Munchie or Munchkin?

6 A. One of those, Munchkin or Munchie.

7 **MR. McNAIR:** All right. Thank you.

8 **RE CROSS EXAMINATION**

9 **BY MR. PHILLIPS:**

10 Q. Just to be clear, just one thing. She was working
11 as a CI, she was playing both sides, which she signed an
12 agreement not to be part of criminal activity, and you knew
13 about and didn't tell the other officer who was arresting
14 people with that information? You said once she was
15 arrested she never worked as a CI again, right?

16 A. Not that I'm aware of, no.

17 Q. She never provided any other information to police?

18 A. Once we arrested her that day?

19 Q. Right.

20 A. Other than what she did that day, not that I'm aware
21 of.

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

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

24 **THE COURT:** You may step down.

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

1 (Witness excused.)

2 **MR. GRAHAM:** The State call Meghan Walker.

3 (Whereupon, Meghan Walker was duly sworn by the Clerk
4 of Court.)

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

7 **THE WITNESS:** Meghan Walker, W-A-L-K-E-R.

8 MEGHAN WALKER,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. GRAHAM:

12 Q. Ms. Walker, where are you employed, ma'am?

13 A. I work at the Fifth Judicial Circuit Solicitor's
14 Office.

15 Q. And what do you do there?

16 A. I'm an assistant solicitor.

17 Q. And how long have you been an assistant solicitor?

18 A. I started working at the solicitor's office in March
19 of 2011.

20 Q. And were you in charge of the prosecution of Jeremy P.
21 Washington and Paula Justice related to their arrest on
22 May 30th of 2012?

23 A. I was.

24 Q. Let me show you State's 46 and 47 and ask if you
25 recognize those documents?

1 A. I do.

2 Q. State's 46 -- State's 47 is the warrant for Paula
3 Justice. She was charged for what charge under her arrest
4 warrant?

5 A. Trafficking crack, twenty-eight to a hundred grams.

6 Q. And what is the punishment for trafficking in crack,
7 twenty-eight to a hundred grams?

8 A. If I recall correctly, I think it's seven to
9 twenty-five years.

10 Q. And then State's 46, that's the one for Jeremy
11 Washington. What was he charged with?

12 A. Trafficking in crack, twenty-eight to a hundred grams.

13 Q. Do you know the date that Mr. Washington bonded out?

14 A. I do not. It would have been on his bond form though.

15 Q. Let me show you a certified document from Richland
16 County and ask if you recognize that?

17 A. This is the bond form. It looks like he bonded out on
18 May 30th of 2012.

19 Q. So that was the date that the warrant was served; is
20 that correct?

21 A. I'd have to look at the warrant again.

22 Q. State's 46.

23 A. Yes.

24 **MR. GRAHAM:** Your Honor, the State would offer the
25 bond form into evidence at this time.

1 **MR. PHILLIPS:** I'm still not sure it's relevant, but
2 I would make a 401. She said they bonded out. I don't --

3 **THE COURT:** Let me put something on the record. Y'all
4 step in the jury room and I'll have y'all right back in
5 here. Don't discuss the case.

6 (Whereupon, the jury retires to the jury room at
7 10:02 AM.)

8 **THE COURT:** He's arguing relevance. Why do you need
9 it?

10 **MR. GRAHAM:** To show that he's out on the street. He
11 made bond and he's out on the street.

12 **MR. PHILLIPS:** I mean, I was giving some leeway based
13 on when we approached the bench. Your Honor was gonna
14 allow us to kind of go down this road. They've gotten in
15 that they both were arrested, they both were charged. I
16 probably should have objected to the sentencing ranges,
17 but I figured that was a close call. We're starting to
18 get down a -- pretty down the road.

19 **THE COURT:** How much more are you gonna do? I mean,
20 she can testify that he had charges and he got out.

21 **MR. GRAHAM:** The story, I guess, goes and develops a
22 little bit like this. She was gonna cooperate for Meghan
23 and testify against Mr. Washington. She got out on bond
24 on March the 15th of 2013, so less than a month later
25 she's dead, and that she had already pled to a reduced

1 charge and deferred sentencing because she was gonna
2 cooperate. During the time that Mr. Washington -- once
3 she said she was gonna cooperate and pled and deferred
4 sentencing in the fall of 2012, Ms. Walker began to make
5 plea offers to Mr. Washington's attorney and she had a
6 trial scheduled and prior to the trial date he switched
7 attorneys and a continuance was granted and during that
8 continuance is when she was killed. I mean, it's very
9 relevant to the motive and the timing.

10 **MR. PHILLIPS:** It's triggering a couple of more
11 things. I don't have any documentation regarding specific
12 talks or cooperation. Obviously it's in there that she
13 was part of the cooperating. If she did plead guilty, I
14 would need that transcript as to what was said during the
15 factual basis and what was presented in mitigation, what
16 was said by Ms. Justice, the confrontation issue. We're
17 going down kind of a perilous road, I think.

18 **THE COURT:** I don't think you can get transcripts.
19 You can get the sentencing sheets.

20 **MR. GRAHAM:** Ms. Walker would be able to say what she
21 told the Court during the sentencing.

22 **THE COURT:** The sentencing was deferred, just the plea
23 accepted.

24 **MR. GRAHAM:** It was deferred.

25 **MR. PHILLIPS:** Well, during the plea the judge would

1 have asked her certain things and there certainly would
2 have been a factual basis, but her attorney would have
3 made certain allegations. I mean, these are things that
4 would be cross-examined. I mean Kyles versus Whitley,
5 things to attack the credibility of the witnesses in the
6 prosecution's case and these things were not turned over.

7 **THE COURT:** She's not a prosecution witness.

8 **MR. PHILLIPS:** But what's being testified to is
9 things she said and I cannot cross-examine the witness
10 that is testifying because I don't have it. There's no
11 way I can challenge that because I don't know what to
12 challenge. Going into specific deals, things that
13 Ms. Justice said, it's impossible for me. It's certainly
14 a hearsay, confrontation, the Sixth and Fourteenth
15 amendments of the United States Constitution and, of
16 course, Article 1, and as far as due process, Section 3
17 of the South Carolina Constitution, as well as the Twelfth
18 and the Fourteenth.

19 **MR. GRAHAM:** If I may, Judge, she's not gonna testify
20 as to what Paula Justice said. All she's gonna be able to
21 say is that Paula Justice pled guilty to a reduced charge
22 and had a deferred sentencing because she was going to
23 cooperate and then she passed the fact that she was going
24 to cooperate onto Mr. Washington's attorney. Whether it
25 was true she was gonna cooperate doesn't matter. The

1 evidence is what Ms. Walker would testify to, that it was
2 believed that she was going to cooperate.

3 **MR. PHILLIPS:** And that's their limited presentation.
4 On cross my scope gets larger based on what was said that
5 gets to that point. I mean, I can ask to do an -- I mean,
6 not ask, the Defendant moves to do an in-camera colloquy
7 of the witness now to see what was presented and what could
8 be presented as possible cross-examination which I would
9 still argue is hearsay and confrontation issue and highly
10 prejudicial.

11 **THE COURT:** It's not hearsay what she did as a
12 prosecutor of that case.

13 **MR. PHILLIPS:** And I'm not arguing that.

14 **THE COURT:** Yeah. I mean, I think she can present
15 out what she did as the prosecutrix, the judge accepted
16 the plea, the sentence was deferred, her expectation was
17 that there was gonna be cooperation and that was conveyed
18 onto the attorney for Washington. Is that how it went?
19 I think she can present all of that. That's firsthand.

20 **MR. PHILLIPS:** Right, but there were things that are
21 said to make her know that. I don't have that information.
22 I can't cross-examine her.

23 **THE COURT:** To make who know that?

24 **MR. PHILLIPS:** Ms. Walker. If Ms. Walker spoke to
25 Ms. Justice and they had this specific --

1 **MR. GRAHAM:** I don't believe she ever spoke with
2 Ms. Justice. I could be wrong, but --

3 **THE COURT:** Why don't you ask that? Because I don't
4 believe what Ms. Walker said can come in.

5 **MR. PHILLIPS:** I agree, and neither about Ms. Justice,
6 but if there was a plea hearing, I understand the
7 sentencing was deferred, there was some pretty critical
8 information presented at that hearing and I don't know
9 what was said.

10 **THE COURT:** If she's gonna cooperate, why do you need
11 to go any further than that?

12 **MR. PHILLIPS:** Because it could potentially have
13 cross-examinable things.

14 **THE COURT:** For the victim. I'm not sure where
15 you're talking about. I mean, you're kind of confusing me
16 as to why you think you're entitled to hear what she said
17 at this plea in front of the judge.

18 **MR. PHILLIPS:** It might not have -- it goes, again,
19 to the fact that they're saying they believe she was
20 gonna cooperate. Was that put on the record? Was that
21 said?

22 **THE COURT:** So what? I mean, what if it was or
23 wasn't? If she says that was her expectation, why does
24 it matter if it was put on the record or not? I mean, it
25 still is a credibility issue with the lawyer, isn't it?

1 **MR. PHILLIPS:** And there's no way for me to verify
2 anything. I mean, that's the point.

3 **THE COURT:** You're losing me somewhere. Did
4 Ms. Justice have an attorney?

5 **MR. GRAHAM:** She did. I believe he cooks pizzas at
6 the beach now. I don't know his name. Ms. Walker would
7 know his name.

8 **THE COURT:** What was his name?

9 **THE WITNESS:** Your Honor, if I recall correctly, she
10 was initially represented by Jessamine Grice of the
11 Richland County Public Defender's Office and then she was
12 represented by Jeremy McNeely, who was at the public
13 defender's office, but has since moved to the beach to
14 open a pizza restaurant.

15 **MR. PHILLIPS:** The defense's contention is that
16 they've gotten out they both were arrested, the sentencing
17 ranges, and I put on the record I probably should have
18 objected to that, but that's in, that was a close call,
19 they both bonded out. At some point the line of the
20 prejudice against the Defendant has crossed the threshold
21 there.

22 **MR. GRAHAM:** Tevin Deloach testified that Mr. Hart
23 said that he was killing Paula Justice because she was a
24 snitch or a CI against Jeremy Washington. That's exactly
25 what his testimony has been.

1 **THE COURT:** All right. Let's go ahead and do an
2 in-camera presentation of it and let him cross-examine her
3 because I want to see what you -- where you're going and
4 where we've got to --

5 DIRECT EXAMINATION (In-Camera)

6 BY MR. GRAHAM:

7 Q. I believe we had left off with Mr. Washington making
8 bond on May 30th of 2012; is that correct?

9 A. Yes, sir.

10 Q. Do you know what the bond amount was set for Paula
11 Justice?

12 A. I do not remember.

13 Q. State's 47 on the back, her bonds were set at what?

14 A. \$40,000.

15 Q. All right. Let me show you a certified copy of a bond
16 form for Paula Justice. Does that say on the back -- does
17 that show what amount was posted and when she got out?

18 A. Let's see. It looks like she got out on March 15th of
19 2013, and there was a \$40,000 bond.

20 Q. So the bond was never reduced?

21 A. It does not appear to be.

22 Q. Okay. Prior to her getting out in March of 2013, did
23 you plead Paula Justice in the fall of 2012?

24 A. She did plead. She did enter a plea and sentencing
25 was deferred.

1 Q. And why was the sentencing deferred?

2 A. Sentencing was deferred because she had at that
3 point through her attorney informed me that she wanted to
4 cooperate against Mr. Washington.

5 Q. And so why were you deferring sentencing?

6 A. In order to maintain her status as a cooperating
7 witness.

8 Q. And she pled to a reduced charge of trafficking ten
9 to twenty-eight grams. Let me show you another certified
10 document and ask you if that's correct?

11 A. Yes.

12 Q. Between the fall of 2012 when she entered a plea
13 with deferred sentencing, did you communicate with
14 Mr. Washington's attorney about trying to resolve the case?

15 A. I did. He initially -- he had two attorneys over the
16 course of his representation and I communicated with both
17 of them about trying to resolve the case or set a trial
18 date.

19 Q. His first attorney was who?

20 A. Mathias Chaplin.

21 Q. And did you extend an offer to Mathias Chaplin?

22 A. I can't recall the exact -- exactly how far our
23 negotiations went. I think there may have been a first
24 offer made to him as well.

25 Q. Did you set a trial date?

1 A. There was a trial date set.

2 Q. Do you remember when the trial date was set?

3 A. I don't remember the date.

4 Q. Prior to that trial coming up, do you know whether
5 Paula was still in jail or whether she had bonded out?

6 A. She was still in jail.

7 Q. Between that trial date or when that trial date was
8 set, prior to that date for the trial, what, if anything,
9 happened to Mr. Washington's representation?

10 A. Mathias Chaplin was relieved as his attorney and he
11 hired John Mobley.

12 Q. And was there another trial date or the same trial
13 date still in place for Mr. Mobley when he came on?

14 A. Initially there was the same trial date and then he
15 asked for a continuance because he didn't have enough time
16 to prepare, so I think he may have hired him right up very
17 close to his trial date. Mr. Mobley stated he didn't have
18 enough time to prepare and the trial was continued.

19 Q. And was he given a continuance?

20 A. He was.

21 Q. Okay. During the -- during that continuance, do you
22 know what happened to Paula Justice?

23 A. She bonded out at some point during that continuance
24 and then I was informed that she had been killed.

25 **MR. GRAHAM:** That would be the requested testimony.

1 **MR. PHILLIPS:** If there were communications.
2 regarding a potential offer, I think I would need those
3 communications. Those would directly go to --

4 **THE COURT:** Ask her.

5 CROSS-EXAMINATION (In-Camera)

6 BY MR. PHILLIPS:

7 Q. What were those communications? I mean, they were
8 e-mails? Were the communications e-mails?

9 A. To who?

10 Q. To you through her attorney.

11 A. Her attorney initially e-mailed me and told me that
12 she wanted to cooperate, yes.

13 **MR. PHILLIPS:** I would need that e-mail.

14 **THE COURT:** You've got her. I know you want it. I
15 don't have it. Keep asking. Move on and then you make
16 your motion. Don't stop at every document. I know you
17 want the sticky note on top of it, too, but, I mean, keep
18 moving.

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

20 BY MR. PHILLIPS:

21 Q. With that being said, you said that her bond was
22 reduced -- or, excuse me, her bond was \$40,000, not
23 reduced. Was that a PR bond or was it a surety bond?

24 A. If you have the bond form, I could take a look at that
25 to refresh my memory.

1 **THE COURT:** It was a PR bond. She got out. I mean,
2 that's not a --

3 **MR. PHILLIPS:** Right. Okay. Well, I'm just ready to
4 make motions then. I'm sorry, Your Honor.

5 **THE COURT:** I mean, if she had a forty thousand surety
6 bond and she couldn't make it, but if she had a PR she was
7 released, wasn't she?

8 **MR. PHILLIPS:** Absolutely.

9 **MR. GRAHAM:** It was not a PR bond.

10 **THE COURT:** I know. I don't think you understood --
11 you were worried about the motion.

12 **MR. PHILLIPS:** That's right. All I'm thinking about
13 is the three motions.

14 **THE COURT:** I'll take a five minute break if you want
15 to let -- let me get you back together because I didn't
16 mean to shake you up like that.

17 **MR. PHILLIPS:** All right. The first thing I would
18 state is that the bond amounts are not relevant at all
19 under 401.

20 **THE COURT:** I agree.

21 **MR. PHILLIPS:** They're not relevant.

22 **THE COURT:** I totally agree.

23 **MR. PHILLIPS:** The next thing would be the discovery
24 issue of these communications of cooperation. I would
25 need copies of these communications. I think it's

1 critical. We have an unavailable witness and then we have
2 a solicitor who says she received them who's going to
3 testify to the truth of those things. They are, in my
4 opinion, discoverable and I would need them.

5 **THE COURT:** I understand. You're denied. You're not
6 getting them. You've got her right here. You can ask her
7 what she did.

8 **MR. PHILLIPS:** As to any discussion regarding
9 Washington's change of attorneys prior to trial, I think
10 that's also not relevant and highly prejudicial, so 401 and
11 403; that any probative value that it would have would be
12 substantially outweighed.

13 **THE COURT:** I don't think that's relevant either that
14 either of them changed attorneys. I agree with you. I
15 don't think that should be part of his presentation they
16 changed attorneys. I don't think -- he asked her
17 questions. I tend to agree with you. The fact that
18 Mr. Washington changed lawyers, what difference does that
19 make?

20 **MR. PHILLIPS:** I --

21 **THE COURT:** So I tend to agree with you, so he can
22 present this without that.

23 **MR. GRAHAM:** I think it's relevant just for the fact
24 that a trial date was set.

25 **THE COURT:** And a continuance was granted. Changing

1 lawyers doesn't matter.

2 **MR. GRAHAM:** So I can go into the fact that a trial
3 date was set and a continuance was granted?

4 **THE COURT:** Sure. I don't -- I mean, what difference
5 does it make if he had five lawyers? I mean, a lawyer
6 asked for a continuance, he wasn't ready for trial, it got
7 continued. Fair enough. Second lawyer, third lawyer, it
8 doesn't matter. First lawyer.

9 **MR. PHILLIPS:** I agree.

10 **THE COURT:** I agree with you. I'm giving you that
11 one. Skip the lawyer question.

12 **MR. PHILLIPS:** So what's coming in is essentially that
13 they made bond, but not the amount, that a trial date was
14 set and then it was continued. Is that the limited scope?

15 **THE COURT:** I think that's a fair presentation of what
16 occurred over there.

17 **MR. GRAHAM:** So the documents that have their release
18 dates on bond --

19 **THE COURT:** I mean, you can ask her. If she knows.

20 **MR. GRAHAM:** As to the date, just let her testify to
21 it?

22 **THE COURT:** Absolutely. Now I don't want him to
23 challenge her memory, you know, then we'll certainly deal
24 with that, but she -- it's her case. She can just read her
25 file and find out -- it's public records when they were

1 released. I mean, isn't that a public record?

2 **MR. GRAHAM:** Yes, sir.

3 **THE COURT:** Okay. I think that's fair, but that's the
4 limited scope we're going into.

5 All right. Any more questions for her while you've
6 got her in-camera?

7 **MR. PHILLIPS:** None, Your Honor.

8 **THE COURT:** Okay.

9 **MR. PHILLIPS:** Sorry, Your Honor. I know this is one
10 thing after another. I know we've already gone into the
11 bond part, but I don't know if she can testify as to the
12 dates. That would be -- they haven't laid the foundation
13 as far as that's a hearsay document. They'd have to call
14 somebody from the clerk's office in Richland County.

15 **THE COURT:** Jesus Christ.

16 **MR. GRAHAM:** They're certified true documents, Your
17 Honor.

18 **THE COURT:** Yeah. I mean --

19 **MR. PHILLIPS:** It's a murder trial, Your Honor.

20 **THE COURT:** I understand, but we're getting tedious
21 again. That's tedious. When they got released -- all
22 right. Let's take a couple of minutes, but I want to be
23 clear. I want to rule she can testify, she handled the
24 two cases, when they were released, a continuance was
25 granted and that she was under the impression based upon

1 her communications with Ms. Justice's lawyer that there was
2 going to be cooperation by her in some fashion against a
3 co-defendant is what I understood, all right? That's where
4 we stand.

5 **MR. PHILLIPS:** And that's just subject to --
6 overruling my objections?

7 **THE COURT:** Absolutely.

8 **MR. PHILLIPS:** Thank you.

9 **THE COURT:** All right.

10 **MR. GRAHAM:** Certified documents under seal are
11 admissible in court without a records custodian.

12 **THE COURT:** Yeah.

13 **MR. GRAHAM:** I mean, I don't plan on introducing the
14 bond because you said the bond amount isn't, but I believe
15 that there's probably -- the one where she had deferred
16 sentencing would show that there was -- that she pled and
17 sentencing would support that. I'd like to introduce that
18 as well.

19 **MR. PHILLIPS:** What is he --

20 **THE COURT:** Her plea sheet that showed sentencing
21 deferred and the date it happened.

22 **MR. PHILLIPS:** She's going -- as Your Honor pointed
23 out, she's gonna testify to it.

24 **MR. GRAHAM:** What's the prejudice?

25 **THE COURT:** It seems like under 403 that's very

1 probative, not prejudicial.

2 **MR. PHILLIPS:** I'll rest on the arguments.

3 **THE COURT:** Okay. Under 403 I'd allow that
4 sentencing.

5 **MR. GRAHAM:** The only other document, Your Honor, was
6 that ultimately Mr. Washington pled to a reduced charge as
7 well after Ms. Justice's death for a five-year term and I
8 have that sentencing sheet as well showing that he was
9 initially facing seven to twenty-five and after her death
10 he got a much reduced sentence.

11 **THE COURT:** Why is that relevant?

12 **MR. GRAHAM:** He got what he wanted.

13 **MR. PHILLIPS:** And that's -- we're bridging gaps here
14 with Your Honor's -- I can tell.

15 **THE COURT:** Let me be clear. Washington is the guy
16 that's in Federal prison?

17 **MR. GRAHAM:** Yes.

18 **MR. PHILLIPS:** Who was arrested this weekend
19 four years later. Yes, Your Honor. That person.

20 **THE COURT:** And he's got a life sentence in Federal
21 prison?

22 **MR. GRAHAM:** After this -- Ms. Walker, I believe this
23 -- I'm asking her, I guess for the record, his five-year
24 sentence came before any Federal action that you're aware
25 of?

1 **THE WITNESS:** Yes, I was not aware of any Federal.
2 action.

3 **MR. PHILLIPS:** And this is the same person who
4 provided exculpatory information denying any involvement
5 in November that I didn't find out about until April 12th.

6 **THE COURT:** Give me that again.

7 **MR. PHILLIPS:** Jeremy Washington --

8 **THE COURT:** Y'all keep using people. I need to know
9 their names. That's how I can remember them. Jeremy
10 Washington is the alleged hiree -- I mean, employer?

11 **MR. PHILLIPS:** Sure. So under the State's theory --
12 that's correct, Your Honor; that this is the linchpin, the
13 guy who set it up. This is the same person we argued in
14 pre-trial that denied any involvement in the case back in
15 November on a conference call while he was in Federal
16 prison in California with the solicitor's office denying
17 any involvement and then in April I find out that he
18 provided this exculpatory information for the first time.
19 He provides another statement, slightly changes his story,
20 but still hasn't said directly implicating my client. Then
21 last Wednesday --

22 **THE COURT:** All right. Tell me this. Washington says
23 I wasn't involved at all. That's not exculpatory to your
24 guy.

25 **MR. PHILLIPS:** That he didn't set it up. I mean,

1 there's the State's theory. I mean, that's -- if their
2 theory is that Washington hired John Hart to kill her and
3 he tells them I didn't do that and I don't know anything
4 about it --

5 **THE COURT:** And you didn't know that?

6 **MR. PHILLIPS:** Not until April 12th and that was taken
7 in November. That's what I was arguing in pre-trial.

8 **MR. GRAHAM:** Jeremy Washington is here in South
9 Carolina if he can get him into the courtroom. We'll have
10 him transported here if he wants him.

11 **MR. PHILLIPS:** And chronologically --

12 **THE COURT:** Well, here's what I don't understand is if
13 Washington is in jail in Federal prison in California and
14 his statement is he wasn't involved and that's part of the
15 state's theory, how does that hurt you?

16 **MR. PHILLIPS:** No, no. In all due represent, that's
17 -- you're confused on that issue. He says -- the State's
18 theory is that Jeremy Washington hired John Hart to kill
19 Paula Justice.

20 **THE COURT:** And Washington's saying no, no, no, I
21 didn't do that.

22 **MR. PHILLIPS:** The solicitor's office is on a call
23 with Washington in November and he says I did not set up
24 anything with John Hart to kill Paula Justice. I am not
25 involved, that did not happen.

1 **THE COURT:** And they don't believe him because they
2 think -- their theory is that he did --

3 **MR. PHILLIPS:** Of course.

4 **THE COURT:** -- because Deloach says it.

5 **MR. PHILLIPS:** Jailhouse snitches say it. And then,
6 of course, I find out for the first time on April 12th,
7 five, six months later. Then they bring him over --

8 **THE COURT:** Wait a minute now. If they think that
9 Washington hired and he's not saying it -- or he did say
10 it, yes, I hired your client, you'd have known that,
11 wouldn't you?

12 **MR. PHILLIPS:** Once he made that statement, the
13 argument pre-trial was under the continuing duty to
14 disclose I needed to know that the person that they said
15 set this up had just told them that didn't happen and I
16 didn't know that until five, six months later after they
17 also had brought him in and he made a statement that
18 slightly shifted more saying he did say he wanted her
19 dead, but not that John Hart killed her. Then last
20 Wednesday they brought him over with the FBI and during
21 a pre-polygraph interview he changes his story to, if
22 this is correct, to he did set it up, he did -- John Hart
23 did admit it to him and he's charged with murder on
24 Saturday, I believe, or Sunday four years later. The
25 issue with the second statement when he finally started

1 to come around, and if you read the FBI statement all
2 of that's provided in Court's Exhibit Number 3, he's
3 presented with the dilemma of violate your Federal
4 proffer or provide a statement to State authorities.
5 That's when he changes his story from November.

6 **MR. GRAHAM:** He's a little slightly off on the facts,
7 but close.

8 **MR. PHILLIPS:** He can -- he can try to clarify that.

9 **MR. GRAHAM:** He was brought over for a Federal --
10 November of last year Assistant Solicitor McNair and Jason
11 Green, an FBI agent, talked to Mr. Washington on the phone
12 while he was in custody in California. They asked him
13 whether he had any information about this, he denied it.
14 We didn't believe him. We asked the Federal government to
15 go polygraph him. He is under a Federal proffer. He's
16 doing life and is hoping to have that reduced, so the FBI
17 flew out a polygraph examiner to California. Prior to --
18 in a pre-polygraph interview, he started to admit some
19 knowledge of it, enough where we felt that it was worth
20 it to bring him back, so we did a writ and the Federal
21 government helped to do a writ and they brought and
22 transferred him from the marshals to the custody of the
23 Lexington County Sheriff's Department last Monday or
24 Sunday.

25 Tuesday, myself, Sergeant Spivey -- I'm not sure of

1 the exact date, Tuesday, myself, Sergeant Spivey and
2 Assistant Solicitor McNair went over to the FBI office and
3 met with the US Attorney and the FBI polygraph examiner and
4 met with them and explained where he was with his proffer,
5 that they thought that he was in violation with his proffer
6 because he'd already changed his story I believe is what
7 was told at that time. So the polygraph examiner talked to
8 him, developed a little more of the story. I don't want to
9 tell you -- mislead the Court about what was exactly said
10 at that point, but he started saying that he had met
11 Mr. Hart at the hospital, at LMC, that he talked to him
12 about Paula, indicating something about Paula wanting --
13 him wanting Paula dead or she should be dead because
14 snitches snitch on everybody. He at that time claimed
15 that Mr. Hart said that he would take care of it for him
16 and then I think at that time he said after the murder
17 Mr. Hart contacted him and he gave him five circles of
18 crack cocaine worth about \$2,000 so that Mr. Hart could
19 go to New York. After that the polygraph examiner came
20 back and told us and we asked him if he would go ask
21 Mr. Washington if he would be willing to speak with us and
22 he said yes. At that time we separated from the Federal
23 government and it was myself, Mr. McNair and Sergeant
24 Spivey, no Federal people were present, and we read him his
25 Miranda rights, he waived his Miranda rights and talked to

1 us. We told him that we were investigating Paula Justice's
2 death, we thought that he was involved, and during that
3 time he reiterated that he ran into Mr. Hart at the
4 hospital, that he stated that he wanted Paula killed, he
5 said that Mr. Hart said he would do it, he said that he
6 would take care of it, meaning somehow financially take
7 care of him if he did or if somebody did kill her, and he
8 reiterated the fact that he came -- Mr. Hart came to him
9 after the murder and he gave him five circles of crack
10 cocaine worth \$2,000. Based on that statement to us, an
11 arrest warrant was obtained against Mr. Washington.

12 **MR. PHILLIPS:** And they left out one little part. He
13 said well, I wasn't involved or I didn't -- I'm not guilty
14 of this and then he --

15 **MR. GRAHAM:** I'm sorry, that is true. He said he --

16 **MR. PHILLIPS:** -- and then he says -- I believe
17 either McNair or Solicitor Graham says you can't have it
18 both ways; either that happened or it didn't, and he says
19 I want an attorney. That's how it ends.

20 **MR. GRAHAM:** But I don't know how that changes
21 anything.

22 **THE COURT:** But let me guess. He's probably not
23 gonna testify, is he?

24 **MR. GRAHAM:** Right now he has an attorney and my
25 understanding is if I called him he would invoke his

1 Fifth Amendment rights.

2 **THE COURT:** Shocking, huh? I think I understand
3 the third-party guilt request. It's starting to become
4 clearer.

5 All right... Let's take a couple of minutes and let me
6 digest some of this and let the witness rest up so y'all
7 can get her done.

8 **THE WITNESS:** Thank you, Judge.

9 **THE COURT:** Let's take about ten minutes and then
10 we'll come back and talk further.

11 **MR. PHILLIPS:** Thank you.

12 (Recess taken.)

13 **BAILIFF:** All rise.

14 **THE COURT:** You may be seated.

15 All right. We know the scope with Ms. Walker, where
16 we can go, you know what you can cross-examine her on.

17 Anything else we need to do on the record before we
18 bring the jury back in?

19 **MR. PHILLIPS:** Just with the scheduling regarding the
20 cell phone, I know -- is it the AT&T custodian?

21 **THE COURT:** No, it's Verizon.

22 **MR. PHILLIPS:** I'm sorry, the Verizon custodian. I
23 called my expert witness, Tom Slovenski. He's telling me
24 that he has a scheduled conference for noon tomorrow and
25 he's sitting in a suit with his stuff all ready. He's

1 waiting for our call. We thought -- we were told today,
2 so I know we're getting close -- we'll be close on time
3 with that.

4 **MR. GRAHAM:** What I found out from Verizon on the
5 break was that their -- the person who was supposed to
6 come here is in Texas, their backup is in Orlando, so
7 Verizon said they cannot have anybody here today.

8 **THE COURT:** It looks like Verizon is gonna be called
9 in the morning. That's about as good as we can do. I
10 wish it were all easier than that. I hope we won't
11 inconvenience Mr. Slovenski too much. Where's his 12:00
12 -- or midday?

13 **MR. PHILLIPS:** Greenville.

14 **THE COURT:** Well --

15 **MR. GRAHAM:** The other -- I guess the other option
16 may be to try to keep moving.

17 **THE COURT:** Either way if he were to finish today,
18 you would need him tomorrow if you were gonna call him.

19 **MR. PHILLIPS:** I mean, I can go ahead. I mean, this
20 is not some type of trial strategy that I'm holding back.
21 The State's gonna present cell site location maps as
22 demonstrative aids, I would imagine that's what they are.
23 They've already -- they've presented it to me, my expert
24 reviewed it and says that the maps shouldn't be used as
25 they're made -- or as demonstrative exhibits, that they're

1 misleading. I provided the report to the State and that
2 he would -- we'd essentially do an in-camera hearing on
3 admissibility of those demonstrative aids going before
4 the jury. That's -- that's what I need him for.

5 **THE COURT:** Right, but if they were testifying this
6 afternoon, you'd need him tomorrow anyway to do that.

7 **MR. PHILLIPS:** Right, whenever they would call the
8 person who would present that --

9 **THE COURT:** Yeah.

10 **MR. PHILLIPS:** -- the demonstrative aids.

11 **THE COURT:** Right. We'll just have to try to have
12 him here when Verizon can be here and it looks like that's
13 tomorrow morning.

14 **MR. GRAHAM:** I guess another option to maybe keep
15 things going is if we run out of witnesses this afternoon
16 we could send the jury home and do his hearing. He's not
17 -- he's not talking about, I don't think, having his person
18 testify in front of the jury.

19 **MR. PHILLIPS:** That would work because all my stuff
20 is just whether the demonstrative aids as they are are
21 admissible and then --

22 **THE COURT:** How's he gonna do that? You're gonna do
23 that just with your guy, not the Verizon guy?

24 **MR. GRAHAM:** Right. I guess -- my thought we would
25 be is we put up the maps we expect to get in once the

1 Verizon records come in and then go through that testimony.

2 **MR. PHILLIPS:** And it's in-camera, we won't need the
3 jury, so that could happen today.

4 **THE COURT:** Okay. That makes sense to me to. Your
5 data analysis guy is analyzing the data that's comes into
6 Verizon tomorrow, which he can testify -- I'm basing this
7 on what I've been provided already. It's not in trial,
8 but it's anticipated to be in and we can go ahead and do
9 that in-camera hearing. That's not a bad plan.

10 **MR. PHILLIPS:** And since we don't need the jury,
11 scheduling-wise that's --

12 **MR. GRAHAM:** My thought would be is let us run as far
13 as we can and then we can take up that at the end of the
14 day and he can tell his person to be here at 3:00 or
15 whatever time is necessary.

16 **MR. PHILLIPS:** Do you want me to go outside and call
17 him and tell him to be here this afternoon? I just told
18 him right now --

19 **THE COURT:** That sounds pretty good to me. That
20 sounds like a very reasonable plan.

21 **MR. PHILLIPS:** I'm gonna do that. Thank you.

22 **THE COURT:** Uh-huh.

23 **MR. GRAHAM:** And I could be wrong on the time. You
24 might want to tell him earlier. I don't know.

25 **THE COURT:** He said three. I'm thinking three, but I

1 don't know.

2 **MR. GRAHAM:** Tell him to be here at two. }

3 (Pause in proceedings.) (

4 **THE COURT:** All right. Bring the jury in.

5 (Whereupon, the jury returns to the courtroom at
6 10:49 AM.)

7 **THE COURT:** All right. Are y'all ready?

8 All right. We had several things to take up. One
9 turned into three. Sorry about keeping you back there so
10 long.

11 Mr. Graham, you may continue.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. GRAHAM:

14 Q. Ms. Walker, I think we left off with Jeremy Washington
15 made bond. I'm gonna show you a certified document. He
16 made bond and posted it and got out when?

17 A. May 30, 2012.

18 Q. All right. Paula Justice -- let me show you another
19 certified document. Paula Justice posted her bond and got
20 out on what date?

21 A. March 15th of 2013.

22 Q. Okay. Let me show -- prior to her getting out on
23 bond, what was your understanding about her cooperating for
24 your case against Mr. Washington?

25 A. I was informed through her attorney that she wanted

1 to cooperate and testify against Jeremy Washington.

2 Q. Based on that, did you allow her to plead to a reduced
3 sentence from the warrant that was trafficking twenty-eight
4 to a hundred to a reduced charge?

5 A. I did.

6 Q. Let me show you a document and ask if you recognize
7 this?

8 A. This is her sentencing sheet showing the deferred
9 sentence.

10 MR. GRAHAM: Your Honor, the State would offer this
11 into evidence.

12 THE COURT: Subject to your objection.

13 MR. PHILLIPS: Yes, Your Honor.

14 THE COURT: All right. That will be State's 48?

15 THE COURT REPORTER: Yes.

16 THE COURT: 48 is admitted subject to the objection.
17 Your record is protected.

18 (State's Exhibit Number 48, a sentencing sheet, was
19 marked and admitted into evidence.)

20 BY MR. GRAHAM:

21 Q. State's 48, when we say it's a sentencing sheet, what
22 is meant by that, Ms. Walker?

23 A. This is a sentencing sheet where it shows what she
24 is pleading guilty to, it shows that I've agreed to this,
25 she's agreed to it, that her attorney agreed to it, and at

1 the top it says sentencing deferred.

2 Q. And when you say sentence deferred, what does that
3 mean?

4 A. She entered a guilty plea, but she wasn't sentenced
5 when she entered that guilty plea. She was going to be
6 sentenced at a later date, so she didn't know what
7 sentence she would have to serve.

8 Q. Sentenced after her cooperation?

9 A. Yes.

10 Q. All right. Do you remember approximately when the
11 deferred -- when she entered her deferred -- her guilty
12 plea on the reduced charge with the deferred sentence?

13 A. I think that would have been in the fall, but I'm
14 not -- I can't remember the exact date. Does it --

15 Q. I don't believe that there are any notations on there.

16 A. I don't remember the exact date.

17 Q. When you said --

18 A. It would have been before she bonded out.

19 Q. Before she bonded out. Did you communicate to
20 Mr. Washington's attorney that Ms. Justice was going to
21 cooperate against Mr. Washington in your case against him?

22 A. I did.

23 Q. And was there a trial date set for Mr. Washington on
24 his trafficking charge?

25 A. There was.

1 Q. And what was -- if you don't remember the exact date,
2 do you remember in relationship to when she was released
3 on bond on March 15th of 2013 when the trial was scheduled
4 for Mr. Washington?

5 A. The original trial date was before she was released
6 on bond.

7 Q. So a trial date was set, she was released. Was the
8 trial held?

9 A. The trial was not held, it was continued.
10 Mr. Washington's trial was.

11 Q. Mr. Washington's trial was continued. Do you
12 remember whether the continuance happened before or after
13 Ms. Justice was released on bond on March 15th of 2013?

14 A. I can't remember if it was right before or right
15 after. It was all happening right around the same time.

16 Q. Right around that March 15th date?

17 A. Yes.

18 Q. Okay. And then subsequently you learned that
19 Ms. Justice had been killed; is that correct?

20 A. I did.

21 Q. And what effect did that have on your case against
22 Mr. Washington?

23 A. The case against Mr. Washington was still a case that
24 I felt the State could prove his guilt, but it did have a
25 negative impact on, I guess, my confidence in the case at

1 that point. She was -- she agreed to testify, she had a
2 lot of information that she was willing to provide from
3 what her attorney told me, and so taking that into
4 consideration it did impact the decisions that I made in
5 prosecuting Mr. Washington.

6 **MR. GRAHAM:** Thank you, Ms. Walker.

7 CROSS-EXAMINATION

8 BY MR. PHILLIPS:

9 Q. Hello again.

10 A. Hello.

11 Q. So Ms. Paula Justice pled guilty back in the fall.
12 You said you weren't -- you couldn't remember --

13 A. I can't remember the exact date, but it was -- she
14 pled guilty and the sentencing was deferred. She bonded
15 out and she was never sentenced.

16 Q. So several months after she had pled guilty she sat in
17 jail?

18 A. She sat in jail for I know at least a couple of months
19 before she was able to bond out.

20 Q. And at that point did she write statements to the
21 solicitor's office?

22 A. No, at that point she was communicating through her
23 attorney to me that she wanted to cooperate against
24 Mr. Washington.

25 Q. And I think you said the attorney only sent you like

1 one e-mail?

2 A. The attorney sent me -- in terms of e-mail, there was
3 one e-mail, but there were several telephone conversations.

4 Q. Okay. But she never wrote any statements to you?

5 A. I was not that far into the trial preparation process
6 of Mr. Washington's case in order to sit down and talk to
7 her myself. I just understood that she was very eager to
8 testify against Mr. Washington.

9 Q. And so several months had passed by, she's sitting in
10 jail, she doesn't write you any statements. After she's
11 already pled guilty, you don't have any statements taken
12 after she's pled guilty, and ultimately Jeremy Washington
13 pled guilty.

14 A. He plead guilty as well, yes.

15 Q. I mean, so Jeremy Washington pled guilty. He didn't
16 get off scot-free?

17 A. No, he pled guilty, I think, to a reduced sentence.
18 He was facing seven to twenty-five -- he was facing one
19 range and pled guilty to a much reduced range.

20 Q. Like you said, you felt like you had enough for a
21 conviction and so did they. They plead guilty.

22 A. I felt as if -- I was confident that we could get
23 a conviction. I was less confident than I was before
24 Ms. Justice was murdered.

25 Q. And he pled guilty?

1 A. He did.

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

3 **THE COURT:** Anything else?

4 REDIRECT EXAMINATION

5 BY MR. GRAHAM:

6 Q. I think you testified he was facing seven to
7 twenty-five?

8 A. Yes.

9 Q. And he pled to what?

10 A. If I recall correctly, I think there was a negotiated
11 five-year sentence.

12 Q. Do you know whether that five years was what
13 they call an 85 percent crime, where you have to serve
14 85 percent of that?

15 A. It is.

16 **MR. GRAHAM:** Thank you, Ms. Walker.

17 **THE COURT:** You can step down.

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

19 **MR. PHILLIPS:** I have one --

20 **THE COURT:** If you want to.

21 RECROSS EXAMINATION

22 BY MR. PHILLIPS:

23 Q. He pled guilty?

24 A. Yes, he pled guilty.

25 **THE COURT:** Now you can step down.

1 **THE WITNESS:** May I be released or excused?

2 **THE COURT:** Sure you can.

3 **THE WITNESS:** Thank you, Judge.

4 (Witness excused.)

5 **MR. GRAHAM:** Amy Stephens.

6 **MR. PHILLIPS:** The name of the witness, Your Honor?

7 **MR. McNAIR:** Amy Stephens, Your Honor.

8 **THE CLERK:** I apologize. I didn't hear him call her.

9 (Whereupon, Amy Stephens was duly sworn by the Clerk
10 of the Court.)

11 **THE CLERK:** Once you're seated, state your full name,
12 spelling your last.

13 **THE WITNESS:** Amy Stephens, S-T-E-P-H-E-N-S.

14 AMY STEPHENS,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q. Ms. Stephens, where are you employed and what do you
19 do?

20 A. I'm employed at the State Law Enforcement Division in
21 the evidence control department. My daily responsibilities
22 are to log in, package and transfer evidence for forensic
23 analysis.

24 Q. All right. What does evidence control do? Can you
25 explain it a little more in detail of how the process of

1 when an agency such as the sheriff's department comes and
2 gives items to SLED how that works?

3 A. The law enforcement agencies throughout the state of
4 South Carolina will arrive at our laboratory to submit
5 evidence for analysis. They will bring their submission
6 paperwork, we take that information and enter it into our
7 computer system in which a unique lab number is generated
8 and then each item of evidence for that particular case is
9 assigned an item number as well. We will then transfer
10 that evidence to a location within our evidence room
11 awaiting analysis.

12 Q. So when an officer brings -- how do they actually do
13 the physical hand-to-hand?

14 A. At the time this case was logged in, it would have
15 been a face-to-face transfer and then we would have
16 packaged the evidence according to our policies and then
17 have the officer initial and date the seals.

18 Q. And what does SLED do to maintain the -- I guess, the
19 security of the packages, to secure the evidence and make
20 sure it's not tampered with?

21 A. A piece of evidence is packaged in a heat-sealed
22 pouch, the pouch is sealed and they will initial and date
23 the seal. Everything else is packaged in boxes or
24 envelopes and it's taped with packing tape and then it's
25 taped with evidence tape with the initials and date of the

1 sealing official.

2 Q. So once it goes past evidence control, it goes through
3 several hands to make it to the appropriate department when
4 testing is done; is that correct?

5 A. It can, yes.

6 Q. All right. Let me show you a few items that are
7 already in evidence and let's talk about the chain of
8 custody, which is the passing of the hands, right?

9 A. Correct.

10 Q. This is State's Exhibit Number 43, which is a Karr 45,
11 which, I believe, may be Item 9.

12 A. That's correct.

13 Q. Would you explain the chain of custody on that item?

14 A. I received this piece of evidence from Michael Phipps
15 with the Lexington County Sheriff's Department on April 17,
16 2013, at 4:12 PM. I then transferred the evidence to
17 latent print examiner, Thomas Darnell, also on April the
18 17th, 2013, at 4:21 PM. Thomas Darnell then transferred
19 the evidence to Kenneth Whitler, who was employed within
20 the firearms department, on April the 18th of 2013, at
21 2:07 PM. The evidence was then transferred back to Thomas
22 Darnell on April 18, 2013, at 2:56 PM. The evidence was
23 then transferred again to Kenneth Whitler within the
24 firearms department on April 18, 2013, at 2:59 PM. Kenneth
25 Whitler then transferred the evidence to forensic

1 technician Patricia Crooks, who was employed within the
2 evidence control department, on April the 24th, 2013, at
3 3:04 PM. On April 24, 2013, at 3:07 PM, Patricia Crooks
4 transferred that evidence to an evidence intake shelf -- or
5 return shelf, excuse me, within our evidence room and on
6 May 1, 2013, at 10:46 AM Patricia Crooks retrieved that
7 evidence from that location and returned it to the agency
8 to Beth Holliman with the Lexington County Sheriff's
9 Department.

10 Q. All right. So for each item -- for this item in
11 particular, you just detailed every person who touched this
12 from the time it came into SLED until the time it left?

13 A. Correct.

14 Q. The items are sealed with tamper-proof tape?

15 A. Yes, they are.

16 Q. If things aren't done right, notations are made; is
17 that correct?

18 A. That's correct.

19 Q. Now the firearms people who would have been involved
20 in looking at this would have been Thomas Darnell and Ken
21 Whitler; is that correct?

22 A. Thomas Darnell is employed within the latent prints
23 department and Ken Whitler was employed within the firearms
24 department.

25 Q. All right. State's Number 14, which is going to be

1 SLED's Number 8, came in a package which we've got labeled
2 as Item 15. Also inside that package was State's Number 44
3 in evidence, which I believe is Item 7 from SLED?

4 A. That's correct.

5 Q. Would you talk about the chain of custody for these
6 items when they came into SLED's possession?

7 A. SLED Item Number 7, which is described as a fired
8 bullet or as a projectile, I retrieved that -- I received
9 that evidence from Michael Phipps with the Lexington County
10 Sheriff's Department on April 17, 2013, at 4:12 PM. I
11 transferred this evidence to Thomas Darnell also on
12 April 17, 2013, at 4:21 PM. Thomas Darnell then
13 transferred the evidence to Kenneth Whitler on April 18,
14 2013, at 2:07 PM. Kenneth Whitler then transferred the
15 evidence to Patricia Crooks within the evidence control
16 department on April the 24th, 2013, at 3:04 PM. Patricia
17 Crooks transferred that evidence to a shelf within our
18 evidence room on April 24, 2013, at 3:06 PM, and Patricia
19 Crooks returned the evidence to Beth Holliman with the
20 Lexington County Sheriff's Department on May 1, 2013.

21 Q. Any indication that either of the items we've talked
22 about, either the gun or the projectile or the casing, had
23 any irregularities going through SLED?

24 A. No.

25 Q. Let me show you another item and ask if you recognize

1 this as being SLED's Item 9.1, 2, 3 and 4?

2 A. The label that is affixed to the outside of this
3 package corresponds with SLED's Item 9.1, 9.2, 9.3 and 9.4.

4 Q. And can you tell the jury what Items 9.1., 9.2, 9.3
5 and 9.4 are?

6 A. SLED Item 9.1 is a swab from a pistol grip. SLED Item
7 9.2 is a swab from the pistol trigger slash guard. SLED
8 Item 9.3 is a swab from a pistol magazine and SLED Item 9.4
9 is a swab from cartridge headstamps.

10 Q. Can you tell who created those items?

11 A. These items were created in-house by forensic
12 scientist Thomas Darnell of the latent prints department.

13 Q. And can you go through the chain of custody for those
14 four items?

15 A. The chain of custody will be the same for Items 9.1
16 through 9.4. They begin with Thomas Darnell on April the
17 18th, 2013, at 1:11 PM. He transferred these items to
18 Kenneth Whitler on April 18, 2013, at 2:07 PM. Kenneth
19 Whitler transferred the evidence back to Thomas Darnell on
20 the April 18th, 2013, at 2:56 PM. Thomas Darnell then
21 created a container for these items on April 18, 2013, at
22 2:58 PM. Thomas Darnell transferred the evidence to our
23 latent evidence return holding on April 18, 2013, at
24 4:44 PM. He retrieved that evidence from that location on
25 April the 22nd, 2013, at 1:05 PM. Thomas Darnell then

1 transferred the evidence to Doris Yarborough, who was a
2 technician within the evidence control department, on
3 April 22, 2013, at 1:07 PM. Doris Yarborough transferred
4 that evidence to a DNA intake shelf within the evidence
5 room on April 22, 2013, at 1:07 PM. That evidence was
6 retrieved from the intake shelf by Jennifer Aycock, who
7 was a forensic technician within the evidence control
8 department, on September 29, 2014, at 10:56. Jennifer
9 Aycock transferred the evidence to Jessica Stowe, who is
10 a forensic technician in the serology department, on
11 September 29, 2014, at 10:56 AM. On October 14, 2014, at
12 10:34 AM, Jessica Stowe transferred the evidence back to
13 Jennifer Aycock, who then transferred the evidence to a
14 DNA intake shelf on October 14, 2014, at 3:20 PM. Jackie
15 Davis retrieved that evidence from the DNA intake shelf on
16 March 2nd, 2015, at 11:02 AM, and transferred the evidence
17 to DNA analyst Catherine Leisy at 11:03 AM. On March 18,
18 2015, at 10:27 AM, Catherine Leisy placed the evidence in
19 DNA returns within the DNA department. The evidence was
20 retrieved from that location by Sheree Brown on April 9,
21 2015, and transferred to myself, also on April 9, 2015.
22 I then transferred that evidence to a return shelf within
23 our evidence room on April 9, 2015, at 3:06 PM, and Jackie
24 Davis retrieved that evidence on April 15, 2015, at
25 10:20 AM and returned that evidence to Candy Kyzer with

1 the Lexington County Sheriff's Department.

2 **MR. GRAHAM:** Thank you, Ms. Stephens. The State would
3 offer this in evidence at this time.

4 **MR. PHILLIPS:** No objection.

5 **THE COURT:** And that will be 49.

6 (State's Exhibit Number 49, swabs, were marked and
7 admitted into evidence.)

8 **MR. PHILLIPS:** No questions, Ms. Stephens. Thank you.

9 **THE COURT:** You may step down.

10 **THE WITNESS:** Thank you.

11 (Witness excused.)

12 **MR. McNAIR:** Your Honor, the State calls Tom Darnell.

13 (Whereupon, Thomas Edward Darnell was duly sworn by
14 the Clerk of Court.)

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

17 **THE WITNESS:** My name is Thomas Edward Darnell. Last
18 name spelled D-A-R-N-E-L-L.

19 THOMAS EDWARD DARNELL,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. McNAIR:

23 Q. Agent Darnell, where are you currently employed?

24 A. I work at SLED. I'm in the forensic laboratory here
25 in Columbia.

1 Q. All right. How long have you been employed with SLED?

2 A. Since about 1990. I've been there -- I actually left
3 for a few years and then came back.

4 Q. What's your current position there?

5 A. I am a -- currently a latent print examiner within the
6 latent print department.

7 Q. How long have you been a latent print examiner for?

8 A. For -- I actually started in law enforcement in 1982,
9 started at SLED in 1990, and I've done latent prints pretty
10 much since 1990, so twenty-seven years.

11 Q. Okay. And have you been qualified as an expert in
12 court concerning latent print analysis before?

13 A. I have.

14 Q. How many times?

15 A. Probably a 140 or 150 times or so across the state and
16 some out of state, state and Federal court.

17 **MR. McNAIR:** Your Honor, we'd offer Agent Darnell as
18 an expert in latent print analysis.

19 **MR. PHILLIPS:** No object. He's an expert.

20 **THE COURT:** All right. Agent Darnell is qualified as
21 an expert and can provide testimony in the field of latent
22 fingerprint examination.

23 **BY MR. McNAIR:**

24 Q. Agent Darnell, can you kind of explain to the jury
25 what a latent print is?

1 A. Well, first of all, on the -- you know, we all have
2 fingerprints, we all have fingers, and on the surface on
3 your fingers are patterns and those patterns sometimes
4 when you touch a surface you may leave that impression on
5 the surface. The word latent actually means hidden or
6 invisible. We would require -- in order for me to be able
7 to see a latent print, I would have to develop it or try to
8 enhance it by some form, but basically a latent print is a
9 chance print that might be left when you touch a surface.
10 The latent print is about 98 to 99 percent moisture when
11 you do touch a surface.

12 Q. All right. Now if something had been submerged in
13 water for about a week, would you expect to get a latent
14 print off of that?

15 A. I would not expect it just simply because of the fact
16 that latents are -- they're extremely fragile. In other
17 words, whenever -- you know, most of us might be familiar
18 with the fingerprint brushes and the black powder that you
19 quite often see on television shows, but when you're --
20 actually when you're brushing a surface trying to develop
21 a print, you can actually damage it just by the stroke of
22 the brush if you're not careful. So latents are extremely
23 fragile and if a surface had been submerged in water I
24 would certainly not expect to see any latents on that type
25 of object.

1 Q. During your twenty plus year career, have you ever
2 obtained a latent print off something that had been
3 submerged in water?

4 A. I never have and I've processed quite a few things.
5 I've been asked to process quite a few items of evidence
6 such as the one we have here and I couldn't develop
7 anything on it.

8 Q. All right. I'm gonna show you State's Exhibit 43.
9 Can you tell me whether or not that was submitted to you
10 for analysis?

11 A. Yes, sir.

12 Q. And how was that item submitted to you?

13 A. This -- this item was actually -- this container
14 actually had water in it and the pistol was actually
15 submerged in the water when I got it.

16 Q. All right. And was it in a sealed container?

17 A. It was. This is the actual container it was in and
18 it had all this evidence tape on it. In fact, I think the
19 red tape is probably what the sheriff's department used
20 whenever they packaged it. All the yellow tape is
21 signified with SLED, so that would be tape that we might
22 have put on there once we started moving the item around
23 in the laboratory, but it was in a sealed condition when I
24 got it.

25 Q. And what did you do when you received that?

1 A. When I got the item, of course, I had to take it out
2 of the water. There is one process that I can attempt to
3 use in trying to develop latent prints on the gun, so --
4 and actually prior -- prior to that I was asked to swab
5 certain areas of the gun in an attempt to collect any DNA
6 that might be present, so I did the swabbing of the gun
7 for DNA evidence prior to attempting to develop any latent
8 prints on the gun itself and the magazine.

9 Q. All right. And were you able to obtain any latent
10 prints off of that gun?

11 A. I was not.

12 Q. You mentioned you also took swabs from areas on the
13 gun?

14 A. Yes, sir.

15 Q. I'm gonna show you State's 49. Can you identify what
16 that is?

17 A. I can. State's 49 is a sealed container, which on
18 the inside there were four small envelopes. Each envelope
19 contains swabs that I made of the pistol and each swab
20 was allowed to air dry, placed inside the envelope, each
21 envelope was sealed up and then all four envelopes were
22 placed inside of this package, which has my name on it, the
23 date I did it and the item numbers, but this is the outer
24 container that contained all the DNA swabs.

25 Q. So after you took the swabs, you sealed it in that

1 package?

2 A. I did.

3 Q. All right. And what did you do with it at that point?

4 A. When I completed -- when I got all this contained
5 and sealed properly, I transferred it downstairs to our
6 evidence control department so it might could be
7 distributed to the DNA department.

8 Q. All right. And do you have a description of where
9 the swabs were taken from the gun?

10 A. I do. There was a total of four. One swab came from
11 the pistol grip, one swab came from the pistol trigger or
12 the trigger guard area. I actually -- and I did some swabs
13 from the magazine, pistol magazine, and then I took some
14 swabs from the cartridge -- or the unfired bullets. I took
15 some swabs from the headstamps of those unfired bullets.

16 Q. All right. I'm gonna show you State's 14 and State's
17 44. I'll show you State's 14 first. Was that item
18 submitted to you as well?

19 A. Yes, it was.

20 Q. Did you do any analysis on that item?

21 A. No, I did not. State's 14 is actually a fired
22 cartridge case. This item came in in a sealed -- contained
23 in a sealed condition inside of a sealed container and
24 there were notations in the file that it had already been
25 processed by Lexington County, so there wasn't anything

1 further for me to do with it. In fact, I didn't even
2 bother opening it up. I left it in the sealed container
3 and ultimately it was transferred on to the next
4 department.

5 Q. And is State's 44 the same thing, the projectile?

6 A. The same thing. State's 44 is a fired projectile
7 and it, too, came in in a sealed condition. Typically
8 when we get this type of evidence it's being submitted for
9 a firearms examination only and I would -- if I had to
10 guess, I would imagine that they would want to keep all the
11 firearms evidence together is probably why I would have
12 gotten this as well.

13 Q. All right. And what did you do -- you already
14 testified what you did with State's 49. What did you do
15 with State's 43, 44 and 14 after it was in your custody?

16 A. Once I completed everything that I needed to do,
17 making my notes and so forth, I simply -- well, I put it
18 back in -- all back in the container and I sealed it up
19 and I walked across the hall in the laboratory to the
20 firearms department and physically transferred it
21 person-to-person to Agent Whitler. Ken Whitler at that
22 time worked in the firearms department.

23 MR. McNAIR: All right. Thank you. No further
24 questions.

25 CROSS-EXAMINATION

1 BY MR. PHILLIPS:

2 Q. Based on your testimony, long story short, there's no
3 fingerprint evidence in this case?

4 A. I was unable to develop anything from the evidence at
5 all.

6 MR. PHILLIPS: Thank you. No further questions.

7 THE COURT: You may step down.

8 THE WITNESS: Thank you, sir.

9 (Witness excused.)

10 MR. McNAIR: Your Honor, the State calls Kenneth
11 Whitler.

12 (Whereupon, Kenneth Whitler was duly sworn by the
13 Clerk of Court.)

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

16 THE WITNESS: My name is Kenneth Whitler, last name
17 spelled W-H-I-T-L-E-R.

18 KENNETH WHITLER,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. McNAIR:

22 Q. Agent Whitler, are you currently with SLED or are you
23 retired now?

24 A. I'm retired.

25 Q. How long were you with SLED prior to your retirement?

1 A. I was with SLED from 1997 until 2012 when I retired
2 and then I came back for -- until 2014. For two years I
3 worked part-time in the laboratory.

4 Q. All right, sir. And when you were with SLED, what was
5 your position?

6 A. I was an examiner in the firearms and toolmark
7 section.

8 Q. All right. And do you have any other experience in
9 firearms identification other than SLED?

10 A. Prior to that I was a firearms and toolmark examiner
11 for the FBI in the FBI laboratory in Washington.

12 Q. How many times have you been qualified as an expert
13 in firearms identification in court?

14 A. Approximately three hundred in various state, Federal
15 and territorial courts.

16 **MR. McNAIR:** Your Honor, we'd offer Agent Whitler as
17 an expert in firearms identification at this time.

18 **MR. PHILLIPS:** No objection.

19 **THE COURT:** All right. Agent Whitler is qualified
20 as a toolmark and firearms examiner for identification
21 purposes.

22 BY MR. McNAIR:

23 Q. Agent Whitler, can you explain to the jury kind of
24 what makes firearms identification possible?

25 A. Well, firearms identification is the study of the

1 microscopic marks on the firearms components such as
2 bullets and cartridge cases for the purpose of associating
3 those bullets or cartridge cases with a particular firearm
4 or if there's no firearm submitted with other bullets or
5 cartridge cases. And the way you do that is when a firearm
6 is manufactured part of the manufacturing process leaves
7 marks on various parts of the firearm. When the cartridge
8 is fired in a firearm, the bullets and cartridge cases in
9 many cases picks up these marks and these marks are unique
10 for that particular firearm. What we do is when you get a
11 -- when a firearm is submitted, you would test fire it and
12 compare the test fired bullets and cartridge cases with
13 cartridge cases or bullets found at the scene and you do
14 that using a comparison microscope, which is basically a
15 microscope that lets you look at two objects side by side
16 microscopically so you can align them, and what you're
17 doing basically is you put the test bullet on one side --
18 on one stage, you put the questioned bullet on the other
19 side or cartridge case and you rotate them until you find
20 marks that are identical on both sides and when they match
21 up with sufficient agreement, then you can say that bullet
22 or cartridge case was fired from that firearm and if
23 there's not enough agreement, then you have to say it could
24 have been fired from it or in some cases there's enough
25 disparity that you're able to say it wasn't fired by it.

1 Q. I'm gonna show you State's Exhibit 43 and can you
2 tell me whether or not you examined the items contained
3 in this box?

4 A. Yes, I have.

5 Q. Okay. And do you recall how those items were
6 submitted to you?

7 A. They were submitted in a plastic -- I think this is
8 the plastic container, it has my marks on it, in water.
9 When I received it, it was in water and I had to take the
10 gun out of the water, wash it, clean it and dry it out and
11 then test fire it.

12 Q. All right. And so what analysis or test did you
13 perform on these items, which is -- first of all, what are
14 these items? Can you describe what they are?

15 A. Okay. This is Item 9 in my report and it's your
16 State's Exhibit 43 and it consists of four unfired
17 cartridges, 45 caliber, one magazine and one pistol, which
18 was a Karr 45 auto caliber pistol.

19 Q. All right. And are those cartridges consistent with
20 what would be fired from that weapon?

21 A. Yes, sir.

22 Q. Okay. Now what analysis or test did you perform on
23 these items?

24 A. The analysis I -- after I cleaned the gun up, I test
25 fired the pistol to obtain a test fired bullet -- or test

1 fired bullets and cartridge cases from this particular
2 pistol and we do that because now I know exactly where the
3 bullet came from and where the cartridge case came from
4 because I fired it and I recovered them, so I know there's
5 no question that they came from this gun.

6 Q. Okay. And was that gun in working order?

7 A. Yes, sir, after I put it back together and cleaned it.

8 Q. Okay. It did fire?

9 A. It did fire.

10 Q. And what type of ammunition is that?

11 A. This ammunition is Remington ammunition. It's
12 consistent with the brand called Golden Saber, which is a
13 hollow point bullet with a brass jacket and it has a nickel
14 cartridge case.

15 Q. And what is on the headstamp of that cartridge?

16 A. RP 45 auto.

17 Q. And that is Remington's brand of ammunition; is that
18 correct?

19 A. That's right. That's one of their headstamps, right.

20 Q. All right. Let me show you State's Exhibit 44. Can
21 you tell me whether or not you examined that item?

22 A. Yes, I did. State's Exhibit 44 is a fired 45 auto
23 cartridge case. It also has a Remington-Peters headstamp
24 on it.

25 Q. All right. And what conclusions did you reach

1 regarding that item, which is State's 14, and the gun?

2 A. From my comparison -- microscopic comparison I
3 determined that Item 14, the cartridge case, was fired by
4 the Item 43 pistol.

5 Q. And State's Exhibit 44, is that also something that
6 you analyzed?

7 A. Yes, it is.

8 Q. And what, if anything, are you able to determine by
9 examining that that item? And that is the fired projectile
10 that was submitted to you?

11 A. State's Exhibit 44 is a fired 45 caliber bullet whose
12 physical characteristics are consistent with the bullets
13 loaded into Remington Golden Saber brand cartridges. It
14 was fired from a polygonally rifled barrel. That's very
15 smooth rifling that had six grooves in it. My microscopic
16 comparison of this bullet to the test bullets from the item
17 -- the State's Exhibit 43 pistol was inconclusive, which
18 means there weren't sufficient agreement of the marks to be
19 able to say that the bullet was definitely fired from this
20 gun, but it also could have been fired by this gun.
21 Inconclusive means I can't tell you that it was fired by
22 the gun, but I can't tell you that it wasn't. It could
23 have been fired from this gun because they had the same
24 rifling characteristics as the bullets produced by test
25 firing the pistol.

1 Q. All right. And can you not say for certain just
2 because that's the nature of a polygonal barrel, it doesn't
3 leave enough identifying characteristics?

4 A. A polygonal barrel is generally very, very smooth and
5 the smoother a barrel is the less likelihood -- or less
6 marks that are passed onto the bullet when it travels down
7 the barrel. In this case, there just wasn't sufficient
8 agreement. There were the right number of lands and
9 grooves in the right direction and it was the right
10 caliber, but it just wasn't enough marks to enable me to
11 say with certainty that this bullet was fired this by this
12 gun. So this bullet could have been fired by this pistol
13 or by any other pistol with six groove polygonal rifling.

14 Q. Okay. But that projectile is consistent with being
15 fired by a Remington 45 caliber cartridge?

16 A. Well, it's the same type of bullet that's used in the
17 Remington Golden Saber brand of ammunition.

18 Q. Okay. But the shell casing that was submitted to you
19 was fired by that gun, correct?

20 A. Yes, sir. This bullet could have come from this
21 cartridge case or it could have come from another one.
22 This cartridge case is used in different loadings by
23 Remington, not just the Golden Saber brand, there may be
24 others, but this bullet is consistent with the type of
25 bullet that would be loaded in this cartridge case and it

1 was consistent in appearance with the other submitted
2 unfired cartridges.

3 Q. Okay. Just to be clear, the cartridge case -- the
4 fired cartridge case that was submitted to you was fired by
5 that gun that was also submitted to you, correct?

6 A. That's correct.

7 **MR. McNAIR:** All right. I don't have any further
8 questions. Thank you.

9 **MR. PHILLIPS:** No questions. Thank you.

10 **THE COURT:** You may step down.

11 (Witness excused.)

12 **MR. McNAIR:** Your Honor, the State calls Jessica
13 Stowe.

14 (Whereupon, Jessica Stowe was duly sworn by the clerk
15 of Court.)

16 **THE CLERK:** Have a seat, please, ma'am. Once you're
17 seated, state your full name, spelling your last.

18 **THE WITNESS:** My full name is Jessica Herron Stowe,
19 last name S-T-O-W-E.

20 JESSICA HERRON STOWE,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. McNAIR:

24 Q. Agent Stowe, where are you employed?

25 A. I'm employed with the South Carolina Law Enforcement

1 Division, also referred to as SLED.

2 Q. How long have you been with SLED?

3 A. Five years.

4 Q. All right. And what do you do for SLED?

5 A. I am a forensic serologist.

6 Q. Can you explain for those of us who don't know what
7 serology is?

8 A. So serology is the identification of body fluids, such
9 as blood, semen, saliva. We get all kinds of items from
10 car part to guns to knives to sexual assault kits and we
11 are looking for body fluids. We also prepare samples for
12 DNA analysis.

13 Q. All right. Now were some items submitted to you for
14 analysis in this case?

15 A. Yes.

16 Q. I'm gonna show you State's Exhibit 49. Can you tell
17 me whether or not those items were submitted to you?

18 A. Yes, they were. I can tell by the lab-specific
19 number, the L-134852, the container, and I also see my
20 initials and the date.

21 Q. All right. Now what, if anything, did you do with
22 those items?

23 A. I didn't analyze these items. The only thing I did,
24 like I just mentioned, a role of the serologist is to
25 prepare the samples for DNA, so I just took small cuttings

1 of each swab that was submitted, put them in a small
2 sterile tube and packaged them up and returned them to
3 log-in for the DNA analyst to get.

4 Q. All right. And were those created by Tom Darnell?

5 A. To my knowledge, yes.

6 Q. Okay. So you just took his swabs and you cut a small
7 sample off of that?

8 A. Yes, to prepare that for DNA.

9 Q. All right. And that was forwarded to the DNA section?

10 A. That was returned to evidence control, which then the
11 DNA analyst would have picked it up from there later on.

12 MR. McNAIR: Thank you. I have no further questions
13 for this witness, Your Honor.

14 MR. PHILLIPS: No questions. Thank you.

15 THE COURT: Thank you, ma'am.

16 (Witness excused.)

17 MR. GRAHAM: The State calls Catherine Leisy.
18 Judge, if we could approach briefly.

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

20 (Whereupon, Catherine Leisy was duly sworn by the
21 Clerk of Court.)

22 THE CLERK: Have a seat. Once you're seated,
23 state your full name, spelling your last on the record,
24 please.

25 THE WITNESS: Catherine Leisy, L-E-I-S-Y.

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CATHERINE LEISY,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Ms. Leisy, where are you employed and what do you do?

A. I work for the South Carolina Law Enforcement Division, more commonly referred to as SLED. I am a forensic scientist assigned to the DNA and serology unit.

Q. What is DNA and serology?

A. Serology is the identification of bodily fluids. Forensic serology is the identification of fluids that may be involved in a criminal proceeding. DNA analysts are responsible for trying to develop DNA profiles from unidentified biological materials found at crime scenes or on items of evidence for the purpose of comparing them to the profiles of known individuals to try and determine whether or not that individual could have contributed that material.

Q. Briefly would you tell the jury what your education is.

A. I have a bachelor of science degree in genetic engineering from Cedar Crest College in Allentown, Pennsylvania. I've been employed by SLED for eleven years. I was trained by court-qualified analysts in all the different types of tests and analyses that I perform and

1 I also spent four years working as a forensic DNA analyst
2 at a private testing facility known as Orchid Cellmark in
3 Germantown, Maryland, prior to coming to SLED.

4 Q. And have you testified as an expert in the field of
5 DNA and serology in South Carolina?

6 A. I have.

7 Q. It how many times?

8 A. In DNA identification testing, on over fifty
9 occasions. I don't know the exact number as far as
10 serology, but not as many times as DNA identification.

11 **MR. GRAHAM:** Your Honor, the State would offer
12 Ms. Leisy as an expert in the field of DNA and serology.

13 **MR. PHILLIPS:** No objection.

14 **THE COURT:** Agent Leisy is qualified in the field of
15 forensic DNA and serology analysis.

16 **MR. GRAHAM:** Thank you, Your Honor.

17 BY MR. GRAHAM:

18 Q. Ms. Leisy, did you have an opportunity to do some DNA
19 work on this case?

20 A. Yes, I did.

21 Q. Let me show you what's been marked State's Exhibit 49,
22 which contains SLED's items 9.1, 9.2, 9.3 and 9.4. Do you
23 recognize that?

24 A. I do.

25 Q. When that item came in to you, was it properly sealed?

1 A. Yes, it was.

2 Q. Nothing irregular about it?

3 A. No, sir.

4 Q. Well, let's talk about what you did. For those
5 items, briefly would you say how you go about developing
6 or attempting to develop DNA?

7 A. When we receive items of evidence, the first step is
8 to perform a DNA extraction where we're simply isolating
9 and removing DNA from whatever material it is that we're
10 testing. I then attempt to generate profiles from these
11 items that could be used for comparison.

12 Q. All right. 9.1, 9.2 and 9.4, would you tell the jury
13 what swabs those items came from?

14 A. SLED Item 9.1 was described as swabs from the grip of
15 a handgun. SLED Item 9.2 was swabs from the trigger and
16 guard of the handgun and SLED Item 9.4 were swabs from the
17 headstamps of cartridges that were contained within the
18 gun.

19 Q. From your review of the case, were you aware that
20 this gun had been found in a pond and submerged in water?

21 A. I did have that information based on a narrative
22 entry. We keep track of all correspondence with the
23 submitting agency and solicitor's office and that material
24 was included in that narrative.

25 Q. And how does that affect, in your experience, the

1 ability to obtain DNA?

2 A. It can be very detrimental. DNA can be washed off,
3 it can be degraded or broken down because of bacteria that
4 may be present or enzymes that may be present, so to have
5 an item submerged in water can make it difficult, if not
6 impossible, to develop a profile.

7 Q. On Item 9.1, 9.2 and 9.4, were you able to develop
8 any DNA?

9 A. No, I was not.

10 Q. Item 9.3, what was the description for that one?

11 A. Item 9.3 was described as swabs from the magazine of
12 a handgun.

13 Q. Were you able -- what were you able to do as far as
14 developing a DNA profile from that?

15 A. I was able to develop a partial DNA profile from the
16 swabs from the magazine. It was a mixture of at least two
17 individuals.

18 Q. All right. With that information -- what's CODIS?

19 A. CODIS stands for Combined DNA Index System. It's an
20 electronic database maintained by the FBI that contains
21 DNA profiles developed from items of evidence or crime
22 scene locations, as well as the profiles of some known
23 individuals, and it's a resource that we can use to compare
24 unidentified profiles against these profiles to see if we
25 can identify the contributor or potentially link it to

1 another case.

2 Q. All right. What -- is there a criteria that's
3 required before you can submit a sample against the
4 database to try to get a hit?

5 A. There are actually several criteria. The FBI requires
6 that the DNA profile essentially be of a certain quality.
7 We have to have a minimum amount of information. We have
8 to be able to develop a statistic for any comparison that
9 can be made before we can enter it in. That's really more
10 of a SLED requirement. And we also have to be able to
11 identify the location of collection, as well as how it may
12 be linked back to a potential suspect in a case.

13 Q. Did the partial DNA profile that you developed from
14 9.3 meet the criteria to submit to CODIS?

15 A. It did not.

16 Q. Additionally, can you describe this standard? I mean,
17 what you developed, how strong or weak of a standard was
18 it, the profile that you developed?

19 A. From Item 9.3, I would describe it as a very low
20 level profile. Again, it was a mixture of at least two
21 individuals. It was very weak and very difficult to make
22 a comparison based on such a limited amount of information.

23 Q. Even if you would have been submitted known standards,
24 let's say that you had my DNA, you took my blood or did a
25 swab of my mouth and I gave it you, or anybody else, any of

1 the jurors, would you be able to use that in comparison
2 against Item 9.3?

3 A. At this point, no. Our protocols would prohibit that
4 because, again, if we can't generate a statistic, we cannot
5 make a comparison, and this particular part of the profile
6 would be too weak for me to do any type of statistic on an
7 inclusion.

8 Q. So is it your opinion then as an expert in the field
9 of DNA that although you developed a partial DNA profile
10 it was too weak to actually do anything with?

11 A. At the time it was developed I could have potentially
12 made exclusions. Again, our protocols have changed since
13 then, so any additional comparisons would not be allowed.

14 **MR. GRAHAM:** Thank you. Please answer any questions
15 Mr. Phillips has.

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

17 **CROSS-EXAMINATION**

18 **BY MR. PHILLIPS:**

19 Q. Hello.

20 A. Good morning.

21 Q. Good morning. So 9.3, that's a swab from the pistol?

22 A. From a magazine from a pistol, yes.

23 Q. The magazine that comes out at the bottom and it's a
24 mixture of two male individuals?

25 A. It's a mixture of at least two individuals.

1 Q. At least two. It could be more?

2 A. Yes, sir.

3 Q. All right. So a minimum of two, maybe more.

4 Definitely male individuals?

5 A. There is an indication of some male DNA present. It
6 doesn't necessarily mean that both of the individuals that
7 are contributing to this mixture are male. There is at
8 least one male DNA contributor.

9 Q. All right. Well, I mean, your report says a mixture
10 of two male individuals.

11 A. Not for Item 9.3.

12 Q. Partial DNA profile developed from Item 9.3 is a
13 mixture of at least two male individuals.

14 A. No, sir. Item 9.3 is a mixture of at least two
15 individuals.

16 **THE COURT:** Show her what you're reading from.

17 BY MR. PHILLIPS:

18 Q. Page 2 of your report. The first line.

19 A. Yes, sir. The first line says at least two
20 individuals.

21 Q. And then below you're saying with the male part that
22 it could be unsuitable as far as knowing whether it's
23 female or male?

24 A. I'm not sure I understand, sir.

25 Q. So you know it's at least two individuals?

1 A. Correct.

2 Q. And the discrepancy is it could be more than two
3 males. You're not -- the gender part's the --

4 A. That's correct. When we generate a profile, we also
5 test a location called amelogenin. It tests for the X and
6 Y chromosome. So just X would be female X, X and Y would
7 indicate male. This particular partial profile does show
8 a Y indicating at least one male contributor. I can't say
9 everyone who contributed is male.

10 Q. And it could be another male?

11 A. That's possible, yes, sir.

12 Q. And Paula Justice, her profile was tested, and she was
13 excluded?

14 A. Correct. At the time I was able to exclude Paula
15 Justice as a contributor.

16 Q. All right. So with that being the case, you couldn't
17 compare the DNA of these two male individuals with anybody
18 else. It was insufficient?

19 A. At this point, again, based on our current protocols
20 I would not be able to make a comparison between this
21 partial and any individual.

22 Q. But Paula Justice was excluded?

23 A. Correct. At the time, while this profile would not
24 have been suitable for an inclusion or any type of a match,
25 we were able to exclude individuals if there was a lack of

1 consistency between the profile being compared and the item
2 of evidence.

3 **MR. PHILLIPS:** Thank you so much.

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

5 REDIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q. At this point under I think -- when Paula Justice was
8 excluded and you wrote this, the SLED policy was different
9 than it is now?

10 A. That's correct.

11 Q. At this point is Paula Justice -- you wouldn't be able
12 to testify today really that Paula Justice was excluded
13 because the policy has changed; is that correct?

14 A. I can still testify to a previous report, but if any
15 additional known standard were submitted, I would not be
16 able to make a comparison, but it doesn't necessarily
17 change how we testify to previous testing.

18 Q. If I would have provided Paula Justice's to you
19 today --

20 A. I would not be able to make a comparison.

21 **MR. GRAHAM:** Thank you.

22 RECROSS EXAMINATION

23 BY MR. PHILLIPS:

24 Q. So the -- I'm just a little confused. The science
25 changed?

1 A. The requirements for types of comparison and when a
2 comparison is appropriate has changed, yes, sir.

3 Q. Because innocent people have been found with faulty
4 DNA evidence?

5 A. I wouldn't say that that's the reason. Based on the
6 accreditation agency that we work with they now require us
7 to be able to generate a statistic to make any type of
8 comparison.

9 Q. So the standard gets higher?

10 A. It has changed, yes, sir.

11 **MR. PHILLIPS:** Thank you.

12 **THE COURT:** All right. Now you can step down.

13 (Witness excused.)

14 **MR. GRAHAM:** Judge, if we could take a quick break
15 and then call one more witness that should take us to the
16 lunch hour.

17 **THE COURT:** All right. Let's step out and take about
18 ten or fifteen minutes. You can't discuss the case. We'll
19 take one short witness and stop at the midday and take a
20 lunch break, all right? You can't discuss the case.

21 (Whereupon, the jury retires to the jury room at
22 11:44 AM.)

23 (Recess taken.)

24 **THE COURT:** Judge, the next witness the State was
25 gonna call is Deandre Staley. He is on the conflict list,

1 so that would be an issue that we need to address. He's
2 coming right this way now.

3 **THE COURT:** All right..

4 **MR. GRAHAM:** And then there's also some cautions, I
5 guess, that Mr. Phillips wanted to discuss and we also
6 need to find out his current legal status about charges
7 that may or may not be on his rap sheet that are pending.

8 **THE COURT:** All right. We'll be able to do all of
9 that here. Have him come up here if you want to talk to
10 him about it.

11 (Whereupon, Deandre Staley was duly sworn by the
12 Clerk of Court.)

13 **THE CLERK:** Have a seat right up there. Once you're
14 seated, I need you to state your full name, spelling your
15 last, please.

16 **THE WITNESS:** Deandre Staley, S-T-A-L-E-Y.

17 **THE COURT:** All right. Mr. Phillips, do you want to
18 go through that conflict with him?

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

20 DEANDRE STALEY,
21 having been duly sworn, testified as follows:

22 EXAMINATION (In-Camera)

23 BY MR. PHILLIPS:

24 Q. I work as an associate attorney at the Michael
25 Jeffcoat Firm. The Michael Jeffcoat Firm is handling a

1 personal injury matter that you're involved in. Are you
2 aware?

3 A. Yes, sir.

4 Q. Have you received the letter withdrawing
5 representation and telling you to find another lawyer to
6 make sure of the potential conflict because I represent
7 Mr. Hart?

8 A. Yes, sir.

9 Q. You did receive the letter?

10 A. I think I received it.

11 **THE COURT:** Recently?

12 **THE WITNESS:** Recently? No. No, sir. Not recently.

13 BY MR. PHILLIPS:

14 Q. Okay. You would have received it recently. So to
15 explain, because I represent Mr. Hart there's a potential
16 conflict since you are a witness in this case.

17 A. Okay.

18 Q. So to protect your rights and interests, we are
19 withdrawing from representing you and you can get another
20 lawyer and they'll do everything. What we have to tell
21 you though is in personal injury matters there's a strict
22 statute of limitations and that you should seek another
23 attorney immediately, okay, on those issues.

24 A. Yes, sir.

25 Q. I'm not gonna bring your business up, but on those

1 issues you need to seek another attorney immediately and
2 you should get the letter soon if you haven't already got
3 it.

4 **THE COURT:** And the cases aren't related.

5 **MR. PHILLIPS:** They're not related, no.

6 **THE WITNESS:** I have no -- I have no cases in
7 Lexington County at all.

8 **MR. PHILLIPS:** The personal injury matter is not
9 criminal.

10 **THE WITNESS:** Okay.

11 **THE COURT:** Yes, it's a totally different matter that
12 you've got dealing with and he thinks you agreed to let
13 Mr. Jeffcoat represent you, he's working for Jeffcoat and
14 he's representing Mr. Hart. You're just a witness here is
15 all it is.

16 **THE WITNESS:** Okay. Okay.

17 **THE COURT:** But you being a witness creates an issue
18 for his client --

19 **THE WITNESS:** A complication.

20 **THE COURT:** Right.

21 BY MR. PHILLIPS:

22 Q. Do you have a problem with?

23 A. No, sir.

24 Q. So you're gonna waive that?

25 A. Yes, sir.

1 Q. All right. And just, again, so you know, the Michael
2 Jeffcoat firm, the law firm, will not be representing you
3 on that personal injury matter and that you need to find a
4 lawyer as soon as possible to protect yourself, okay?

5 A. Okay.

6 **THE COURT:** And that means your clock's ticking on
7 your time to recover against whoever is at fault in that
8 civil case. They've only got three years to bring it and
9 the clock's ticking.

10 **MR. PHILLIPS:** And I think because it's -- it's a
11 government issue --

12 **THE COURT:** It's two years.

13 **MR. PHILLIPS:** -- the clock is tighter. I think it's
14 two years.

15 **THE COURT:** Anyway, you'll get a letter here shortly
16 from Mr. Jeffcoat saying he's backing out and you need to
17 find somebody else to help you with that matter. For
18 purposes of today you're just gonna be a witness to testify
19 about what you remember, if anything, about this issue.

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

21 **MR. PHILLIPS:** And that's not gonna affect your
22 ability to testify.

23 **THE COURT:** You can ask him that.

24 BY MR. PHILLIPS:

25 Q. So it's not gonna affect your ability to testify that

1 I represent Mr. Hart?

2 A. Okay.

3 Q. No, I'm asking you. Do you have a problem with that?

4 A. Oh, no, sir.

5 Q. Okay.

6 **THE COURT:** All right. Now there was something else,
7 some other issue we wanted to proffer.

8 **MR. PHILLIPS:** The few other issues is, one's the
9 updated criminal record. I believe the solicitor's office
10 believes there might be some stuff that I didn't have on
11 the rap sheet.

12 **THE COURT:** Have y'all got it now?

13 **MR. McNAIR:** I'm really not aware, Your Honor. I
14 know he's got some pending charges in Laurens County, but
15 I'm not exactly sure what they are, so we can just ask him.

16 **THE COURT:** Have you got a lawyer in Laurens County?

17 **THE WITNESS:** A DUS and a grand larceny.

18 **THE COURT:** Who's your lawyer up there?

19 **THE WITNESS:** I haven't got one yet.

20 **THE COURT:** Is it one of those ladies up there,

21 Ms. --

22 **THE WITNESS:** Nobody. I'm basically just new.

23 **THE COURT:** Brand new?

24 **THE WITNESS:** A brand new case.

25 **THE COURT:** Okay. If y'all want, you can call the

1 public defender up there, she's a former law clerk, she's
2 up in that office, and ask her. Kate Anderson -- the
3 married name I can't recall it, but she's up there along
4 with Chelsea McNeill if you want to call her. That's
5 probably who he's gonna end up with.

6 **MR. McNAIR:** He thinks he's got a warrant for
7 possession of a stolen vehicle and DUS -- or grand larceny,
8 he said. Do you need to verify that or --

9 **THE COURT:** Who's in charge of it, Laurens city,
10 Laurens County?

11 **THE WITNESS:** Clinton.

12 **THE COURT:** Clinton. Okay.

13 **MR. PHILLIPS:** He's saying they've got warrants for
14 those.

15 **MR. McNAIR:** You're fine with that?

16 **MR. PHILLIPS:** Yes. And then, I guess, his other
17 prior record, but we can just see whether the judge wants
18 to go into it.

19 **THE COURT:** Kate Kendall. I forgot her last name.

20 **MR. PHILLIPS:** It appears he's got a 2013 burglary
21 third degree, failure to stop for blue light, then an '09
22 burglary second and possession of stolen vehicle and a
23 probation violation.

24 **THE COURT:** Is that your record?

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

1 **THE COURT:** Is it accurate?

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

3 **THE COURT:** Are you on probation now?

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

5 **THE COURT:** Who's your agent?

6 **THE WITNESS:** Agent Wright.

7 **THE COURT:** Here in Lexington or Laurens?

8 **THE WITNESS:** No, Calhoun.

9 **THE COURT:** Calhoun?

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

11 **THE COURT:** All right. He's supervised in Calhoun.

12 **MR. PHILLIPS:** And a possession of cocaine from '08.

13 I'm sorry.

14 **MR. McNAIR:** Your Honor, I would agree the two
15 burglary convictions, he could ask him about that because
16 those are about truthfulness. I don't know about a failure
17 to stop.

18 **MR. PHILLIPS:** Possession of stolen vehicle is.

19 **MR. McNAIR:** Yeah, two burglaries and the possession
20 of stolen vehicle I agree are fair game.

21 **THE COURT:** Cocaine and the failure to stop maybe not?

22 **MR. PHILLIPS:** Well, the cocaine definitely carries
23 over a year and the same with the failure to stop for a
24 blue light. It's within ten years. He's not a defendant,
25 so it's not substantially similar to enhance prejudice.

1 **MR. McNAIR:** Failure to stop carries eight years,
2 doesn't it?

3 **MR. PHILLIPS:** Zero to three.

4 **THE COURT:** Zero to three.

5 **MR. McNAIR:** It's zero to three?

6 **THE COURT:** It used to be zero to eight years, you're
7 correct. They changed it.

8 **MR. McNAIR:** All right.

9 **THE COURT:** I'm gonna allow all five.

10 **MR. McNAIR:** Okay.

11 **THE COURT:** All right. Anything else for him?

12 **MR. PHILLIPS:** Oh, the two other matters were in his
13 statements. There's a lot of referencing to gang activity.
14 I know Your Honor had said that that was excluded. I
15 wanted to make sure we didn't get -- end up in a mistrial
16 situation.

17 **MR. McNAIR:** Your Honor, I've instructed him not to
18 refer to any gang affiliations. I also instructed him he
19 met Mr. Hart -- with Mr. Hart at MacDougall Correctional
20 Institution. I told him not to mention that he met him
21 there. Of course, unless Mr. Phillips opens the door to
22 something, I don't intend to ask any question to elicit
23 that response.

24 **THE COURT:** Do you want any further cautionary
25 instructions to him?

1 **MR. PHILLIPS:** The only other thing I saw in the
2 letters or the statements was he said that Mr. Hart said
3 he didn't want to spend the rest of his life in prison
4 like his daddy. I definitely would say that's
5 inadmissible.

6 **THE COURT:** I tend to agree with that.

7 **MR. McNAIR:** Well, then I need to redact that on the
8 letter that has been marked for ID then.

9 **THE COURT:** Okay. Let's redact that.

10 Do you understand the cautionary instructions they've
11 given? Don't talk about any type of club you're in, stay
12 clear of that, and where you met Mr. Hart, don't mention
13 that. You met him. It doesn't matter where.

14 **MR. GRAHAM:** I'm a little concerned, Your Honor,
15 because we're taking out something that goes to maybe
16 establishing it as true. I mean, they're written by him.
17 If there gonna dispute that it was written by him, I don't
18 know at this moment if I have proof that his dad was in
19 prison, but if I can corroborate that, then that's -- I'm
20 doing that. Maybe we can undo it later if I can verify
21 that. Can we do it that way?

22 **THE COURT:** Let's see if it comes in and maybe we can.

23 **MR. PHILLIPS:** I mean, they already had one witness
24 testify to his handwriting on that letter he wrote. I
25 still say --

1 **THE COURT:** He's talking about verifying whether his
2 dad was in jail.

3 **MR. GRAHAM:** That would go to the truth of the author
4 if he's gonna dispute who wrote it, which I assume he is.

5 **THE COURT:** I don't think he -- I think he just didn't
6 want -- he thought that was a prejudicial comment.

7 **MR. PHILLIPS:** Right.

8 **THE COURT:** It's just that one sentence was a
9 prejudicial comment, not that he didn't write it. He
10 didn't say that.

11 **MR. PHILLIPS:** And when it's subject to the prior
12 objection was because that letter is related to the
13 handwriting analysis that we objected to. That letter was
14 used in the handwriting analysis, so any objection to it
15 is from a prior objection. And plus the redaction has to
16 comport with the rules of evidence and that statement
17 would be unfairly prejudicial under Rule 403.

18 **THE COURT:** Y'all have got to show me the letters so
19 I understand what I'm ruling on because I'm kind of a
20 little bit in the gray. Not quite dark, but gray.

21 **MR. McNAIR:** I'm in a gray area, too.

22 (Discussion between counsel.)

23 **MR. PHILLIPS:** It's just in the written statement to
24 the police, it's not in the letter they're talking about,
25 so we're just saying prohibit the testimony, no redaction

1 will be needed.

2 **THE COURT:** All right. Is that -- is that a problem?

3 **MR. McNAIR:** Do you understand that, Mr. Staley?

4 **THE WITNESS:** Not really.

5 **THE COURT:** Is that a problem?

6 **MR. PHILLIPS:** It was just a written statement, so

7 just to exclude testimony.

8 **THE COURT:** Okay. So that letter is okay?

9 **MR. PHILLIPS:** Subject to the --

10 **THE COURT:** Subject to handwriting analysis objection,
11 but it comes in over that.

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

13 **THE COURT:** Okay. Do you understand, Mr. McNair? The
14 letter's fine and it's going to admitted subject to his
15 handwriting objection.

16 **MR. McNAIR:** Right. And just make sure Mr. Staley's
17 clear on don't bring up the fact that he made a comment
18 about his father being -- serving life in prison, correct?

19 **THE WITNESS:** Okay.

20 **THE COURT:** Correct.

21 Now can we bring the jury in?

22 **MR. McNAIR:** Yes, Your Honor.

23 Your Honor, I stepped out, but has he been sworn?

24 **THE COURT:** He has.

25 (Whereupon, the jury returns to the courtroom at

1 12:09 PM.)

2 **THE COURT:** All right, folks. I had to take care
3 of a few matters just before y'all came in regarding
4 Mr. Deandre Staley, who's been called as a witness by the
5 State. He is under oath and, Mr. McNair, you may ask him
6 questions.

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

8 DEANDRE STALEY,
9 having been previously sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. McNAIR:

12 Q. Mr. Staley, is it fair to say you do not want to be
13 here today?

14 A. Yes, sir.

15 Q. You're only here because we subpoenaed you, correct?

16 A. Yes, sir.

17 Q. Do you know Chris Hart?

18 A. Yes, sir.

19 Q. How long have you known Mr. Heart for?

20 A. For at least -- at least eight years plus.

21 Q. And what names do you know him by?

22 A. Bhريس or Brisko.

23 Q. Now was there a time in your life when you saw him
24 pretty much on a daily basis?

25 A. Yes, sir, every day.

1 Q. All right. And did y'all become pretty close friends?

2 A. Yes, sir.

3 Q. Did y'all talk every day?

4 A. Yes, sir.

5 Q. Now at some point did you get arrested and go to the
6 Lexington County Detention Center?

7 A. Yes, sir.

8 Q. Do you recall when you were arrested?

9 A. October the 10th, 2012.

10 Q. All right. And you've already pled to those charges,
11 correct?

12 A. Yes, sir.

13 Q. All right. And do you remember when you pled?

14 A. I want to say June the 5th of 2013.

15 Q. All right. And you currently don't have any charges
16 in Lexington County; is that correct?

17 A. No, sir.

18 Q. Do you have some other pending charges?

19 A. In Laurens County.

20 Q. In Laurens County?

21 A. Yes, sir.

22 Q. All right. And those are pending right now?

23 A. Yes, sir.

24 Q. What are those charges?

25 A. Grand larceny and a DUS.

1 Q. All right. Prior to your plea in Lexington County,
2 did anybody promise you anything?

3 A. No, sir.

4 Q. Has anybody promised you anything in exchange for your
5 testimony today?

6 A. No.

7 Q. Now during the time you were in the Lexington County
8 Detention Center, did you have a conversation with Mr. Hart
9 about his case?

10 A. Yes, sir.

11 Q. Do you remember when that was?

12 A. I remember I was working out doing pushups on the rec
13 field and we just kind of started talking about it.

14 Q. All right. Do you know if Mr. Hart had been there a
15 long time at that point or had he just arrived?

16 A. I wasn't really sure.

17 Q. Okay. Tell the jury what Mr. Hart said to you on the
18 rec yard that day.

19 A. I bodied the bitch. I was just doing pushups and just
20 conversating, you know, like, man, bro, I'm gonna -- I'm
21 gonna end up doing time, and I was doing pushups and he
22 said I bodied the bitch. His exact words.

23 Q. And when he said that, did you know who he was
24 referring to?

25 A. Yeah.

1 Q. Who was that?

2 A. Paula.

3 Q. All right. Did he make any comments about why he had
4 killed Paula?

5 A. She was a CI and she -- her name had come up in a lot
6 of stuff, people in the neighborhood and the community and
7 stuff, I guess, getting them in trouble.

8 Q. All right. Did he mention anything -- anybody in
9 particular about who Paula had set up?

10 A. Munchkin.

11 Q. All right. Is Munchkin somebody that you know?

12 A. Yeah.

13 Q. Who's Munchkin?

14 A. He's a known drug dealer around West Columbia.

15 Q. Do you know his real name?

16 A. Jeremy Washington.

17 Q. Did you know the name Paula Justice?

18 A. Yes. Yes, sir.

19 Q. How did you know her?

20 A. It's kind of difficult. My -- my father's son, which
21 I had just met around like -- around the certain time that
22 I saw them. They was at his mother's house -- where she
23 was at his mother's house and they were just connected, so.

24 Q. So she was friends with somebody you knew?

25 A. His mother with my -- my brother's -- my little

1 brother's mother.

2 Q. I got you. Did he mention anything about what he got
3 in exchange for killing Paula?

4 A. Crack cocaine.

5 Q. All right. How much?

6 A. I want to say five circles he said.

7 Q. Five circles of crack cocaine?

8 A. Yes, sir.

9 Q. Did he tell you what he did after he killed Paula?

10 A. He went -- I want to say he was telling me about
11 going to the bus station and his brother or cousin or
12 somebody buying a bus ticket and he went to New York to
13 see his son.

14 Q. Do you recall him saying anything about his
15 co-defendant on this case?

16 A. That people playing tough out in the streets, but get
17 caught and turn into pussy rats when they get locked up.

18 Q. Do you know who his co-defendant was?

19 A. No, sir, I just -- no.

20 Q. And do you remember giving a written statement to law
21 enforcement back on May 14th of 2013?

22 A. Yes, sir.

23 Q. Is that your handwriting?

24 A. Yes, sir.

25 Q. Does that refresh your memory as to who paid for his

1 bus ticket to New York?

2 A. Yes, sir.

3 Q. And who did he tell you paid for his bus ticket to
4 New York?

5 A. His brother. I think his name is Tevin Deloach.

6 Q. You say his brother. You're not meaning --

7 A. I didn't know if that was his brother or not. I'm
8 just --

9 Q. Okay. He was referring to his co-defendant?

10 A. Yeah. Yes.

11 Q. Now at some point did he mention how he killed Paula?

12 A. No, sir.

13 Q. Just that he bodied the bitch?

14 A. Yes, sir.

15 Q. Those were his words?

16 A. Yes, sir. Exact words.

17 Q. At some point after that conversation, did he give you
18 a letter?

19 A. Yeah. Well, he gave me numerous letters. I just --
20 I was kind of like shocked that he was actually writing me
21 kites talking about it, so the first couple of letters I'm
22 like is he trying to get me in trouble, too, or get me
23 somewhat involved with me having knowledge of it, so I'm
24 kind of balling them up, throwing them in the trash,
25 flushing them, and the last one I got I was like man, I

1 don't know what's his agenda, I'm just sending it in like
2 just to clear myself up in case he is trying to get me
3 involved somehow.

4 Q. So that's why you came forward with this letter? You
5 thought he was trying to get you involved in something?

6 A. Exactly.

7 Q. I'm gonna show you State's 21. Do you recognize that?

8 A. Yes, sir.

9 Q. Who gave you that letter?

10 A. Chris Hart.

11 Q. All right. How did he give it to you?

12 A. It was folded up in a kite.

13 Q. He handed it to you?

14 A. Yeah.

15 **MR. McNAIR:** Your Honor, we'd offer State's 21 in
16 evidence at this point.

17 **MR. PHILLIPS:** Subject to the prior motions.

18 **THE COURT:** Subject to the objection it's admitted.
19 (State's Exhibit Number 21, a letter, was admitted
20 into evidence.)

21 BY MR. McNAIR:

22 Q. Do you mind just reading the letter for the jury?

23 A. What's up, bro? Yeah, my attorney came and saw me
24 today. I can't get a motion until June 13th, which is
25 the first appearance shit, but he did tell me that my

1 co-defendant talking, bro. I just don't understand why
2 -- why niggers don't shut the fuck up. They so gangster
3 on the street, but turn into straight bitch snitches when
4 we get locked up. Bro, I'll be scared of this rats not
5 catching no time. You feel me? LOL. You the only one
6 that I done really explained this shit to. Everybody else
7 I be playing that role like I don't know why I'm in here,
8 bro. The only person I did open up to a little was Slim
9 because I know for a fact my dog ain't no 999. Feel me?

10 Q. What is -- stop right there. What does a 999 mean?

11 A. A snitch.

12 Q. Okay.

13 A. Or him being a snitch or a rat. Feel me? I don't
14 even be saying too much around Poncho, bro, because the
15 rule is you ain't supposed to say shit. I ain't telling
16 on myself, bro. Fuck that. LOL. A lot of these tough
17 ass niggers in here are working, bro. They might as well
18 get a badge and suit. I was gonna tell you, no disrespect,
19 but your lady pretty, bro. I saw you all caked up, nigger.
20 LOL. Ain't nothing wrong with that. And I'm still putting
21 that play together, too, but I'm gone, bro. Shine, love,
22 peace, Lil Bhريس.

23 Q. All right. At the beginning of that letter when he
24 said I can't get a motion until June, what is he talking
25 about? What does a motion mean?

1 A. A Rule 5 discovery.

2 Q. His discovery?

3 A. Yes, sir.

4 Q. So when you got this letter, he hadn't seen his
5 discovery?

6 A. No.

7 Q. So this letter was dated sometime prior to -- I guess
8 it was written prior to June 13th. He didn't have his
9 discovery yet?

10 A. Yes.

11 Q. Now at some point did he ask you to make contact with
12 somebody for him?

13 A. Yes, sir.

14 Q. Who was that?

15 A. Munchkin.

16 Q. All right. And what did you do to try to get in
17 contact with Munchkin?

18 A. I asked a cousin that was in the dorm with me if he
19 could get in touch with Samari, which is Munchkin's niece,
20 or either his daughter, I wasn't really sure, but I knew
21 they had some kind of relationship, so I tried to help him.

22 Q. Okay. So there was a cousin in the detention center
23 with you who dated Munchkin's niece?

24 A. Yes. Yes, sir.

25 Q. And were you present when his -- Munchkin's niece was

1 called?

2 A. Yes, sir.

3 Q. And did Mr. Hart tell you to relay a message to
4 Munchkin's niece?

5 A. Yes, sir.

6 Q. And what did he tell you to tell her?

7 A. He needed some money and that he owed him a thousand
8 bucks.

9 **MR. McNAIR:** Mr. Staley, that's all the questions I
10 have, so please answer any questions Mr. Phillips has.

11 CROSS-EXAMINATION

12 BY MR. PHILLIPS:

13 Q. How are you?

14 A. I'm okay.

15 Q. So the first time you got involved in this case is
16 you wrote a letter to the solicitor's office?

17 A. (Nods head.)

18 Q. Can you tell me if this is true or not? And I'll
19 certainly hand it up to you.

20 A. Yes, sir.

21 Q. You say I have major information about the case of
22 Paula Denise Justice. This is the person you have that
23 family relationship with?

24 A. Yeah, you could say.

25 Q. That I feel and know will be -- will help in the case.

1 I'm just asking for -- or I'm just asking to be helped as
2 well. Is that right?

3 A. Yeah.

4 Q. I'm just asking to be helped as well, meaning
5 resetting my bond to PR.

6 A. Yeah.

7 Q. And PR is get out of jail?

8 A. Yes, sir.

9 Q. And/or a small punishment for the crimes I'm in on
10 now?

11 A. Yes, sir.

12 Q. I help you, you help me?

13 A. Yeah.

14 Q. Something like that?

15 A. But it didn't go like that.

16 Q. And you've got pending warrants now, right?

17 A. Yes, sir.

18 Q. And those are for possession of a stolen vehicle and
19 grand larceny?

20 A. Yes, sir.

21 Q. And having these pending warrants, that means if the
22 police get you they'll lock you up?

23 A. No. You say pending warrants?

24 Q. Yes.)

25 A. No, all my charges are --

1 Q. You don't have a bench warrant?

2 A. I'm paying a ticket on -- I have a magistrate court
3 ticket that I'm paying on, yes.

4 Q. So you just have pending charges for a stolen vehicle
5 and grand larceny?

6 A. Yes, sir. No, no. Just -- just grand larceny. The
7 -- the ticket, that was for a bench warrant for magistrate
8 court charges, which was DUS, and possession of marijuana.

9 Q. Okay. So you've got these pending charges in Laurens
10 County. You're looking to have your back scratched on
11 those, too?

12 A. No, because honestly I didn't do -- I didn't those --
13 that crimes in Laurens.

14 Q. Based on your testimony, it went something like this.
15 You're not sure when Mr. Hart came into your dorm, you were
16 doing pushups, he comes up to you, I killed this person --
17 or, in your words, I bodied the bitch. That's how it
18 happened?

19 A. Not exactly. It went through basically -- plus
20 conversing because we know -- we've known each other for a
21 while, but we just --

22 Q. Right. And in the letter you sent to the solicitor's
23 office I think you specifically say he came into the dorm
24 -- or one of the statements you wrote to the investigator,
25 he came into the dorm and the next day he confessed. So

1 within twenty-four hours he's telling you he murdered
2 someone?

3 A. Yeah. It shocked me, too.

4 Q. I bet. Because that doesn't seem plausible. You see
5 him, twenty-four hours, I bodied the bitch, then you're
6 writing a letter I need to be helped as well, meaning reset
7 my bond to get out of jail or a small punishment?

8 A. Uh-huh.

9 Q. And you're very familiar with how that works in the
10 sense that you have in June of 2013 a burglary conviction
11 as well as a failure to stop for a blue light?

12 A. Yes, sir.

13 Q. And in 2009 you got an another burglary conviction and
14 possession of stolen vehicle and a violation of probation?

15 A. Yes, sir.

16 Q. November 2008 you got possession of cocaine?

17 A. Yes, sir.

18 Q. You've been in the system, you know how it works?

19 A. Yes, sir.

20 Q. The number you provided to Investigator Spivey that --
21 they asked you what's Chris Hart's number and you said it
22 was 297-2782?

23 A. Yes, sir. I couldn't remember that number now, but,
24 yeah, I think I be giving that number.

25 Q. In that letter you said he just wrote, does he say

1 anything -- I mean, you said at this point he had already
2 confessed to you. Does it say anything about killing
3 anyone?

4 A. In the --

5 Q. In the letter.

6 A. The letter that he wrote me?

7 Q. Uh-huh.

8 A. It -- it basically -- he was kind of like pointing out
9 to me. The letter was --

10 Q. The only letter we've got to look at.

11 A. No.

12 Q. Not all these ones you said you threw away?

13 A. No, I through those away. Yes, sir.

14 Q. They don't say anything about killing anybody?

15 A. I don't think none of them said anything about killing
16 anybody.

17 Q. And it says that he confided into you?

18 A. Sir?

19 Q. You said -- essentially in the letter it implies he
20 confided into you?

21 A. Right, sir. He said himself in his own words that he
22 -- he explained everything.

23 Q. That he threw away the gun?

24 A. No, he didn't say that, about throwing the letter
25 away, but -- throwing the gun away and all that, but he

1 explained enough for me to know that he had killed
2 somebody.

3 Q. And then you relayed a message from him for -- taking
4 your testimony, your word, you relayed a message from him
5 to somebody else about this case. Is that what you're
6 testifying to?

7 A. Yes, sir.

8 Q. So you're an accessory in this case?

9 A. No, I'm not an accessory in the case.

10 Q. Well, based on what you've testified to, he told you
11 that Jeremy Washington set up a murder and you -- that he
12 confided in you that he did it and that he needed to get
13 information out to Jeremy Washington and you testified you
14 done that?

15 A. Oh, yeah, that happened. Yes, sir.

16 Q. So you're an accessory in this case?

17 **MR. McNAIR:** I object to that, Your Honor.

18 **THE COURT:** Sustained.

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

20 BY MR. PHILLIPS:

21 Q. And who were these people that you relayed the message
22 to?

23 A. It would be Quinton Mills. He's my relative.

24 Q. Another personal relationship like Paula?

25 A. No, I wouldn't say me and Paula was on that same

1 relationship. This is my family; same aunties, daddy,
2 cousins is what I'm saying. Family.

3 Q. And I had a private investigator go see you; is that
4 right?

5 A. In prison, yes.

6 Q. And when he interviewed you, he asked you where did
7 John Hart tell you he shot Paula. Do you remember your
8 response?

9 A. I was telling him anything.

10 Q. Telling him anything.

11 A. I was telling them anything because they were
12 portraying it as they were state investigators, like they
13 were actual investigators, and they actually told me not
14 to come here, so I didn't know what to believe then.

15 Q. Did you tell any of these three people what you just
16 testified to?

17 A. Yes. I was not gonna come because if I wouldn't have
18 called her, I wouldn't have knew.

19 Q. I see Deputy Solicitor Shawn Graham shaking his head
20 that that didn't happen.

21 A. Say what? That I didn't tell him about it?

22 Q. Yes, sir.

23 A. Unh-unh.

24 Q. So if you told them that, are you saying they're
25 lying?

1 **MR. GRAHAM:** Objection.

2 **THE COURT:** Don't -- don't do that.

3 **MR. PHILLIPS:** Okay. All right. He's a key witness.

4 **THE COURT:** Ask him questions -- ask him questions,
5 but --

6 **MR. PHILLIPS:** Yes, Your Honor. We'll stay on task.

7 **THE COURT:** Okay.

8 BY MR. PHILLIPS:

9 Q. Your answer to my investigator was he told me --
10 talking about John Hart, John Christopher Hart -- that he
11 told me that he shot -- or bodied the bitch, shot her twice
12 in the chest.

13 A. Yes, sir.

14 Q. That's what you told my investigator?

15 A. I don't remember telling him that.

16 Q. And what you just testified to before that was you
17 would tell them anything?

18 A. Yeah. I had already been stabbed in prison, so I was
19 already in protective custody at that time, so I really
20 didn't have -- want nothing to do with this case at all
21 period. Like I told y'all, I didn't want to be here today
22 at all.

23 Q. But you wrote that letter on May 8th saying you wanted
24 to help and you're asking for help as well?

25 A. Yes, sir.

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

2 **THE COURT:** Redirect.

3 REDIRECT EXAMINATION

4 BY MR. MCNAIR:

5 Q. Mr. Staley, when you said you informed us of
6 Mr. Phillips' private investigator coming to talk to you,
7 did you tell our investigator, Jill Smith, that this
8 morning?

9 A. Yes, Ms. Jill.

10 Q. That's what you were talking about?

11 A. Yes, sir.

12 Q. And when that private investigation came to talk to
13 you, you said he represented himself as a state agent?

14 A. Yeah, basically. He -- he didn't really explain
15 himself as like a "private" private investigator. He made
16 it seem like he was with Lexington County.

17 Q. And he encouraged you not to be here today?

18 A. Yes.

19 Q. Do you want to be here today?

20 A. No.

21 Q. Why not?

22 A. Because I'm basically ducking and dodging right now
23 just to stay from getting hurt or killed or anything from
24 the threats I've been getting from prison, I've been
25 stabbed, so.

1 Q. You're scared to be here, aren't you?

2 A. Yes, sir.

3 Q. He mentioned your charges. When you wrote that
4 letter, you had pending charges in Lexington County, but
5 you pled straight up to those charges, didn't you?

6 A. Yeah.

7 Q. Nobody promised you anything?

8 A. No. I did --

9 Q. Sergeant Spivey told you he couldn't help you in any
10 way, didn't he?

11 A. I did five --

12 Q. And you never got a PR bond?

13 A. I did almost five years.

14 Q. You never even got a PR bond, did you?

15 A. No.

16 Q. You got nothing you asked for?

17 A. I went to court maybe a week after this, after I
18 talked to him.

19 Q. And you've got nothing to gain for being here today
20 because you don't have any pending charges in this county,
21 do you?

22 A. No, sir.

23 Q. And we don't have anything to do with what goes on in
24 Laurens County?

25 A. At all.

1 Q. Mr. Phillips is acting like Chris Hart just randomly
2 came up to you on the yard and talked to you for the first
3 time, but y'all were tight, weren't you, back in the day?

4 A. Yeah, like we done beat up people together in prison
5 and all types of stuff.

6 Q. You know a lot of stuff about him, don't you?

7 A. Yeah.

8 Q. Y'all had a lot of friends in common, didn't you?

9 A. Yeah.

10 Q. He trusted you?

11 A. Yes, sir.

12 Q. All right. And there was a reason. Did he trust
13 other people in that dorm with you at that time?

14 A. Well, I was the only one he trusted at the time. He
15 was -- he was scared because the rest of the boys were in
16 Feds.

17 Q. The rest of the people, they were in Federal custody?

18 A. Yes, sir.

19 Q. And they were all trying cooperate with their case?

20 A. Yes, sir.

21 Q. But you weren't in Federal custody?

22 A. No.

23 Q. So he thought he could trust you, didn't he?

24 A. Yes, sir.

25 Q. And you knew him from back in the day and y'all were

1 tight, weren't you?

2 A. Yes, sir.

3 **MR. McNAIR:** No further questions, Your Honor.

4 RECROSS EXAMINATION

5 BY MR. PHILLIPS:

6 Q. In the land of snitches, you're the most confidential
7 person to confide in, the trustworthy person?

8 A. Yeah.

9 Q. In the land of snitches?

10 A. I guess so.

11 Q. And when you say that you couldn't be helped at all
12 when you had the pending grand larceny and you were facing
13 ten years, the fact that -- you don't believe the
14 prosecutor's gonna find out that you testified in a murder
15 case in Laurens County? Don't think that's gonna come up?
16 You're not gonna tell your defense attorney?

17 A. No, sir.

18 Q. You've been to prison and you don't want to go back?

19 A. No, sir, I don't want to go back.

20 Q. And you just got out of prison and there you are
21 facing another crime, ten years?

22 A. Yes, sir.

23 Q. The judge is gonna look at the prior record, you know
24 you just got out of prison. Going back to prison is
25 probably pretty likely.

1 A. No.

2 Q. You don't think so?

3 A. The proof's in the pudding in the case, so. I
4 basically fit the description and I ended up getting
5 caught with weed at the same time and they just -- they
6 charged me.

7 Q. Wrong place, wrong time for you, right?

8 A. I was at a hotel room. I was never near Clinton at
9 all. I was in a whole other county. Clinton didn't even
10 arrest me at all.

11 Q. A total mistake?

12 A. Yes, sir.

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

14 **THE COURT:** All right. Mr. Staley, you're free to go.
15 (Witness excused.)

16 **THE COURT:** All right. Ms. Frick went to see if your
17 lunch is here. I think it is. Y'all step in the jury
18 room. If any of you want to step outside for a few
19 minutes, we'll be down until a quarter till two. Is that
20 enough time, closer to two?

21 (Discussion between counsel.)

22 **THE COURT:** Y'all step in the jury room. Y'all can
23 come in and out. The bailiffs will let you know when
24 we'll get back together, but a quarter till two will be
25 the earliest and it may be 2:00. We may be waiting on

1 witnesses to arrive here at a certain time.

2 So you can't discuss the case, but y'all can step in
3 the jury room. You can step outside if lunch isn't here.
4 Y'all will be free to move around. Just you can't talk to
5 anybody about the case or each other, okay?

6 **MR. GRAHAM:** Judge, 1:45 will be fine.

7 **THE COURT:** 1:45 is likely. Okay.

8 (Whereupon, the jury retires to the jury room for a
9 luncheon recess at 12:34 PM.)

10 **THE COURT:** All right. We'll stand at ease until
11 1:45-ish.

12 **MR. GRAHAM:** Your Honor, there's still an outstanding
13 ruling from Your Honor on the Jackson v. Denno from
14 Sergeant Mefford with the phone call when he was first in
15 custody in New York where they talked about extradition.

16 **THE COURT:** Let's go back here.

17 (Whereupon, a luncheon recess taken.)

18 **BAILIFF:** All rise.

19 **THE COURT:** Thanks. Be seated.

20 Do you need anything before I bring the jury in?

21 **MR. GRAHAM:** I believe so, Your Honor. We're gonna
22 call Dr. Ross out of order and then after that we would go
23 into the Jackson v. Denno, so the ruling would be needed --
24 the next witness after Dr. Ross would be Sergeant Mefford.
25 I've got two documents I was gonna ask to have -- go

1 ahead and have marked.

2 **THE COURT:** Okay.

3 (State's Exhibit Number 50 and 51 were marked for
4 identification.)

5 **THE COURT:** All right. Bring in the jury.

6 (Whereupon, the jury returns to the courtroom at
7 1:49 PM.)

8 **THE COURT:** There's my foreperson. For purposes of
9 what we're doing today and tomorrow, you get to sit there.
10 Randy, there she is.

11 All right. Tell me your name.

12 **FOREPERSON:** Allison.

13 **THE COURT:** Last name?

14 **FOREPERSON:** Williams.

15 **THE COURT:** Congratulations. Any objection?

16 All right, Mr. Graham. Call your witness.

17 **MR. GRAHAM:** Thank you, Your Honor. The State calls
18 Dr. Janice Ross.

19 (Whereupon, Janice Edwards Ross was duly sworn by the
20 Clerk of Court.)

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

23 **THE WITNESS:** Janice Edwards Ross, R-O-S-S.

24 JANICE EDWARDS ROSS,

25 having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRAHAM:

Q. Dr. Ross, what do you do for a living?

A. I'm a forensic pathologist with Newberry Pathology Associates.

Q. What is a forensic pathologist?

A. I'll go back to my -- I've gone through four years of college at the University of South Carolina and four years of medical school. I received my M.D. degree from Upstate Medical Center in Syracuse, New York, and that's where I did further training in the field of pathology. As opposed to surgery or pediatrics, in pathology we learn how to identify diseases like cancers by looking at tissue under the microscope, we learn how to help diagnose disease through the use of blood work and we learn how to do an autopsy to find the cause of death. I did further training in medical examiner's offices to become a forensic pathology. In forensic pathology we learn how to identify patterns of injury so that we can identify homicides, suicides, accidents or even natural deaths through the use of identifying marks, patterned injuries, gunshot wounds, stab wounds. We do -- in the forensic autopsy, we document these patterns of injury and we take fluids for toxicology.

Q. The forensic aspect, what does that mean?

A. Forensic -- the word "forensic" means legal, so we use

1 our pathology knowledge on legal matters such as homicides,
2 suicides, accidents and rapes.

3 Q. How many autopsies have you performed?

4 A. Over 11,000.

5 Q. And how many times have you testified as an expert in
6 the field of forensic pathology in courts?

7 A. In South Carolina, over 150.

8 **MR. GRAHAM:** Your Honor, the State would offer
9 Dr. Janice Ross as an expert in the field of forensic
10 pathology.

11 **MR. PHILLIPS:** She's an expert.

12 **THE COURT:** Ladies and gentlemen, we've qualified
13 several experts. Dr. Ross, she's testified numerous times
14 you've heard. She's an expert in the field of forensic
15 pathology and probably some other fields also from her
16 training and experience so she can offer opinions in that
17 field of expertise.

18 Continue on, Mr. Graham.

19 **MR. GRAHAM:** Thank you, Your Honor.

20 BY MR. GRAHAM:

21 Q. Dr. Ross, did you have an opportunity to perform an
22 autopsy on Paula Justice?

23 A. Yes, I did.

24 Q. What date did you do that on?

25 A. That was April 11, 2013, and we started the autopsy

1 about 12:30 PM.

2 Q. Were you able to make approximations for her height
3 and for her weight?

4 A. Yes. We measured her as 67 inches, which is five feet
5 seven inches. We don't have a scale in the morgue, but we
6 estimated her weight to be over 200 pounds.

7 Q. When you begin the autopsy in general, and
8 specifically for Paula Justice, what's the first thing
9 that you do?

10 A. We take a photograph of the body bag that the patient
11 comes in in. We take photographs of the body clothed and
12 then take the clothing off, inventory it and take
13 photographs externally of the body and look for injuries.
14 In this case, we found evidence of a gunshot wound so we
15 did further x-raying of the body to see if there were any
16 bullets left in the body.

17 Q. As part of the first part of the autopsy where you do
18 your external examination, other than a gunshot wound did
19 you find anything else on Ms. Justice?

20 A. No, no other injuries.

21 Q. If I should say -- what's a defense wound?

22 A. Defense wound is like it sounds. It's usually a
23 bruise or an abrasion of the skin of the hands, front or
24 back, or the forearms. In other words, the victim is
25 seeing something bad coming at them and they'll put their

1 hands up in a defensive mood -- or mode.

2 Q. And did you see any evidence of defensive wounds on
3 Ms. Justice?

4 A. No, I did not.

5 Q. So after the external examination, what's the next
6 thing that you do you?

7 A. After the x-ray, we do an internal examination and
8 look at all the organs, look for any kind of natural
9 disease plus injuries.

10 Q. What did you find on the internal examination?

11 A. I found a laceration of the brain from the gunshot
12 wound to the head.

13 Q. Anything else?

14 A. Nothing that would be fatal.

15 Q. So what was the cause of Ms. Justice's death?

16 A. The laceration of the brain due to the gunshot wound
17 to the head.

18 Q. And what happens when a bullet travels through the
19 brain and lacerates the brain?

20 A. There's an internal explosion basically and then
21 swelling that causes fairly immediate unconsciousness,
22 actually immediate unconsciousness, and then it will
23 further cause the brain to swell and then death occurs
24 within four to five minutes.

25 **MR. GRAHAM:** Judge, if I could have Dr. Ross step down

1 so that she could describe the location of the gunshot.

2 **THE COURT:** Sure.

3 (Whereupon, the witness steps down from the witness
4 stand.)

5 BY MR. GRAHAM:

6 Q. If you could just face the jury, you can either use me
7 or use yourself.

8 A. Sure. The entrance wound was in the hair in the head
9 above the -- above the left ear basically, a little bit
10 behind, and three inches from the midline of the face, if
11 you go down your nose. And the x-rays showed the bullet
12 in the jaw, the right jaw, mandible. So the bullet was
13 going basically from the left, to the right, downward and
14 a little bit forward.

15 Q. So left from the top of the head down to the
16 mandibular --

17 A. Joint.

18 Q. -- joint. And then you said it was slightly forward?

19 A. Slightly forward.

20 **MR. GRAHAM:** All right. You can have a seat, Doctor.
21 Thank you.

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

23 BY MR. GRAHAM:

24 Q. So is there any way for you to tell the orientation of
25 the -- what position somebody's body is in when they're

1 shot?

2 A. Not really. All I can say is the bullets go straight.
3 So if you have two people, the victim and the shooter,
4 whatever lines up best. Sometimes evidence at the scene is
5 important to find out how the person was -- was sitting,
6 standing, whatever, but the fact is the bullet goes
7 straight so that the gun had to be above and to the left of
8 the victim's head.

9 Q. Let me show you two photographs and ask if they
10 represent fairly and accurately portions of your
11 observations during the autopsy and help assist you in
12 explaining your testimony?

13 A. Yes, sir, they do.

14 **MR. GRAHAM:** Your Honor, that's State's 50 and 51,
15 which have previously been shown to defense counsel, and
16 the State would move these into evidence.

17 **MR. PHILLIPS:** No objection.

18 **THE COURT:** 50 and 51 entered without objection.

19 (State's Exhibit Number 50 and 51, photographs, were
20 admitted into evidence.)

21 BY MR. GRAHAM:

22 Q. State's Number 51 is an x-ray. What is that, Doctor?

23 A. This is an x-ray of the head. You can see the nose,
24 the eye orbits and this is the bullet itself. This is a
25 reflection of the camera's light, but this is the bullet

1 right here right next to the joint of the mandible.

2 Q. Now that bullet you would have recovered from the
3 autopsy and you would have turned that over to a member of,
4 in this case, the sheriff's department, correct?

5 A. Correct.

6 Q. State's Number 50, what do we see there?

7 A. This is the entrance wound. It's kind of a top of the
8 head shot. You can see the left ear here. The wound is --
9 has some abrasion, which is a roughening of the top of the
10 skin, and it has a little bit of soot around it indicating
11 that it's very close contact, if not contact. The edges of
12 the wound are lacerated and what happens when a muzzle is
13 against the skin and when the bullet comes out so does a
14 lot of gas and that gets underneath the skin and pushes it
15 outward and causes the laceration along the sides of the
16 entrance wound itself.

17 Q. So your opinion as an expert in the field of forensic
18 pathology is this was a contact wound?

19 A. Contact or near contact, yes.

20 **MR. GRAHAM:** Thank you, Doctor. Please answer any
21 questions Mr. Phillips has for you.

22 CROSS-EXAMINATION

23 BY MR. PHILLIPS:

24 Q. Did you include any information about the testimony
25 about how close it was in your report?

1 A. No, I did not.

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

3 **THE COURT:** Okay, Dr. Ross. Have a safe trip back.

4 **THE WITNESS:** Thank you.

5 (Witness excused.)

6 **MR. McNAIR:** Your Honor, the State calls Roy Mefford.

7 **THE COURT:** Y'all come up here real quick.

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

9 (Whereupon, Roy Mefford was duly sworn by the Clerk
10 of Court.)

11 **THE CLERK:** Once you're seated, state your name,
12 spelling it on the record, please.

13 **THE WITNESS:** Roy Mefford, M-E-F-F-O-R-D.

14 ROY MEFFORD,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. McNAIR:

18 Q. Sergeant Mefford, where are you currently employed?

19 A. I'm the director of Lexington County Animal Services.

20 Q. And is that a new position for you?

21 A. It is.

22 Q. And where were you prior to that?

23 A. I was with the Lexington County Sheriff's Department
24 for nineteen years.

25 Q. All right. Now on April 10th of 2013, what was your

1 position at that time?

2 A. I was a sergeant in the major crimes unit.

3 Q. And did you become involved in the investigation of
4 this case involving John Christopher Hart?

5 A. I did.

6 Q. Now at some point during the course of your
7 investigation, did you have the opportunity to speak to
8 Mr. Hart?

9 A. I did.

10 Q. Can you explain the circumstances of that
11 conversation?

12 A. Yes. We'd asked the fugitive task force to assist in
13 locating Mr. Hart and on the 18th of April, 2013, I was
14 contacted and notified that he was in custody in New York
15 and at that point I needed to work out logistics on whether
16 or not to go get him or to send investigators up to speak
17 to him and at that time I reached out to the officers
18 involved in the task force in New York and spoke to Officer
19 Race with Rome Police Department and my intention was to
20 speak to Officer Race to see if Mr. Hart was willing to
21 speak to investigators if I did send them up there to talk
22 with him.

23 Q. All right. So you wanted Officer Race just to make
24 contact with Mr. Hart and determine whether or not he was
25 willing to speak to investigators?

1 A. Yes, sir. I was just seeing if there -- if there was
2 a need to send investigators up there to talk to him or
3 just let the extradition process work itself out. So at
4 that time I just needed to see if I needed to send
5 investigators up there right then to speak to him, so I
6 wanted to see his level of cooperation and speak to the
7 officer about that.

8 Q. Okay. And what did Officer Race do at that point?

9 A. At that time he said he could facilitate a phone
10 conversation between myself and Mr. Hart and at that time
11 he handed Mr. Hart the phone and I spoke to him briefly.
12 I identified myself and told him that I wanted to make sure
13 he understood what he was charged with and I wanted to ask
14 him if he was willing to speak to investigators if I did
15 send them up there.

16 Q. All right. And did he respond to the question you
17 asked?

18 A. Yes, at that time he -- he began to ask questions
19 about the case and I informed him I was not gonna discuss
20 the case or details of the case over the phone as it was
21 not appropriate to do so and I just wanted to see if he
22 was willing to speak to investigators and at that time he
23 made the statement to me "How are you gonna charge me with
24 murder, you found a gun with my fingerprints on it?", or
25 something.

1 Q. All right. And prior to that time had anybody told
2 Mr. Hart that a gun was involved in this case?

3 A. I did not.

4 Q. You did not?

5 A. And not to my knowledge.

6 **MR. McNAIR:** No further questions, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. PHILLIPS:

9 Q. Good afternoon. How are you?

10 A. Good. How are you?

11 Q. Doing well. So when you called him, he just said that
12 there wasn't any fingerprints on the gun or you said you
13 don't remember?

14 A. Well, my call was to Officer Race. My intent was
15 never to -- my intention of the call was to speak to the
16 officer involved, not to Mr. Hart, but he just made the
17 statement -- do you want to know exactly what he said?

18 Q. Well, you said about the fingerprints. You said you
19 weren't sure. Did he say his fingerprints were on the
20 gun?

21 A. No, he said how are you gonna charge me with murder,
22 you got my -- a gun with my fingerprints on it or
23 something.

24 Q. Okay. I just wasn't sure what you said. Thank you.

25 A. Yeah. Yeah, he just asked if we had found a gun with

1 his fingerprints on it.

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

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

4 **THE COURT:** Okay. You may step down.

5 (Witness excused.)

6 (The following proceedings were held at the bench out
7 of the hearing of the jury.)

8 **THE COURT:** Stacy, put on the record there was a
9 sidebar conference just before the testimony of Mr. Mefford
10 and I'm allowing the pre-trial motion to stand, the
11 objection to his testimony is overruled and he's gonna make
12 a full record of it at the next break.

13 (Sidebar concluded.)

14 **MR. GRAHAM:** Sergeant Spivey.

15 **THE CLERK:** Still under oath?

16 **THE COURT:** Yes, ma'am. Still under oath.

17 SEAN SPIVEY,

18 having been previously sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q. Sergeant Spivey, you're the lead investigator on this
22 case, correct?

23 A. Yes, sir.

24 Q. At some point did you receive information, probably
25 from Sergeant Mefford at the time, that Mr. Hart had been

1 located and placed in custody in Utica, New York?

2 A. Yes, sir.

3 Q. Or near Utica, New York. Based on that information,
4 what did you do?

5 A. At that point in time, myself and Detective Stout got
6 up and left the house at about four in the morning to drive
7 up to New York to go interview Mr. Hart.

8 Q. So who went up there?

9 A. Myself and Detective Chris Stout.

10 Q. And how did you get there?

11 A. We actually drove Sergeant Mefford's county Explorer
12 that he had at that time.

13 Q. And how long of a drive is that?

14 A. About fourteen, fifteen hours one way.

15 Q. When you got to New York, what did you do?

16 A. Well, at the time when we were on the way our
17 impression was that we were just going up there to
18 interview him alone. When we got there, we actually met
19 with some family members up there as far as that Mr. Hart
20 had a baby momma up there and we actually met with some of
21 the people up there first. At that point in time, we --
22 after doing that we went to the -- to attempt to interview
23 him.

24 Q. So Mr. Hart had family up there?

25 A. He did.

1 Q. Were you able to determine what the relationships to
2 him were?

3 A. One of the people that was there was Ms. Amber Hart,
4 and she has a -- she's the baby momma of one of -- his
5 child.

6 Q. And at some point did you actually come in contact
7 with Mr. Hart?

8 A. We did.

9 Q. And what was your purpose for that?

10 A. At that point in time the whole purpose was to go up
11 there to try to interview him about this case, so that's --
12 that's what we were doing. We just went to interview him.

13 Q. Now he's in custody and you're wanting to interview
14 him, so what, if anything, do you do to advise him of his
15 rights?

16 A. We have a suspect statement form and at that point in
17 time I'll go over the suspect statement form to make sure
18 he understands his rights.

19 Q. Let me show you State's Number 1, I believe, for
20 identification at this moment, and ask if you recognize
21 that?

22 A. I do. It's one of the statement forms that we use for
23 suspect statement forms at the Lexington County Sheriff's
24 Department.

25 Q. Is that the actual exact form you used to advise

1 Mr. Hart of his rights?

2 A. Yes, sir.

3 **MR. GRAHAM:** Your Honor, the State would offer that
4 into evidence at this time.

5 **THE COURT:** Any objection?

6 **MR. PHILLIPS:** No objection.

7 **THE COURT:** The advice of rights form is 62?

8 **THE COURT REPORTER:** No, it was marked Number 1 for
9 ID.

10 **THE COURT:** Oh, it was one of the first ones. Okay.
11 Number 1 is admitted without objection.

12 (State's Exhibit Number 1, an advisement of rights
13 form, was admitted into evidence.)

14 BY MR. GRAHAM:

15 Q. Are you able to see on the screen the different
16 colored handwriting ink or do you need to see it in person?

17 A. I probably need to see it in person. I believe I can,
18 but to make certain I'm not wrong.

19 Q. So there's different colored ink on there. What are
20 the two colors of ink?

21 A. You have blue ink and you also have black ink.

22 Q. Okay. But blue ink is who?

23 A. Blue ink is me.

24 Q. And the black ink is who?

25 A. Mr. Hart.

1 Q. All right. Would you describe to the jury when you
2 sat down with Mr. Hart -- and Detective Stout would have
3 been with you as well?

4 A. Yes, sir. You can actually put it back up.

5 Q. So the date and time is in blue ink. What date was
6 that that you sat down and interviewed Mr. Hart?

7 A. April 19, 2013.

8 Q. And the time?

9 A. It says on there 19:35, which is military time, so it
10 would be 7:35 PM.

11 Q. So it says I, the undersigned, John Christopher Hart,
12 also in blue, which would be your handwriting, correct?

13 A. That's correct.

14 Q. Now down here there's initials. Whose initials are
15 those?

16 A. Those are Mr. Hart's.

17 Q. What's he acknowledging right there?

18 A. Right there is basically I completed so many grades
19 in school and then basically I can read and write. He
20 initialled that he can read and write.

21 Q. All right. Down to the rights themselves, those are
22 the enumerated rights; one, two, three, four and five.
23 Would you describe to the jury how you explained those
24 rights to Mr. Hart and what his response was.

25 A. I would read each line verbatim before -- I would read

1 actually each line, you know; one, two, three, four, all
2 the way down, and I would -- actually to the left you'll
3 see my initials up there, which is SS, those are my
4 initials indicating that I went over them with him.

5 Q. So your initials are over here saying that you went
6 over them with him?

7 A. Yes, sir.

8 Q. There are initials in black ink beside each one to the
9 right of each item. What are those?

10 A. Those are Mr. Hart's initials indicating that he
11 understood each line that I went over with him.

12 Q. All right. Let me hand State's 1 back to you and
13 actually ask you to read to the jury the rights that you
14 explained to Mr. Hart.

15 A. Basically it goes I have the right to remain silent.
16 Anything I say can and will be used against me in a court
17 of law. I have the right to talk to a lawyer for advice
18 before I'm asked any questions and to have him or her
19 present with me during questioning if I want. If I have
20 no money for lawyer's fees, the Court will appoint one to
21 represent me without any cost, if I wish. If I decide to
22 answer any questions now without a lawyer present, I will
23 still have the right to stop answering questions at any
24 time. You also have the right to stop answering questions
25 at any time until you talk to a lawyer. And at the end of

1 that it says I've read this statement of my rights and I
2 understand what my rights are. At that point I asked him
3 if he understands his rights and if he's still willing to
4 talk and he wrote his initials and he also said yes, he's
5 willing to talk.

6 Q. Did you have any question of whether he understood his
7 rights?

8 A. No, sir.

9 Q. Any question whether he knowingly and intelligently
10 waived his rights when he agreed to speak to you?

11 A. I believe he did.

12 Q. Did he appear to be under the influence of alcohol or
13 drugs during your time speaking with him?

14 A. No, sir.

15 Q. Did you make any promises to get him to speak to you?

16 A. No, sir.

17 Q. Did you threaten him or coerce him in any way to get
18 him to speak with you?

19 A. No, sir.

20 Q. After he waived his rights, further down on that
21 statement there's a line crossed and some handwritten
22 notes. What does that say?

23 A. Basically at the end he -- he refused to write a
24 statement and so at that point I wanted to make certain it
25 was indicated that it was offered but he refused to write a

1 statement with that and at that point I drew a line from
2 one side to the other just so it's alleged that nothing
3 will -- nothing goes there.

4 Q. So he wouldn't write anything, but he did, in fact,
5 speak with you; is that correct?

6 A. He did. He was willing to talk, but at the very end
7 he refused to write a statement.

8 Q. At any time during your conversations with him did he
9 ask to stop speaking?

10 A. No, sir.

11 Q. Did he ever ask for an attorney?

12 A. No, sir.

13 Q. So tell me about your conversation or your interview
14 with him. How did it start?

15 A. As soon as we walked in, he basically -- he looked at
16 us and asked if we were there to take him back. You know,
17 on the way up there our intention was to go up there
18 because, you know, Sergeant Mefford asked about us going --
19 driving fourteen, fifteen hours like that to go talk to
20 him, so our intention was to just go up there solely just
21 to interview him. You know, when we went up we didn't have
22 anything with us except maybe one set of handcuffs between
23 the two of us.

24 While we were in the middle of driving, we found out
25 that Mr. Hart had waived extradition, so when we sat down

1 with Mr. Hart when he came in the first thing he asked at
2 that point in time is are y'all here to pick me up and I
3 replied -- we replied no, but we later found out we were
4 gonna be taking him back anyway, so that was kind of how
5 that went.

6 Q. Was Mr. DeLoach -- had Mr. DeLoach already spoken with
7 you?

8 A. He had.

9 Q. And he had already told you what his involvement
10 was and told you the story about what he related about
11 Mr. Hart's involvement?

12 A. Yes, sir.

13 Q. Let me show you two photographs and ask if you
14 recognize these photographs?

15 A. I do.

16 Q. Did you use both of those photographs in your
17 interview of Mr. Hart or just one?

18 A. I believe we used both of them.

19 **MR. GRAHAM:** The State would offer both of these into
20 evidence.

21 **MR. PHILLIPS:** No objection.

22 **THE COURT:** Have they been marked yet? It will be 52
23 and 53?

24 **THE COURT REPORTER:** Yes.

25 (State's Exhibit Numbers 52 and 53, photographs, were

1 marked and admitted into evidence.)

2 BY MR. GRAHAM:

3 Q. So, Sergeant, tell me how your investigation -- I
4 mean, the interview began.

5 A. Well, the first thing we did after we explained to him
6 that -- whenever he asked that question if we were here to
7 just take him back, we told him we were here to talk to him
8 about the case and at that point in time we went over the
9 Miranda rights with him.

10 Q. And after he waived his rights, what was the first
11 part -- tell me about your actual interview with him.

12 A. Well, I show him a picture of what you just -- the two
13 pictures you showed me there.

14 Q. Let me put those on the overhead. State's 52 and 53,
15 what are those pictures of? Who is that?

16 A. That's Mr. DeLoach and that's at the Lexington County
17 Medical Center. That's the lobby over there.

18 Q. What was your purpose in showing him those
19 photographs?

20 A. To see if he knew who that was and see if he would
21 tell us who that was.

22 Q. When you showed those photographs to him and you asked
23 him that, what was his response?

24 A. His exact words as far as on that was -- I asked if he
25 knew who it was and he said yes, that's my peoples.

1 Q. What was the next thing that you asked him?

2 A. In talking with him, we began asking him about the
3 victim, Ms. Paula Justice.

4 Q. And did you ask him whether he knew Paula Justice?

5 A. We did.

6 Q. And what was his response?

7 A. He said no.

8 Q. What was the next thing you confronted him with?

9 A. We then started talking to him and letting him know
10 that we had phone records and everything as far as -- and
11 that we had spoken to numerous people throughout the
12 investigation and that we knew that -- we'd also spoken to
13 his co-defendant already and that he had already told us
14 what all happened.

15 Q. And what was his response to that?

16 A. His response as far as with it -- we also basically
17 mentioned that we had their Lincoln and we had it also
18 showing them picking her up at the Waffle House. His
19 response was -- he said that we didn't have a picture of
20 him picking her up.

21 Q. Did you talk to him about phone records?

22 A. We did.

23 Q. What did you tell him about phone records?

24 A. We said we had phone records and his response was --
25 he said we didn't have any phone records in his name.

1 Q. After he made the comment about not having a picture
2 of him in the Lincoln with the victim, what was the next
3 thing you talked to him about?

4 A. At that point we -- I believe we showed him a picture
5 at the Waffle House and with her getting in the car.

6 Q. And what else did you tell him?

7 A. I told him we had the victim's phone records and put
8 them together at the Waffle House when she got into the
9 Lincoln at approximately 10:48 PM and I told him we had his
10 phone number and everything on her -- on the victim's phone
11 as well right before picking her up.

12 Q. And did he have any response to that?

13 A. He basically says that we didn't have a picture of
14 him, we don't have phone records with his name on it. He
15 still was kind of adamant that we didn't have a picture of
16 him with her getting in a car with him in it.

17 Q. At some point did you talk to him about your
18 conversation with Mr. Deloach and how Mr. Deloach
19 implicated him?

20 A. We did.

21 Q. And what did he respond to that?

22 A. He kept asking if we had him on video killing this
23 girl and we told him we did not have him on video killing
24 her, but we had a lot of evidence against him. He
25 continued to say at that point that we didn't have anything

1 on him. He also made the comment that we were throwing a
2 lot of stuff at him and he hadn't seen any motion for
3 discovery yet.

4 Q. Specifically when you talked to him, you had showed
5 him State's -- I think they were 50 and 51 and he said that
6 was his people, at some point did you tell him that Tevin
7 Deloach implicated him in Paula's murder?

8 A. Yes, sir.

9 Q. And what, if anything, did he say about Tevin Deloach
10 at that time?

11 A. At that time he started separating himself from
12 Mr. Deloach. He basically said -- he stated saying that
13 he didn't know Tevin Deloach anymore. When I asked him
14 why he made that comment earlier that that was his peoples,
15 his response was I call everybody my peoples.

16 Q. And how did the interview continue to go at that
17 point?

18 A. The interview got very confrontational. It seemed
19 like he was there more as far as to find facts, you know,
20 to get facts from us as opposed to answer questions. I
21 mean, he -- he did deny it. He, you know, basically --
22 well, I say he denied. He basically just kept saying that
23 we didn't have anything against him, we didn't have him
24 on video, we didn't have anything in his name. Basically
25 we didn't have anything -- anything against him. And he

1 was very confrontational throughout -- throughout the
2 interview.

3 Q. Did he ever mention the name Alex Wallace or
4 AJ Wallace to you during that interview?

5 A. No, sir.

6 Q. Let me show you several other photographs and ask if
7 you recognize these?

8 A. Yes, sir.

9 Q. And are those photographs that you used during your
10 interview with Mr. Hart?

11 A. It is.

12 **MR. GRAHAM:** The State would offer these into
13 evidence, Your Honor.

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

15 **THE COURT:** What are those marked? Are they marked
16 yet?

17 **THE COURT REPORTER:** Not yet.

18 **THE COURT:** All without objection.

19 **MR. GRAHAM:** 54 through 58. Yes, Your Honor.

20 (State's Exhibit Number 54 through 58, photographs,
21 were marked and admitted into evidence.)

22 BY MR. GRAHAM:

23 Q. At this point in the interview, where did you feel you
24 were at and what were you trying to do?

25 A. At that point, like I said earlier, he seemed to only

1 want to get information from us. He didn't seem to want
2 to give information. He just seemed to want to see what
3 we had against him. And he kept saying we didn't have
4 anything -- any kind of evidence against him. We had
5 already -- I think already told him also that we had found
6 the gun as well; that his co-defendant took us to where the
7 gun was at. So at this point -- he had mentioned earlier
8 to Sergeant Mefford whenever he was on the phone with him,
9 he made the comment what do you have -- how are you going
10 to charge me with a murder, you've got my fingerprints on
11 the gun or something, so at this point we just felt like
12 the interview was not going anywhere, so at that point I
13 began showing him the pictures there, which is where we
14 collected the gun from in the pond during the dive. So I
15 showed him these pictures basically to let him know just
16 so -- if he recognized those pictures, he obviously would
17 recognize we, in fact, did have something against him
18 without giving him the -- you know, telling him everything.
19 We especially wanted to give him something so he knows that
20 we're up there for a reason, that we're not just throwing,
21 you know, stuff at him for no reason.

22 Q. So up to this point he basically denied having any
23 information and told you that you didn't have his picture
24 killing Paula Justice?

25 A. Yes, sir.

1 Q. State's 54, what is that a photograph of?

2 A. That's a picture of the pond. That's where we located
3 the gun at during the dive.

4 Q. Did you get any reaction from him -- did he say
5 anything when you showed him that photograph?

6 A. No, I kind of just went through the pictures. He
7 never basically -- at the end after I showed him everything
8 as far as -- he just said we don't have anything against
9 him.

10 Q. State's 55?

11 A. That's also in the area where the pond was at. You
12 can actually see down in the left bottom that's actually
13 the pond, the tennis court next to it, and there's a
14 parking lot and a clubhouse.

15 Q. State's 56?

16 A. Yeah, that's another -- that's actually a playground
17 right there as far as kind of in the middle just outside
18 the parking lot.

19 Q. State's 57?

20 A. Another overview of it showing the tennis courts and
21 different things as far as that were all there on the
22 grounds of where they threw the gun.

23 Q. State's Number 58?

24 A. That was actually the gun that we collected during the
25 dive and that was actually the gun that the co-defendant

1 took us to that said was used during the murder.

2 Q. During this part of interview with him when you were
3 confronting him, did you get any response out of him?

4 A. No, he continued to say that we don't have anything
5 against him as far as with the --

6 Q. Now did you try one more thing?

7 A. I did.

8 Q. What was that?

9 A. Based on -- based on the comment that he made to
10 Sergeant Mefford before we left, you know, some of the
11 tactics that we use as far as law enforcement is basically
12 -- you know, there are several different tactics during
13 interviews that we use as far as -- that we throw out there
14 as far as to see what the response of the person would be.
15 We had CSI Phipps at the time, who's already basically been
16 up here before, we had told him what he had -- the comment
17 that he made to Sergeant Mefford. CSI Phipps actually at
18 that point in time put a fingerprint on a similar type
19 style gun to the one that's right there. At that point in
20 time we brought out that picture as far as with it and said
21 we do have your fingerprints on it to see what his reaction
22 was going to be. At that point he still -- he said we
23 don't have his fingerprints on anything.

24 Q. And was there any more interview at that point?

25 A. No, at that point in time we were kind of -- we were

1 kind of done. Like I said, he was very confrontational,
2 so the interview at that point ceased and we left out.

3 Q. And he provided no information about any knowledge of
4 this event, correct?

5 A. No, sir.

6 Q. And he did not mention the name Alex or AJ Wallace?

7 A. Never.

8 Q. So that would have been 4-19. April 19, 2013. What
9 happened next day?

10 A. The next morning at four in the morning, we picked him
11 up from Oneida County Detention Center in order to transfer
12 him back to Lexington County.

13 Q. This was a fifteen hour car ride?

14 A. Yes, sir.

15 Q. What, if anything, did you do about advising him of
16 his rights again?

17 A. As soon as we picked him up, we actually -- at that
18 point in time we knew it was gonna be a long ride back and
19 knew at some point it was possible that the case may come
20 back up again, so I wanted to make certain he understood
21 his rights as well, even though it was only a few -- you
22 know, several hours before that I gave them to him, I went
23 ahead and read them again as well off the same suspect
24 statement form that we did before. Just -- that way it
25 helps me memorize and make sure I'm covering everything

1 whenever I'm reading. So we read the Miranda to him again.
2 He -- also at that point in time he never -- he agreed to
3 talk, he never said, you know, he didn't want to talk to us
4 or anything like that.

5 Q. All right. So did he still -- did he appear to be
6 under the influence of alcohol or drugs during the ride
7 back?

8 A. No, sir.

9 Q. At any time during the ride back, did you coerce him
10 to get him to speak with you?

11 A. No.

12 Q. Did you threaten him?

13 A. No.

14 Q. Did you make any promises to him?

15 A. No, sir.

16 Q. During your ride back with him, tell me about the
17 conversations regarding this case.

18 A. At some point I asked him because his -- his baby
19 momma had just had a baby during the time. He was supposed
20 to be picking her up from the hospital. We learned that
21 during the investigation.

22 Q. Let me interrupt you for a second because you had
23 talked about a lady in New York. So when you say baby
24 momma, who are we talking about?

25 A. I'm sorry. The -- he had a baby momma up in New York

1 that he went to see, but he also had a baby momma here in
2 South Carolina who had just had a baby [REDACTED] the [REDACTED], 2013.
3 She was supposed to get out of the hospital April the 10th,
4 she was supposed to be discharged, and he was supposed to
5 go pick her up.

6 Q. And we're talking about Jessica Ussery?

7 A. Yes, sir.

8 Q. Okay.

9 A. So at that point in time I asked him, you know, why
10 he didn't go give Jessica a ride home. His response was
11 Jessica had a ride home.

12 Q. And what did you tell him after that?

13 A. I told him that she didn't have a ride home. She
14 actually had to end up having lie to the medical staff in
15 order to be able to get home.

16 Q. And what was his response to that?

17 A. I think -- basically at that point I don't recall what
18 his response was to that.

19 Q. What was the next thing that he said to you?

20 A. He made the comment at some point while he was talking
21 to us that he knows that talking isn't going to help him.
22 He also made the comment -- he said he knows the system and
23 how it works. He also says that he knows people that have
24 cooperated with the police before and they didn't get
25 anything for it.

1 Q. What, if anything, does he -- was he questioned about
2 snitches?

3 A. I'm sorry?

4 Q. Was he questioned about snitches? Did he make any
5 comments about snitches?

6 A. He did make comments about how he didn't like
7 snitches.

8 Q. What else did he say to you during the ride back,
9 specifically to you?

10 A. At one point he made the comment to me -- he said that
11 he would never forget me because I've been all over his ass
12 is what he said.

13 Q. Those were his words?

14 A. Those were his words.

15 Q. What else did he say?

16 A. He also said that this wasn't a petit larceny-type
17 charge and had it been a petit larceny charge he would have
18 already confessed over the phone.

19 Q. And that covers your conversation with him both up in
20 New York and also during the ride back; is that correct?

21 A. When we got -- when we got to Lexington County, you
22 know, I had reached out to Sergeant Felder, who's one of
23 the CO's there, and I basically told him that him and his
24 co-defendant needed to be kept away from each other.

25 Q. And did you hear Mr. Hart say anything in response to

1 that?

2 A. His response was that --

3 **MR. PHILLIPS:** Your Honor, I don't think -- not
4 through this witness.

5 **THE COURT:** It's done during the interrogation.

6 **MR. GRAHAM:** I'm not sure what the objection was. I'm
7 sorry.

8 **THE COURT:** Y'all come up.

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

10 BY MR. GRAHAM:

11 Q. I'm not asking you to repeat what somebody else told
12 you later. I'm asking at that moment did you hear Mr. Hart
13 say anything?

14 A. Yes.

15 Q. Okay. So what did you hear Mr. Hart say?

16 A. Hart then said that we didn't have to keep them away
17 from each other. He would be okay with him.

18 Q. And that would be the person -- Tevin Deloach who he
19 first said was his people and later said everybody was his
20 people and he didn't know him; is that correct?

21 A. Yes, sir.

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

23 BY MR. GRAHAM:

24 Q. Sergeant Spivey, let me show you a piece of paper with
25 multiple photographs and lines on it. Do you recognize

1 that?

2 A. I do.

3 Q. Would that help you explain to the jury your
4 investigation and as far as what you found as connections
5 between people involved in this case?

6 A. Yes, sir.

7 **MR. GRAHAM:** The State would offer this into evidence
8 at this time.

9 **THE COURT:** Provided you give him a copy of it to
10 utilize during cross-examination. Is that right?

11 **MR. PHILLIPS:** That's right.

12 **THE COURT:** This would be State's 59 without
13 objection, but subject to him having a copy to work with
14 also.

15 (State's Exhibit Number 59, a photo diagram, was
16 marked and admitted into evidence.)

17 BY MR. GRAHAM:

18 Q. State's 59 on the overhead, do you recognize those
19 people up there?

20 A. I do.

21 Q. The female in the upper right is who?

22 A. Paula Justice.

23 Q. Upper left?

24 A. Jeremy Washington.

25 Q. And the center?

1 A. John Christopher Hart.

2 Q. To the right?

3 A. Tevin Deloach.

4 Q. To the left?

5 A. Chance Belton.

6 Q. And at the bottom?

7 A. Alex Wallace.

8 Q. All right. And you were in the courtroom and you
9 heard Mr. Phillips say that Alex Wallace had confessed to
10 this crime; is that correct?

11 A. That's correct.

12 Q. In fact, he asked you on cross had he confessed and
13 you said he did give a confession, but you excluded him?

14 A. That's correct.

15 Q. So let's talk about that. During the investigation
16 of this case -- how long have you been working on this
17 case?

18 A. Four years.

19 Q. In the four years that you've worked on this case,
20 what, if any, conversations did you find between John Hart
21 and Paula Justice?

22 A. What connections did I find? That they had a -- she
23 was a prostitute and he was -- he supplied her with some
24 drugs.

25 Q. And did you find that out from one source or multiple

1 sources?

2 A. Multiple sources.

3 Q. Were you able to establish a connection between Paula
4 Justice and Jeremy Washington?

5 A. I was.

6 Q. And how was that?

7 A. She was co-defendant in a case out of Richland County.

8 Q. That we heard about earlier today?

9 A. Yes, sir.

10 Q. John Hart and Jeremy Washington?

11 A. John Hart and Jeremy Washington knew each other from
12 whenever they were younger. They actually lived in the
13 Broad River Road area together whenever they were younger.

14 **MR. PHILLIPS:** And, Your Honor, I'm gonna object to
15 hearsay. If they want to bring witnesses to establish
16 this --

17 **THE COURT:** Okay. I understand. So I sustain it not
18 to include hearsay. Mr. Graham's experienced. He can ask
19 questions to exclude hearsay.

20 **MR. PHILLIPS:** And call the witness.

21 BY MR. GRAHAM:

22 Q. John Christopher Hart and Chance Belton, what did your
23 investigation reveal on that?

24 A. Chance Belton is the one with the Lincoln Town Car.
25 He's the one that actually sent the tow guy to get the

1 Lincoln Town Car from the Delta. We also had multiple
2 phone calls between Mr. Hart and Chance Bolton during the
3 time of the traffic stop and before.

4 Q. Mr. Hart and Mr. Deloach?

5 A. Mr. Hart and Mr. Deloach are co-defendants in this
6 case.

7 Q. All right. Were you able to establish any connection
8 between Tevin Deloach and Paula Justice?

9 A. No.

10 Q. Between Tevin Deloach and Jeremy Washington?

11 A. No.

12 Q. Tevin Deloach and Alex Wallace?

13 A. No.

14 Q. Chance Bolton and Alex Wallace?

15 A. No.

16 Q. Paula Justice and Alex Wallace?

17 A. No.

18 Q. John Christopher Hart and Alex Wallace?

19 A. Yes.

20 Q. When were you first contacted by Alex Wallace about
21 wanting to speak to you about this case?

22 A. Back in June, I think, of last year.

23 Q. June of 2014 -- or, no, '16?

24 A. June of -- it would have been June 21st. I got a --
25 what happened is I got a letter in my box over at our

1 headquarter's office asking to come speak to him. That he
2 had some information.

3 Q. And did you go speak to him?

4 A. I did.

5 Q. And when you speak with him, what did he tell you?

6 A. He wanted to -- he basically -- we've had a lot of
7 people approach us and want to talk to us in regards to
8 this. We assumed it was kind of very similar to it. We
9 sat down with him. We figured he had some information he
10 wanted to pass on that he maybe heard himself and at that
11 point in time, he said he wanted to get the allegations
12 correct and wanted to admit that he's the one that actually
13 killed Paula Justice.

14 Q. Were you expecting him to tell you that?

15 A. No, sir, not at all.

16 Q. So tell me about your conversation or interview with
17 him.

18 A. At that point we -- when he made that comment, we told
19 him to stop. At that point we read Miranda to him. We
20 told him if he was gonna attempt to implicate himself in a
21 case like this that we needed to read his rights to him so
22 he understood what they were.

23 Q. And what did he tell you?

24 A. That he understood what those rights were and then he
25 went -- he went into kind of detail -- he agreed to talk to

1 us and he wanted to go into detail about what happened.

2 Q. And did he, in fact, write a statement?

3 A. He did.

4 Q. And do you have that with you?

5 A. I do.

6 **MR. GRAHAM:** Your Honor, the State would offer that
7 into evidence.

8 **THE COURT:** Where is it?

9 **THE WITNESS:** This is not the original, it's a copy.
10 The original is probably in my folder.

11 **MR. GRAHAM:** Where would that be?

12 **THE WITNESS:** She's got it.

13 **THE COURT:** Approach.

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

15 **THE COURT:** I thought it would be easier for us
16 stepping out than stepping y'all out so I can hear a little
17 better. It's raining.

18 All right. Have we got the original, Mr. Graham?

19 **MR. GRAHAM:** It's right up there.

20 **THE COURT:** There's no highlights on that one.

21 **THE WITNESS:** That's not the copy was I looking at.

22 **THE COURT:** This is un-highlighted offered into
23 evidence as State's 60.

24 **MR. GRAHAM:** Your Honor, I'm gonna staple it because
25 I think it's nine or ten loose pages.

1 **THE COURT:** Is that right, Stacy, 60?

2 **THE COURT REPORTER:** Yes, it will be 60.

3 **THE COURT:** And, Mr. Phillips, State's 60, these nine
4 pages of this statement un-highlighted, without objection
5 or subject to the objection?

6 **MR. PHILLIPS:** They're not calling Alex Wallace?

7 **THE COURT:** He said not.

8 **MR. PHILLIPS:** How does it come in?

9 **THE COURT:** It was a statement given to the detective,
10 wasn't it? He interviewed him.

11 **MR. PHILLIPS:** No objection.

12 **THE COURT:** No objection. State's 60 is -- is it nine
13 pages roughly?

14 **MR. GRAHAM:** I'm sorry, Your Honor?

15 **THE COURT:** Is it nine pages roughly?

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

17 **MR. GRAHAM:** Nine and nine, yes, sir.

18 (State's Exhibit Number 60, a handwritten statement,
19 was marked and admitted into evidence.)

20 BY MR. GRAHAM:

21 Q. State's Number 60, do you have a copy in front of you?

22 A. I do.

23 Q. Okay. So your testimony is that you received a
24 request from him on June 21, 2016, to go speak with him
25 and you went and spoke with him on -- it looks like on the

1 22nd; is that correct?

2 A. That's correct. I believe I got the request on the
3 22nd. It was dated on the 21st.

4 Q. And once he started telling you that he was there to
5 tell you that he shot somebody, you read his Miranda
6 rights, right?

7 A. That's correct.

8 Q. So go through the advisement of rights with him and
9 how you did it.

10 A. The same thing. You have the right to remain silent.
11 Anything you say can be used against you in a court of law.
12 You have the right to talk to lawyer for advice before
13 asked any questions and to have him or her present with you
14 during questioning. If you have no monies for a lawyer's
15 fees, the Court will appoint one to represent you without
16 any cost, if you wish. If you decide to answer any
17 questions now without a lawyer present, you will still have
18 the right to stop answering questions at any time. You
19 also have the right to stop answering questions at any time
20 until you talk to a lawyer. I read -- and then the last
21 part is I read the statement of my rights and I understand
22 what my rights are and I make the following statements.

23 At that point I asked him if he understood what his
24 rights were and if he still agreed to talk and he said yes.

25 Q. How old was he at this time?

1 A. He was eighteen years old.

2 Q. Was he in the detention center on other charges?

3 A. He was.

4 Q. What charges was he in the detention center for?

5 A. He's also on the charge -- he's there right now for a
6 murder charge.

7 Q. And who's the lead officer on that case?

8 A. I am.

9 Q. What was he accused of doing?

10 A. He was accused of doing a burglary. During the midst
11 of the burglary, the homeowners came home, they got pinned
12 into the back room -- as they couldn't get out the back
13 door, they got pinned in the back room and Mr. Wallace
14 pulled a gun out. Subsequently whenever they -- they met
15 with each other and tried telling the homeowner to get on
16 the ground. At that point in time because the homeowner
17 would not comply, he shot him and then fled.

18 Q. And Mr. Wallace gave a confession to you on that case;
19 is that correct?

20 A. Yes, sir.

21 Q. So after you read his rights, did he acknowledge that
22 he understood his rights?

23 A. He did.

24 Q. And the same way that you did earlier with the S's on
25 the side saying that you read them and his initials over

1 there?

2 A. Yes, sir.

3 Q. All right. Looking through this, what did he tell
4 you?

5 A. He basically wanted to say that he was the one that
6 actually killed her. He basically said that when he --
7 after he killed her he basically thought that the case
8 went cold, that nobody got charged. Whenever he got --
9 whenever he saw Hart again he realized that basically he
10 got in trouble for something he did, so he wanted to make
11 the allegations right and say -- because he felt bad, he
12 felt like he needed to come forward right away and make it
13 known.

14 Q. Did he -- were you able to determine during your
15 investigation whether Mr. Hart and Mr. Wallace had access
16 to each other prior to Mr. Wallace speaking to you about
17 this?

18 A. Yes. At one point they -- I found out that they
19 started -- they were together all the way from January 2016
20 and they were also -- you know, at that point all the way
21 to the point where I was talking to him, so for six months
22 they had access on a daily routine as far as with each
23 other.

24 Q. So let's go through what he told you. If you would
25 just start reading it.

1 A. Just read the statement?

2 Q. Yes, sir.

3 A. It says I, Alex Jermaine Wallace, confess to the
4 murder of Paula Justice. Any allegations against John
5 Hart are incorrect. I know Hart from selling drugs out of
6 motels in the West Columbia area. Me and Hart both know
7 Paula Justice because she was a prostitute. Paula owed me
8 \$1,250 at the time. I would call her phone, which was a
9 363 number, and she would constantly ignore my calls. I
10 knew that Hart knew Paula as well, so I called him and
11 told him to bring Paula to me. I told him that it was a
12 money meeting about getting Paula to do prostitution. He
13 called me back and told me he was on the way. I was
14 walking down Greenwood emerging onto Lumberjack when I saw
15 the car pull up. I walked down Lumberjack and greeted
16 Hart and Paula. Paula didn't say anything to me and Hart
17 asked me where was the customer and told -- told him it
18 was a few houses up. I told Paula to walk ahead of us so
19 -- excuse me. I told Paula to walk ahead of us so me and
20 Hart could talk. When she did, that's when I pulled my
21 45 caliber gun out and shot her once in the back of the
22 head. As soon as I shot her, I ran up Lumberjack back to
23 my house on Greenwood. I didn't hear anything from Hart
24 afterwards and I wasn't notified if anyone was locked up
25 for it or not, so I thought the case was cold. Hart did

1 not murder Paula Justice. The gun, all black with chrome
2 cartridge, with black clip. The car Hart and Paula came in
3 was tan or beige. I was wearing a dark green and beige
4 camo hoodie with black pants and black and beige Jordan's.
5 I'm coming up to the murder of Paula -- I'm owning up to
6 the murder of Paula because an innocent man should not be
7 charged for something he honestly didn't do.

8 Q. And then it goes on with questions. Well, let's stop
9 there for a second. Actually, let's not. Let's continue
10 with your questions and answers.

11 A. All right. There were several questions. I said:
12 What kind of gun was it used on this day? His answer was:
13 A Glock, 45 caliber. My next question was --

14 Q. Let me stop you for a second.

15 A. I'm sorry.

16 Q. He told you what?

17 A. He told -- he wrote it was a Glock, 45 caliber.

18 Q. What kind of a gun was recovered from the pond?

19 A. It was a Karr 45 caliber gun.

20 Q. So was that consistent with the facts as you
21 understand them in this case?

22 A. No, sir.

23 Q. All right. Continue on, please.

24 A. My next question was? Who shot Paula. His response

25 -- his answer was: I did. The next question, I said: How

1 far were you from Paula when you pulled the trigger? Four
2 or five feet away with my arm extended.

3 Now this is key as far as in this because whenever I
4 was talking to him verbally before he wrote his statement
5 out, I asked him how far away he was and he said he was
6 about five or six feet away. I then told him that my
7 understanding, which I hadn't -- you know, this is, you
8 know, a few years after the fact, but I told him that my
9 belief, which I didn't have in front of me, was that she
10 was shot at close range and she would have close contact,
11 which means that the gun would have been right up against
12 her skull or, you know, relatively close, I guess. When he
13 wrote his statement, at that point he basically, you know,
14 changed what he said to try and make himself shorter and
15 basically said now -- he went from five to six feet and now
16 he went to four to five feet and now he's extending his
17 arm.

18 Q. So how far was he telling you that the end of the gun
19 was from -- I think he said the back of Paula's head?

20 A. Yeah, he shot her. And he also said while she was
21 walking.

22 Q. So when it says four or five feet away with my arm
23 extended, was he talking about the gun from Paula or him
24 from Paula?

25 A. Well, when he wrote the statement he said that he

1 was four or five feet away with my arm extended, so I'm
2 assuming he's talking about he was actually four feet away
3 from -- four to five feet away as far as what he wrote on
4 the statement. Again, he told me five to six feet away
5 that he was standing away from her when he actually pulled
6 the trigger, so his body was five to six feet away from
7 her.

8 Q. So he moved -- when you confronted him about it being
9 a contact or a close wound, he changed his story?

10 A. Yes, sir.

11 Q. Continue on, please.

12 A. I asked him then, I said: How do you know it was a
13 Glock and how certain are you to it being a Glock? His
14 answer was: When I bought it, that's what I was told it
15 was. I'm positive.

16 Q. That's right there, I'm positive?

17 A. Yes, sir.

18 Q. Page 3.

19 A. On page 3, the first question is: What color was the
20 gun? His answer was: All black, chrome cartridge, top
21 part, not magazine. The next question: How did you
22 contact Hart to come meet you with Paula? By phone. What
23 number did you call Hart from and whose phone does this
24 number belong to? When he gave me the answer earlier, he
25 said that his number was 803-522 -- and my copy is smudged

1 here on that part. I think that's 8057, if I'm reading
2 correctly from a distance, but when he wrote his actual
3 statement he wrote a different number down, but he only
4 changed it one digit. He actually wrote 803-822-8057.

5 Q. So when he told you verbally what it was, it was a
6 different number?

7 A. That's correct.

8 Q. Why did he change that when he wrote this number?

9 A. I don't recall why he said he changed it, but he did.

10 **MR. PHILLIPS:** We're getting into speculation.

11 **THE COURT:** Okay. He said he didn't know. Moving on.

12 **BY MR. GRAHAM:**

13 Q. Did you have an opportunity to go back and check both
14 phone numbers against records in this case?

15 A. I did.

16 Q. And were you able to see any calls from either number
17 he gave you to Mr. Hart on any phone that you believed was
18 associated with Mr. Hart?

19 A. No, sir.

20 Q. Continue on.

21 A. To finish on this, he said: It did not -- it did
22 belong to me. In my mom's name, Rhonda Wallace. It was
23 then stolen when I got locked up in June of 2013. The next
24 question was: How big was the Glock gun you said you shot
25 Paula with? We talked about mine being a mid-side Glock on

1 my hip, a small one that I wear on my ankle, on my leg, and
2 the size that Detective Stout, who was in the room with me
3 at the time, has as being a full-size Glock.

4 So when we're talking to him, I'm basically -- without
5 pulling anything out of my holster or anything like that,
6 I basically showed him mine on my -- my side. Glock makes
7 three different size guns as far as they have a full-size
8 gun, they have a medium-size gun and then they have a small
9 one, a little compact-type gun. So I showed him mine on
10 my hip. I also showed him one on my ankle that I wear and
11 then I showed him the one that Detective Stout had because
12 Detective Stout has a full-size, I have a mid and then I
13 have a little -- what's called a baby Glock on my ankle.

14 **THE COURT:** Hang on.

15 **MR. PHILLIPS:** If we go down this road, we need the
16 other gun. We have that gun and we're getting testimony
17 about sizes of guns. The jury's gonna have to see these
18 sizes of gun.

19 **BY MR. GRAHAM:**

20 Q. Do you have -- what guns do you have on you right
21 now?

22 A. I have my mid-size gun and I have my baby Glock on my
23 ankle right now.

24 **MR. GRAHAM:** Your Honor, if you're okay, he can pull
25 them out and clear them so that the jury can see the size

1 and I bet some officer in here has a full-size.

2 **MR. PHILLIPS:** Well, Alex Wallace didn't see him --
3 he saw them in the holster. He can't pull them out.
4 That's not what Alex saw.

5 **MR. GRAHAM:** Then why are -- what's the problem then?

6 **THE COURT:** Move over a bit. I can't quite see your
7 face.

8 **MR. PHILLIPS:** The issue would be they're gonna say
9 about size, that he doesn't know the size of the gun.

10 **THE COURT:** All right. Wait a minute., Come up here
11 real quick.

12 I'll tell you what let's do. Let's take a quick break
13 so we can discuss this. Y'all need a break because I've
14 been wanting one myself. Don't discuss the case and we'll
15 get this straightened out and then we'll have a little
16 break.

17 (Whereupon, the jury retires to the jury room at
18 2:59 PM.)

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

20 **THE COURT:** All right. Let's take about ten minutes
21 for ourselves.

22 (Recess taken.)

23 (State's Exhibit Number 61 was marked for
24 identification.)

25 **THE COURT:** All right. Are y'all ready for the jury?

1 **MR. GRAHAM:** The State's ready.

2 **THE COURT:** Okay. Any problem with me telling the
3 jury exactly how we worked out the presentation of the
4 conversation? I think it's better we explain it to them --

5 **MR. PHILLIPS:** Absolutely.

6 **THE COURT:** -- the way we all agreed that's the best
7 way.

8 (Whereupon, the jury returns to the courtroom at
9 3:13 PM.)

10 **THE COURT:** All right. I tell you what we resolved
11 while y'all were out is the lawyers were trying to --
12 sometimes you find out something during the trial. During
13 this interview this question about the gun and what it
14 looked like or how big was it. During the questioning
15 Detective Spivey was saying this is this size and I have
16 another one. We agree we're gonna show the guns to you
17 just the like the witness was shown the guns in their
18 holster, kind of on their body, so they're gonna get up
19 and do a little modeling for you.

20 So with those instructions, Mr. Graham, do you have
21 the other detective who was there available?

22 **MR. GRAHAM:** Yes. Detective Stout, who was there,
23 and has the same gun.

24 **THE COURT:** If you want to bring him in, bring him
25 in, okay?

1 BY MR. GRAHAM:

2 Q. Sergeant Spivey, we were at -- right before we walked
3 out here, you had asked the question how big was the Glock
4 you said you shot Paula with, you talked about yours being
5 mid-size on your hip and a small one on your leg and then
6 it says and the size that Detective Stout as being a
7 full-size. Could you step down? You're gonna get to lift
8 your leg up here, too.

9 Can you show the jury the one on your hip.

10 A. (Witness complies.)

11 Q. And is that how you showed it to Alex Wallace during
12 your interview?

13 A. Yes, sir.

14 Q. Did you draw it out and threaten him or just show it
15 just like this?

16 A. Just showed it just like that.

17 Q. Step down here as well.

18 A. (Witness complies.)

19 Q. Yours is a mid-size; is that correct?

20 A. Yes.

21 Q. All right. The one on your ankle that you carry, what
22 size is that?

23 A. This is what you call a baby Glock. It's the smallest
24 one they make.

25 Q. And would you show them the same way that you showed

1 him?

2 A. (Witness complies.)

3 Q. Nice legs.

4 **THE COURT:** Stacy, you don't have to put that on the
5 record.

6 Q. Would you go down here?

7 A. (Witness complies.)

8 Q. Okay. And then in addition you had a full-size model
9 that was on Detective Stout; is that correct?

10 A. Yes, sir.

11 Q. Okay. You can have a seat back on the stand.

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

13 **MR. GRAHAM:** Present in the courtroom with me now is
14 Detective Chris Stout. I believe he's wearing the same gun
15 that he had on at that time, so I'll ask him to show his
16 gun to the jury just as he did to Mr. Wallace.

17 (Whereupon, Detective Chris Stout stands before the
18 jury.)

19 **MR. GRAHAM:** That's a full-size Glock. You can step
20 down here and let them see.

21 BY MR. GRAHAM:

22 Q. So after you showed Mr. Wallace the Glocks, the
23 full-size, mid-size and baby Glock, what did he say about
24 the Glock he used?

25 A. He said it was the same as Detective Chris Stout's,

1 the full-size.

2 Q. Now the weapon that was recovered from the pond that
3 testing has revealed was the one that left the cartridge
4 casing on the scene, which is State's --

5 **THE COURT:** Is it 43?

6 Q. -- State's Number 43, that is a -- not a Glock, but a
7 Karr, correct?

8 A. Yes, sir.

9 Q. And what size is that compared to the full-size, the
10 mid-size on your hip and the baby Glock?

11 A. That's actually smaller than the baby Glock.

12 Q. Smaller than the baby Glock on your ankle?

13 A. Yes, sir.

14 Q. In addition, earlier he wrote down -- how did he
15 describe the gun again as in the color of the gun?

16 A. He said that it was black -- all black, chrome
17 cartridge, top part, not magazine.

18 Q. That's up here. Now what's the difference between
19 chrome and stainless steel?

20 A. Chrome I would say is more shiny when it comes to it.

21 Q. And on the Karr, is that chrome or is that a different
22 type of metal?

23 A. I think that's a different kind metal.

24 Q. And do you know what kind that is?

25 A. No, sir.

1 Q. Continuing on down with his statement, what's the next
2 thing?

3 A. What number did you call Paula on and when did you
4 last try to call her prior to her being shot? The same
5 number I called Hart on, the night before, several other
6 times -- and several other times.

7 Q. Those would have been the -- the number above, the
8 822-8057. You said during the interview before he wrote
9 this he gave you a different number as well?

10 A. Correct. The only difference was instead of it being
11 822 as was written on the statement, it was 522, the same
12 last four digits.

13 Q. And did you look for those numbers in Paula's records?

14 A. Yes, sir.

15 Q. Did you find either of those numbers?

16 A. No, sir.

17 Q. Continue on, please.

18 A. How many times did you try to call Paula the night
19 before the incident? Twice is his answer.

20 Q. The next page.

21 A. What was Paula wearing on this night? I'm not sure,
22 but I believe it was a gray or white shirt and sweatpants.

23 Q. And how does that go with what she was actually
24 wearing?

25 A. To be honest with you, whenever we met with him I

1 couldn't recall what she was wearing, so.

2 Q. Continue on.

3 A. Who else was with Hart and Paula and how did they get
4 there? His answer, nobody. They drove.

5 Q. So he didn't mention anything about Tevin Deloach or
6 another person being there?

7 A. No, sir.

8 Q. All right. Continue on.

9 A. What did they drive? A tan or beige car. Maybe a
10 Lincoln or Crown Vic.

11 Q. And what color was the Lincoln that was involved in
12 this case?

13 A. Like a blue -- like a bluish silver kind of color.

14 Q. Continue on.

15 A. Where was the car parked at and where did they get
16 out of the car? On the dirt road. Hart got out of the
17 driver's side and Paula got out of the opposite side. The
18 thing about this, when it kind of goes into it, going back
19 to the video I watched at the Waffle House, Paula got into
20 the back seat, not on the passenger seat.

21 Q. And continue on.

22 A. Where did they -- where did they come from prior to
23 getting there? His answer: I don't know. The next
24 question is: What did Hart do after you shot Paula? His
25 answer: I don't know because I ran. Next question is:

1 What did you say to Hart before you supposedly pulled the
2 trigger? His answer: Hart asked me where was the customer
3 and I told him just a few houses up. He asked again and I
4 did not reply. The next one is: Tell me what you did with
5 the gun after the incident. His answer was: Got rid of
6 it.

7 Q. Continue on to the next page.

8 A. The next one is: Where did you get rid of it at?
9 Describe the place completely. A pond in Irmo, a couple of
10 trees, near a railroad track, and there was a relatively
11 close housing or apartment complex.

12 Q. All right. The place the gun was recovered, what was
13 the name of that area?

14 A. Crest --

15 Q. Chestnut Hill Plantation?

16 A. Yes, sir. Chestnut Hill Plantation.

17 Q. Where is Chestnut Hill Plantation located?

18 A. It's over off Broad River Road.

19 Q. Is it in Irmo?

20 A. I would say it's more probably a Columbia address.
21 It's over there near Harbison.

22 **THE COURT:** It is where it is.

23 A. But it's on the Broad River side where Harbison is.

24 Q. State's Number 26 is on the overhead right now. How
25 did he describe the area where he threw the gun?

1 A. He said it was a pond in Irmo, a couple of trees, near
2 a railroad track, and there was a relatively close housing
3 or apartment complex.

4 Q. Is there a railroad track anywhere near this area?

5 A. No, sir.

6 Q. No mention of a clubhouse or tennis courts?

7 A. No, sir.

8 Q. Continue on.

9 A. How did you get there? A friend gave me ride since
10 how I was going -- a friend gave me ride since how I was
11 going to a friend's house. The next one is: Who is your
12 friend and what kind of vehicle were you -- were you two
13 in? I don't know his government name. Black Honda. What
14 else --

15 Q. Let me interrupt you for a second. He didn't give you
16 any name, did he?

17 A. No, sir.

18 Q. So there wasn't anything for you to follow up on, was
19 there?

20 A. No, sir.

21 Q. Go ahead.

22 A. What else was around this pond? I just saw trees.
23 The next one is: What did you do with the gun when you got
24 to the pond? His answer: Threw it in the pond. The next
25 one was: Where was your friend when you threw the gun in

1 the pond. In the car was his answer.

2 Q. Page 6.

3 A. The next question: How did you find this place? His
4 answer: On the way to my friend's house I saw it. And my
5 recollection as far as of this area is the pond is all the
6 way in the back. He wouldn't have passed -- he wouldn't
7 have passed this area.

8 Q. Continue on.

9 A. The next one is: Where does your friend live? He did
10 live on Long Creek Drive.

11 Q. Where is Long Creek Drive in relation to this?

12 A. It's somewhere in that area. I mean, it's over in
13 that -- in the Irmo area. I'm not familiar off the top of
14 my head where it is -- you know, where it's at in relation
15 to Chestnut Hill Plantation.

16 Q. All right. Continue.

17 A. What time of day was this when you threw the gun in
18 the pond? Nighttime. Maybe 10 or 10:30 PM. The next one
19 is: How long after you shot Paula did you get rid of the
20 gun in the pond? His answer was: A couple of days later,
21 maybe three. The next question is: When did you shoot
22 Paula? His answer was: Around 11:30 PM, somewhere around
23 the 8th or 9th of April of 2013. The next question: What
24 was Paula doing when you shot her and how many times did
25 you shoot her? His answer was: She was slowly walking.

1 Q. All right. And where -- earlier he said where he shot
2 her, correct?

3 MR. PHILLIPS: There was more to that answer.

4 THE COURT: Okay. He can read it off.

5 THE WITNESS: I'm sorry. She was slowly walking and
6 then once. Sorry.

7 THE COURT: Okay.

8 BY MR. GRAHAM:

9 Q. Previously he did tell you, I believe, where he shot
10 her, correct? What part of her body?

11 A. He shot her in the back of the head.

12 Q. From a distance he said of?

13 A. He verbally told him five to six and then after I told
14 him about the close contact, he narrowed his gap to four to
15 five on the last -- what he wrote on the statement.

16 Q. And either in writing or oral, did he say whether she
17 was walking toward him or walking away?

18 A. I don't recall, but he -- you know, it sounded like
19 she was walking away.

20 Q. Okay. Continue.

21 A. What was Hart wearing? His answer: I don't remember.

22 The next one is: What phone number did you call Hart on?

23 This is when he said 803-822-8057. And this is the one
24 that's different. When verbally he told me, it was the

25 522-8057. The next question: What is Hart's phone number

1 that you called him on? His answer: I don't remember.

2 I think it was a long distance -- I think it was long

3 distance. The next one: At the pond, how far were you

4 from your friend and could he see you? His answer: About

5 30 or 35 yards and, no, because the car was parked with

6 its trunk towards me at an angle so he could pull out.

7 Q. So looking back at State's 26, which is the overview,

8 if the pond is up here and the road is here, how is he

9 describing how his friend's car was parked?

10 A. It was parked where the butt of -- or the trunk of

11 his car was facing towards him. So if the pond is right

12 by the tennis court, then it would have been pointing

13 towards the pond.

14 Q. Across this roadway?

15 A. Yes, sir.

16 Q. Continue.

17 A. The next question: Did the guy know what you were

18 doing since he was parked ready to pull out? His answer:

19 No, he was ready to go to a party and he parked like how

20 he did because it was a long turnaround.

21 Q. Page 8.

22 A. Draw me the pond and everything around it like it

23 was on the night you got rid of the gun. And this is his

24 drawing.

25 Q. Can you describe to the jury what he was showing you

1 with that drawing?

2 A. Do you have the pointer where I can --

3 Q. I wish I did.

4 **MR. GRAHAM:** Your Honor, can he step down?

5 **THE COURT:** Sure.

6 (Whereupon, the witness steps down from the witness
7 stand.)

8 BY MR. GRAHAM:

9 Q. Go ahead.

10 A. Right here -- these right here are all indications of
11 trees. He's got that written right here, so these are all
12 indications of trees. This is where he's saying is "me",
13 referring to Wallace. Right here is where he's saying is
14 the car and he's saying that he was backed -- the guy was
15 backed -- had the trunk facing this direction. He's
16 basically drawing an indication about 30 yards from here to
17 the car. And then this is a roadway. He doesn't remember
18 this area right here, but this is grass or dirt. And he
19 said he couldn't see this area right here.

20 Q. In any of his descriptions -- you can have a seat.

21 A. (Witness complies.)

22 Q. In any of his descriptions to you or the drawing, did
23 he say anything about a clubhouse?

24 A. No, sir.

25 Q. Anything thing about the tennis courts?

1 A. No, sir.

2 Q. Anything about multiple ponds?

3 A. No, sir.

4 Q. Anything about the giant parking lot?

5 A. No, sir. And that was the thing about the parking
6 lot. If he was turned in that direction where the -- where
7 the trunk of the vehicle was, you know, he would have had
8 to go and turn around in that big parking lot, so I don't
9 know see how he missed that.

10 Q. You're talking about this parking lot right here?

11 A. Yes, sir.

12 Q. State's 26.

13 A. And also with the tennis court being directly beside
14 the pond.

15 Q. That shows a -- is that showing that there's a road
16 right there?

17 A. Yes, sir.

18 Q. And is there any road at this site?

19 A. It's basically -- if you see where, you know, the
20 roadway is, it goes all the way around and back out.
21 There's like a neighborhood. You'll pass like through a
22 neighborhood. So, no, there's no road right there.)

23 Q. The last page, page 9.

24 A. How long have you known Hart and Paula? His answer:
25 I knew them for maybe seven or eight months before the

1 incident. The next question: Where is Hart at in LCDC in
2 comparison to you? His answer: The same floor. The next
3 question: How often do you see or talk with Hart? His
4 answer: I see him once a day if I'm not asleep and we
5 don't talk that often. The next question is: Were you
6 promised anything today by Detective Stout or myself in
7 any way? His answer: No. The next one is: Were you
8 threatened by anyone here to make a statement? His answer
9 is: No. The next one: Did Hart threaten you or promise
10 you anything to make a statement? His answer: No. The
11 next one: Did you make a request to talk with us and why?
12 His answer: Yes, because someone innocent is locked up for
13 something I committed.

14 Q. Back on page 1 and 2 in the written portions, he says
15 that he knows Hart from selling drugs out of motels in the
16 West Columbia area. Was there anything that struck you as
17 odd about that statement?

18 A. Well, the thing is that if he -- if he would have done
19 this back then when -- like he's saying, he was eighteen at
20 the time whenever he -- whenever we talked, he would have
21 been fifteen years old, and I find that kind of odd that he
22 would have been able to have a car --

23 **MR. PHILLIPS:** Objection. He's speculating.

24 **MR. GRAHAM:** It's part of his investigation, Your
25 Honor.

1 **THE COURT:** I sustain it as he can't go into any
2 psychological effects, but his perception of -- through
3 his investigation, the way it was characterized, I'll
4 allow that answer.

5 **BY MR. GRAHAM:**

6 Q. Go ahead, Sergeant.

7 A. Being that he was -- he would have been -- had to have
8 been fifteen years old at the time when this incident
9 occurred and him talking about how he sold drugs and he
10 dealt with people prostitution-wise at hotels and sold
11 drugs out there, I find it kind of odd how he would have
12 been able to come and go without a driver's license or a
13 vehicle or anything like that.

14 Q. And further down on page 1, how does he talk about --
15 where does he say that he's coming from and did he come up
16 on Lumberjack?

17 A. He states that he -- he was coming off Greenwood.
18 This is where he supposedly grew up according to what he's
19 telling us and he said he emerged onto Lumberjack and as
20 soon as he emerged onto Lumberjack, they pulled up.

21 Q. Let me show you State's Number 61 and ask you if that
22 accurately reflects the area around the Greenwood area
23 of -- Greenwood Drive area of Lexington County?

24 A. Yes, sir.

25 **MR. GRAHAM:** Your Honor, the State would offer this

1 into evidence.

2 **MR. PHILLIPS:** No objection.

3 **THE COURT:** That's a map?

4 **MR. GRAHAM:** A map. Number 61.

5 **THE COURT:** That's the same area you can see on the
6 photograph?

7 **MR. GRAHAM:** Yes, sir.

8 **THE COURT:** Okay. 61's admitted without objection.

9 (State's Exhibit Number 61, a map, was admitted into
10 evidence.)

11 **MR. GRAHAM:** Can I have the detective step down from
12 the stand, Your Honor.

13 **THE COURT:** Sure, he can step down.

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

16 BY MR. GRAHAM:

17 Q. Can you point to the jury over here where Gator Road
18 is?

19 A. Gator Road is right here.

20 Q. All right. Earline Drive is another area that we
21 talked about. Where is that on here?

22 A. Right here.

23 Q. Where's Lumberjack Road -- Drive?

24 A. Right back here. Lumberjack comes off back here.

25 Q. So Paula's body was found where?

1 A. Just past Earline, so right about -- right in this
2 area right through here on the bottom.

3 Q. All right. And where -- I'm sorry. Show them where
4 Greenwood Drive is.

5 A. Greenwood Drive is right here. It actually goes all
6 the way around like a circle.

7 Q. Show Gator Road.

8 A. Gator Road is right here.

9 Q. Earline?

10 A. Right here.

11 Q. Lumberjack?

12 A. Right here.

13 Q. And Greenwood?

14 A. Right here. It goes all the way around.

15 Q. Can you step back here?

16 A. (Witness complies.)

17 Q. So when he described to you -- he said that he was
18 "emerging" I think is the word that he chose to use?

19 A. That's what he wrote.

20 Q. Emerging from Greenwood Drive onto Lumberjack?

21 A. Yes, sir.

22 Q. And where would that area be on here?

23 A. Right here. This is where Greenwood comes into
24 Lumberjack right here.

25 Q. And how does that relate to where Paula's body was

1 found?

2 A. Completely opposite of where the body was found. The
3 body was found on the Gator Road side.

4 Q. Thank you, Detective.

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

6 Q. Let me show you a letter and ask you if you recognize
7 this?

8 A. Yes, sir.

9 Q. Just by glancing at it, does that appear to be the
10 same handwriting as the statement that was given to you?

11 A. Yes, sir.

12 Q. Okay.

13 **MR. GRAHAM:** I believe with consent of Mr. Phillips
14 that this letter that we believe Mr. Wallace wrote to me
15 would be in evidence. I thought that's what he said.

16 **MR. PHILLIPS:** No objection.

17 **THE COURT:** Okay.

18 **MR. GRAHAM:** I'm okay with taking it out if you don't
19 want it. That's okay.

20 **MR. PHILLIPS:** That's fine. You can say it's all in.

21 **MR. GRAHAM:** Or I can -- I tell you what, let's not
22 put it in.

23 **MR. PHILLIPS:** That's fine. He's gonna testify
24 tomorrow. It can come in.

25 **THE COURT:** All right. It's in without objection.

1 (State's Exhibit Number 62, a letter, was marked and
2 admitted into evidence.)

3 BY MR. GRAHAM:

4 Q. The written statement that you took from him on
5 State's 60, what date was that?

6 A. On 6-22-2016. You're talking about the written
7 statement that he gave me?

8 Q. Yes.

9 A. That was June 22, 2016. The actual request for me to
10 come talk with him, that was dated 6-21-2016.

11 Q. All right. And here's a letter dated June 19th.
12 Would you read that letter for the jury, please?

13 A. To whom it may concern. And it's dated June 19, 2016.
14 I, Alex Jermaine Wallace, am wholeheartedly confessing to
15 killing Paula Justice. All the allegations against John
16 Hart murdering her is a complete lie and illusion just to
17 save others. I know Paula from selling drugs to her at a
18 motel in West Columbia several times and introducing her to
19 other prostitutes in the area. The only reason Hart got
20 involved was because I told him bring Paula to the
21 countryside so she could make some money on a prostitution
22 arrangement that would benefit all three of us. Hart had
23 no idea at all that I was going to kill Paula. He thought
24 it was a money meeting. I didn't talk about my plan to
25 kill Paula with anyone, either before or after. The only

1 reason I didn't get her to show up herself was because she
2 knew she owed me \$1,250 and if I would have called her she
3 wouldn't have came. I knew John, a/k/a, Bhris from
4 previous interactions with serving drugs to people. We
5 crossed paths several times, so after four or five times I
6 introduced myself and tried to build a relationship so
7 there wouldn't be any understandings. That's also why I
8 was comfortable calling him up for the setup and which he
9 knew nothing about. I was walking off Greenwood Drive onto
10 Lumberjack Lane when I saw a car pull up and Bhris and
11 Paula hopped out. I was wearing a dark green and beige
12 camouflage hoodie with black jeans and black and tan
13 Jordans. When I came up to Bhris and Paula, Paula looked
14 shocked and also terrified because Bhris only told her she
15 was meeting a customer. Bhris then asked me where -- where
16 was the customer. I then told him the customer was up the
17 road a little. And "the customer" was in parentheses.
18 Bhris saw no point in getting back in the car since how I
19 told him it was only a couple of houses down. I told Paula
20 to walk ahead of us some and Bhris stayed beside me. I
21 told Paula I needed to talk to Bhris real quick, so she
22 complied. That was the instant in which I pulled my 45
23 caliber pistol out and shot her in the head. I broke off
24 into a full sprint going back up Lumberjack towards
25 Greenwood Drive. I could hear Bhris yell my name and once

1 as I ran -- I could hear Bhريس yell my name once as I ran
2 since how he was probably utterly confused of what had
3 happened. After four or five days, maybe a week, I laid
4 low at the house since how I was expelled from school. I
5 saw it on the news and hoped that no one said anything.
6 Since it was a full week after the incident and no one
7 reported anyone had been determined, I thought the charge
8 was going cold. I never knew anything about John being
9 arrested for the murder of Paula Justice until I came to
10 Lexington County on a different murder charge in the same
11 area. Word got around to me that that's what Bhريس was
12 locked up for. When me and Bhريس finally crossed paths
13 again he was highly and rightfully enraged at me about
14 not owning up to my own problems and letting an innocent
15 man be incarcerated for something he didn't do. I came to
16 the conclusion that this is the proper and responsible
17 thing to do. I have no reason to keep an innocent man,
18 father, brother and son away from his family when he did
19 not commit a crime. I also know for a fact that Hart's
20 co-defendant has been trying to implicate Hart as the
21 killer because he really thought it was Hart because Hart
22 left the car with Paula and came back by himself. I don't
23 believe that Hart's co-defendant saw me at all, but if he
24 did then he probably thought I was Paula by first glance
25 since how she was in front of me and Bhريس. His

1 co-defendant has also been paying people to go against
2 Hart so he can let -- so he can be let off charges. Hart
3 is an innocent man and I, as a human being, cannot watch
4 a man, an innocent man, and ex-colleague get thirty years
5 to life in prison for something he did not do. And it's
6 signed -- it's signed after that, I guess, Alex Jermaine
7 Wallace, July 19, 2016.

8 Q. You also had an opportunity to watch a video interview
9 that was supplied to us by the defense in this case, an
10 interview with Alex Wallace; is that correct?

11 A. Yes, sir.

12 Q. Going through that interview, what, if anything, did
13 you notice that was inconsistent with the facts of the case
14 or inconsistent with things that he previously said?

15 A. One thing he said is that they both worked with Paula
16 as pimps. He set up the -- he set up the connects. That's
17 the first we've heard about that. He also said him, Hart
18 and Paula was walking next -- next to Hart. He said him,
19 Hart and Paula, Paula was walking next to Hart, so they
20 basically were kind of almost in a line because he was
21 saying there was him, Hart and then Paula was next to Hart
22 as they were walking. And he now is also saying --

23 **MR. PHILLIPS:** Your Honor, I mean, I'll play the
24 video. It's getting a little much to where they can't
25 understand and they're getting his opinion. I'll play the

1 video if we have to go that route, that's fine. And he's
2 gonna testify. They've already got these statements in,
3 which is entirely --

4 **THE COURT:** All right. Okay. Would it be easier to
5 play the video or let him play it?

6 **MR. PHILLIPS:** I mean, at this point it's the State's
7 case.

8 **MR. GRAHAM:** All I was trying to do was clean up the
9 inconsistencies that he saw. However Your Honor wants to
10 deal with it. I just don't --

11 **THE COURT:** I understand. Let's take a short break.
12 I want to check the weather. There's been more tornado
13 warnings and watches and so I'm kind of curious about that.

14 So y'all step in the jury room. If you need to use
15 your phone, let me know. You can't discuss the case.

16 (Whereupon, the jury retires to the jury room at
17 3:43 PM.)

18 **THE COURT:** Are you gonna play the video?

19 **MR. PHILLIPS:** My point is just that I feel like I've
20 probably already PCR'd myself by letting those statements
21 in. I mean --

22 **THE COURT:** What about the video? Are you gonna play
23 it?

24 **MR. PHILLIPS:** Well, my argument was at this point I
25 -- he's definitely gonna testify. That's gonna happen.

1 **THE COURT:** All right.

2 **MR. PHILLIPS:** Now my issue was if they're gonna parse
3 out where it gets -- even in pre-trial there's a lot of
4 opinion testimony with this witness.

5 **THE COURT:** I mean, it sounds like closing argument
6 to me, what the -- what did the video show. That's what
7 it sounds like to me.

8 **MR. PHILLIPS:** It's just a lot of opinions as point
9 of reference. I mean, it either -- you know, it's one
10 thing if it is or it isn't, but it's like so basically,
11 they use the word "basically", or I kind of feel it was
12 like this or that. It's either he said that or he didn't.
13 I just don't like that. It's misleading to the jury.
14 And he's gonna testify and they get to cross-examine him.

15 **THE COURT:** I don't like having a description of
16 something we have available to us; what I saw in the video
17 was this, that and the other. Play the video. That's kind
18 of my thinking. I don't think it's -- I think it's gonna
19 be difficult to cross-examine somebody that says what I
20 gleaned from the interview conducted by the defense was
21 that they were walking differently. I tend to agree with
22 you. I'm trying to talk to Mr. Graham. It's almost like
23 pitting the witness.

24 **MR. PHILLIPS:** Right. And I feel like -- my only
25 problem is I'm already kicking myself about not fully

1 objecting and going all out about keeping the statement
2 in since the burden is on the State and it's the State's
3 case and now that two statements are in and we're gonna
4 show a video --

5 **THE COURT:** All right. I kind of want to hear
6 Mr. Graham. I'm not necessarily disagreeing with you. I
7 don't think that Detective Spivey is allowed to give a
8 full commentary, become an analyst like in a football
9 game of a video.

10 **MR. GRAHAM:** I really -- we need to get to the cell
11 tower stuff before the end of the day, too, because his
12 expert's here. So why don't we just not play the video
13 and we'll just stop?

14 **MR. PHILLIPS:** If he doesn't go down that road, they
15 can cross-examine -- I mean, at this point I can say with
16 a hundred percent certainty we're calling Alex Wallace as
17 a witness. He will sit there and they will cross-examine
18 him on everything they need. We went through two
19 statements --

20 **THE COURT:** What about the video? Are you gonna use
21 the video?

22 **MR. PHILLIPS:** We won't have to because we're gonna
23 go through everything through live testimony.

24 **MR. GRAHAM:** My thought is normally when you have
25 video or an audiotape I feel like I have to struggle to try

1 to clip out the little portions that are the opposite of
2 what he says and I don't know that -- I don't know that
3 we'll be able to do that. So I guess maybe I have some
4 leeway to introduce the whole video later. I don't know,
5 but --

6 **THE COURT:** I mean, do we have to redact parts of it?

7 **MR. GRAHAM:** I don't -- I mean, I don't know.

8 Normally it would be what was just inconsistent; you know,
9 isn't it true you said this.

10 **MR. PHILLIPS:** And I do think the solicitor's office
11 with the three or four or five million dollar budget can
12 redact the video.

13 **MR. GRAHAM:** Well, that's not fair. I don't know what
14 he's gonna say tomorrow and for me to have to cross-examine
15 him three minutes after he does it and have everything
16 redacted is ridiculous. That's not gonna happen.

17 **THE COURT:** Okay. Well -- all right. What I don't
18 like, and I don't think is fair, is to allow someone to
19 tell what the video showed to them which is inconsistent
20 with what he told them before. I think that's getting a
21 little bit far afield if they're inconsistent. Well, the
22 order in which they were walking, a straight line or --
23 that's an observation. I'm just kind of -- it's not an
24 observation of what happened, it's an observation of what
25 he watched on the video. Anyway, I don't think questions

1 that keep going down that path are fair. If the video is
2 played, this is what we see. If y'all want to in closing
3 argument say that's inconsistent with what he told the
4 detectives the first time, that seems fair. That seems
5 completely fair. But I understand the State's hands are
6 kind of -- they've got to go first and if you don't call
7 the guy, then they didn't have an -- they didn't take
8 advantage of their opportunity, but you're representing
9 to the Court you're gonna call him?

10 **MR. PHILLIPS:** I'm telling you. We've done the
11 transport order. He's getting called as a witness. The
12 only way he doesn't testify is if he invokes his Fifth
13 Amendment right.

14 **THE COURT:** Did I sign a transport order? Did I sign
15 that?

16 **MR. PHILLIPS:** I confirmed. I guess we didn't -- I
17 mean, I called my paralegal and said to do the transport
18 order and I confirmed with the deputies that he's coming.

19 **THE COURT:** Is it county?

20 **MR. PHILLIPS:** It's county.

21 **THE COURT:** I just want to make sure. If you think I
22 signed one, I'm not aware of it.

23 **MR. PHILLIPS:** The deputies confirmed that --

24 **THE COURT:** I'll represent to you I probably --

25 **MR. PHILLIPS:** It was confirmed by the deputies that

1 it's in for him to come.

2 **THE COURT:** Okay.

3 **MR. PHILLIPS:** The only way is if he invokes the
4 Fifth, but I'm calling him. I have to.

5 **THE COURT:** I understand.

6 **MR. GRAHAM:** Which is -- I won't ask any more
7 questions about the video.

8 **THE COURT:** Okay. Are we getting any accurate --
9 this is off the record, Stacy.

10 (Discussion off the record.)

11 **THE COURT:** All right. Do we need a short break for
12 anybody?

13 **MR. PHILLIPS:** Just so Your Honor knows, the expert
14 for the cell phone, he is here.

15 **THE COURT:** Okay.

16 **MR. GRAHAM:** No, we're ready, Your Honor.

17 **THE COURT:** What about you, Stacy?

18 **THE COURT REPORTER:** I'd like to.

19 (Whereupon, the jury returns to the courtroom at
20 4:00 PM.)

21 **THE COURT:** All right, Mr. Graham. Let's continue on.

22 **MR. GRAHAM:** Judge, that's all the questions I have
23 for Sergeant Spivey. Thank you.

24 **THE COURT:** All right.

25 CROSS-EXAMINATION

1 BY MR. PHILLIPS:

2 Q. Good afternoon.

3 A. How are you?

4 Q. Good. Good. I hope the same for you.

5 A. (Nods head.)

6 Q. You testified it was your opinion it was odd that a
7 fifteen-year-old would be selling drugs and kind of going
8 around to motels and prostitutes. You testified that it
9 was odd?

10 A. Yes. Not necessarily to sell drugs, but to be able
11 to get over to these hotels because he's claiming that
12 he's meeting these people all at different hotels and he's
13 fifteen and doesn't have a car.

14 Q. And if I would -- and the gun in this case was stolen?

15 A. Yes, it was.

16 Q. And if I was to say is it odd for a sixteen-year-old
17 to go into someone's house and then execute them, would
18 that be considered odd for a sixteen-year-old?

19 A. I would say it is, but I think he kind of -- based /
20 on my investigation of that case, he was committing a
21 burglary, he wasn't there to commit I would say murder.
22 I think this is just what happened.

23 Q. And then he had the man get on his knees and he
24 executed him?

25 A. No, he didn't -- he didn't tell him to get on his

1 knees. He was telling him to get down. He never got on
2 his knees. Because he refused to get on -- get on the
3 ground, that's whenever he shot him. There was a little
4 bit of a confrontation between the two as well, swinging
5 and everything, too.

6 Q. And this sixteen-year-old -- you used the word "odd".
7 That would be a very odd behavior for a sixteen-year-old to
8 execute a man looking at his face, face-to-face?

9 A. I would say that's a fair assessment; that it's odd,
10 but I also feel like -- for a sixteen-year-old I think he
11 probably felt kind of trapped as a sixteen-year-old.

12 Q. Not your opinion. Whether it actually is. It's odd
13 for a sixteen-year-old to kill somebody and he was expelled
14 at the time when he was fifteen, right?

15 A. I believe -- I believe you're also -- you're asking my
16 opinion based on if that's odd as well and so I'm giving
17 you what I believe based on my investigation.

18 Q. That's fair. That's fair. And he was expelled at
19 that time, so he wasn't in school. So you have no idea.
20 It's purely speculation. You have no idea whether he was
21 at these hotels, whether he was selling drugs, you have no
22 idea of that, but he did confess to killing someone.

23 A. We have -- we have talked to other people as far as
24 in the course of the investigation and also basically, you
25 know, that knows Mr. Wallace as well that would have known

1 during this course that that was true.

2 Q. Where are these people?

3 A. I believe they -- they may take the stand. I don't
4 know. It's up to the State's side as far as if that
5 happens.

6 Q. We'll see. Going to the pistol, the pistol that was
7 shown here and the display we had of the different guns,
8 a fifteen-year-old who buys this gun on the street, it's
9 stolen, and he's shown guns that are in holsters, you're
10 saying that that's the same thing as far as being able to
11 look at the size guns in holsters? I mean, you make it
12 like this is a small gun.

13 A. It is a small gun, especially when the slide's
14 forward. I mean, it looks a little bigger when the slide
15 is cocked back like that, but it's actually smaller when
16 the slide is forward.

17 Q. I did it, too. All right. And it's pretty heavy.
18 I mean, maybe not to a law enforcement officer who deals
19 with guns every day, but a fifteen-year-old boy. And there
20 was talk about the differences between chrome and metal.
21 I mean, that's -- when he says it's a silver slide part,
22 I mean, chrome or metal. If a fifteen-year-old boy buys a
23 stolen gun off the street, that's consistent, right?

24 A. I can't -- I can't speak for him. I can only speak
25 what he told me.

1 Q. And he -- and you did say he was expelled at fifteen?

2 A. He was expelled, yes.

3 Q. And we're talking about chrome and steel, the
4 differences between the two. You testified yeah, there's
5 a big difference between them.

6 A. There is. Chrome is very different than that.

7 Q. And you would say that -- what he testified was
8 silver-gray top, black bottom. That's absolutely what this
9 gun looks like.

10 A. I believe he said chrome, not silver.

11 Q. Okay. In checking these numbers, did you ever check
12 any of the hotel phones that Paula frequented? You said
13 that you could tell that he didn't call Paula, but she
14 stayed at multiple hotels.

15 A. He specifically gave Paula's 363 number. That was
16 actually in his written statement as well that he called
17 on her 363 number. That's the number we checked to verify
18 that.

19 Q. And did you ever verify any other numbers?

20 A. As in what? Which?

21 Q. The call logs. I mean, that's a big point in the
22 case, right? So did you ever check these numbers?

23 A. I'm not following which records you're talking about.

24 Q. The hotel where she was staying at that time, where
25 everybody said she was coming in and out of. The room

1 where Tina or -- I believe it's Tina sees her coming out
2 that she's telling she's meeting KG? The room she was
3 staying at.

4 A. No, we did not check that because, again, he -- he
5 stated specifically and even wrote it on his statement
6 that he called her numerous times on her 363 number, not
7 a hotel number.

8 Q. Well, not even Alex Wallace -- let's go back to the
9 initial investigation. You're getting all these phone
10 records, you're piecing all these numbers together. You
11 know she's staying in this one hotel room. Did you ever
12 get it to see which numbers called that room?

13 A. We did. We actually verified, I believe it was, that
14 Mr. Hart contacted the Delta.

15 Q. So you got the phone records for her hotel room?

16 A. There were actually phone records, I believe, that
17 stated that -- that he contacted the Delta that same night.

18 Q. Right. So are you saying that you did get the phone
19 records for her hotel room?

20 A. We sent a search warrant off for the cell phone
21 records. I believe we'd have to go back and look at it
22 and see.

23 Q. I mean, I don't have them. They don't have them.

24 **MR. GRAHAM:** I have no idea.

25 **BY MR. PHILLIPS:**

1 Q. For her room, Paula's room in the hotel, did you get
2 the phone records for that room?

3 A. For Paula's records at the hotel, the America's Best,
4 no, we did not.

5 Q. And there was talk about Harbison not being Irmo. I
6 mean, it would be fair to say that parts of Harbison are
7 Irmo. I mean, that's kind of parsing out -- that's
8 splitting hairs.

9 A. Yeah, I mean, you could say splitting hairs. I mean,
10 that -- I think it's more Columbia area, but -- I consider
11 Irmo the other side, but we can call it Irmo.

12 Q. And through your investigation you saw that Alex
13 Wallace went to Airport High School?

14 A. I believe that's where he was going.

15 Q. I grew up in the area. All that's zoned for Airport
16 High School. I mean, they're trying to say he's not from
17 the area. Your investigation showed he is from that area.

18 A. Okay.

19 Q. And if he didn't throw the gun away, if that part is
20 a lie, he would not know all the things that you walked
21 through about the gun. I mean, that's fair.

22 A. Well, here's -- here's -- I believe if we go into the
23 opening statement that you made, it wasn't that he's the
24 one that threw it, right?

25 Q. That's what I said.

1 A. So he is telling me and also gave a written statement
2 prior to talking to you in the video interview that you
3 guys did that he never gave it to Hart and he actually took
4 it himself. If you go back to the video that I watched, he
5 actually -- he was asked specifically in that interview if
6 he gave -- after he supposedly shot her, did he give it to
7 Hart and his answer was no.

8 Q. That's entirely true and he's sticking to that. I
9 mean, he has every right to stick to that, but if he didn't
10 do that he wouldn't have any of that incorrect? All that
11 information would be incorrect because --

12 A. I'm not following, I guess, your question with that.
13 He's telling -- he told me that he actually got rid of it,
14 that he didn't give it to anybody else, and he told you the
15 same thing in the video interview that he is the one that
16 actually took it, he did not give it to Hart, yet you're
17 saying that Hart is the one that actually got rid of it.
18 Is that what your question is?

19 Q. That's it. And if he didn't -- if he wasn't the one
20 that did it as far as throwing the gun away, he wouldn't
21 know all those things.

22 A. Yeah, I guess if he -- if he didn't do it, but he's
23 saying he did.

24 Q. So it's established that -- I know a point was made
25 again about his age, but in the same age range within a

1 year he's executing a man, he's expelled from school during
2 this time --

3 **MR. GRAHAM:** Object to execute. He's describing
4 the --

5 **THE COURT:** Call it a murder. I mean, it's --

6 **MR. PHILLIPS:** I think that he -- they testified to
7 execution-style earlier.

8 **THE WITNESS:** Well, here's the thing about it. He --
9 it was a burglary. I want to make certain that's clear on
10 the record that it was a burglary that he was committing,
11 the homeowner interrupted the burglary, they ran to the
12 back of the house, he tried kicking the door to get out of
13 the house, the door was sealed, he couldn't get out, so
14 they tried to hide in the back bedroom. At that point
15 whenever they couldn't get out, they tried to hide, they
16 heard the homeowner come inside the house and start making
17 comments. At one point he tries to go to the bathroom and
18 they thought that they could actually run out while he was
19 in the bathroom. Unfortunately what happened is the
20 homeowner stepped out of the bathroom as they were getting
21 ready to walk out and that's whenever they had the
22 interaction. You know, at that point supposedly there was,
23 you know, a fight, you know, I think the homeowner tried
24 swinging at him. So I think, in my opinion, based upon my
25 investigation, if you want to look at that, I believe that

1 he felt trapped and he improvised and shot the guy after
2 he wouldn't get down when he asked him to.

3 Q. So when he says for him to get down on the ground and
4 he doesn't do it and he kills him, you would classify that
5 as a lesser thing than murder?

6 A. No, I consider it murder. I don't disagree. That is
7 murder.

8 Q. I mean, it's cold-blooded. In his face.

9 A. Yeah, he murdered -- he did. He murdered him.

10 Q. He told him to do something and he killed him when he
11 didn't do it?

12 A. Yes, sir.

13 Q. An innocent man in his own home.

14 A. Yes, I agree. And he was charged.

15 Q. And he confessed?

16 A. He did.

17 Q. And he was sixteen?

18 A. He was.

19 Q. And he grew up in this area?

20 A. Well, if you look at his statement, he actually -- he
21 has an address on there of Blossom Street, but, you know,
22 I think he has a lot of friends in that area, so I think he
23 hung out -- he had a girlfriend over in that area as well.

24 Q. And he went to Airport High School from your
25 investigation and he's from that area?

1 A. He is.

2 Q. That's fine.

3 A. Yeah, I mean, we can say that.

4 Q. And showing him the guns, you've got that gun, it
5 wasn't in a holster as far as you know to show the
6 differences between what they all look like side by side.

7 A. I believe there's a difference. I think it's a
8 visible difference between -- even if it's in the holster
9 otherwise, you know. I still wouldn't have -- you know,
10 it's a safety reason why we don't pull them out of the
11 holster as far as when we're doing that, but I believe that
12 there's still a difference as far as that's visible when
13 we're talking about that, especially if you're talking
14 about a small gun of that nature and he completely goes
15 to a full-size Glock. And we all know as far as law
16 enforcement --

17 Q. And you're -- you're a police officer, you handle guns
18 all the time.

19 A. Okay. But Glocks are all black.

20 Q. And Glocks are what's talked about in rap songs all
21 the time, right, and he's fifteen years old and he buys a
22 stolen pistol, right?

23 A. He does. That's what he said.

24 Q. Glock's the cool gun?

25 A. Okay.

1 Q. You've been a cop for a long time. You know.

2 A. Sure. But he also said whenever we asked him he said
3 he was positive that it was a Glock. Those were his words.

4 Q. Well, I think his words, if we're getting into
5 specifics about the statement, was that's what I was told
6 when I bought it. I mean, I can -- and then he says what
7 you said, but --

8 A. When I bought it, it was -- it's that. That's what
9 I was told it was and I'm positive, so.

10 Q. And he's fifteen?

11 A. Yep.

12 Q. Going to the transportation and getting Mr. Hart from
13 New York, those police officers offered to allow you to
14 record your statement?

15 A. Well, when I -- when I answered that question, I said
16 I don't recall for certain, but I also made the comment
17 that if they did I would have told them no.

18 Q. Okay. So -- but you said based on your memory you
19 kind of remembered them --

20 A. I said I don't recall if they did or didn't, but I
21 said if they did, I conceded with that, that if they did
22 based on our protocol here at Lexington County Sheriff's
23 Department we don't do that. We don't record audio or
24 video unless, number one, they request it or, number two,
25 the way I do it is if I find them to be illiterate where

1 they can't write a statement.

2 Q. And so it is the policy of the sheriff's department
3 not to record statements in murder cases when you've got
4 somebody charged with murder?

5 A. It's the policy, yes, but not just for murder
6 statements. It's -- the policy basically is we --
7 Lexington County Sheriff's Department is not equipped
8 with audio and video as far as there in the interview
9 rooms. So some agencies actually do have audio and video,
10 some do not. Our agency doesn't have them. Now whether
11 they get them in the future, I don't know, but we do not
12 have them. What I do do is I do offer them to write a
13 statement, a written statement, where they can basically
14 take their moment to think about each question before they
15 answer those questions so they can kind of reflect on what
16 they want to say instead of the spur of the moment audio
17 stuff that kind of goes on.

18 Q. Well, I mean, New York's a mandatory recording state.
19 They record all interrogations.

20 A. I didn't know that.

21 Q. It's the work of the Innocence Project. It's the
22 reason we have this. You have access to an audio
23 recording device. Lexington County officers do record
24 some statements; is that fair to say?

25 A. I've recorded a couple. Probably, you know, a

1 handful. The only times I've done it is whenever somebody
2 has asked me if they can -- if it would be recorded, then
3 I would go get one. The other times I've done them
4 whenever the person literally just -- they were asking
5 how to spell small words, four letter words that a normal
6 person should probably know how to spell, and I'm not -- I
7 can't tell you how to you write your statement, so at that
8 point, you know, we'll go get a recorder.

9 Q. In a case as grave as a murder case and you're
10 sitting down with a person who's charged with it and he
11 says I don't want an attorney, right? He never said I
12 want an attorney?

13 A. That's correct.

14 Q. I don't -- I'm not invoking my right to remain silent.
15 He never did that?

16 A. That's correct.

17 Q. I'm freely, voluntarily just gonna talk to you?

18 A. That's correct.

19 Q. Knowing he's charged with murder, the biggest crime
20 we've got, you have the ability to record it, but you know,
21 you made the conscious choice not to?

22 A. Well, I don't think that's -- I don't think there's
23 anything malicious behind anything like that because, you
24 know, like I said, Lexington County doesn't record, you
25 know, typically audio or video as far as with that. I

1 mean, I think if you're asking that, you know, insinuating
2 or referring that it's malicious, there was nothing like
3 that because ultimately what we do is we -- we basically
4 offer them to write their own statement. Because a lot of
5 times people when they do audio and video --

6 Q. Not a lot of times.

7 A. Well, in my, you know -- all right. In my opinion,
8 based on my investigative time at the sheriff's department,
9 audio and video can make people feel uncomfortable and it's
10 also spur of the moment, so I don't disagree with not
11 audioing and videoing as far as with that, but what I do
12 offer is them to -- the ability to write their statement
13 because I feel like it's better -- it's more a comforting
14 thing for them whenever they're not -- a lot of people
15 don't like, you know, to be video'd or audio'd because of
16 the situation. They feel like, you know -- I guess they
17 feel more entrapped with that, but I give them the ability
18 -- the opportunity to write a statement where they can
19 actually read each question and make a decision of what
20 they want to answer before they do it.

21 Q. And I wasn't insinuating that. The reason I bring it
22 up is because we're now four years later.

23 A. Uh-huh. Sure.

24 Q. Four years later. And the only way we can challenge
25 anything about what he said is for me to ask you questions.

1 And just like the reason we have body cams on police
2 officers is because it makes it no question if you record
3 it, then it gets played and they know what he said and
4 it's not this.

5 A. And as far as Lexington County goes, as far as, you
6 know, whether they're gonna eventually -- I believe that
7 they're -- with the new sheriff that we have I think that's
8 the way they're maybe leaning towards is going to audio
9 and video and at that point in time, then we will follow
10 the directions as far as on how they do it.

11 Q. But the point is you had the ability and you didn't.

12 A. Yeah, we made a choice based on to follow the way we
13 normally do audio -- you know, the way we normally do
14 interviews.

15 Q. And it wasn't a secret throughout your investigation
16 that all of the people at the motels -- or most of the
17 people, you can't say all of the people, but a lot of the
18 people at the hotels, Tina, Briteny, Marquis, I mean, the
19 list kind of goes on, they all for the most part knew Hart,
20 they knew Paula. Several of them all knew what Paula was
21 telling them, that she was gonna go meet Hart.

22 A. Well, I think there was a little bit of
23 inconsistencies on that and I want to -- as far as, you
24 know, some of the people that you're talking about,
25 referring to, they -- they took the stand here and

1 basically even said -- and they made the comment that I
2 only knew them for maybe a couple of days or they didn't
3 know -- or they didn't get in their business and stuff
4 like that, so they were not aware -- I think it was
5 Briteny Baker was the only one that basically, I think,
6 came out and said that I knew she was going to meet KG who
7 she really didn't know. She'd seen him once, but didn't
8 know him.

9 Q. I'm glad you brought that up. There also was Crystal
10 Hartless and she provided a lot of information. She has
11 not been called as a witness.

12 A. That's not my decision on who's called. I don't make
13 those decisions.

14 Q. But she provided a lot of information about their
15 relationship?

16 A. She knew -- she knew Paula probably better than the
17 other ones that -- you know, she knew her. She also knew
18 Mr. Hart as well based on the street name.

19 Q. And what Paula was telling everybody she was gonna go
20 do. She's the one that -- one of ones you got a lot of
21 information from.

22 A. Sir?

23 Q. I mean, one of the reasons he became suspect number
24 one was from talking to these people and the main person
25 kind of right off after you talked to Marquis --

1 A. That was Briteny. The first person after her was
2 Briteny.

3 Q. And then it Crystal?

4 A. Uh-huh.

5 Q. And Crystal provided a lot of information?

6 A. Now it was also Tina during that time and Tina
7 provided a lot of information. Tina was valid because
8 that's where Mr. Hart went after he -- after they left
9 the 44 Truck Stop, they went directly there and that's
10 where they also left the vehicle as well that was later
11 identified to be involved.

12 Q. Right. So it wasn't a secret that they knew each
13 other and that Paula had told people who she was going
14 with?

15 A. I think the only person that said that they knew that
16 she was going with them was Briteny at the time.

17 Q. And Crystal, right?

18 A. Huh?

19 Q. And Crystal, which she hasn't testified.

20 A. She may have. I don't recall what she said off the
21 top of my head. I'd have to refer back to what she said.
22 I talked to her, I think, maybe once or so. I think some
23 other investigator talked to her.

24 Q. I think even Marquis said the same thing, right? Not
25 that -- she didn't talk to him directly, but --

1 A. Yes, Marquis did say that yes, he knew that she was
2 supposed to be going to meet a guy by the nickname KG.

3 Q. I mean, a lot of people in this environment.

4 A. I wouldn't say a lot of people. We're talking about
5 three people right now, so we're talking -- I mean, when
6 you say a lot of people, three people I wouldn't consider
7 a lot.

8 Q. Right, but it wasn't something that was not known?

9 A. Three --

10 Q. I mean, you were able to find out pretty --

11 A. Three people, you know, said they knew.

12 Q. And you found that real -- fairly quick when you got
13 to the hotel?

14 A. Sure.

15 Q. I mean, all that came --

16 A. We jumped, yeah. We jumped on it, yeah.

17 Q. Of course. The same thing with Alex Wallace. When he
18 tells you that he killed someone, you could have recorded
19 his statement?

20 A. That I could have what?

21 Q. Recorded his statement.

22 A. We didn't have -- we didn't have audio or video in
23 our interview room that we had with that. And at the same
24 time whenever we were first talking to him, we had no idea
25 that's what he was getting ready to tell us. That was a

1 shock to both myself and Detective Stout.

2 Q. Okay. But once he said that, I mean, you could have
3 went and got a recorder.

4 A. Yes, sir.

5 Q. So all of these things that you're saying that are
6 different now, all that could have been preserved.

7 A. Well, here's -- here's the thing about it is he wrote
8 -- a lot of what you're saying that we talked about as far
9 as that are inconsistent, that's been uncorroborated with
10 this whole entire homicide and the person that you're
11 trying to bring up here. The problem is the majority of
12 the -- the inconsistencies are in a handwritten statement
13 that he provided to me. It's not anything as far as much
14 in my notes or in my report as much as it is in his written
15 statement, but my thing is is that in my investigation I
16 don't think anybody could ever dispute how I report and how
17 I document my stuff because --

18 Q. No, I'm not saying that.

19 A. -- because I write -- I probably have over forty or
20 fifty pages in a supplemental report. I am very detailed.
21 Good, bad or ugly or whatever, I am very detailed as far as
22 when it comes to how I write my reports. It doesn't matter
23 if it's beneficial towards your client, it doesn't matter
24 if it's beneficial towards the State. It's based on what
25 is told and I will tell all based on what happened during

1 that time. The good, bad and the ugly it goes in my
2 report, but in what you're talking about is a written
3 statement that he actually provided that has the
4 inconsistencies that we're talking about.

5 Q. Well, we read them out loud.

6 A. Sure.

7 Q. But then you said there were things that were
8 inconsistent beyond that. That's what I was talking about.

9 A. Yeah, and we -- we talked about some of the stuff
10 that was inconsistent, yes. But, again, going back to the
11 audio, it's not something we do typically at the sheriff's
12 department as far as it's just not a policy that we have.
13 And some agencies, again, have that, some agencies don't,
14 and we do not.

15 Q. And it could have been preserved. It could have.

16 A. If we'd recorded it. Absolutely.

17 Q. And he's confessed to a murder. Two of them.

18 A. Yes, but one is completely, like you said -- you
19 know, the one you're talking about right now is
20 completely uncorroborated. There is -- it's completely
21 uncorroborated. There's so many holes and gaps in what
22 you're talking about, that differs in what you're talking
23 about, and that's why he was never charged.

24 Q. Your testimony was that there was no -- you're talking
25 about no corroboration. That there was no evidence that

1 Alex Wallace knew Paula.

2 A. There was no corroboration. There was nothing that
3 indicates that supposedly he knew. Only what he told.
4 Only what he told, but there was nothing -- when you go
5 back to phone records, like he said, he contacted Paula on
6 her 363 number. It wasn't a motel, it wasn't anything
7 else, but it was actually her 363. That's what he said.
8 There were no calls whatsoever between him and her at any
9 point in time on any phone records we have.

10 Q. Just the cell phone records?

11 A. That's the one he said he called her on. He
12 specifically said that. In the state -- the written
13 statement, he didn't say he contacted her at a hotel, he
14 didn't say he called anybody else's phone except for Hart
15 as well as Paula Justice.

16 Q. You testified there was no information linking them?

17 A. Only what is he now coming forward and saying in
18 June of 2016 is what -- he's saying he's the one that
19 killed her, but going back and looking at records and phone
20 records I don't see anything that links them together.

21 Q. So other than phone records the reason you're saying
22 there's no link is because you believe he's lying? I mean,
23 that's it. That's it.

24 A. Everything that we very fact-wise and evidence-wise
25 is and what he is saying is completely inconsistent and

1 when I asked him -- and when I explained to him that his
2 statements were completely inconsistent and it appeared
3 that he was doing -- doing this out of pure -- based on
4 somebody else wanting him to do it, take his charge for
5 him.

6 Q. Just take a murder case?

7 A. Yeah. So based on that, it's -- it appears that --
8 that that's definitely what it appears is that he did, but
9 based on the fact -- based on the facts that we have I told
10 him that there was so much inconsistencies based on the
11 facts we had, his only response was well, maybe y'all have
12 your facts and evidence wrong --

13 Q. Exactly.

14 A. -- and the facts and evidence is something that's not
15 gonna lie...

16 Q. Well, you also testified that there was no link
17 between -- and this is testimony under oath --

18 A. Sure.

19 Q. -- that Tevin Deloach didn't know Paula.

20 A. There's no phone records that show --

21 Q. Not phone records. He testified that he knew Paula,
22 that he'd met her a bunch of times. There's other stuff
23 than the phone records.

24 A. Okay. I think he -- I think he said he met her one
25 time. Actually, going back now -- now that you said that,

1 I believe he did say he met her one time or saw her. I
2 don't think he knew who she was, but I think he met -- I
3 think what he actually said is he knew who she was, he met
4 her, I think, one time.

5 Q. He said a lot of stuff in a lot of different
6 statements, but what he testified to is he'd met her, I
7 believe, a couple of times. Then you said there was no --
8 you testified there's no relationship with Chance Belton
9 and Tevin Deloach and I think you've got an incident report
10 that says they knew each other.

11 A. Where's that incident report?

12 Q. While talking to Deloach, he said he first met up
13 with --

14 **MR. GRAHAM:** Your Honor, can he show him what he's
15 reading from?

16 **THE COURT:** Oh, sure.

17 **MR. PHILLIPS:** I'm sorry.

18 **THE COURT:** I want to tell the jury statements taken
19 that are signed can come in provided the person who gave
20 the statement is available. Incident reports are just
21 reports that investigators and all sort of people use to
22 summarize things. When the witness is available, those
23 don't come in. So I want y'all to know the incident
24 reports are here, they're in the records of the
25 investigation, but when a witness is available, he's the

1 better evidence than the incident report because you can
2 ask him questions. So don't expect the incident report to
3 come in, okay? I want y'all to be clear on that. A lot
4 of times juries get confused, why didn't we get to see
5 that, well, we've got the guy every time, okay?

6 **MR. PHILLIPS:** Thank you.

7 BY MR. PHILLIPS:

8 Q. So when you met with Deloach, you showed him -- you
9 asked him --

10 A. Yeah, I know what you're talking about as far as on
11 that. He did actually say that he went over with Hart to
12 Black's house. He only way knew him as Black.

13 Q. Well, and then you said you showed him a picture of
14 Chance Belton and that he identified him?

15 A. Yeah, he knew who he was. He'd been over there is
16 what he said. So I'm -- yeah, I'm going back and what
17 you're saying is true.

18 Q. Right. So when you testified there was no connection,
19 your investigation showed there was a connection?

20 A. Yeah.

21 Q. And then your investigation other than -- not the
22 cell phone records, but other than that your investigation
23 showed that there was a connection with Alex Wallace and
24 Paula Justice, it's just that you didn't agree with it,
25 you didn't really find it believable, that was your

1 opinion.

2 A. What -- what connection do you have verified?

3 Q. The man said I met Paula several times and selling
4 drugs.

5 A. Okay. But the number that he said he contacted her
6 on the day before -- he said he called twice the day before
7 on the 363 number. That was actually what he wrote and we
8 didn't find that on her 363 number. The only connection
9 that you're saying that we can sit there and say he was --
10 would be considered based on the murder that he is trying
11 -- he's basically saying he's done, which I don't believe
12 he did. I think --

13 Q. He confessed to murder.

14 A. -- it's completely uncorroborated stuff and I -- if I
15 believed that somebody committed a murder, I would be one
16 that would charge them. If I --

17 **MR. PHILLIPS:** Your Honor, may we approach just a
18 second?

19 **THE COURT:** Sure.

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

21 **BY MR. PHILLIPS:**

22 Q. This trial is about credibility and Alex Wallace has
23 confessed to one murder and he confessed to this one. True
24 or false?

25 A. True.

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

2 **MR. GRAHAM:** Nothing else, Your Honor.

3 **THE COURT:** All right. You can step down, Detective
4 Spivey.

5 (Witness excused.)

6 **THE COURT:** All right, folks. As I understand it,
7 what we just talked about, we've got a little more work to
8 do this afternoon and we don't need the jury. We'll come
9 back in the morning and call these other witnesses.

10 **MR. GRAHAM:** Correct, Your Honor.

11 **THE COURT:** All right. I've got to listen to a
12 little bit. The State has a witness that's flying in.
13 They had one here and one there, they could use either
14 one, and they're both in Orlando and Texas. They will be
15 here in the morning and so we start back in the morning
16 anticipating that testimony. I've got to hear something
17 else that will help tomorrow move a little quicker and I
18 can do that this afternoon while y'all can head on home.

19 You can't discuss the case. Be back in here in the
20 morning at 9:15 and we'll continue on, all right?

21 (Whereupon, the jury was excused for the evening at
22 3:32 PM.)

23 **THE COURT:** While we were at the sidebar over here,
24 I wanted to touch on the prior issue also of the statement
25 on the phone that was volunteered to Detective Mefford.

1 We talked about that and I overruled your objection and
2 then I made a sidebar record with Stacy as to the sidebar
3 conference and if you want to elaborate on that issue also,
4 now's a good time.

5 **MR. PHILLIPS:** I think it's preserved. I mean, we
6 argued it and then you preserved it by saying at the
7 sidebar that you noted it and now we've brought it up and
8 solidified it.

9 **THE COURT:** Okay. Because it was -- as soon as he
10 stepped down, I made the record with Stacy and the
11 objection was contemporaneous because we talked about it
12 at sidebar just before he testified.

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

14 The other matter when we just approached, whether
15 it's ultimately decided I caused it or not, throughout the
16 witness's -- the prior witness's testimony and throughout
17 virtually the three times he's testified in this trial
18 there's been an incredible amount of nonresponsive opinion
19 evidence. This is a credibility issue from a law
20 enforcement officer. I would make the prejudicial argument
21 that similar to CSC cases when you have this person -- have
22 the improper bolstering when you have this law enforcement
23 officer say without a doubt he doesn't believe -- and he
24 makes that opinion he doesn't believe that person murdered
25 them, not whether he believes there's probable cause or

1 anything like that, but he makes this unequivocal opinion
2 and it's on top of many other opinions about what he
3 believes and what most people are like or most
4 investigations and, you know, different things, kind of a
5 cumulative nature over the three times he testified plus
6 that. And, again, if it's because of during
7 cross-examination it's ultimately found that I caused it
8 through questions, but it is what it is. But I believe we
9 had hit a threshold with that opinion evidence regarding
10 the credibility of Alex Wallace, who is a key witness in
11 this case, who the jury gets to determine whether he's
12 telling the truth or not that I believe at that point it's
13 almost invaded the province of the jury, it's crossed that
14 line, and because of that I feel compelled to move for a
15 mistrial at this time.

16 **THE COURT:** Mr. Graham, do you want to comment on
17 that?

18 **MR. GRAHAM:** I'm not -- I mean, as he went through and
19 he was stating his opinion, I think Mr. Phillips objected
20 once or twice here or there. I honestly don't know how
21 many times they went into that. Some of it was allowed
22 without objection, some of it came in and he stopped it,
23 and I think Your Honor shut him down a couple of times.

24 **MR. PHILLIPS:** I mean, a lot of this trial I've had to
25 hold back objections because it looks bad to the jury and

1 I'm getting the eyeballs that they don't like me objecting
2 obviously, but I've got to be strategic about that and I
3 might have to answer for that one day, too. But in using
4 that strategic decision I think we've crossed that line on
5 the prejudice to the Defendant on hitting the credibility
6 of a key witness that invades the province of the jury,
7 that it's too prejudicial and that it would result in a
8 mistrial -- or should result in a mistrial.

9 **THE COURT:** Okay. Let me hear from Mr. Graham. I
10 understand your point.

11 **MR. GRAHAM:** I don't know. Maybe there's a curative.
12 I mean, I understand where he's going from. I don't think
13 he meant to ask a question to cause a mistrial and I don't
14 think the sergeant meant to say anything to cause a
15 mistrial. I think the sergeant was trying to explain in
16 relation -- he would have charged him if he believed him,
17 and that's basically what this comes down to, and it is a
18 jury decision. So maybe the thing to do is to give a
19 curative instruction and maybe we strike that kind of
20 testimony. I don't think it -- I mean, the bottom line is
21 -- the truth is he would have charged -- he charges who he
22 believes, so he's not saying anything that's not obvious.
23 If he believed that Alex Wallace did this, we wouldn't be
24 here. So I don't know that he said anything that --

25 **THE COURT:** Isn't it more apt to say he charged who he

1 believed the evidence shows most likely did it? He heard
2 all sorts of statements and he elected to charge someone
3 whose testimony was corroborated by physical evidence or
4 other testimony or other eyewitnesses, not who he believed.
5 And it's what police do, is that they investigate and
6 they're told something, they've got to go corroborate it or
7 it's just a confession that's not supported by anything
8 other than the words that are on the confession. That's
9 what they do in their investigation is tie it up and
10 bolster -- well, not bolster, but tie it up and find
11 evidence to support it factually.

12 **MR. PHILLIPS:** The only other thing I would add is
13 going into that -- there's kind of two parts. One would
14 be the whole theory from day one had been that Jeremy
15 Washington was the reason John Hart got arrested. He
16 wasn't arrested based on the information they had. It
17 wasn't until this Saturday before trial that he's arrested
18 four years later and the only other part I would have is
19 all the discussion about incident reports brought up. That
20 goes back to my pre-trial motion regarding a continuance.
21 Part of the discovery with his incident reports was from,
22 I believe, July 14th or July 18th of 2014. There was
23 three years' worth of incident reports that he had
24 supplemented that I didn't get until April 12th. I mean,
25 that's a whole separate issue, but it's just -- this whole

1 trial has been one snowball effect.

2 **THE COURT:** Correct me if I'm wrong, but on the
3 bolstering cases, most of them, like you say, come up on
4 CSC cases and Kromah cases and all those cases that follow
5 there, but you have someone comes in that evaluated a
6 statement made by, in those cases generally the victim,
7 and then they say their statement was consistent with what
8 I saw or something along those lines and the testimony is
9 bolstering their truthfulness. What this detective did
10 was listen to the story, ask for confirmation with other
11 facts and find that the more facts he received the less
12 credible he thought the witness was. So it's not really
13 bolstering, it's kind of the converse.

14 **MR. PHILLIPS:** Right. I guess maybe the -- the
15 terminology -- I might be off on the terminology, but the
16 one thing I know that's not incorrect would be the word
17 "prejudice"; that his opinion, that goes specifically to
18 that, and as many times as it was said that that -- the
19 cumulative effect of it prejudiced the Defendant and
20 violated his right to a fair trial.

21 **THE COURT:** I'm gonna think about it, but it seems to
22 me it's the opposite. There's not a witness testifying
23 that I believe this victim thus and so happened. It's --

24 **MR. PHILLIPS:** Kind of like the inverse.

25 **THE COURT:** Huh?

1 **MR. PHILLIPS:** Kind of like the inverse of it.

2 **THE COURT:** It is the inverse. This guy said I did
3 a terrible thing and killed this man and how did you do
4 it and you ask him questions and then it doesn't start
5 matching up and so he got more -- keeps asking for more
6 details. And I do agree -- I do agree that he said in
7 my opinion it didn't match up, he said that a lot, and
8 whether that's prejudicial to your client or not, I'm not
9 sure yet. Let me think about it. I understand your
10 argument, but it seems to me he was trying to play devil's
11 advocate with the statement, with the physical evidence,
12 is what I was hearing him say.

13 **MR. PHILLIPS:** Right. So the bolster would be to
14 support it, he was to discredit it, but the same rationale
15 for why is improper is my argument.

16 **THE COURT:** Okay.

17 **MR. GRAHAM:** I guess -- Mr. Phillips keep saying that
18 he never got discovery from Detective Spivey since 2014.
19 That's not correct. I'm looking at a report dated -- it
20 would have been from Wallace's interview. We didn't hold
21 onto Alex Wallace's interview and turn it over in April
22 of 2017. He got those probably within a month of those
23 happening back in 2016 in June and July. I mean, I've got
24 a date stamp August 8, 2016. It's a supplement from
25 Detective Spivey dealing with those conversations so I --

1 I just object because the record's gonna show that he
2 continually says he got no discovery from Detective Spivey
3 since 2014 and that's not true.

4 **MR. PHILLIPS:** And the only thing I did get was the
5 Alex Wallace stuff. You know, what we've talked about is
6 the continuing duty to disclose. The only thing I got was
7 the Alex Wallace stuff because it was like a time bomb went
8 off whereas all this other stuff -- again, if you look
9 through the late discovery, all those other incident
10 reports, all those other witnesses that are mentioned,
11 remember we flagged those six pages' worth of supplements,
12 I don't get any of that. I did get the Alex Wallace
13 statements. Those were turned over. That was another time
14 bomb, which I would say the same thing with the Jeremy
15 Washington stuff from November.

16 **THE COURT:** Okay. All right. You've made your
17 record on that and I've ruled against you on the late
18 discovery and made you go forward, but I can't grant you
19 a continuance now, so that's already ruled. But you keep
20 making reference to it and I understand that's making your
21 record, but -- and Mr. Graham's comment on when -- the
22 Alex Wallace stuff and now you concede it was given to you
23 before recently?

24 **MR. PHILLIPS:** I do concede that and I do not want to
25 imply that they withheld that. The Alex Wallace stuff did

1 -- was received by defense counsel.

2 **THE COURT:** All right. I want to think about the
3 inverse of the bolstering. It's interesting, but I'm not
4 certain it gets you to a mistrial granted, but I'm gonna
5 think about it.

6 Moving on from that issue, we're gonna do an in-camera
7 presentation for some data or data analysis from cell phone
8 records --

9 **MR. GRAHAM:** Cell phone tower mapping.

10 **THE COURT:** -- from the State's witness. So this will
11 be a proffer by the State to which the defense wishes to
12 hear and perhaps make objection depending on how it gets
13 presented and since --

14 **MR. GRAHAM:** I guess I don't understand why I have to
15 make a proffer. I mean, I don't understand the basis of
16 our hearing to make a proffer...

17 **MR. PHILLIPS:** The rationale was they're gonna present
18 demonstrative aids and kind of what's happened in this
19 trial a bunch of times is all this information gets in
20 front of the jury and then I have to look like the bad guy
21 when it's already been explained what it is and what it's
22 about and have to say don't use it and then they look at
23 me like what's he hiding. The whole point is my expert
24 reviewed it, what was provided, said there were issues with
25 it and so we don't have to do this back and forth in front

1 of the jury.

2 **THE COURT:** I'll tell you what let's do. We're gonna
3 assume for the sake of this presentation in-camera to get
4 it done is -- what Mr. Graham wants to know is where can
5 he start, where are you gonna object? Assuming that the
6 expert for the county comes in and testifies and he's
7 analyzed the Verizon data and the AT&T data and he has
8 extrapolated that data and presented some sort of map and
9 you're gonna say Judge, I'm gonna object because.

10 **MR. PHILLIPS:** It was just the admissibility of the
11 demonstrative -- the map, the cell site location maps that
12 they provided to me, that's it. Because they're gonna use
13 those maps to explain all that to the jury and my expert
14 sent me a report and said the maps weren't right and I
15 asked him do you think it crosses the line or it should be
16 admissible and he's like well, you know, I'm not a judge,
17 but looking at it, it's not right. And then because I've
18 got a report I feel like I have a duty make the challenge.

19 **THE COURT:** Let's start with the maps as to why or why
20 not they reasonably and accurately depict the area. I
21 mean, that's apparently --

22 **MR. PHILLIPS:** I'm just making sure -- I mean, I got
23 a report from my expert and I'm just going from there,
24 but I figured we'd do that better than what's happened a
25 million times in this trial where --

1 **THE COURT:** I tend to agree with you on that.

2 **MR. PHILLIPS:** It's gotten a little, you know --

3 **THE COURT:** So am I correct in summarizing where you
4 would anticipate objecting would be when I've drawn a map
5 and prepared a map which would demonstrate where the cell
6 phones were triangulating or pinging from and you're gonna
7 say Judge, that's not an accurate depiction of the area?

8 **MR. PHILLIPS:** Right. That the maps based on science
9 and how -- I'll let my expert speak because that's way
10 beyond me. But, yes; that -- that would be it.

11 **THE COURT:** Well, they provided you some sort of this
12 demonstrative --

13 **MR. PHILLIPS:** They did. I asked for it and they did.

14 **THE COURT:** Can you show him which one your expert's
15 having a question with? And we'll start with that one.
16 Let's just cut to the chase.

17 **MR. PHILLIPS:** I can bring -- if you want, we can do
18 my expert first and he could walk through his report and
19 he could say which ones. They provided me today with two
20 amended --

21 **THE COURT:** That sounds fair. Let him call his
22 witness and say this is what I'm having an issue with.

23 **MR. GRAHAM:** That would be the best and easiest way to
24 do it, Your Honor.

25 **THE COURT:** Okay. Let's do that.

1 **MR. PHILLIPS:** Thank you. I'll go get him.

2 (Pause in proceedings.)

3 (Recess taken.)

4 (Whereupon, Thomas Slovenski was duly sworn by the
5 Clerk of Court.)

6 **THE CLERK:** State your full name, spelling your last
7 for us, please.

8 **THE WITNESS:** Thomas Slovenski, S-L-O-V-E-N-S-K-I.

9 (State's Exhibit Numbers 63 through 69 were marked for
10 identification.)

11 **THE COURT:** All right. For the record, in discussing
12 with the attorneys, through discovery the State provided
13 some demonstrative aids, maps, cell phone towers and data
14 analysis from the cell phone records from AT&T and Verizon
15 that's been analyzed by the State's witness and provided
16 to the defense counsel. He's had an expert examine it
17 and anticipates challenging that demonstrative aid in the
18 morning when the witnesses are called. To try to speed up
19 our presentation tomorrow, we're gonna utilize the expert
20 witness for the defense to show the challenges he may have
21 to the State and -- so the Court can make a ruling as to
22 whether they will be admissible and allowed. Fair enough?

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

24 **THE COURT:** Is that what we discussed?

25 **MR. PHILLIPS:** Yes.

1 **THE COURT:** And the jury's gone, so it's just an
2 in-camera hearing.

3 All right. Go ahead, Mr. Phillips.

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

5 THOMAS SLOVENSKI,

6 having been duly sworn, testified as follows:

7 EXAMINATION (In-Camera)

8 BY MR. PHILLIPS:

9 Q. Good afternoon, Mr. Slovenski.

10 A. Good afternoon, sir.

11 Q. Could you, please, state your occupation?

12 A. Yes. I am a mobile forensic examiner.

13 Q. And with that occupation, what training have you done?

14 A. I have been licensed by SLED for fifteen years. I
15 have been certified as a mobile forensics examiner, I've
16 been certified as an expert by the ZetX Corporation in cell
17 tower records analysis and geolocation analysis. I've been
18 declared an expert witness in various courts in South
19 Carolina. My firm presently handles many capital crime
20 cases across the United States dealing with cell towers and
21 mobile devices, as well as proximity of the said devices to
22 the towers that were utilized.

23 Q. How many times have you testified in state courts?

24 A. Numerous. I don't --

25 Q. Over thirty?

1 A. No, sir. Not -- well, if you count my law enforcement
2 background, yes.

3 Q. I guess being qualified as an expert in law
4 enforcement or as a private witness or independent witness,
5 however you want to describe it, defense witness, how many
6 times total law enforcement and since you've been out on
7 your own?

8 A. Over thirty. I have fifteen years of law enforcement
9 experience, mostly here in South Carolina. I graduated
10 from the academy down the road and have been doing private
11 work for fifteen years.

12 Q. And in being qualified, have you also been qualified
13 in Federal court?

14 A. I'm working on that. I had to -- I've got several
15 Federal cases right now, one in Arizona, and a lot of my
16 cases I do the expert analysis on it and then a lot of
17 times you just don't hear anything else from it.

18 Q. Due to the nature of the case they don't need the
19 testimony?

20 A. That's correct.

21 Q. Okay. How many cases have you worked?

22 A. Oh, wow. Hundreds.

23 Q. Hundreds. And with that, other than the training, is
24 there any special education or anything else that would --
25 in addition to the certifications you've said you have, is

1 there anything else that the Court would need to know that
2 would be relevant to you being qualified as an expert?

3 A. Sure. In 2007, I pioneered mobile forensics in the
4 state of South Carolina. SLED was just starting to dip
5 their feet into it and I brought it to the private sector.
6 I went all the way to up Purdue University and trained
7 under Dr. Rick Mislán at the time. He's now with RIT. And
8 I've trained with Federal, state and local officers in the
9 same classes. I brought it back to South Carolina and
10 started offering my services on the private sector. I also
11 do cases for law enforcement and the prosecution. I'm an
12 independent examiner and as such I look over the evidence
13 and then give my expert opinion on it based on my
14 education, my experience and my equipment.

15 I'm also the first to write a book for law enforcement
16 on mobile phone forensic triage. I wrote it back in 2012
17 and it's published and still being used across the country.
18 One of the classes that it's used for is the Department
19 of Justice class out west. I've also written numerous
20 articles on mobile forensics and mobile data recovery, as
21 well as have been approved by the South Carolina Bar as an
22 instructor. You will note that I met you back in January
23 at the South Carolina Bar conference, which I was one of
24 the instructors. I've also produced for the South Carolina
25 Bar eight training videos on mobile forensics, cell towers

1 and mobile spyware. I've trained hundreds of law
2 enforcement officers across the country. I was employed by
3 the State Department as a digital forensics instructor and
4 was deployed by them to numerous countries to teach their
5 local law enforcement under the -- what's called the ATA,
6 the Antiterrorism Assistance Act. So I've --

7 Q. Been around?

8 A. -- been around, sir. Yes, sir.

9 **MR. PHILLIPS:** At this time I'd like to qualify him
10 as an expert in cellular forensics, specifically the cell
11 site location data because that's what these maps are.

12 **THE COURT:** Any voir dire?

13 **MR. GRAHAM:** A few.

14 VOIR DIRE EXAMINATION (In-Camera)

15 BY MR. GRAHAM:

16 Q. You said you were licensed by SLED, Mr. Slovenski.
17 What does that mean?

18 A. That means I'm licensed under -- as a private
19 investigator. Digital forensics in South Carolina on the
20 private side can only be conducted by a SLED-licensed
21 investigator and they stick us under the PI Act.

22 Q. So if you want to use a Cellebrite machine and
23 download it --

24 A. That is forensics.

25 Q. That's what you're talking about?

1 A. I can do that.

2 Q. Right. And you being licensed allows you to do that?

3 A. Yes.

4 Q. How much -- you've talked a lot about mobile
5 forensics. How much of what you've done is actually
6 related to cell tower mapping, what we're talking about
7 today?

8 A. That's a very good question. Over the past few years
9 my business has grown exponentially on the cell tower
10 analysis side. In fact, I'm doing more cases now dealing
11 with cell tower analysis than I am with the actual phones.
12 Last year I attended eighty hours of, as I call it, my butt
13 in the seat training with the ZetX Corporation. I was the
14 only private individual amongst twenty to twenty-five
15 others in the class that were law enforcement. I am one of
16 the very few -- there's actually only three of us -- that
17 ZetX has allowed the subject matter expert certification on
18 the private side. In fact, and I'm proud to say, today I
19 was granted the partnership from ZetX to now start selling
20 their product which is a state of the art cell tower
21 mapping program using the latest technology to attorneys,
22 attorney firms, insurance, banks, and so they vetted me and
23 they must have seen something they liked.

24 Q. So how many times have you testified as an expert in
25 cell tower mapping?

1 A. In the State of South Carolina where I was brought in
2 to testify, several times.

3 Q. Can you just tell me how many?

4 A. How many do you want?

5 Q. I want to know the number, sir. I asked you how many.
6 I want to know how many.

7 A. Again -- well, I'm telling you it's probably about
8 three, four. Most of the stuff that I do I don't get
9 invited back in because it tells a story. Either the
10 person was lying or they weren't and it's used accordingly.

11 **MR. GRAHAM:** Okay. That's all the questions, Your
12 Honor. Thank you.

13 VOIR DIRE EXAMINATION (In-Camera)

14 BY MR. PHILLIPS:

15 Q. The only follow-up I would have is you said you have a
16 qualification with our state Bar?

17 A. Yes.

18 Q. And what is that qualification?

19 A. Well, the qualification is that they take any training
20 that I have and give to attorneys under the Bar of which
21 I've done numerous classes and they approve every training
22 -- they have never rejected any one of my trainings and so
23 the attorneys that attend my class get continuing education
24 hours, they get CLE's. I know of no other private
25 individual in this state in mobile forensics that has been

1 given that privilege.

2 Q. I mean, the presentation you gave this past year at
3 the South Carolina Bar convention conference dealt with
4 cell site location data?

5 A. The entire thing did, yes.

6 Q. And there were judges in the room?

7 A. Yeah, I was told circuit court judges were having to
8 appear at that particular timeframe and my presentation
9 was granted CLE qualification for those in attendance.

10 Q. But you have been qualified as an expert in cell site
11 location mapping?

12 A. Yes. Yes.

13 **MR. PHILLIPS:** That would be --

14 **THE COURT:** I'll ask a question.

15 VOIR DIRE EXAMINATION (In-Camera)

16 BY THE COURT:

17 Q. The program that you're allowed to sell now that you
18 just got this license for, describe what it does.

19 A. Okay. I'm glad you asked that because I'm thrilled
20 about this stuff. There's only three entities in South
21 Carolina that have it. Charleston city, Anderson city and
22 myself. It's called TRAX, T-R-A-X, Your Honor, and it can
23 be found under ZetX, Z-E-T-X, dot com. It is a radio
24 frequency content program and if anyone in this courtroom
25 would ever like to see a demonstration of it, it's for law

1 enforcement and non-law enforcement, I'd be more than happy
2 to give it to them at a later date.

3 But what it does, Your Honor, is it's not the
4 traditional pie method where you'll have a cell site and
5 they'll say well, the azimuth was 60 degrees, okay? That
6 being the case, then we find 60 and go 30 this way, 30 this
7 way and then we draw all these little lines that come out.
8 That's old school. In --

9 Q. That's the extrapolation method?

10 A. Yeah. And in 2009 that's the only thing that was
11 being taught and there was only one instructor that would
12 teach non-law enforcement. Now, remember, I'm not law
13 enforcement anymore, so a lot of the classes I want to get
14 into they say no, you can't come in, you're not gonna find
15 out our secrets. Well, I was able to prove to TRAX that I
16 was trustworthy with their program. Anyway, I took all
17 their training and did all their workshops afterwards.

18 In fact, Your Honor, Anderson city used the TRAX
19 program to help find that girl that was abducted and held
20 in Woodruff, South Carolina, in that storage unit.
21 Remember they found -- I don't know if you remember the
22 case. It was about six months ago and the guy's now
23 confessed to numerous crimes.

24 Q. Uh-huh.

25 A. Okay. I trained with one of those detectives and he

1 told me, he said this thing works. And what my program --
2 or the ZetX program does, Your Honor, is it was built by a
3 former law enforcement officer and intentional for law
4 enforcement and what it does is it takes not only the
5 records, the CDRs that would come from the providers that
6 we always ask for and the cell tower location data, but it
7 uses it with a particular algorithm that only they know of
8 and it will show you the tower and then from it will
9 emulate what I call a cloud. It kind of looks like a brain
10 if you were doing a CT scan. It's no longer these lines
11 that jut out that have been proven to have errors in them.
12 If you were to put a traditional extrapolation with now
13 radio frequency content, you would start seeing areas that
14 were not covered but are covered by the actual tower
15 because what happens is it comes out from there like -- I
16 say a cloud, that's what I call it for want of a better
17 purpose, but it will even have a bit of signal that will go
18 behind the tower, Your Honor. There's like little lobes
19 that come out and if you go to my website on the cell tower
20 side you'll see a picture of the cloud that I used in an
21 actual case for the prosecution up in Anderson and the
22 gentleman was convicted, in part, due to --

23 Q. That's because some of those radio frequencies bounce?

24 A. Yeah, they bounce, Your Honor, but here's the thing
25 about this program. This program gives you a more exacting

1 area, rather than saying well, it can go anywhere from a
2 half a mile to fifteen miles, and it takes into account
3 things like topography, geography. The settings that that
4 tower were set at at that time, this company takes all
5 these records and stores them, all right? Now we've got
6 law enforcement feeding in, too, on their cases, all right?
7 I can't see their cases, they can't see mine, but we're
8 taking all of this data and we are putting it in a program
9 that when you run the CDRs you are seeing a more true
10 picture. Could he have gone out a few more yards than the
11 line is -- or could his device, I'm sorry, gone out a few
12 more or come back in a little bit based on the time of day
13 and the traffic on the tower? Yes, but not this fifteen
14 miles when you've got a forest sitting right there at the
15 end of where the radio frequency would go, and we had that
16 happen in Anderson. There was a big forest that was about
17 ten miles long. There's no way the person could have been
18 where they said they were using their phone because it was
19 showing further south.

20 Q. Okay. I understand. I understand that part of it.
21 I was actually the first South Carolina judge to attend
22 the computer forensics class at the -- Alabama that the
23 FBI puts on --

24 A. Oh, really?

25 Q. -- so I understand some of what you're saying.

1 A. A lot of the Federal agencies like the IRS and many
2 law enforcement agencies around the U.S. are now signing on
3 with the TRAX method.

4 **THE COURT:** Okay. Mr. Graham, you stood back up.
5 You've got more voir dire?

6 **MR. GRAHAM:** You were talking about propagation maps,
7 is that what that was?

8 **THE WITNESS:** Uh-huh.

9 **MR. GRAHAM:** No, I'm -- through experience and
10 training he's qualified to talk about it, Your Honor.

11 **THE COURT:** I agree. So he is so qualified as a cell
12 tower data --

13 **MR. PHILLIPS:** Analyst.

14 **THE COURT:** -- analysis and cell phone interaction
15 with those cell towers. Analyzing the data that cell
16 phones and towers put off from the cell phone providers.
17 I think that's what he does. I think that's the best way
18 to describe it.

19 **MR. PHILLIPS:** Thank you.

20 **MR. GRAHAM:** My thought would be unless somebody has
21 a better suggestion would be to throw each exhibit up and
22 let him say what's wrong with them.

23 **MR. PHILLIPS:** I agree completely.

24 **THE COURT:** Absolutely. Now we're getting somewhere.
25 That's good.

1 **MR. GRAHAM:** These are in no particular order than
2 the way they were laid down. State's Number 63, the one
3 notation that you had made on this one --

4 **THE COURT:** All right. Hold that closer to me.

5 **THE WITNESS:** Yeah, me, too.

6 **THE COURT:** Do you need to move? You can come right
7 there. You can stand right there behind Stacy, if you'd
8 like. And, Shawn, you can point it that way a little bit.
9 That's a lot better.

10 **THE WITNESS:** Is this the one that was labeled Delta?
11 Because that's how I have them.

12 **MR. GRAHAM:** That was the one that had the different
13 time right there.

14 **THE WITNESS:** Okay. You found it. Okay.

15 **MR. GRAHAM:** So other than that, what -- there was
16 one we initially sent over. I don't remember what the
17 time was. It was 12 something.

18 **MR. TRAVIS:** 12:02:18.

19 **THE COURT:** All right. For my record, what's Stacy
20 got it labeled?

21 **MR. McNAIR:** What's the number?

22 **MR. GRAHAM:** This is State's 63.

23 **THE COURT:** State's 63 is what we're talking about.

24 Now for purposes of record clarity, if you want
25 someone else to comment, let me know, but let Stacy know

1 most importantly. Right now I'm gonna let Mr. Phillips
2 ask questions and y'all stay close by and I'll give you
3 your opportunity, but Stacy can't take five conversations
4 down.

5 **THE COURT REPORTER:** And who are you?

6 **MR. TRAVIS:** Brian Travis.

7 **THE COURT REPORTER:** Okay. I knew you looked
8 familiar. I couldn't recall your name.

9 **MR. PHILLIPS:** In looking at this map, it appears to
10 be what was sent to me as Image Number 2 named Delta; is
11 that correct?

12 **MR. GRAHAM:** I have no idea.

13 **THE COURT:** It's State's 63.

14 **MR. PHILLIPS:** Right. Exactly. I'm just saying as
15 we received it from the solicitor's office, it does have
16 the 8:21 PM, so none of the others ones have that time.

17 **CONTINUED EXAMINATION (In-Camera)**

18 **BY MR. PHILLIPS:**

19 Q. Mr. Slovenski, in reviewing the image that was
20 provided to you, it's State's 63, but was provided to you
21 as the second image as labeled Delta, what were the issues
22 that you found with this map?

23 A. Okay. The first one I want to point out is if you'll
24 notice it says Cell Site Locations For. Now for brevity's
25 sake, if I refer to a number I'm just gonna refer to it by

1 the last four digits. 5324, 7280, 3318. We copy?

2 Q. (Nods head.)

3 A. All right. 3 -- I'm sorry. 5324 is not listed down
4 in that graph. The problem that I have with that is that
5 this is giving the impression of all encompassing; that
6 these three numbers are encompassed and represented onto
7 this map when best practice forensically you're not really
8 supposed to do that.

9 Q. And just so we're clear on the record, that
10 803-348-5324 is not -- is not on the map?

11 A. No, sir. Because if you look at those numbers there,
12 the green is represented by 7280 and then the yellow is
13 represented by 3318.

14 **THE COURT:** All right. So I understand, in reference
15 to the cell phone number and the title at the top should be
16 redacted and that would make it clearer? Is that your --

17 **THE WITNESS:** For me, sir?

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

19 **THE WITNESS:** Yes, sir. If I was presenting this in
20 court, yes.

21 **THE COURT:** Okay. I understand.

22 Mr. Graham and Mr. Travis, y'all can comment.

23 **MR. GRAHAM:** I'll go first. That's our -- that's the
24 throwaway phone we have linked to Mr. Hart. There is no
25 activity. So we're still showing that -- by showing it not

1 being on here, we're being able to discuss the fact that
2 there is no cell tower location.

3 **THE COURT:** Okay. I understand.

4 **MR. GRAHAM:** So I don't think it results in any
5 confusion. In fact, it emphasizes the point.

6 **THE COURT:** Okay.

7 **MR. PHILLIPS:** Okay.

8 **MR. GRAHAM:** From what I understand, Mr. Solvenski
9 has just -- he got these and he's looking at these and he
10 doesn't understand the whole case and everything that's
11 going on.

12 **MR. PHILLIPS:** Right. I just sent these to him last
13 week. Anyway --

14 **THE WITNESS:** What I'm basing all this on are best
15 practices in the forensic community and my --

16 **THE COURT:** All right. Mr. Solvenski, as an expert,
17 how would Mr. Phillips show that the 5324 was not in that
18 area or used in that area during this time period?

19 **THE WITNESS:** That's a good question.

20 **THE COURT:** That's what Mr. Graham is trying to do,
21 show it was not used.

22 **THE WITNESS:** Right. If that number is gonna be
23 present on this map, then down here in the graph, Your
24 Honor, there would need to be something to show the
25 untrained eye, those that are -- the only thing they know

1 about cell towers is what they see on CSI Miami -- and show
2 that there was no activity so that they could explain that
3 as such to the jury.

4 **THE COURT:** All right. And that was the reason I
5 just was representing as the Court, all right? I'll
6 probably allow it. We're not gonna redo things. That
7 sounds reasonable -- or plausible.

8 **MR. PHILLIPS:** I agree. I agree.

9 **THE COURT:** All right. The next one.

10 **MR. GRAHAM:** Then the only thing that we changed from
11 what you looked at was the time. I corrected a time there
12 that had been incorrect down here that is now correct up
13 here.

14 **THE COURT:** So you just matched it up?

15 **MR. GRAHAM:** We changed the one where the tag is to --
16 it was a typo.

17 **THE COURT:** Okay. Fair enough.

18 **THE WITNESS:** No, please. I'm not done yet.

19 **MR. GRAHAM:** I thought you were done.

20 **THE WITNESS:** No, sir. Your Honor, you'll take
21 notice that there are blocks that are used, I'm assuming,
22 and I don't like to do that, but that the color key is
23 representing these blocks as cell site locations. Where
24 I have concerns, Your Honor, is that those cell site
25 locations are not marked accordingly, all right? What we

1. have found in previous cases and in analysis of other
2. cases is that when you put a block up to the untrained
3. eye, those that are not educated in the sort of things
4. that we are, it could be prejudicial in that the person
5. then assumes oh, where that green is, that's where he
6. was or she was. And then to make matters even more
7. complicated, if you take like that very first one, Your
8. Honor, that is -- go ahead and point down to that corner
9. right by Dayne, right there, and you can down, okay,
10. there's no explanation as to the line, okay? And then you
11. get to the end of the line and then there's a green box
12. with a time in it. To those who are not familiar with what
13. we do, that could be interpreted that okay, that is a cell
14. tower, but it ended there, therefore, he must be right
15. there where that time thing is. It may not be what you
16. intended. I'm just saying this is what we have to avoid
17. when we are trying to present to the Court and to the jury
18. so that they don't get mixed up because they're gonna look
19. at that and assume more than likely that wherever that line
20. ends that's where the subject was. As Your Honor knows,
21. when it comes to a cell tower emanating a distance, it can
22. be within a range and not at a pinpoint location.

23. **THE COURT:** Mr. Graham, my guess is you've got
24. testimony and other evidence saying the car was, the
25. subject was, the witness was at some particular address,

1 and that's where you put the time on it?

2 **MR. GRAHAM:** What we know -- what this is supposed to
3 represent and what the testimony by Detective Travis would
4 show is that any time there's a particular tower with a
5 line with a phone call that we're saying that the phone
6 records show that it hit that tower which is gonna be GPS,
7 you know, coordinates and that that line represents the
8 azimuth that was hit somewhere in there. Like you said,
9 that's where -- where they were actually standing, I don't
10 know, but that's where the tower -- that's the azimuth,
11 that's the cell face, whatever you want to call it, the
12 tower hit.

13 **THE COURT:** So without drawing a 60 degree cone, you
14 drew a straight line?

15 **MR. GRAHAM:** Because in my understanding of the two
16 it's more accurate because the cone -- you don't go every
17 120 -- I mean, roughly it's 120 degrees around a circle
18 and that's what they used to do just like Mr. Slovenski
19 talked about.

20 **THE COURT:** The cells that are drawn on map to get
21 the cell phones.

22 **MR. GRAHAM:** And, you know, I've done it before where
23 they've done -- I've had AT&T come in and done propagation
24 maps. Those are really cool because it gives you a much
25 better idea and they can tell you yep, he was right here.

1 But my understanding is the better practice is now just to
2 identify the azimuth and have it gone out and you're gonna
3 say this is where they were at. You know, they're over
4 here somewhere. We don't know where.

5 **THE COURT:** All right. I think that's a
6 cross-examination question. I understand this point very
7 much. That's a cross-examination question because that
8 line doesn't represent an accurate exact spot where that
9 cell phone call was made.

10 **MR. GRAHAM:** And we never would try to present it
11 that way.

12 **THE COURT:** It's in a range of that area and that's
13 as close as they can get. That is subject to your
14 cross-examination. I agree with both of you.

15 **MR. GRAHAM:** Anything else on this one?

16 **THE WITNESS:** Yes, sir. Actually all the maps, all
17 seven maps, Your Honor, there are -- and I'll just name
18 these straight out and we won't approach them again, but,
19 please, keep these in mind. Number one, there's no author
20 on that map as to show who actually authorized or authored
21 that map. That could have a play.

22 **THE COURT:** Testimony's gonna have to do that. You
23 can't offer --

24 **THE WITNESS:** Don't do that? Okay.

25 **THE COURT:** Mr. Travis has got to be the author of

1 this because he's the one from my experience in this county
2 from prior trials that provides this for Lexington County,
3 so he can do that. Now these are demonstrative aids.
4 These generally don't come into evidence, correct?

5 **MR. GRAHAM:** No, I'm planning on introducing them into
6 evidence.

7 **THE COURT:** All right. That's --

8 **MR. PHILLIPS:** That changes things a little bit.

9 **THE COURT:** That changes things a little bit. If
10 they're demonstrative aids, it makes things a lot easier
11 for me obviously.

12 All right.

13 **THE WITNESS:** Secondly, there's no case number listed
14 on there, okay? I know I'm being picky on this, Your
15 Honor, but evidence is evidence is evidence. We have to
16 handle it as such so that it --

17 **THE COURT:** Let me tell you something. The gun
18 doesn't have a case number on it either, so move on.

19 **THE WITNESS:** Okay. All right. The date the image
20 was created, as well as the software used to create the
21 image, and little to no key or detailed explanations as to
22 what phones, person or the other coded colors would mean.
23 And I'm done with that one.

24 **THE COURT:** Okay. Moving on.

25 **MR. GRAHAM:** State's 64.

1 **THE WITNESS:** Is this the corrected one, too?

2 **MR. GRAHAM:** This is the one that there were -- you
3 had indicated that there were only four time callout boxes
4 and there were actually five and it was hidden under one,
5 so now it's displayed so you can see the times.

6 **THE WITNESS:** Okay. The -- again, 5324 is on there.
7 I understand what you're saying, Counselor, as to that.
8 Your timeframe is off. This was given to me as 4:00 to
9 8:00 PM, yet it shows 3:17 to 8:11. And, again, Your
10 Honor, the boxes are giving you -- the boxes give the
11 impression that the person could have been at that location
12 unless it's explained otherwise.

13 **MR. TRAVIS:** Your Honor?

14 **THE COURT:** All right. Hang on. Mr. Graham needs to
15 keep talking. Mr. Travis was trying to tell you something.
16 That's your witness.

17 **MR. GRAHAM:** If you want to come handle this one.

18 **MR. TRAVIS:** He's referencing the name of the file,
19 not the title of the map. The name of the file is really
20 irrelevant. It matters more what the map is titled to be
21 from 3:17 PM to 8:11 PM.

22 **THE COURT:** I don't understand about the box showing
23 the location. What does that mean?

24 **MR. GRAHAM:** The red ones are our victim's phone; is
25 that correct?

1 **MR. TRAVIS:** No, that's the 348 number.

2 **THE COURT:** That's the throwaway phone.

3 **MR. TRAVIS:** So all the red ones go along with the
4 348-5324, the yellow ones go along with the 603-498-3318
5 and the green ones are 803-465-7280. So each box is where
6 a cell site is and the color responds to which phone hit
7 off that cell site.

8 **THE COURT:** You know what would be helpful to me
9 already would be let's highlight the numbers at the top
10 red, yellow and green in the top of the picture. If I saw
11 that, I could pick that up like that. If y'all don't mind
12 doing that, I'd like that.

13 **MR. PHILLIPS:** And just to clarify, so there's gonna
14 be the testimony -- I guess that will clear up one issue.
15 The testimony will satisfy that each box represents the
16 cell site itself, right, the tower?

17 **THE WITNESS:** If there would have been like a little
18 key at the bottom saying okay, you see this little red box,
19 this is a tower that -- because I don't know who else is
20 gonna be seeing these. Are they gonna be given to the jury
21 to look at later?

22 **THE COURT:** That was what I just asked them. I
23 thought the jury was gonna look at them in the courtroom
24 demonstratively. Mr. Graham's gonna suggest they be
25 entered in evidence and Mr. Phillips would like --

1 **MR. PHILLIPS:** And I believe they were demonstrative
2 aids as well.

3 **THE COURT:** That's something for me to decide.

4 **MR. PHILLIPS:** I believe they were demonstrative aids
5 as well and I know you can fill in the gaps with testimony
6 because it's not going back to the jury room and the only
7 issue with -- if we get nitpicky is if they go to the jury
8 room and it doesn't have the things that Mr. Slovenski has
9 testified to, then I guess that's the point of contention;
10 the difference between a demonstrative aid and a piece of
11 evidence.

12 **THE COURT:** And that's for the Court to rule on. I
13 understand. I'm taking all this in. I'm not making those
14 rulings right now.

15 **MR. GRAHAM:** Anything else on that?

16 **THE COURT:** I find it very interesting, the points
17 he's making.

18 **MR. GRAHAM:** State's 65.

19 **THE COURT:** Okay. Let me -- the very last one.

20 Okay. This one was listed as Waffle House. Again --
21 and I understand, Counsel, where you're saying the 5324 up
22 there. Okay. Again, we have the lines that are emanating,
23 Your Honor. To me it appears that the detective was trying
24 to possibly make a sector with the line going to the north
25 and the line going to the southwest, but I can't confirm

1 that. There's no indication. If this was the case, Your
2 Honor, this is the pie method of which is problematic
3 because we're finding that in -- as technology advances and
4 we're able to actually see how these cell towers are really
5 working and propagating the radio frequencies that there is
6 the very distinctive possibility that to the outside of
7 those lines the subject could have been. How far I do not
8 know because I was never asked to run that particular
9 tower. I'm just, you know, commenting on the item itself.

10 **MR. GRAHAM:** If I can address that, Judge?

11 **THE COURT:** You may.

12 **MR. GRAHAM:** It is not showing the sector, those are
13 two different azimuths, which was a zero azimuth off that
14 tower and that's the 240 azimuth off that tower and both of
15 them are reflected right there.

16 **THE WITNESS:** Now with that being the case, it still
17 appears to be a sector and it would have been good if the
18 prosecution would have maybe given it a different colored
19 line or somehow -- you know, a juttred line, somehow to
20 demonstrate that one is not related to another. Here it
21 gives the impression where that Waffle House is, where that
22 tan box is, Your Honor, it gives the impression that the
23 subject could have been in that area, and I don't know if
24 he or she, whatever, the device rather, was in that area.
25 So the lack of detail in this map could be used, and I'm

1 not saying it is, Counselor, so, please, don't take
2 offense, but someone could use it to their advantage to
3 basically make that map say what they want it to say.

4 **THE COURT:** Okay. I understand your point.

5 **MR. GRAHAM:** Anything else on this one?

6 **THE WITNESS:** No, sir.

7 **MR. GRAHAM:** State's 66.

8 **THE WITNESS:** Your Honor, the same things that I
9 noted in the former maps. I'm not gonna belabor you with
10 the details. As you can see, it appears to be the same
11 type of -- I don't want to use the word "mistakes", but
12 the same type of --

13 **THE COURT:** So your criticism is more in the
14 presentation and lack of detail or there's a different
15 way of presenting the azimuth versus the cone shaped 120
16 degree cone that goes out there?

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

18 **THE COURT:** I'm with you.

19 **MR. GRAHAM:** State's 68.

20 **THE WITNESS:** Okay. Got it. All right. And, again,
21 we're seeing the same thing as before, the appearance of
22 the boxes. They could be made to say, you know, these are
23 cell tower locations or as the case progresses if someone
24 wanted to bend an item -- I'm not saying you're gonna do
25 it, Counselor, I'm just saying that a map, again, that --

1 with these types of designations lends itself to more of a
2 prejudicial, potentially misleading type of presentation,
3 Your Honor, okay? Did you guys correct 11:22 on the map?
4 Okay. It says 11-22. The last entry was 11:21.

5 **MR. GRAHAM:** It's 11:21:54.

6 **THE WITNESS:** Right. I'm sorry I'm being particular,
7 but that's what I get paid for. The next one.

8 **MR. GRAHAM:** State's 61 -- no, 67.

9 **THE WITNESS:** My challenge to this, Your Honor, is as
10 we stated before just the use of blocks and really nothing
11 to -- if this was gonna be given over to the jury, nothing
12 to kind of really explain what those blocks are. The
13 untrained eye could look at that and say oh, he was on
14 that road or that's his path, his location was really
15 right there, which as you know, Your Honor, that can't be
16 said about a device just by cell tower records.

17 **THE COURT:** I don't think it's being challenged that
18 the Defendant was arrested in New York and that he took --
19 a bus ticket was afforded to him and he travelled via bus
20 to -- is it Utica, New York where he ended up?

21 **MR. PHILLIPS:** Rome.

22 **MR. GRAHAM:** I think that's where the bus stop was.

23 **THE COURT:** Okay. Wherever. It wasn't New York City,
24 but it was in the state of New York.

25 **MR. GRAHAM:** State's 69. The last one.

1 **THE WITNESS:** Okay.. This on here is listed to me as
2 traffic stop no azimuth. Again, Line -- or Number 5324 is
3 not in the graph or in any way on there. We still have
4 the item with the blocks designation, Your Honor. And
5 that's it.

6 **MR. PHILLIPS:** The only arguments I would have is
7 through a demonstrative aid it can be easily explained and
8 discussed to the jury where they understand the maps. If
9 they are admitted into evidence and they to go back to the
10 jury room, based on what he's testified to I think there's
11 problems that a layperson would not necessarily -- or could
12 be misled by those maps. That would be the argument that
13 -- we don't have a problem with it being explained as
14 demonstrative aids. We would have a problem with them
15 being admitted into evidence.

16 **THE COURT:** Okay.

17 **MR. GRAHAM:** He's gonna be up there; he's gonna
18 testify, he's gonna explain it, he's gonna be subject to
19 cross-examination. Between the two of us it ought to be
20 well-explained. If they go back there and somebody gets
21 confused, they can come back and listen to the
22 testimony again.

23 **THE COURT:** All right. I understand your concern.
24 I understand you've got a lot of foundation to lay. We
25 can decide that. I get it. I don't know what I'm gonna

1 do. There may be some come in and some don't. It's very,
2 very interesting. I like that.

3 **MR. PHILLIPS:** Is it possible to have the ruling
4 before so we don't have to --

5 **THE COURT:** How can I do it?

6 **MR. PHILLIPS:** I know. That's true. It's
7 impossible.

8 **THE COURT:** It's kind of like a motion in limine.
9 What you've done for me is Judge, this is what I think
10 and I'm afraid of and it will be prejudicial to me under
11 403 and they've got to get over that tomorrow and so I --
12 I couldn't possibly make a ruling without hearing you on
13 the fly, but I understand what you're wanting me to listen
14 for, the gaps and/or the misleading potential if it went
15 to the jury room. I understand why they want it. So I
16 don't want to make a ruling preliminarily, but I do
17 understand your expert's explanation of why he thinks it
18 could be misleading. Very much so. I understand that.

19 **MR. PHILLIPS:** Thank you. And this avoids having to
20 stop it right in the middle and taking out the jury.

21 **THE COURT:** Absolutely. Absolutely. And we can go
22 through Detective Travis's testimony and we've already had
23 an in-camera preview of the converse. I think that's --
24 I'm glad we handled it this way. And we could have a
25 sidebar perhaps and say do you remember this and I can do

1 that.

2 All right. Do we need to consider anything else?

3 **MR. PHILLIPS:** I believe that's it, Your Honor.

4 (Witness excused.)

5 **THE COURT:** Okay. 9:15 in the morning. Is he coming
6 back?

7 **MR. PHILLIPS:** That's all the testimony I would need
8 him for.

9 **THE COURT:** And only for the purpose of admission --
10 of coming in or out?

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

12 **THE COURT:** Okay. All right. I'm -- I understand
13 what he said, so I can -- I can make my rulings based upon
14 that and this would be -- it's a little bit unusual to be
15 out of order, but certainly you can argue anything he's
16 testified to.

17 **MR. PHILLIPS:** Yes, Your Honor. And the only reason,
18 again, remember we're doing it out of order is because the
19 State's --

20 **THE COURT:** The data hasn't gotten here.

21 **MR. PHILLIPS:** Right. The Verizon wireless chain of
22 -- isn't here.

23 **THE COURT:** I don't think there's any prejudice to
24 the State that you can argue with the expert testimony
25 he's provided today as to why he thinks those could be

1 misleading. That's what they presented and I think that's
2 fair for the Court to consider tomorrow after the data
3 comes in and Mr. Travis testifies. So in that respect,
4 you can reference back to what he's testified to, that he
5 said thus and so, I've got the testimony heard, it is fair
6 game, I'll consider it in making my ruling. So if that's
7 your concern, then maybe you don't need him.

8 **MR. PHILLIPS:** That would be the only concern.

9 **THE COURT:** I will not need to hear it again, okay?

10 **MR. PHILLIPS:** Thank you.

11 **THE COURT:** We told the jury to be here about 9:15,
12 so we'll see y'all here about then also.

13 (Whereupon, the proceedings were concluded for May 24,
14 2017, at 5:30 PM.)

15 (Whereupon, the following proceedings were held on
16 May 25, 2017, beginning at 9:36 AM.)

17 (State's Exhibit Number 70 through 76 were marked for
18 identification.)

19 **MR. PHILLIPS:** Before we begin, could I put a few
20 things on the record.

21 **THE COURT:** Uh-huh.

22 **MR. PHILLIPS:** Thank you.

23 Good morning, Your Honor. A few things I want to
24 put on the record before we get started. In doing some
25 research, I just need to go through a few things, I think,

1 just to make sure the issues are thoroughly clear, at
2 least from my point of view that are expressed in a precise
3 manner.

4 In determining whether to grant a mistrial, our
5 Supreme Court has noted that, and this is a quote, the
6 less than lucid test as whether a mistrial is dictated by
7 the manifest necessity or the ends of public justice, and
8 the latter being defined as the public's interest in a fair
9 trial designated to end in justice. Now, specifically,
10 the trial court must consider the following factors when
11 ruling on a motion for a mistrial. The character of the
12 testimony, the circumstances under which it was offered,
13 the nature of the case, other testimony in the case, and
14 perhaps other matters. In going directly to that, Am.Jur.
15 case law states that whether an offer of improper evidence
16 requires a reversal depends on the character and importance
17 of the evidence offered, and then it goes into whether --
18 the vital inquiry is whether or not the verdict was
19 substantially influenced by its impropriety.

20 And yesterday I made a motion for mistrial that Your
21 Honor took under advisement. The argument is when you look
22 at the character of the testimony, that Investigator Spivey
23 testified at three different times so far in this trial,
24 and it's certainly my contention -- and could be determined
25 different later that it was my fault coming out in cross,

1 but it's my contention that his answers were nonresponsive
2 -- repeatedly nonresponsive to the questions asked
3 providing improper opinion evidence. I made the argument
4 that it was -- and as we fleshed out, somewhat of an
5 inverse bolstering, vouching argument of the CSC cases
6 where it's not unusual for an officer to say through my
7 investigation I decided not to arrest him or I made the
8 choice, I didn't think there was probable cause, or I made
9 the conscious decision not to seek an arrest warrant. He
10 went farther than that. He crossed that threshold. He
11 went straight into essentially the inverse of saying
12 unequivocally it's his opinion that Alex Wallace is not
13 credible. That invades the province of the jury, that
14 violates his Fifth and Fourteenth amendment rights, as well
15 as Article 1 Sections 3, 12 and 14 of the South Carolina
16 Constitution of his due process right to a fair trial.
17 With that being the case, crossing that threshold, I think
18 the critical point is this case is all about credibility.
19 It is a third-party guilt case and in a third-party guilt
20 case from the defense's theory the key witness is our
21 third-party guilt witness. That person has not testified.
22 We have the lead investigator who's testified three times
23 before the jury unequivocally say he believes that person
24 is lying and not just saying he believes he's lying in as
25 much as he didn't pursue it in the investigation, but

1 without a doubt he would not charge anybody he truly
2 believes didn't do it. I think he crossed that line of
3 what's allowed and the prejudicial nature was enhanced by
4 this cumulative effect, what I said the snowball effect
5 yesterday, of this nonresponsive repeated improper opinion
6 testimony.

7 I think at least from my point of view, and Your Honor
8 may feel different, that this trial has been filled with a
9 lot of inadmissible hearsay and confrontation Crawford
10 issues. Specifically, one, again, later -- I think if
11 Your Honor will grant me a little leeway to explain this,
12 I was put in a very difficult position yesterday when the
13 solicitor offered the third-party guilt -- Alex Wallace's
14 written statement to police into evidence before the jury
15 in a credibility case. The solicitor -- I mean, I think
16 Your Honor would agree that that written statement is not
17 admissible and that the letter would not be admissible.
18 It's the State's case, they have the burden, they should
19 have called Alex Wallace and they can impeach him if he
20 said something different. The normal protocol would be to
21 question the officer did he give you this statement, did he
22 write it, is all that consistent? After your investigation
23 and after looking at everything he did and he provided
24 inconsistencies, you decided not to charge. That's the
25 normal way to do it, but in front of the jury who's been in

1 this case every time I've objected looking at me like why
2 am I trying to hide something when it's a third-party
3 guilt, I mean, I can feel it. When the solicitor says I'm
4 moving into evidence a statement of this third-party who
5 has yet to testify during their case, which we know that
6 statement should not come in, it is a hearsay document and
7 inadmissible, they can call Alex Wallace and impeach him
8 with that statement, but when he says what it is, this is a
9 written statement by Alex Wallace and I'm moving it into
10 evidence and I feel every eyeball from the jury shift to me
11 as they've seen all trial where I have to respond whether
12 I'm going to allow it into evidence and then I'm put in --
13 to make a very strategic judgment call at that point not
14 to lose all credibility with the jury and allow a piece of
15 inadmissible evidence in. Whether it's later determined on
16 PCR, if that comes to it, I'll answer for it, but all the
17 jurors were looking and wanting to know whether I was gonna
18 hide it from them or not. And even if I said I need a
19 matter of law, Your Honor, they already knew what it was
20 and they knew if they didn't get to hear it I kept them
21 from hearing it.

22 Then we went a step further. We went -- we had a
23 sidebar conference outside the hearing of the jury. We
24 discussed -- at that point I said well, there's a letter
25 that he wrote to the solicitor's office, too. That would

1 be an issue of we're getting one statement in now that
2 shouldn't come in, but now we've got another letter, and I
3 did ask should that come in. I mean, now we've got these
4 competing things where we have two written statements, both
5 hearsay documents, and I said I've got to make the choice
6 of whether that comes in. Then, again, in front of the
7 jury the solicitor says I believe the Defendant -- or the
8 defense attorney would concede to allow this written letter
9 into evidence. This is the cumulative effect. At that
10 point I wish the transcript could reflect my facial
11 expression. Your Honor saw it. I even did my hands up
12 like, you know, that we're going down this road and then,
13 again, the jury's looking at me like you're gonna keep us
14 from seeing the letter he wrote, so I said no, allow it.
15 That then forced when they brought in -- started discussing
16 the video, not playing the video, but discussing the video,
17 I had to then say essentially at this point it's gotten out
18 of control as far as the amount of hearsay and Crawford
19 confrontational issues, and all of this has built up to my
20 previous mistrial -- or my subsequent mistrial motion about
21 Investigator Spivey vouching essentially in his own way
22 for the credibility against our third-party guilt witness
23 and I said it -- I wholeheartedly believe it would
24 substantially affect the outcome of the verdict because
25 he's the lead investigator of the case, he's a police

1 officer. With that being the case, I would certainly say
2 that it invades the province of the jury. The jury gets
3 to make that credibility determination. You will instruct
4 them that they get to make a credibility determination.

5 So we're kind of in, as I said yesterday, a perilous
6 place. The case is about credibility and the jurors have
7 to decide who they believe is telling the truth and that
8 witness went too far with his opinion. That is not the
9 standard procedure of testimony. Not -- obviously way not
10 the standard procedure to get two hearsay documents in and
11 read verbatim. It's the State's case, they should have
12 called the witness and impeached him if that's what they
13 wanted to do. They certainly could have explained that
14 and I think that's -- I mean, that's a fair and accurate
15 thing. I don't think I'm saying anything improper by
16 making that. I mean, that -- those statements and letters
17 would not normally be admissible.

18 Again, just to show the further prejudice in addition
19 to all the other motions made, we did have Deloach and
20 Staley testify in this case. Deloach's jail phone calls
21 were given to me the morning of trial and Staley's phone
22 calls we don't know -- there weren't any available whenever
23 I sent the supplemental discovery motion last week, so one
24 of two things happened. Either they --

25 **THE COURT:** Wait, wait. You're getting to something

1 else now. Let's deal with the -- we're crossing up issues.

2 **MR. PHILLIPS:** I was just trying to show the snowball.

3 **THE COURT:** All right. Regarding the improper inverse
4 vouching, bolstering issue, I agree with you it was an
5 unusual way to present, but it is not bolstering. It's the
6 officer trying to explain -- he had a statement provided to
7 him and he obviously in investigating the case had other
8 people he was gaining information from and the statement
9 didn't fit the other evidence he had and so he was doing
10 his job investigating trying to cover all his bases and tie
11 up all the loose ends with the facts as he was gathering
12 them from talking to different people. And I think you're
13 absolutely right, it is a credibility case. I think
14 partially you opened the door a little bit. I'm going to
15 deny your motion for a mistrial, but I will make a curative
16 instruction about credibility if -- I don't want to
17 highlight it with a curative instruction, but if you want
18 me to give one I'll be happy to try to craft one that
19 would say the jury's job is to evaluate credibility and
20 there's a lot of issues of believability that have been
21 presented and they're to consider what's been presented
22 and not anybody's opinions of one witness's credibility
23 over another and that's why we had the witnesses
24 sequestered so there's not a gauging of criticism towards
25 someone else's credibility, and I'll be happy to give an

1 instruction to that end.

2 **MR. PHILLIPS:** Error preservation law says I have to
3 allow you to give the curative and then I have to object
4 to it and say it can't cure. So I have to ask for the
5 curative and then I'll have say that it won't cure it
6 because I absolutely believe that it won't cure it, but,
7 yes.

8 **THE COURT:** Okay. Well, do you think it would be
9 appropriate to give it first thing before the next
10 witness?

11 **MR. PHILLIPS:** Yes, Your Honor. That way it
12 doesn't --

13 **THE COURT:** That's kind of my thinking, too. That's
14 what I was thinking this morning when I was out for my
15 morning walk.

16 **MR. PHILLIPS:** So just to preserve, I don't believe
17 the curative will cure it, but I do want Your Honor to make
18 sure for error preservation purposes to give the curative.
19 And then I don't know whether with the curative Your Honor
20 wants to go into the fact that he is a law enforcement
21 officer and shouldn't be given any additional weight, he's
22 not an expert witness. And with my argument, all of what
23 Your Honor said was true, but there was that one portion
24 where he -- you could feel the tide turn when he gave this
25 kind of impassioned my belief, my opinion in this case.

1 You could feel it in the room of how convicted he was in
2 his opinion about the truthfulness of Alex Wallace and
3 that's the crux of the prejudice.

4 **THE COURT:** Well, what I am very cautious about doing
5 is I don't want to read out that testimony and say all
6 right, disregard that testimony just read. I will say in
7 my curative instruction something to the effect that any
8 testimony from any witness that says I found someone else
9 not to be believable is to be disregarded. You're to
10 believe the witness who testified as to what they did,
11 saw, gathered, not their opinion about any other witness.
12 Each witness will be considered independently. You're not
13 to believe one over the other and you're to consider all
14 the testimony. I'll be happy to try to do that.

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

16 **THE COURT:** I do not want to -- you to hand me the
17 transcript of what you consider the unfavorable testimony
18 of opinion and then tell the jury to disregard it. I think
19 that would be more harmful than helpful to your client.

20 **MR. PHILLIPS:** Yes, Your Honor. I'll leave it in your
21 discretion to craft a curative and then I would, of course,
22 say it's uncurable.

23 **THE COURT:** Okay.

24 **MR. PHILLIPS:** Thank you.

25 **MR. GRAHAM:** The only thing I would say, Your Honor,

1 as far as the statement by Alex Wallace that was
2 introduced, it's the State's contention that would have
3 been admissible even without his consent, that it is not
4 hearsay because it wasn't offered for the truth of the
5 matter asserted, it's just the fact that he said it, so I
6 think it is admissible and Your Honor didn't have to rule
7 on it because he agreed to it.

8 As far as being back in chambers, when we talked
9 back there, if I made a mistake, I apologize, but I truly
10 believed that Mr. Phillips wanted that letter in, which is
11 why I came in afterward and said what I said because that's
12 how I left it back there.

13 **THE COURT:** And, Mr. Graham, not in your defense, but
14 as you were walking away I think Mr. Phillips looked at me
15 and says I'll think about it or something to that effect as
16 we were walking back in the courtroom and I didn't stop you
17 when you were -- you made that comment. And I know you did
18 not hear that short statement he made when we were coming
19 back in the door.

20 **MR. GRAHAM:** But I apologize. I didn't do it on
21 purpose.

22 **THE COURT:** But he was ambivalent as to whether he
23 was gonna do it or not is what I remember back here.

24 **MR. PHILLIPS:** That's correct.

25 **THE COURT:** Okay. So I don't think there was any ill

1 will there, but I agree you were in a predicament.

2 **MR. PHILLIPS:** It's a hearsay document. When you say
3 it's not to prove the truth, he said -- then the witness
4 said it's not true. I mean --

5 **THE COURT:** It's not hearsay to them. It's hearsay to
6 you.

7 **MR. PHILLIPS:** It's a -- it's an intense Crawford
8 issue.

9 **THE COURT:** Yeah. Very much.

10 **MR. PHILLIPS:** Sixth Amendment. I mean, it's an
11 intense Crawford confrontational clause issue.

12 **THE COURT:** Okay. Are y'all ready to go?
13 Bring in the jury, please.

14 (Whereupon, the jury enter the courtroom at 9:54 AM.)

15 **THE COURT:** All right, folks. Sorry for the delay
16 getting in here. I had a matter I thought was from
17 Saluda County, but it was McCormick County, and I'm chief
18 administrative judge and when the managing of other cases
19 in the other counties come up, they've got to come to me.
20 They were in here for a few minutes longer than I
21 anticipated, so y'all had to wait on that. These folks
22 were waiting, too.

23 In any event, one instruction before we begin today.
24 The State's gonna call a couple of more witnesses this
25 morning I'm told. One thing I want you to understand is

1 at the very end of the trial my instructions will come to
2 you and probably the most important job y'all get to do
3 is answer questions of fact and in doing that y'all are
4 measuring, evaluating, the credibility of everyone who
5 testifies, how they act and what they look like, how they
6 sound, how they sit. Anything you want to use in your
7 evaluation of their credibility y'all are doing that.
8 That's why you're in here as a group watching.

9 Now what I want you to understand is the witnesses
10 aren't allowed to help you to do that, so if any witness
11 makes any comments about what another witness said or what
12 another person -- whether they're -- it's not -- I'm not
13 allowed either to say to you that third witness that
14 testified, I didn't believe a word that came out of his
15 mouth, I'm not allowed to say anything like that because
16 that's y'all's job is to evaluate the words out of their
17 mouths. However you do that is using your good common
18 sense and good judgment and so a person's comments helping
19 you do that or suggesting to you how to do that are kind of
20 improper and so I'm telling you y'all are gonna evaluate
21 the testimony and the evidence that's presented and not
22 anybody who's involved in the trial's opinion of one side
23 or the other because obviously we're in trial and one
24 side's presenting one case and the other side is presenting
25 a different case. Y'all's job is to determine the

1 believability and credibility of the side that prevails,
2 but it's the State's burden of proving the case and all the
3 elements beyond a reasonable doubt. I'm gonna define that
4 for you later, but it's the State's responsibility and
5 their burden, and I emphasize to you that Mr. Hart's
6 presumed innocent all the way through the trial until the
7 very end until his guilt is disproved -- or proved by the
8 State, dispelled, and the reasonable doubt is removed
9 totally by the State. So he's presumed innocent, he's got
10 nothing whatsoever to prove or disprove. Whether he
11 testifies or not is not something we can question. As a
12 matter of fact, if he doesn't testify, I will instruct
13 y'all that y'all cannot even consider or discuss his
14 decision to exercise his right to remain silent.

15 So, in any event, what I want to do is make certain
16 y'all understand that each witness is to be considered on
17 their own and any witness's opinion as to what some other
18 witness is saying or doing or his believability is y'all's
19 job to decide, not the witness's job to tell you how to
20 decide.

21 All right. Call your witness. Both sides records are
22 protected.

23 **MR. McNAIR:** Thank you, Your Honor. The State calls
24 Joshua Austin.

25 (Whereupon, Joshua Evan Austin was duly sworn by the

1 Clerk of Court.)

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

4 **THE WITNESS:** My name is Joshua Evan Austin,
5 A-U-S-T-I-N.

6 JOSHUA EVAN AUSTIN,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MCNAIR:

10 Q. Mr. Austin, where are you employed?

11 A. CTA/FOA. We do business as ClearTalk Wireless.

12 Q. All right. And were you subpoenaed to bring ClearTalk
13 records today for phone number 803-363-9597?

14 A. I was, yes.

15 Q. And have you been designated by ClearTalk as the
16 custodian of those records?

17 A. Yes.

18 Q. Do you have those records with you?

19 A. Yes, sir.

20 Q. And are those records kept and maintained in the
21 ordinary course of ClearTalk's business?

22 A. Yes, sir.

23 Q. And is all the information contained in those records
24 made at or near the time of the event they reflect?

25 A. Yes.

1 (State's Exhibit Number 77 was marked for
2 identification.)

3 **THE COURT:** All right. 62?

4 **THE COURT REPORTER:** No, 77.

5 **MR. McNAIR:** Your Honor, this is State's 77. It's two
6 packets and one sheet. I'm just gonna binder-clip them
7 together as one exhibit.

8 **THE COURT:** All right.

9 BY MR. McNAIR:

10 Q. All right, Mr. Austin. I'm gonna show you State's 77.
11 Are these the records that you just testified about?

12 A. Yes, sir.

13 **MR. McNAIR:** Your Honor, we'd offer State's 77 into
14 evidence at this point.

15 **MR. PHILLIPS:** No objection.

16 **THE COURT:** All right. 77 is admitted without
17 objection. The ClearTalk cellular wireless records.

18 (State's Exhibit Number 77, ClearTalk Wireless
19 records, was admitted into evidence.)

20 BY MR. McNAIR:

21 Q. And, Mr. Austin, can you tell us what those records
22 are?

23 A. Sure. The first one's a customer report for this
24 number, the second is a call detail report, and then the
25 third is an SMS detail report for the text messages.

1 Q. All right. And is there any name associated with that
2 account?

3 A. No.

4 Q. And what is the date and range of those records?

5 A. Let's see. The call log goes from April 1, 2013,
6 through April 10, 2013, and the text messages are April 1,
7 2013, through April 24, 2013.

8 **MR. McNAIR:** All right. I have no further questions,
9 Your Honor.

10 **MR. PHILLIPS:** Good morning. No questions.

11 **THE WITNESS:** Thank you.

12 **THE COURT:** Thank you for coming.

13 **THE WITNESS:** Thank you.

14 (Witness excused.)

15 **MR. McNAIR:** Your Honor, the State calls Jasmine Tell.
16 (Whereupon, Jasmine Tell was duly sworn by the Clerk
17 of Court.)

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

20 **THE WITNESS:** Okay. My name is Jasmine Tell, spelled
21 T-E-L-L.

22 JASMINE TELL,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. McNAIR:

1 Q. Ms. Tell, where are you employed?

2 A. I work at Verizon Wireless.

3 Q. All right. Were you subpoenaed to bring Verizon
4 records to court today for three different phone numbers?

5 A. Yes, I was.

6 Q. All right. What numbers are those?

7 A. The numbers are 803-239-6168, 414-216-1613, and
8 603-498-3318.

9 Q. All right. Do you also have phone records for a
10 number 803-465-7280?

11 A. Yes, I do.

12 Q. I'm sorry. I said three. So you have records for
13 four different phone numbers?

14 A. Yes.

15 Q. All right. And have you been designated as the
16 custodian of records for Verizon for those records?

17 A. Yes.

18 Q. And are all of those records kept and maintained in
19 the ordinary course of Verizon's business?

20 A. Yes.

21 Q. Is all the information in those reports made at or
22 near the time of the event?

23 A. Yes.

24 Q. Can you give me the records pertaining to the 603
25 number?

1 A. (Hanging.)

2 **THE COURT:** Are you going to mark the phone numbers as
3 separate exhibits?

4 **MR. McNAIR:** Yes, sir.

5 **THE COURT:** Excellent.

6 (State's Exhibit Number 78 through 81 was marked for
7 identification.)

8 BY MR. McNAIR:

9 Q. All right. I'm gonna show you State's 78, 79, 80 and
10 81, and those are the records you brought with you to court
11 today?

12 A. Yes, they are.

13 **MR. McNAIR:** Your Honor, we'd offer all of these into
14 evidence at this time.

15 **MR. PHILLIPS:** No objection.

16 **THE COURT:** All right. No objection. I want on the
17 record 78 is which number, 79 is which number, and that way
18 mine and Ms. Johnson's numbers agree.

19 **MR. McNAIR:** Yes, sir.

20 (State's Exhibit Number 78 through 81, Verizon
21 Records, were admitted into evidence.)

22 BY MR. McNAIR:

23 Q. All right. State's 78, what phone number is that?

24 A. It's 603-498-3318.

25 Q. All right. And 79?

1 A. 803-239-6168.

2 Q. And 80?

3 A. It's 414-216-1613.

4 Q. And 81?

5 A. 803-465-7280.

6 Q. All right. Let's start with the 603 number.

7 **THE COURT:** So I'm clear, that's 78?

8 **MR. McNAIR:** 78.

9 **THE COURT:** All right.

10 BY MR. McNAIR:

11 Q. And what records do you have for that phone number?

12 A. I have subscriber information which tells us who the
13 person who is responsible for the phone. I also have call
14 details, which tells the calls that were sent and received
15 from the phones and the dates and times. I also have text
16 messages, which tells the telephone numbers where the
17 numbers -- the messages were sent and received from. I
18 also have some text message content, which tells you what
19 the actual text message said.

20 Q. All right. Do you have a name associated with that
21 account?

22 A. Yes. The subscriber is Tevin Deloach.

23 Q. All right. And when was that phone number activated?

24 A. The 603, this phone number was originally set up on
25 April 2nd of 2013.

1 Q. Okay. And are you able to tell what type of phone
2 that was?

3 A. This was an iPhone 4S.

4 Q. Now at some point did that 603 number change to
5 another number?

6 A. Yes.

7 Q. Can you tell me when that was and what number that
8 changed to?

9 A. Yes. Let me get it. Okay. The number that's ending
10 in 3318 was changed on April 12, 2013.

11 Q. Okay.

12 A. And it was changed to 414-216-1613.

13 Q. All right. And you have the records pertaining to
14 that 414 number?

15 A. Yes, I do.

16 Q. And what exhibit number is that?

17 A. The 414 is Exhibit 80.

18 Q. All right. And you have a name associated with that
19 account as well that's the same name as the 603?

20 A. Yes, these are on the same account.

21 Q. Still Tevin Deloach?

22 A. Yes.

23 Q. All right. Now on the 239-6168 number, what exhibit
24 number is that?

25 A. 79.

1 Q. All right. Do you have a name associated with that
2 account?

3 A. Yes. I have Cynthia Johnson.

4 Q. And when was that phone activated?

5 A. That phone was activated on December 20th -- let me
6 make sure. No -- no, wait. Okay. I'm sorry. Yes. That
7 line was activated on December 20, 2012.

8 Q. All right. And the last number is the 803-465-7280?

9 A. Yes.

10 Q. What exhibit number is that?

11 A. Number 81.

12 Q. What's the name associated with that account?

13 A. That one is Tevin Deloach.

14 Q. And when was that phone activated?

15 A. This one was set up on October 4, 2012.

16 **MR. McNAIR:** Your Honor, I have no further questions
17 of this witness. Thank you.

18 **THE COURT:** Any questions?

19 **MR. PHILLIPS:** Just one.

20 CROSS-EXAMINATION

21 BY MR. PHILLIPS:

22 Q. The 603 number, it was activated on which day?

23 A. Let's see. The original setup date was April 2nd of
24 2013.

25 **MR. PHILLIPS:** Thank you.

1 **THE COURT:** All right. You may step down.

2 (Witness excused.)

3 **MR. GRAHAM:** The State calls Brian Travis.

4 (Whereupon, Brian Travis was duly sworn by the Clerk
5 of Court.)

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

8 **THE WITNESS:** Brian Travis, T-R-A-V-I-S.

9 BRIAN TRAVIS,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. GRAHAM:

13 Q. Mr. Travis, where are you employed and what do you do?

14 A. I'm a detective at the Lexington County Sheriff's
15 Department.

16 Q. And how long have you worked there?

17 A. For ten years.

18 Q. And what have you done there during your time?

19 A. I've worked as a road deputy, a field training
20 officer, a property crimes detective, a major crimes
21 detective, and a law enforcement intelligence analyst.

22 Q. What is a law enforcement intelligence analyst?

23 A. It's a detective in our criminal intelligence unit
24 that works with major crimes, property crimes, the road
25 and the command staff, to provide intelligence and analysis

1 for the crimes that are going on and workload assessments,
2 manpower distribution, that kind of thing.

3 Q. How long have you done that?

4 A. A little over three and a half years.

5 Q. As part of that job, are you also involved in cell
6 phone call analysis and cell call mapping?

7 A. Yes, I am the person at the department that handles
8 all the call detail record mapping that involves the calls
9 and the towers.

10 Q. Can you -- in general terms, would you describe to the
11 jury what a call analysis is and what cell tower mapping
12 is?

13 A. When you subpoena phone records from the phone
14 company, they provide you with a multitude of files. The
15 ones that we are particularly interested in are the CDR,
16 call detail record, which is a list of the calls.
17 Depending on the company, the texts may also be on that
18 or they may be in a separate file, and incoming, outgoing,
19 when they happened and what tower was used or what cell
20 site was used depending on which company names it and then
21 the cell site locations or tower locations in the file that
22 list what those towers are and where they are located by
23 either GPS location or latitude, longitude or latitude,
24 longitude and a physical address.

25 Q. How about call analysis, what is that?

1 A. Call analysis is taking those records and looking at
2 seeing who the people are calling, when they're calling
3 them, where they're calling them from and then going
4 through and finding patterns within that and recognizing
5 those patterns.

6 Q. What's your educational background?

7 A. I have a bachelor's and master's degree in physics
8 from the University of South Carolina.

9 Q. And what, if any, specialized training have you had
10 in cell phone call analysis and cell phone tower mapping?

11 A. I have basic and advanced user certifications from
12 Pen-Link. I've also been trained by GeoTime for their
13 software. CellHawk Analytics, I've been trained to use
14 their software. I've gone to two week long courses by the
15 National Association of Crime Analysts with a focus on
16 cellular mapping and cell phone call detail record
17 analysis. I've also gone to some by the Public Agency
18 Training Council and some other local agencies that have
19 sponsored trainings.

20 Q. Have you ever been qualified as an expert in the state
21 of South Carolina in call analysis and cell phone mapping?

22 A. Yes, I have.

23 Q. How many times?

24 A. Three times.

25 **MR. GRAHAM:** Your Honor, the State would offer

1 Detective Brian Travis as an expert in the field of call
2 analysis and cell phone mapping.

3 **THE COURT:** Any voir dire for Mr. Travis?

4 **MR. PHILLIPS:** None, Your Honor.

5 **THE COURT:** He'll be so qualified in the field of
6 cell phone data and cell tower analysis. Is that right?

7 **MR. GRAHAM:** Call data analysis and cell tower
8 mapping.

9 **THE COURT:** Okay. In that field.

10 **MR. PHILLIPS:** In the limited scope based on his
11 training, what he's been qualified for.

12 **MR. GRAHAM:** Did you want to give an instruction at
13 this point or just go on?

14 **THE COURT:** No, go ahead. I think I gave the
15 instruction that if someone's qualified as an expert in a
16 field they can offer opinions to the subject matter in that
17 field of expertise. They can give factual testimony also,
18 but also opinion testimony as to what the facts show.

19 **MR. GRAHAM:** Thank you, Your Honor.

20 BY MR. GRAHAM:

21 Q. Brian -- or Detective Travis, let me hand you several
22 documents and ask you if you recognize them and had an
23 opportunity to review them. State's Number 45 is AT&T
24 records for the telephone number of 803-348-5324. Do you
25 recognize that?

1 A. Yes.

2 Q. State's 78, I believe, is Verizon phone records for
3 the numbers 603-498-3318. Have you seen those records
4 before?

5 A. Yes, I have.

6 Q. 80 is Verizon records for 414-216-1613. Do you
7 recognize those?

8 A. Yes, sir.

9 Q. State's 81 are Verizon records for 803-465-7280?

10 A. Yes.

11 Q. 79, I believe, are also Verizon records for the number
12 803-239-6168?

13 A. Yes.

14 Q. 77, I believe, are ClearTalk records for the number
15 803-363-9597?

16 A. Yes.

17 Q. And you've had an opportunity to look at and review
18 all those records; is that correct?

19 A. Yes, I have.

20 Q. When you look at reviewing records, what kind of
21 information are contained in those records?

22 A. It lists the calls that are going in, coming out,
23 dates, times, the tower and sector that they're used off
24 of. Depending on the phone company, they can also include
25 text message, the length of the seizure, which is how long

1 it takes to connect, the length of the -- the duration of
2 the call itself, and then, as I said before, depending on
3 the file, some are all one file and they'll give you the
4 tower information and some are separate that you have to
5 compare the two files.

6 Q. And some files actually contain text content; is that
7 true?

8 A. Yes.

9 Q. Let me show you exhibits 70 through 76 and ask if you
10 recognize these? And actually --

11 **MR. PHILLIPS:** Your Honor, one thing we discussed I'd
12 like to discuss real quick.

13 **THE COURT:** Okay.

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

15 **THE COURT:** All right. Ms. Williams, I need to put
16 something on the record. Y'all step in the jury room.
17 I'll have you back out in a few minutes. Don't discuss
18 the case.

19 (Whereupon, the jury retires to the jury room at
20 10:19 AM.)

21 **THE COURT:** All right.

22 **MR. PHILLIPS:** Yes, Your Honor. Again, back with me
23 trying to look like I'm hiding something in front of the
24 jury. The State has created these documents that they're
25 gonna present into evidence that are not authentic

1 documents. It's documents they're using based on the cell
2 phone records. I discussed this with the solicitor prior
3 to trial and asked that he remove John Hart's name from the
4 numbers listed because those numbers as in the cell phone
5 records provided do not have it listed as John Hart's name.
6 The custodians came in here and testified, I did not object
7 to it, but there's nothing other than testimony linking
8 that number to John Hart. The State cannot put through a
9 call expert John Hart's name on that number. That's a
10 credibility issue just like we had yesterday and just like
11 I'd argued for the mistrial. That's a credibility issue
12 that the jury gets to decide. They can show that number
13 348 made these call and when they did it and who they
14 called, and I have no problem with that, but they can't
15 put John Hart's name on 348.

16 **THE COURT:** Okay. I understand. You don't have to
17 go -- all right. Mr. Graham, tell me about this -- this
18 exhibit.

19 **MR. GRAHAM:** Through testimony we've established that
20 that number belongs to him. If I could -- if you want me
21 to change the title, I can say testimony established the
22 contact name. I can write that on each one. But, I mean,
23 testimony has shown that that number belongs to him.

24 **THE COURT:** What he's talking about is this document
25 looks like it's official and it came from Verizon and they

1 had the name. That's what he's trying to get away from.

2 **MR. PHILLIPS:** Right. The argument would be under
3 403 it's misleading to the jury.

4 **THE COURT:** I've got your argument and I want to keep
5 -- I'm kind of going with you.

6 **MR. PHILLIPS:** I know. I'm not gonna dissuade you.

7 **THE COURT:** Don't talk me out of it.

8 **MR. GRAHAM:** He's gonna say that he created it and I
9 can even say through testimony those numbers have been
10 developed related to those -- linked to those people.
11 However Your Honor wants me to reflect that on there, I'll
12 be glad to do it, but if there's not some indication of
13 what the testimony was you're expecting the jury to
14 remember five or six different numbers and who they belong
15 to -- or who the evidence says they belong to, which I
16 don't -- it's confusing to me. I have no question that
17 they're not gonna be able to remember the five or six
18 numbers and who the evidence -- or who the testimony said
19 they relate to.

20 **MR. PHILLIPS:** It invades the province of the jury.
21 I know. I know.

22 **THE COURT:** I tend to agree with Mr. Phillips, but
23 I don't know how you can present it in summary. This is
24 what he did trying to analyze and keep the numbers straight
25 for his job and that's what you're trying to do. I think

1 you're allowed to do that. I'm just not sure you can do
2 it in this fashion.

3 **MR. PHILLIPS:** If it's admitted into evidence, it
4 goes back to the jury room and they see that -- where it
5 has John Hart's name linked to 348 and that's --

6 **THE COURT:** All right. I've got it. I can't think
7 when you're -- I'm trying to listen. I'm sorry. I'm
8 trying to think of a way to help solve this problem.

9 All right. Let me think about it. I want to step
10 in the back. I've got to use the restroom real quick, so
11 everybody stand at ease for a few minutes.

12 **MR. GRAHAM:** Your Honor, one thing I thought that we
13 could do, I don't know whether it would fix it or not, I
14 guess it's still testimony, but, I mean, two -- Jessica
15 Hart {sic} had the two numbers that we're associating with
16 Mr. Hart, the 348 and the 603 number. She testified that
17 they were in her phone as Hart and My Baby and then the
18 detectives saw that and testified to what they saw. I
19 don't know whether that changes it or whether it's still
20 -- short of an official record maybe it's not good enough.
21 I don't know.

22 **MR. PHILLIPS:** When you have Rule 1006, I believe, is
23 the appropriate one, when you're able to boil down a bunch
24 of stuff and put it into, you know, a summary it's got to
25 accurately reflect what the records have and there's

1 nothing in the records that has John Hart's name listed on
2 it.

3 **THE COURT:** All right.

4 (Recess taken.)

5 **BAILIFF:** All rise.

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

7 All right. Here's my suggestion. I tend to agree
8 with Mr. Phillips. They look like official records and
9 I think putting people's names on them based upon the
10 testimony makes these look more official and gives
11 them extra credibility. I think you can use them as
12 demonstrative aids. I would be reluctant to admit them
13 into evidence just because of the appearance because to
14 me -- perhaps they can redact and take the names off and
15 write them on there as he's testifying as this is who I
16 assigned the number to, whether it be My Baby or Hart or
17 whomever, and writing the numbers in there.

18 **MR. PHILLIPS:** I think that actually cures it because
19 he'll say, you know, based on the investigation we linked
20 this number to this person, then it's an explanation, and
21 then that's fine. And then that's a demonstrative aid.

22 **THE COURT:** That's kind of my thinking as to how to do
23 it. If y'all can do that without too much trouble, that's
24 what I think would cure the look of the official business
25 record.

1 **MR. GRAHAM:** Could we not just write through the
2 investigation above each one? I mean, just put it at the
3 top? I guess I'm --

4 **THE COURT:** I know you're trying not to kill more
5 trees.

6 **MR. GRAHAM:** I guess I'm trying to speed it up as
7 opposed to us having to reprint everything out.

8 **THE COURT:** Well, y'all haven't been worried about
9 speed yet.

10 **MR. PHILLIPS:** And I can't be. Mr. Hart's facing
11 life in prison. I can't be.

12 **THE COURT:** I understand. I'd rather write it in
13 there than the name in there. I think that would be
14 cleaner.

15 **MR. GRAHAM:** So just write and -- just so I'm --
16 sorry for interrupting, Your Honor.

17 **THE COURT:** Here's what I think, Mr. Graham. If the
18 names were not on here, just deleted, and then the witness
19 could say -- basically write what he's got back on here in
20 his own pen as you're questioning him. That would be a
21 demonstrative aid that he -- on this number I assigned it
22 to John Hart and write it in there and that way it isn't
23 like an official business record.

24 **MR. PHILLIPS:** And they wouldn't be admitted into
25 evidence. They're demonstrative aids. Is that correct,

1 Your Honor?

2 **THE COURT:** I think that can come in when it's just
3 his testimony. It's like a drawing, isn't it? That's
4 what he did.

5 **MR. PHILLIPS:** Right. I mean, if he got up on the
6 easel and he wrote that this is the number we got from
7 the records, this is -- and then through our investigation
8 this is John Hart's number, we couldn't mark that piece of
9 paper on the easel.

10 **THE COURT:** We could. You'd object to it, but it
11 could be done.

12 **MR. PHILLIPS:** Well, of course.

13 **THE COURT:** I've seen it done both ways.

14 **MR. PHILLIPS:** Right. So, I mean, I would say,
15 again, under Rule 1006 what Your Honor said to do as far
16 as making the changes is appropriate and we would argue
17 that it's fine as a demonstrative aid, but not admissible
18 into evidence.

19 **MR. GRAHAM:** So if I understand, Your Honor, on those
20 -- the last two documents in front of you wouldn't apply
21 to that, Your Honor, I don't believe.

22 **THE COURT:** I only looked at 70.

23 **MR. GRAHAM:** They don't have the names on them.

24 **THE COURT:** These look like phone records.

25 **MR. GRAHAM:** Tevin Deloach, it was testified to on

1 his account. I mean, the account rep said the number that
2 he gave that said it was his from the original one had his
3 name on the account.

4 **THE COURT:** Yeah, so that would be --

5 **MR. GRAHAM:** So we would leave that one on there.

6 **THE COURT:** -- that's okay.

7 **MR. GRAHAM:** The rest of them you want us to remove
8 all of them and then write them in? Can we go ahead and
9 just write them in in pen for the witness or do you want
10 that done in front of the jury?

11 **THE COURT:** I don't know. I wish y'all could agree
12 to it. Y'all are killing me. I've never had this and I
13 don't really know what to do with it. I'm trying to make
14 suggestions and I'm hoping y'all will run with it.

15 **MR. PHILLIPS:** Well, I'm sorry, Your Honor. We did
16 discuss this pre-trial.

17 **THE COURT:** I didn't discuss it.

18 **MR. PHILLIPS:** No, I'm not -- I'm not saying you,
19 Your Honor. I'm sorry.

20 **THE COURT:** I'm overloaded right now. I'm trying to
21 -- I'm trying to help y'all and y'all are not helping me.

22 **MR. GRAHAM:** What if we did this? What if we took
23 all the names off except for Deloach and there was another
24 piece of paper that said testimony revealed and have the
25 numbers together showing the number and the name, but not

1 on that piece of paper. I mean, there's got to be some
2 way for me to explain to the jury who all this -- to
3 summarize it. It's overwhelming.

4 What do you want me to do, Dayne? There's got to be
5 some way for me to be able to do that.

6 **MR. PHILLIPS:** I thought the judge gave you a way.

7 **MR. GRAHAM:** Okay. When -- he needs to write it on.
8 Do you want him to write it on in front of the jury while
9 they're sitting there or do you want him to go ahead and
10 handwrite it on before?

11 **THE COURT:** I think he writes it while the jury's
12 sitting there. I think those will be demonstrative aids
13 and I would be probably reluctant to send them back to the
14 jury. The ones that are official records like this, I
15 don't have near as big an issue because those are actual
16 accounts and actual names.

17 **MR. GRAHAM:** All right. Let me go fix these.

18 **THE COURT:** Okay.

19 (Pause in proceedings.)

20 **THE COURT:** All right. Are we ready?

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

22 **THE COURT:** Y'all bring in the jury.

23 (State's Exhibit Number 70 through 76 were re-marked
24 for identification.)

25 (Whereupon, the jury returns to the courtroom at

1 10:46 AM.)

2 **MR. GRAHAM:** Your Honor, can I take a minute and show
3 these to Mr. Phillips?

4 **THE COURT:** Sure.

5 **MR. PHILLIPS:** Thank you.

6 BY MR. GRAHAM:

7 Q. Detective Travis, during the course of this trial
8 there's been testimony regarding certain numbers and who
9 they belong to. Are you aware of that?

10 A. Yes.

11 Q. That obviously is for the jury to decide whether
12 they believe that testimony, but let me summarize it and
13 make sure that I'm correct. 803-348-5324, there's been
14 testimony that that belongs to Mr. John Hart, the
15 Defendant. Is that your understanding?

16 A. Yes.

17 Q. 803-363-9597 is Paula Justice. Is that your
18 understanding?

19 A. Correct.

20 Q. 603-498-3318 is John Hart. Is that your
21 understanding?

22 A. Say that number again.

23 Q. The 803-498-3318.

24 A. Correct.

25 Q. The 803-404-4793 is Jessica Ussery?

1 A. Correct.

2 Q. And the 803-239-6168 is Jeremy Washington?

3 A. Yes.

4 Q. And then finally the 414-216-1613 there's also
5 testimony relating that to Mr. Hart. Is that your
6 understanding?

7 A. Yes.

8 Q. All right. From the records themselves for
9 803-465-7280, that was a Verizon record, the account name
10 on that was Tevin Deloach. Is that your understanding?

11 A. 465-7280?

12 Q. Yes.

13 A. Yes.

14 Q. I'm gonna hand you State's 70 through 75 and ask you
15 are those documents that you prepared to explain some call
16 analysis regarding all these records in this case?

17 A. Yes, I did.

18 Q. All right. On State's -- between those numbers
19 Mr. Deloach's name has been typed in there as that was
20 testified to by a Verizon custodian as the accountholder.
21 That's the 803-465-7280?

22 A. Yes.

23 Q. The other numbers have been color-coded on there for
24 the numbers that are known; is that correct?

25 A. Yes.

1 Q. At this time would you go through those exhibits and
2 use a pen and handwrite in under the contact name what the
3 testimony has revealed as far as who those numbers belong
4 to?

5 A. (Witness complies.)

6 Q. And then on that one if you'd just write the word
7 "testimony" and put his name.

8 A. (Witness complies.)

9 Q. All right. Looking at State's 70 through 74, are
10 those -- what are those?

11 A. They're summaries of the number of communications
12 between the numbers that we revealed were pertinent in the
13 investigation.

14 Q. What records did you look at?

15 A. We looked at the phone records for -- and I'm just
16 gonna refer to them by the last four numbers of the phone.
17 7280, 5324, 9597, 3318, 4793 and 6168, and 1613.

18 Q. Let me give you a laser pointer and let's go through
19 these. These are not official documents by the phone
20 company. These are things you prepared as an expert to
21 help explain to the jury what you saw in the records; is
22 that correct?

23 A. Correct.

24 Q. Okay. State's Number 70, what is that? What does
25 that mean?

1 A. The records came from Verizon Wireless for the phone
2 number 803-456-7280 and the dates of the records that
3 Verizon provided were from 4-3-2013 at 12:58 AM until
4 4-11-2013 at 11:14 PM. Tevin Deloach is the owner of that
5 phone. And then through those records actually counting
6 the number of communications for each number, the number of
7 communications is then listed. Handwritten in under the
8 contact name is through the investigation what we were able
9 to attribute those phone numbers to -- or who we were able
10 to attribute them to.

11 Q. All right. So what does it mean by number of
12 communications?

13 A. Either calls or texts or both depending on what the
14 records provided. Not all of the records had text
15 messaging included.

16 Q. The number -- so these are from Tevin Deloach's
17 records --

18 A. Correct.

19 Q. -- from Verizon Wireless. The first number going down
20 is in red 803-348-5324 and testimony has revealed by your
21 handwriting that that number's been associated with John
22 Hart; is that correct?

23 A. Correct.

24 Q. And why is -- what's the purpose of color coding
25 these?

1 A. Just to make it easier to reference the phone numbers.

2 Q. Okay. So when you reviewed Mr. Deloach's records, how
3 many contacts did you find between himself and John Hart's
4 number through testimony associated with the 348-5324
5 number?

6 A. Thirteen.

7 Q. Moving on down to the blue one, the 363-9597, which
8 testimony has revealed related to Paula Justice, how many
9 did you see between Mr. Deloach and her during that time
10 period?

11 A. Zero.

12 Q. Moving on down to the yellow, 603-498-3318, which
13 is a Verizon number that testimony has stated belongs to
14 Mr. Hart, how many communications did you see between
15 Mr. Deloach and that number associated with Mr. Hart?

16 A. 112.

17 Q. Moving on down, the 803-404-4793, testimony linking
18 that number to Jessica Ussery, how much communication
19 between Tevin Deloach and her?

20 A. None.

21 Q. How about the final one on there, the 803-239-6168,
22 the number that Detective Lutz of Richland County testified
23 belonged to Jeremy Washington?

24 A. Zero.

25 Q. State's Number 71, that's Verizon Wireless records,

1 too; is that correct?

2 A. Correct.

3 Q. For which phone number?

4 A. 603-498-3318.

5 Q. Which testimony has linked to Mr. Hart; is that your
6 you understanding?

7 A. Yes.

8 Q. What is the date range for these records?

9 A. 4-4-2013 from 1:06 AM to 4-12-2013 at 10:11 AM.

10 Q. How many contacts were there between that 603 number
11 that testimony has linked to Mr. Hart and the other phone,
12 the 803-348-5324 phone?

13 A. There were six.

14 Q. Below that, Tevin Deloach's phone, 803-465-7280, how
15 much contact?

16 A. 162.

17 Q. The 803-363-9597, the number linked to Paula Justice?

18 A. Zero.

19 Q. The 414-216-1613, the number -- other number linked to
20 John Hart?

21 A. Zero.

22 Q. All right. The 603 number became the 414 number; is
23 that correct?

24 A. Correct.

25 Q. Continuing on down, the 803-404-4793 number that's

1 been linked to Jessica Ussery?

2 A. 185.

3 Q. And, finally, the 803-239-6168, the number that's been
4 linked to Jeremy Washington?

5 A. 44.

6 Q. All right. Now the 414 number, the testimony is that
7 -- from Verizon Wireless was that was the same phone, but
8 it's a different number. That previous screen with the 603
9 number then became the 414 number; is that correct?

10 A. Correct, the number was changed, but the account is
11 the same.

12 Q. So when we ended the time on State's 71 at 10:11 AM,
13 was that the last call or last contact under the 603
14 records?

15 A. Correct.

16 Q. When it changed to 414, is that where State's 72 picks
17 up?

18 A. Correct.

19 Q. All right. Would you explain what this shows?

20 A. It's gonna be the Verizon Wireless records for
21 414-216-1613. There's a lapse of three minutes as, of
22 course, the system is changing the numbers over and most
23 likely, you know, they didn't receive any communications
24 or the system couldn't translate them because of the change
25 in number, so it picked up at 10:14 AM and went through

1 4-19-2013 at 11:26 PM.

2 Q. And would you explain the number of contacts between
3 the various people?

4 A. For the 803-348-5324, which testimony has linked to
5 John Hart, there were none. For 803-465-7280, which is
6 Tevin Deloach's number, there were 67. The 603-498-3318,
7 which is the number this previously was, there were zero.
8 803-363-9597, which has been linked to Paula Justice, there
9 were none. 803-404-4793, which through testimony is linked
10 to Jessica Ussery, there were 330. And then 803-239-6168,
11 that's been linked to Jeremy Washington, there were none.

12 Q. State's Number 74, what does that show?

13 A. These are taking the records from AT&T Wireless for
14 803-348-5324 from the time period of 4-3-2013 at 12:03 AM
15 until 4-11-2013 at 11:22 PM and summarizing their
16 communications between those numbers.

17 Q. Would you step through and go through who the contacts
18 were with?

19 A. The number of communications for 803-363-9597, which
20 has been attributed to Paula Justice, there were 260. For
21 803-465-7280, which is Tevin Deloach's number, there were
22 20. The 603-498-3318, which testimony has tied to John
23 Hart, there were four. And for 414-216-1613, also through
24 testimony attributed to John Hart, there were zero.
25 803-404-4793 through testimony linked to Jessica Ussery

1 was 81. And for 803-239-6168, which through testimony was
2 linked to Jeremy Washington, there were zero.

3 Q. State's Number 73. What does that document show?

4 A. This is taking the numbers 803-348-5324, 603-498-3318
5 and 414-216-1613, which through the testimony was linked
6 to John Hart, and looked at their common calls or common
7 communications between the numbers.

8 Q. What's the purpose of doing that?

9 A. When we're looking -- doing an analysis of call detail
10 records, we look at what's typically referred to as pattern
11 of life or a pattern of calls. People generally call the
12 same people repetitively. You know, family tends to be top
13 contacts. If you're married, it's your spouse. It could
14 be your parents, your best friends. But there's always a
15 -- there's always common calls. You might have common
16 friends, the same addresses, so you look and see where
17 those commonalities are and that helps lend an idea of
18 who's using that phone as well.

19 Q. So, for instance, and I don't think you wrote it in
20 here, but 803-404-4793, that is a number that's been linked
21 through testimony to Jessica Ussery; is that correct?

22 A. Correct.

23 Q. So tell me what that means if you read across those
24 three phone records.

25 A. So for each one of the phones they made contact with

1 the number attributed to Jessica Ussery 81 times with the
2 5324 number, 185 times for the 3318 number, and 330 times
3 for the 1613.

4 Q. Let me show you two other items and ask if you
5 recognize these, 75 and 76?

6 A. Yes, I do.

7 Q. And State's 75, what is that?

8 A. It is the text -- the actual text messages between
9 803-348-5324 and 803-363-9597.

10 Q. And those numbers are associated with who through
11 testimony?

12 A. Through testimony, 803-348-5324 is to John Hart, and
13 803-363-9597 is to Paula Justice.

14 Q. That's actually the phone that you found on her body
15 at the hospital; is that correct?

16 A. Correct. And was able to verify that was the number
17 attributed to that physical phone.

18 Q. State's 76?

19 A. It is a list of the communications between
20 803-239-6168, which is attributed to Jeremy Washington,
21 and 603-498-3318, which is attributed through testimony to
22 John Hart.

23 MR. GRAHAM: Your Honor, the State would offer 75 and
24 76 into evidence.

25 MR. PHILLIPS: No objection.

1 **THE COURT:** 75 and 76 are in.

2 (State's Exhibit Number 75, text messages, and 76,
3 call detail records, were admitted into evidence.)

4 BY MR. GRAHAM:

5 Q. State's Number 75. Again, State's 75. So when we see
6 the "from" column, for instance, the first one, what number
7 is there?

8 A. That's the originating number, so for the first one
9 it would be 803-348-5324 is sending the text message.

10 Q. And the testimony has revealed that that belongs to
11 Mr. Hart; is that correct?

12 A. Correct.

13 Q. The "to" number, what is that first one?

14 A. That's gonna be who received the text message and
15 that's gonna 803-363-9597, which through testimony has been
16 attributed to Paula Justice.

17 Q. Now we're actually seeing -- now where it says text
18 content, what is that?

19 A. That is actually what was typed into the phone and
20 sent as the text message.

21 Q. Okay. So actually when you were reviewing, I believe,
22 the ClearTalk records for the number associated with Paula
23 Justice, this information was contained in those records;
24 is that correct?

25 A. Correct. ClearTalk provided the text message content.

1 Q. All right. The date and time over on the left, what
2 does that indicate?

3 A. That's gonna be -- from the phone records from
4 ClearTalk, that's gonna be the time for each one of these
5 text messages that they came into the -- or outwent from
6 the 363-9597 number.

7 Q. Okay. What's the date for those records?

8 A. 4-10-2013.

9 Q. Okay. The first text says 19:30. What does that
10 mean?

11 A. It's military time, so 19:30 is 7:30 PM.

12 Q. And then the last text says 22:27. What would that
13 mean?

14 A. It would be 10:27 PM.

15 Q. If you could step through and explain from testimony
16 who is texting who and what is said.

17 A. From testimony, Mr. Hart messages Ms. Justice and says
18 "What's up". She responds back and says "How long", which
19 is represented by the "LG". She then sends another, "Text
20 me when you on the way". She then sends another that says
21 "I'm at my room". She then sends another that says "How LG
22 you going to be", which is how long you going to be. She
23 then sends another one that says "Can you bring me a 2-O".
24 She then says "Thank you. I'm going to hook up -- HK U --
25 up tonight except for my RM rent for you helping me". Then

1 she sends another one "C U when you get here". She sends
2 another one, "How long before I need to open my door". She
3 sends another one, "I opened my doors open" -- "I opened --
4 my door's open. About how long?" She sends another, "I
5 don't like when you do things like this. You got me
6 waiting and you say you coming, but it don't -- ", and then
7 it cuts off. "It don't LK like it". Then she sends
8 another one, "You not answering, that makes me think that
9 you not coming, what's up", and then the number attributed
10 to Mr. Hart texts back, "To me call".

11 Q. State's Number 76, I believe you stated that that was
12 what?

13 A. That is a list of the communications between the
14 603 number and the 803-239-6168 that's attributed to
15 Mr. Washington.

16 Q. I don't think that we're gonna be able to see that.
17 Let me hand that to you. So whose records were those from?

18 A. They're from the records for 603-498-3318, which
19 testimony has linked to Mr. Hart.

20 Q. Okay. That would have been from the Verizon Wireless
21 records; is that correct?

22 A. Correct.

23 Q. All right. And whose number did you isolate on
24 there?

25 A. The 803-239-6168, which through testimony is

1 attributed to Jeremy Washington.

2 Q. And what's the date of records that you have there?

3 A. From 4-8-2013 until 4-11-2013.

4 Q. And did you look at calls or texts?

5 A. It was -- these records only had calls.

6 Q. So between the date of 4-8-13 and 4-11-13, so in
7 four days, eight, nine, ten, eleven -- how many individual
8 contacts or calls did you see back and forth between them?

9 A. 44.

10 Q. And was there any calls on the night of the 10th
11 itself of 2013?

12 A. Yes, there were.

13 Q. Would you say the times of the calls on the night and
14 the direction?

15 A. Starting at what time on that date?

16 Q. Starting at approximately 10:00 PM.

17 A. There was a call at 23:14, which is 11:14 PM.

18 Q. Were there any other calls that night?

19 A. Not after 10:00 PM.

20 Q. Let me show you several other documents -- or actually
21 posters. State's 64, 65, 68, 67, 66, 63, and 69, and ask
22 if you recognize these and did you, in fact, make these?

23 A. Yes, I created all these.

24 Q. And would they assist you in explaining to the jury
25 what you found as far as mapping?

1 A. Yes, they would.

2 Q. Can you explain what we mean by mapping?

3 A. What I did, was I used a program made by GeoTime called
4 their Call Record Tool to combine the tower files and the
5 call detail records into singular line items and I then
6 took a GIS mapping program called ArcMap and used the
7 latitude and longitude from each one of those calls to put
8 them on a map during the specified timeframes on each map.
9 Also along with that it gives a sector of the tower that is
10 used or the cell site that's used and an azimuth, which is
11 the direction that the antenna points, and we were able to
12 also include that on the mapping to show which direction
13 the antenna was pointing when the call was picked up.

14 Q. Would these maps assist you in explaining what you saw
15 on the records?

16 A. Yes, they would.

17 **MR. GRAHAM:** Your Honor, the State would offer these
18 into evidence.

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

20 **THE COURT:** All right. And it's all of them. Fair
21 enough.

22 (State's Exhibit Number 63 through 69, cell site call
23 maps, were admitted into evidence.)

24 **THE COURT:** He can come down and testify closer to the
25 map perhaps.

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

3 **THE COURT:** Ladies and gentlemen, so y'all understand,
4 Investigator Travis created these maps. They reflect
5 generalities. They're not -- let him -- he'll explain it
6 to you, but they're -- it's my understanding from what
7 I've been told there's not exact satellite active -- you
8 can see when somebody's on the telephone on the ground at
9 a specific time. That's not possible, so it's the best you
10 can do with the data provided. That's the best I can tell
11 you.

12 BY MR. GRAHAM:

13 Q. All right. State's Number 64, what is this document?

14 A. So on this one we took the cell phone records for
15 803-348-5324, 803-465-7280 and 603-498-3318 from 4-10-2013
16 at 3:17 PM until 4-10-13 at 8:11 PM and mapped them with
17 the locations from the towers that they were utilizing for
18 those records.

19 Q. All right. Underlined in red, the 348-5324 number,
20 again, through testimony who is that number linked to?

21 A. It is linked to John Hart and it is underlined in red
22 because each one the cell sites and times are in red boxes.

23 Q. Down here below there is like -- what are these down
24 here at the bottom of the exhibit?

25 A. This is a summary of those actual transactions, so the

1 ones in the color key with a red box are assigned to the
2 803-348-5324 and also responded with the red cell sites and
3 red labels. The ones with a yellow color key are attached
4 to 603-498-3318 number and they'll have a yellow cell site
5 location and yellow boxes for the times.. And then the
6 green color key will be attributed to 803-465-7280 and they
7 will have a green cell site and green labels and this will
8 persist through all of the maps.

9 Q. The second number up here, the 465-7280 underlined in
10 green, that's the number that Verizon Wireless testified
11 belonged to who?

12 A. Tevin Deloach.

13 Q. The 603-498-3318 under yellow, the testimony revealed
14 that that number belonged to who?

15 A. John Hart.

16 Q. And what's the purpose of this map?

17 A. The purpose of this map is to show that the number we
18 -- that Verizon testified belonged to Tevin Deloach, he was
19 at work at that time and so we checked his location and his
20 work is right near where -- across the street from where
21 this cell tower is located and so during the time his work
22 records indicate he was at work, the cell phone records say
23 the same. The other two records for 803-348-5324 and
24 603-498-3318 were not anywhere near the 465 number, so
25 those phones could not have been used by the same person.

1 Q. State's Number 65, what is this map?

2 A. It is the three numbers from the last map, as well as
3 803-363-9597, which through testimony is attributed to
4 Paula Justice, on 4-10-2013 from 10:43 PM until 11:02 PM.

5 Q. All right. So the red number testimony revealed
6 belonged to who?

7 A. John Hart.

8 Q. And the green number?

9 A. Tevin Deloach.

10 Q. The blue?

11 A. Paula Justice.

12 Q. And the yellow?

13 A. John Hart.

14 Q. So what do we see on this map?

15 A. So we're looking at a specific time period now and
16 there two red lines on this map. All those specify the
17 azimuth or the direction the antenna points. They in no
18 way tell us where the person is, it just tells which
19 antenna those calls are hitting off of. Each antenna is
20 gonna have a certain width that it covers, so it doesn't
21 mean they're exactly along the lines and we're not saying
22 where that cone is because without going out and measuring
23 it there's no exact way to tell where that cone begins and
24 ends.

25 Q. When you talk about a cell tower, that's when you

1 drive down the road and see a tower, correct?

2 A. There's -- they used to be set up as towers. They
3 were all towers back when cellular networks were devised.
4 Prior to that there was one omni directional antenna, so
5 the farther away you got the worse the connection got and
6 then once you got too far, the call ended, you'd have to
7 connect to the next tower and redial. They came up with
8 the cellular concept, which instead of having an omni
9 directional antenna, they would take three directional
10 antennas and place them to create hexagonal cells, which is
11 where the name cellular network came from. So generally
12 all your towers, which are now commonly referred to as cell
13 sites, have three antennas. Some do have more, some do
14 have less depending on many factors including geographic,
15 population, how many calls are hitting off of it, so they
16 create a cell to give constant coverage so you're able to
17 keep that call going as you're moving. It just transfers
18 from one tower to the other.

19 Q. So each one of those antennas point to a different
20 direction to encompass a circle?

21 A. Correct. What you would -- the premise of it during
22 the theorizing was you'd take three antennas, each one
23 would cover 120 degrees and then you'd have full 360 degree
24 coverage. The reality is that due to radio propagation of
25 waves there's many factors that influence how those waves

1 can travel, so there's not always 120 degrees of coverage.
2 They can be smaller, they can be bigger. Sometimes they
3 can go to extreme ranges, sometimes they're shorter ranges.

4 Q. All right. So State's 65, there's a callout box right
5 here on Sunset Boulevard in Lexington. What is that for?

6 A. That represents the Waffle House that is on Sunset
7 Boulevard and through the investigation and through the
8 video evidence we were able to determine that that was
9 where Ms. Justice got in the car.

10 Q. All right. So the red callout box, what time is
11 associated with that call?

12 A. 10:48 PM and 10:49 PM.

13 Q. And the red color indicates that it belongs to which
14 number?

15 A. 348-5324.

16 Q. Which testimony reveals belonged to who?

17 A. John Hart.

18 Q. The blue there also near the Waffle House, what does
19 that tell you?

20 A. It's the number attributed to Paula Justice at
21 10:49 PM.

22 Q. And the blue tower -- where we see a red where I'm
23 pointing, there's a red there and a blue there. What do
24 those represent?

25 A. These are cell sites and there's no azimuth because

1 the cell records didn't provide them.

2 Q. So that's the actual physical location of the tower?

3 A. Correct.

4 Q. So those are gonna be here with the blank azimuth?

5 A. So this is the red tower and this is the blue tower
6 and I've listed them by the carriers and as you can see
7 there's no azimuth provided.

8 Q. And, again, an azimuth is nothing more than
9 designating the direction on a 360 circle of where it's
10 pointing?

11 A. Correct.

12 Q. So, for instance, when it says zero here on this?

13 A. It's gonna be pointing towards true north, so it's
14 zero degrees on a compass.

15 Q. And the 240?

16 A. Which would be coming down to 240 degrees of the
17 circle, which would be south of east -- or south of west.
18 Sorry.

19 Q. State's 68.

20 A. Again, this map is gonna cover those same numbers;
21 the 5324 attributed through testimony to Mr. Hart, the
22 7280, which is Mr. Deloach's, 9597, which is attributed to
23 Ms. Justice, and 3318, which is attributed to Mr. Hart
24 going from 11:02 PM to 11:22 PM.

25 Q. What am I pointing at right here? What is that?

1 A. That is the -- the dot right here, the circular dot,
2 is the location where Ms. Justice's body was discovered.

3 Q. So can you show to the jury on this map where Gator
4 Road and Lumberjack Drive is.

5 A. Gator Road is the road coming down like this curving
6 and Lumberjack is this small road right here that goes
7 (indicating).

8 Q. So, again, 348-5324, the number associated with
9 Mr. Hart in red, what does this map show us?

10 A. So you've got different cell sites where that number
11 had utilized and the times in the boxes. So the boxes
12 for the times are solely for the purpose of just -- not
13 overlapping, they don't specify positions, just that's the
14 azimuth that was used at that time. So you've got one
15 pointing down here at 11:02 and one here that goes from
16 11:04 to 11:14 and then one down here that then hits at
17 11:17 and based on training and experience when you have
18 cell sites that are changing that close in time attributes
19 to movement.

20 Q. Does Mr. DeLoach have any cell phone activity during
21 this time in this area?

22 A. No, he does not.

23 Q. Or anywhere else actually?

24 A. No.

25 Q. Ms. Paula Justice's phone, is there any activity out

1 in this area?

2 A. No.

3 Q. Is there any more after the last information we saw
4 on State's Number 65 as the location for her phone?

5 A. After -- there were transactions on the record, but
6 the phone was in police possession at that point.

7 Q. The 603-498-3318 number, again, who does that number
8 through testimony belong to?

9 A. John Hart.

10 Q. All right. And what do we see on here as far as calls
11 at that point?

12 A. On this one you see there's two different cell sites
13 utilized; however, on this lower one it's showing two
14 different azimuths. So like we had said in previous
15 testimony, each cell site has multiple antennas, so this
16 is saying at these times he utilized that side of the tower
17 and at that time he utilized that side of the tower --

18 Q. All right. So specifically let me ask you --

19 A. -- and on this one.

20 Q. This call right here, let's talk about that. What is
21 that?

22 A. At 11:14, this call right here, that's gonna be going
23 to the number that through testimony has been linked to
24 Jeremy Washington.

25 Q. All right. And that's what I was gonna ask you. If

1 you look back at State's 76 when you were up on the stand
2 and I was asking you about phone calls on the night of
3 April 10, 2012 --

4 A. 2013.

5 Q. I'm sorry. April 10, 2013. That call is on these
6 records on State's 76 that you've mapped right there?

7 A. Correct.

8 Q. Which is -- through testimony is the number linked
9 from the iPhone belonging to John Hart to Jeremy
10 Washington; is that correct?

11 A. Correct.

12 Q. All right. We're now up to 11:22 PM. State's
13 Number 65 -- apparently I listed it out of order. So
14 backing up, earlier in the night?

15 A. This one we already went over.

16 Q. Oh, yes, we did. I thought it looked familiar.
17 State's 69, what does that show?

18 A. This is gonna show for the 5324, 7280 and 3318 numbers
19 that are attributed to Mr. Hart and Mr. Deloach and, again,
20 Mr. Hart on the 10th of April, 2013, from 11:50 PM until
21 the 11th at 1:05 AM.

22 Q. All right. Let me back up. You're not showing in red
23 on this chart; is that correct?

24 A. Correct.

25 Q. In fact, from this point out there is no more red?

1 A. Correct.

2 Q. Why is that?

3 A. The phone ceased to receive any kind of tower listings
4 in the communications.

5 Q. So back on State's 68, what was the last cell tower
6 information you had for the 348-5324 number?

7 A. It was a data connection to this tower right here at
8 11:17 PM.

9 Q. And after that point there was no further tower
10 information?

11 A. Correct.

12 Q. What could cause that?

13 A. The phone was powered off or the battery was removed
14 or dead or destroyed.

15 Q. So what do we see between 4-10-13 at 11:50 PM and
16 4-11 at 1:05. Where are we at?

17 A. This is gonna be Interstate 20 going through Lexington
18 County and this is about -- right here is Mile Marker 33 --
19 43, excuse me, so you're right around the Pond Branch Road
20 exit.

21 Q. And what does this tell us?

22 A. There was a traffic stop done by Deputy Patterson at
23 the 43 mile marker, which is marked with this black dot,
24 and then at the 44 Truck Stop it's also marked with a black
25 dot where they stopped, and then it shows the calls during

1 this time period.

2 Q. The green is attributed to who?

3 A. Again, to Tevin Deloach.

4 Q. The yellow is attributed to?

5 A. Through testimony to John Hart.

6 Q. State's 63, what does this show?

7 A. This is, again, for the same numbers, 5324, through
8 testimony to Mr. Hart, 7280 to Mr. Deloach, and 3318
9 through testimony, again, to Mr. Hart, from 1:13 AM on
10 4-11-13 until 8:21 AM. And then, again, it is showing the
11 cell sites with the azimuth of the side that they're
12 utilizing.

13 Q. The black label there, what is that?

14 A. That is Delta Motel. That's where we recovered the
15 vehicle.

16 Q. All right. In general terms, would you explain where
17 Mr. Deloach's phone is and where the 603 number attributed
18 to Mr. Hart is?

19 A. So, again, in symbols like this where there's yellow
20 and green it means that both phones have hit off that tower
21 and then when you come down, you'll see the boxes that show
22 what times those phones hit. If there's just a yellow,
23 that is only the 603 number. And so this one up here and
24 this one right here there was no activity from that tower
25 for the 7280 number and each call is listed down here

1 that's showing on the map.

2 Q. The last one. State's Number 67, what is this?

3 A. This is a map that shows from South Carolina up
4 into New York and we took the cell site locations for
5 414-216-1613 through testimony linked to Mr. Hart from
6 4-12-13 at 10:14 AM, which is when the phone came into
7 service, until 4-19-13 at 4:28 PM. And it starts down in
8 Columbia. There will be a black dot for Columbia, a black
9 dot for Utica and a black dot for Rome, New York, and then
10 the yellow dots represent each the cell site used along the
11 way during that time.

12 Q. And the 414 phone is the same phone that you
13 previously said was associated with 603-498-3318?

14 A. Correct.

15 Q. Thank you, Mr. Travis. If you could take a seat back
16 up on the stand.

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

18 BY MR. GRAHAM:

19 Q. Yesterday there were other -- you've been asked to
20 look at other numbers to look for the presence of numbers
21 in Paula Justice's phone and Jeremy Washington's phone
22 and John Hart's phone and Tevin Deloach's phone that the
23 testimony has revealed belonged to those people. In all
24 of records that you have in front of you, have you been
25 asked to look for particular numbers?

1 A. Yes, I was.

2 Q. 803-522-8057, does that number appear in any of those
3 records anywhere?

4 A. No, they do not.

5 Q. 803-822-8057, does that number appear in any of those
6 records?

7 A. It does not.

8 Q. And what's your understanding -- the testimony
9 yesterday was that those numbers belonged to AJ Wallace.
10 Is that your understanding?

11 A. That's what I was advised.

12 Q. And in all the records you reviewed over that time
13 period, neither of those numbers show up; is that correct?

14 A. Correct.

15 Q. Finally, the last thing that I wanted to discuss with
16 you is you were present at the hospital when Paula Justice
17 was brought in and attempted to be treated and pronounced?

18 A. Correct.

19 Q. And did you have an opportunity to look and actually
20 collect her clothing?

21 A. I did.

22 **MR. GRAHAM:** Madam Clerk, do you have any gloves?

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

24 **BY MR. GRAHAM:**

25 Q. Have you had an opportunity to view the contents of

1 this box?

2 A. Yes, I did. I unsealed the box.

3 Q. And is it, in fact, the clothes that you saw
4 Ms. Justice wearing at the hospital on the night of
5 April 10, 2013?

6 A. Yes, it is.

7 **MR. GRAHAM:** Your Honor, I'd ask that he be able to
8 remove those and show those to the jury.

9 **THE COURT:** Any objection?

10 **MR. PHILLIPS:** I'm sorry. No objection.

11 **THE COURT:** The clothes can be shown.

12 **MR. GRAHAM:** Your Honor, if he could step down if
13 front of the jury?

14 **THE COURT:** Sure.

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

17 BY MR. GRAHAM:

18 Q. You can just let them take a look at the front and
19 back of it.

20 A. (Witness complies.)

21 Q. And would you describe that shirt? You're holding a
22 shirt; is that correct?

23 A. Correct. This is a shirt that was cut off of her.

24 Q. And how would you describe that?

25 A. It's a black T-shirt with pink sparkly writing and

1 white writing. A size large maybe.

2 Q. The writing is on the front or the back?

3 A. It was on the front.

4 Q. Thank you. How about -- what did she have on for
5 pants? And for the record, can you describe what those
6 are?

7 A. These are a pair of women's jeans in size 16.

8 Q. Thank you. If you'd put those back in the box.

9 A. (Witness complies.)

10 **MR. GRAHAM:** And that's all the questions I have,
11 Your Honor.

12 (Discussion between counsel.)

13 CROSS-EXAMINATION

14 BY MR. PHILLIPS:

15 Q. In being -- you would say that you're very familiar
16 with the investigation in this case?

17 A. Yes.

18 Q. And that -- I mean, even though you were sequestered,
19 you know what was testified to? And that's basically what
20 we went through with the maps.

21 A. I don't know specifically what was testified to, no.

22 Q. Right. I mean, you knew enough to go through the
23 maps and the numbers and being well involved in this
24 investigation, did you run the cell site location data on
25 the number provided by Alex Wallace?

1 A. I don't have those phone records.

2 Q. And if you did have that number, you could have ran
3 cell site location data just like you did with those?

4 A. If the phone records had them, yes, I could.

5 Q. And so we would have a map of where that phone number
6 was just like we did with those?

7 A. Correct.

8 Q. And we'd be able to see where that phone was on?

9 A. Correct.

10 Q. But we don't have those?

11 A. During the time lapse phone companies don't keep
12 records for that long.

13 Q. Well, the question was if y'all didn't request it, we
14 don't have it, not whether they have it or not because you
15 don't know. You didn't ask; is that right? I'm trying to
16 keep you on the answer to the question.

17 A. It's not that simple an answer.

18 Q. Well, the quick way to do it is did you request the
19 records?

20 A. I'm not the person that requests the records. I don't
21 know if they were requested or not.

22 Q. And if they were requested, they would have then been
23 given to you to interpret?

24 A. If they received records, then generally, yes, they
25 would give them to me to interpret.

1 Q. And you don't have them?

2 A. I do not have them.

3 Q. So you can't say anything about those records?

4 A. The only thing I can say is what -- whether or not
5 those numbers occurred in these phone records.

6 Q. Right. And all the records that just came up here,
7 there's no cell site location for that number?

8 A. There's no record -- there's calls on here that don't
9 have cell site records. Text messages don't have cell
10 site --

11 Q. The specific question is for Alex Wallace, the number
12 that was provided, was cell site location data done? A
13 specific question.

14 A. First you referred to his records, then you referred
15 to these records. I'm confused.

16 Q. I'm sorry. I'll step back. For Alex Wallace -- it's
17 a big part. For Alex Wallace, the number provided, did you
18 run cell site location data on that number like you did for
19 these?

20 A. No.

21 Q. And you talk about Jeremy Washington and the numbers
22 with that. When you got these records, and being a part of
23 the investigation, was he arrested?

24 A. I believe he was arrested.

25 Q. This Saturday?

1 A. Something like that. I don't know the exact date.

2 Q. So for four years you've had all these records and
3 being part of the investigation and knowing the State's
4 theory about how this happened, the State didn't -- didn't
5 arrest Jeremy Washington?

6 A. In September of 2013, I left the major crimes division
7 and I didn't have interaction with this case for quite a
8 while after that.

9 Q. But you've -- I mean, you've been in preparation for
10 this trial, you knew how to go through all the maps and
11 all the numbers. You said you know the case very well.

12 A. I know the case from back then. I don't know about
13 Mr. Wallace's involvement.

14 Q. Oh, not Mr. Wallace. Jeremy Washington.

15 A. I don't have a -- I wasn't the one that was involved
16 in that. That would be Sergeant Spivey.

17 Q. Okay. Were text messages requested for Jeremy
18 Washington's phone?

19 A. They were requested, but Verizon doesn't provide text
20 messages.

21 Q. So we only have text messages of one phone, but
22 another phone that's also a very critical part of this
23 trial, we don't have text messages for that?

24 A. It would show what the communications were back and
25 forth, but it doesn't have content.

1 Q. And being familiar with this investigation, obviously
2 -- I mean, you weren't in here for all the testimony. It's
3 kind of -- it's undisputed that DeLoach and Hart were
4 together that night. They were stopped by a Lexington
5 County police officer.

6 A. Correct.

7 Q. I mean, that's -- that's not in dispute that they were
8 together.

9 A. Correct.

10 Q. And it's not in dispute that he was in New York. I
11 mean, that's --

12 A. That Mr. Hart was in New York?

13 Q. -- where he was got arrested.

14 A. Correct.

15 Q. It's not even in dispute that Paula and Mr. Hart knew
16 each other and that other people knew that Paula was gonna
17 go meet Mr. Hart that night.

18 A. I can't comment on whether that's under dispute, but
19 from the phone records I would say that that is the case.

20 Q. And that's what all these maps show, but we don't have
21 the cell site location data for the numbers provided for
22 Alex Wallace?

23 A. Correct.

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

25 **MR. GRAHAM:** Nothing else, Your Honor.

1 **THE COURT:** You can step down, Detective.

2 (Witness excused.)

3 **MR. GRAHAM:** That's the State's last witness, Your
4 Honor. We rest.

5 **THE COURT:** All right.

6 Let me talk with the lawyers up here real quick for
7 scheduling.

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

9 **THE COURT:** All right. We're going to -- I've got
10 a couple of things to put on the record. It's about
11 eighteen minutes until 12:00. Y'all be back here at 1:00
12 and then we'll start with the second part of the case, all
13 right?

14 You can't discuss the case. Be back in the jury
15 room about 1:00 and we'll get y'all back in here. We'll
16 see you in a little while.

17 (Whereupon, the jury was excused for lunch at
18 11:42 AM.)

19 **THE COURT:** All right, Mr. Phillips.

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

21 For the motion for directed verdict, before we get
22 there, I'd like to renew all pre-trial motions and
23 objections and then also renew all trial objections and
24 motions, specifically the motion for the mistrial at this
25 time.

1 **THE COURT:** All right. I'm going to consistently
2 rule the same on those. All your objections are noted for
3 the record. I'll respectfully deny consistently with my
4 pre-trial and during court rulings.

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

6 It is a credibility case, I understand that, but I do
7 need to make the motion for directed verdict. The accused
8 is entitled to a directed verdict when the State fails to
9 present evidence to support every element of the offense
10 charged. In this case, there's case law that's whether --
11 in a circumstantial evidence case like this we don't have
12 an eyewitness, it's purely based on testimony, it's whether
13 it rises to the level of substantial circumstantial
14 evidence is the case law. State v. Odems and other cases.
15 Certainly when it merely raises the suspicion -- that's in
16 State v. Odems, that when it merely raises the suspicion
17 of his guilt, then that's not enough to reach the level of
18 substantial circumstantial evidence and we would argue that
19 a directed verdict is appropriate in this case.

20 Oh, and to cite another case, State v. Buckmon,
21 347 SC 316, it's suspicion implies a belief or opinion as
22 to guilt based on facts or circumstances, which don't
23 amount to proof. In this case, Tevin Deloach testified
24 that he didn't see John Hart shoot Paula Justice, he didn't
25 see John Hart with a gun prior to. The solicitor's -- the

1 solicitor presented the testimony that was put in which was
2 Alex Wallace's statement admitting that he killed Paula
3 Justice. At this point every bit of evidence that's been
4 provided, again, citing the Odems case, 395 SC 582, the
5 trial court should grant a directed verdict motion when
6 the evidence merely raises a suspicion that the accused
7 is guilty and I think we haven't reached that level of
8 substantial and would make a motion for directed verdict.

9 **THE COURT:** All right. Mr. Graham.

10 **MR. GRAHAM:** Your Honor, at this time the evidence is
11 to be viewed in the light most favorable to the State. At
12 this point the State has established a connection between
13 Jeremy Washington and Paula Justice as far as a motive for
14 why he would want her killed coming through Meghan Walker.
15 We have established through Tevin Deloach that Mr. Hart
16 told him that he was hired and paid to kill her because she
17 was a snitch by Mr. Hart. Mr. Hart told Mr. Deloach that
18 he killed her, he was seen walking away from a car with
19 her, he returned running back with a gun in his hand
20 telling him to go, saying that he had killed her, and
21 then subsequently said that he had killed her for Jeremy
22 Washington. He also states in the ride away that Mr. Hart
23 got on his phone and called somebody who he didn't know and
24 said that -- I don't remember his exact words, but made a
25 comment about it's done or something like that. That

1 number has been linked -- that call was identified and has
2 been linked to Jeremy Washington. Deandre Staley stated
3 that he has a long association with Mr. Hart and that he
4 told him that he -- to use his language, he bodied the
5 bitch, and then they talked about Paula, he knew it was
6 about Paula, and then they talked about Jeremy Washington.
7 I think the State has met its burden and I think it's a
8 jury question at this point.

9 **MR. PHILLIPS:** And the only thing I would add is that
10 the State never called Jeremy Washington as a witness. The
11 lynchpin of their case is Jeremy Washington because they're
12 saying he's the one that set it up, yet they did not call
13 him as a witness.

14 **MR. GRAHAM:** And Jeremy Washington's attorney told me
15 that he would invoke his Fifth Amendment right if he was
16 called.

17 **MR. PHILLIPS:** But that's why you have to call him to
18 find out. He never got -- I mean, that's all --

19 **MR. GRAHAM:** That's not true. If you know somebody
20 is gonna invoke the Fifth Amendment, you don't call them to
21 the stand, Your Honor.

22 **THE COURT:** Mr. Washington's testimony is additional
23 proof, it's not essential proof. He could have added
24 something to it if he came in and testified to something
25 to that effect. Whether he set it up or not, the question

1 is whether or not Mr. Hart did it or not, I think, and
2 whether the State has proved it beyond a reasonable doubt
3 through all the circumstantial evidence they presented.
4 Certainly Mr. Washington's failure to testify will impact
5 what the jury does, but I don't think his testimony is
6 essential to the State's proof, it's just one of the other
7 circumstances. So considering what I've heard and taken
8 notes on and what the State's presented, in the light most
9 favorable to the State I think they have met and presented
10 enough circumstantial facts and evidence to get by the
11 directed verdict motion. Respectfully, I'll decline to
12 grant that motion in your client's favor.

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

14 **THE COURT:** All right.

15 Start back at 1:00? All right.

16 (Whereupon, a luncheon recess taken.)

17 **BAILIFF:** All rise. Court's now in session.

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

19 Are we ready? Are you ready, Mr. Phillips?

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

21 **THE COURT:** All right. Bring them in.

22 (Whereupon, the jury returns to the courtroom at
23 1:11 PM.)

24 **THE COURT:** All right, folks. We're ready to begin
25 this afternoon. Sorry I was a few minutes late.

1 (Pause in proceedings.)

2 **THE COURT:** Call your witness.

3 **MR. PHILLIPS:** Thank you, Your Honor. The defense
4 calls Will Lowder to the stand.

5 (Whereupon, Will Lowder was duly sworn by the Clerk of
6 Court.)

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

9 **THE WITNESS:** My full name is Wilbur Lowder,
10 L-O-W-D-E-R.

11 WILBUR LOWDER,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. PHILLIPS:

15 Q. Good afternoon, Mr. Lowder.

16 A. Good afternoon.

17 Q. Please state your occupation to the jury.

18 A. Currently I'm employed with Glenn Harrell
19 Investigative Services.

20 Q. That's private investigation?

21 A. Private investigating, yeah. Three years.

22 Q. You were hired on this case -- or the firm was hired
23 in this case by me, the defense?

24 A. Correct.

25 Q. And how long have you worked as a private

1 investigator?

2 A. Three years.

3 Q. And could you go into your training and your
4 experience all the way back leading up to being a private
5 investigator?

6 A. I was in the Army National Guard for a total of
7 thirty-six years and I was trained in many, many different
8 fields, including some military police exercises, but I
9 retired from the National Guard in 2006 and then I worked
10 at Toomey Hospital security for three years and then I came
11 to work for Glenn.

12 Q. And in doing private investigations on this case, did
13 you and Mr. Harrell ever go see Deandre Staley?

14 A. Yes.

15 Q. And where did you go?

16 A. To the prison in Bennettsville. I can't recall the
17 name.

18 Q. And when y'all were originally scheduled to go see
19 him, it actually had to be rescheduled; is that right?

20 A. Correct.

21 Q. That's because they had to do background checks and
22 confirm that you're a registered SLED investigator?

23 A. Correct.

24 Q. Of course, that happened and you went and they had to
25 confirm whether he wanted to meet with you because you were

1 going for another lawyer, not his lawyer?

2 A. Correct.

3 Q. And you did, along with Glenn Harrell, meet with
4 Deandre Staley?

5 A. Yes.

6 Q. And in meeting with him, did you ever imply that you
7 were a Lexington County law enforcement investigator?

8 A. No.

9 Q. In fact, whenever you and Glenn Harrell came and sat
10 down with him, what's the standard protocol that you do
11 with somebody when you're taking a statement and they're
12 not -- it's not your witness -- or, excuse me, your client?

13 A. Well, we first inform them who we are and that we
14 aren't law enforcement. That's one of the key statements
15 that we make to the -- to the witness and then explain what
16 we do and why we're there.

17 Q. Would it be fair to say that the standard operating
18 procedure for private investigators when they meet with
19 the witness is to explain that you're coming on behalf of
20 the defense and that you represent a certain person and
21 they don't have to speak with you?

22 A. Correct.

23 Q. Was that done in this case?

24 A. Yes.

25 Q. That was done with Deandre Staley?

1 A. Yes.

2 Q. So if anything was said different than that, that's
3 not true?

4 A. No.

5 Q. In speaking with Deandre Staley, it was asked how did
6 John Hart tell him that he killed Paula Justice. Did you
7 ask that question?

8 A. Yes.

9 Q. And what -- and what did he tell you?

10 **MR. GRAHAM:** Objection. It would be under 613(b),
11 extrinsic evidence of a prior inconsistent statement. If
12 I can approach for --

13 **THE COURT:** Sure.

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

15 **THE COURT:** Let's do that right now. I need to make a
16 record on something real quick, so y'all step in the jury
17 room. I don't think it will take very long and I'll have
18 you back in here.

19 (Whereupon, the jury retires to the jury room at
20 1:18 PM.)

21 **THE COURT:** All right. For the purpose of this
22 in-camera hearing on the objection, Mr. Phillips, I want
23 you to remake your question and then I want to hear the
24 objection and your basis for the objection.

25 **MR. PHILLIPS:** Thank you, Your Honor. The question

1 was in meeting with Deandre Staley, the question was asked
2 did you ask him how did John Hart tell him that he killed
3 Paula Justice, and he said yes, and then the next question
4 was -- I didn't even get it out before the objection, but
5 what it will be will be what did he say, and that's the
6 impeachment question. Essentially, when Deandre Staley
7 testified I specifically asked him did you meet with these
8 investigators and he said well, you know, I did, but --

9 **THE COURT:** He was a little bit squirrely on who the
10 investigators were. I remember that.

11 **MR. PHILLIPS:** He said he believed that they were
12 Lexington County investigators, which is why I asked those
13 first set of questions. And then I said did you tell them
14 that John Hart told you he shot her twice in the chest and
15 he said I didn't say that.

16 **THE COURT:** All right.

17 **MR. PHILLIPS:** Paula Justice twice in the chest.

18 **THE COURT:** So that was -- that's the question you're
19 trying to impeach?

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

21 **THE COURT:** All right. Mr. Graham.

22 **MR. GRAHAM:** Just one second, Your Honor. I
23 apologize. I'm confused so I need to make sure I
24 understand. Mr. Phillips is saying that he cross-examined
25 Deandre Staley about meeting with these investigators and

1 the question that he asked him was what?

2 **THE COURT:** Was, as I understand it, did Deandre
3 Staley tell you -- did you tell the investigator that Hart
4 told him he shot the victim twice in the chest. The answer
5 was I didn't say that.

6 **MR. GRAHAM:** Okay. And that was asked? I don't
7 remember that being asked. That was asked?

8 **THE COURT:** We can go back and look, but I remember
9 that because I was concerned; one shot in the back, one
10 shot in the side of the head, and he wrote two shots
11 frontal, totally different, was my hearing of the differing
12 evidence outside the presence of the jury. I was listening
13 to that. I wanted to hear the answer because that was
14 something drastically different from what had been
15 presented from other people. The shot in the head versus
16 two shots in the chest. Two shots frontal different than
17 side of head, back of head, one shot. I alerted to that
18 when the question came up.

19 **MR. GRAHAM:** And Mr. Staley's answer was?

20 **THE COURT:** I didn't say that.

21 **MR. PHILLIPS:** Or something to that effect.

22 **THE COURT:** Something to that effect. He denied
23 saying those words.

24 **MR. GRAHAM:** I remember Mr. Staley saying that he
25 lied, but I didn't -- that was something else, I guess.

1 That wasn't this? Because I know one of the questions was
2 something and he -- Mr. Staley's response was I lied to
3 them about that. He admitted lying. I didn't know what
4 that -- do you remember what that was about?

5 **THE COURT:** Hang on. Let me look. I try to take
6 pretty good notes.

7 **MR. GRAHAM:** He admitted lying to you about something.
8 Was it not this?

9 **MR. PHILLIPS:** That was the only thing that we had
10 that he could lie about.

11 **MR. GRAHAM:** No, but Mr. Staley admitted to you on the
12 stand that he lied about something when you asked did you
13 tell the investigator --

14 **MR. PHILLIPS:** That's where we had the back and forth
15 where he said he told y'all that our investigators
16 pretended to be Lexington County investigators and then you
17 shook your head no and I said Deputy Solicitor Shawn Graham
18 is shaking his head no that this wasn't presented and then
19 you asked -- we'll sit down.

20 **MR. MCNAIR:** Judge, there's a case, and I can't think
21 of the name right now, but it's once a witness admits to
22 making a prior inconsistent statement, that is the end of
23 the impeachment. You can't then offer extrinsic evidence
24 of that prior inconsistent statement, so my recollection
25 was he admitted that he did lie to the investigators, so at

1 that point the impeachment's over.

2 **THE COURT:** No, no, no. I think you're right if it
3 was a different statement. He didn't admit. He said I
4 didn't say that. It's not I gave an inconsistent
5 statement. He denied saying he told someone two shots to
6 the chest. I didn't say it.

7 **MR. McNAIR:** I don't recall him -- and maybe you're
8 right, but I remember at some point him saying I was just
9 telling them whatever they wanted to hear and essentially
10 admitted --

11 **THE COURT:** He was squirrely. No question about it.
12 Everybody in the courtroom -- I was talking to my law
13 clerks over here and they remembered him being squirrely,
14 particularly under cross-examination because he didn't want
15 to talk to y'all. I mean, he certainly didn't want to talk
16 to Mr. Phillips. He was not wanting to be here.

17 **MR. McNAIR:** You're right.

18 **THE COURT:** Unless y'all -- I mean, I'm gonna allow
19 the question unless y'all can tell me or remind me the
20 testimony was different.

21 **MR. McNAIR:** I don't have exact notes of what was
22 said. I just remember him in general saying yeah,
23 admitting that he lied to the investigators.

24 **THE COURT:** I remember he wrote them a letter saying
25 I need help, but then didn't get any help. I remember that

1 part, too. Or it didn't seem like he got any help. He
2 couldn't name any. I'll give y'all a minute to look. I
3 mean, some time to look.

4 (Whereupon, a portion of the record was read back.)

5 **THE COURT:** Y'all are both right. Mr. Phillips is
6 right and you're right about I told them anything. I mean,
7 so -- again, my characterization of the testimony was his
8 behavior was squirrely. He wasn't happy about being here
9 for anybody.

10 **MR. PHILLIPS:** The defense's contention in a
11 credibility case -- he's big because he says within
12 twenty-four hours of being in the detention center John
13 Hart confesses to him and now there's a point of contention
14 about his credibility.

15 **THE COURT:** All right. Mr. Graham, I noted some of
16 your objection. I want you to make a full record, but I'm
17 gonna allow the question of what he was told. You can put
18 your rule. Was it 611 or 612?

19 **MR. GRAHAM:** It would be under 613(b), Your Honor.
20 Extrinsic evidence of a prior inconsistent statement of a
21 witness is not admissible unless the witness is advised of
22 the substance of the statement, the time and place it was
23 allegedly made and the person to whom it was made and given
24 the opportunity to explain or deny. If he does not admit
25 that he made the prior inconsistent statement, extrinsic

1 evidence of the statement is admissible; however, if the
2 witness admits making the statement extrinsic evidence of
3 the prior statement is inadmissible. Our contention would
4 be that when he stated that he said he would say anything
5 because he didn't want to talk to them and he's been
6 stabbed that he's admitting that it's not true.

7 **THE COURT:** I understand y'all's positions. This is
8 a big time credibility issue for both sides. The time and
9 place and date. There was one conversation between the
10 investigators of the defense team with Mr. Staley. You
11 spoke with my investigators and you said. I think that
12 specifically identifies the time and place it was spoken.
13 It did not say the date, I'll grant that, but having only
14 one conversation in a very recent time, in the last
15 month --

16 **MR. PHILLIPS:** Not month. When I first got the case.
17 It would have been sometime in the fall.

18 **THE COURT:** Okay. But as I understood it, only one
19 conversation was the investigator and Mr. Staley.

20 **MR. PHILLIPS:** That was it. They never met with him
21 a subsequent time.

22 **THE COURT:** I'm gonna allow the question.
23 Anything else?

24 **MR. GRAHAM:** I don't need to do any other further
25 objection. Thank you, Your Honor.

25 BY MR. MCNAIR:

1 Q. What date did you meet with Mr. Staley?

2 A. I don't remember the date.

3 Q. He was in SCDC when you met with him?

4 A. Yes, in Bennetsville.

5 Q. Was he reluctant to talk to you?

6 A. Was he willing?

7 Q. Reluctant.

8 A. At first. Then he --

9 Q. Were you aware of whether or not he had been stabbed
10 in SCDC after he gave a statement in this case?

11 A. No.

12 Q. You didn't know that he'd been stabbed prior to
13 talking to you --

14 A. Unh-unh.

15 Q. -- for his cooperation on this case?

16 A. (Shakes head.)

17 **MR. McNAIR:** Thank you.

18 REDIRECT EXAMINATION

19 BY MR. PHILLIPS:

20 Q. And you told him while you were there?

21 A. Exactly.

22 Q. And that you were on behalf of John Hart and Dayne
23 Phillips, his attorney?

24 A. Exactly.

25 Q. And he was previewed even by the Department of

1 Corrections whether he wanted to speak with you?

2 A. Correct.

3 Q. And he said he did?

4 A. He said he would, yes.

5 Q. And then after you went all through that with him in
6 person he still said I'll speak with you?

7 A. Uh-huh.

8 Q. And that's what he told you?

9 A. That's what he told us.

10 **MR. PHILLIPS:** Thank you.

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

12 **THE COURT:** You may step down, Mr. Lowder.

13 (Witness excused.)

14 **MR. PHILLIPS:** The defense calls Alex Wallace.

15 (Whereupon, Alex Wallace was duly sworn by the Clerk
16 of Court.)

17 **THE CLERK:** Have a seat right up there, sir. Once
18 you're seated, state your full name, spelling your last.

19 **THE WITNESS:** Alex Jermaine Wallace, W-A-L-L-A-C-E.

20 ALEX JERMAINE WALLACE,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PHILLIPS:

24 Q. Mr. Wallace, we've met before, correct?

25 A. Yeah.

1 Q. I represent John Hart?

2 A. Yeah.

3 Q. And in speaking, have I ever told you what to say?

4 A. No.

5 Q. And when we met, your attorney, who's present in the
6 courtroom, was there?

7 A. Yes.

8 Q. And that's Sarah Mauldin?

9 A. Yes, sir.

10 Q. Be very straight with me. Did you kill Paula Justice?

11 A. Yeah.

12 Q. Why did you kill Paula Justice?

13 A. She owed me some money.

14 Q. How did you know Paula Justice?

15 A. From prostitution and selling drugs.

16 Q. How did you know John Hart?

17 A. Same thing.

18 Q. Why would you call John Hart to get Paula Justice
19 involved?

20 A. Because I know I couldn't get in contact with her and
21 I -- I knew he was the only one I could trust to get her
22 because I didn't really mess around with too many other
23 people and I knew he knew her.

24 Q. Did John Hart know that you were going to kill Paula
25 Justice?

1 A. No.

2 Q. Why on God's good Earth would you confess to another
3 murder?

4 A. Because it wouldn't be right to see somebody go down
5 for something they didn't do, something they didn't know
6 any a part of, didn't want to have no part of. I just
7 can't -- I can't live with that.

8 Q. And you confessed to another murder?

9 A. Yeah, I have. For the same reason.

10 Q. And you shot another person in the head in that case.
11 You confessed to it?

12 A. Yeah.

13 Q. You confessed to this case?

14 A. Yeah.

15 Q. What do you have to gain by taking on another murder
16 charge? Where's the benefit to you?

17 A. It's not much for me to gain. It's not the point of
18 gaining anything period.

19 Q. Has John Hart offered you money?

20 A. No.

21 Q. Has John Hart promised you something that you could
22 get in prison?

23 A. No.

24 Q. Has he threatened you?

25 A. No.

1 Q. Has he had anybody else threaten you?

2 A. No.

3 Q. And this is your testimony. This is -- you're putting
4 your hand on the Bible and I know confessing to murder you
5 said. As far as being religious, does that mean something
6 to you?

7 A. Yes.

8 Q. Is that why you confessed to these murders?

9 A. A little part of it.

10 Q. Well, what's the other part?

11 A. The same part I just told you. I can't see somebody
12 go down for something they didn't do.

13 Q. How old were you when you began selling drugs and
14 being around prostitutes?

15 A. Twelve.

16 Q. And how did you get around in cars?

17 A. I had some females drive me around.

18 Q. Were there other young teenagers with you?

19 A. I was mainly around grown people.

20 Q. And with that being the case of running the streets,
21 where did you grow up?

22 A. Down here, Cleveland, Chicago. Little bit of
23 wherever.

24 Q. Did you grow up in the Gaston area?

25 A. No.

1 Q. Let me rephrase. Did you grow up in the same area
2 where the crime occurred?

3 A. Yes.

4 Q. Now I guess if that's Gaston, Pine Ridge, South
5 Congaree, it's all side by side. How would you describe
6 it? Would that be Dixiana?

7 A. It'd be South Congaree.

8 Q. South Congaree. And with that being South Congaree,
9 how close did you grow up from where this crime occurred?

10 A. The road that branches off where it happened..

11 Q. How close is that?

12 A. A quarter mile.

13 Q. Walking distance?

14 A. Walking distance.

15 Q. So from where you at one point in your life, because
16 you said you moved around, that you lived in a home you
17 said it's a quarter mile from where you grew up or a house
18 that you lived in to the murder scene?

19 A. Yeah.

20 Q. This pistol you bought, you said it was stolen?

21 A. Yeah.

22 Q. Why do you think it was a Glock?

23 A. I really didn't -- I'm not really too much on make
24 and models, but I figured that it was a Glock by how it
25 looked.

1 Q. And you were fifteen at the time?

2 A. Yeah.

3 Q. And you were just a little bit older than sixteen
4 whenever the other crime occurred?

5 A. Yeah.

6 Q. And you bought this stolen pistol off the street?

7 A. Yeah.

8 Q. Why did it take you so long to come forward if you're
9 telling the truth?

10 A. I honestly didn't know he was incarcerated for it.

11 Q. When did you find out?

12 A. When I got incarcerated.

13 **MR. PHILLIPS:** Your Honor, if I could be granted some
14 leeway. I know given the nature of the circumstances and
15 the gun, it's bolt-locked, I want to be able to show him
16 the gun. May I approach?

17 **THE COURT:** As long as the bolt lock's in place, we're
18 good.

19 **MR. PHILLIPS:** The magazine's in the --

20 **THE COURT:** Can you verify that for me?

21 **DEPUTY:** Yes.

22 **THE COURT:** Okay. You can take it out.

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

24 **THE COURT:** Uh-huh.

25 **BY MR. PHILLIPS:**

1 Q. Is that the gun?

2 A. Yeah.

3 Q. How are you sure?

4 A. There's a K on the handle.

5 Q. Say that again.

6 A. There's a K on the handle.

7 Q. So the gun you had had a K on the handle?

8 A. Yeah.

9 Q. What about the way it looks? Anything else?

10 A. No, it's the same.

11 Q. Specifically, the colors. Do you know the difference
12 between chrome and stainless steel?

13 A. Stainless steel's a little lighter.

14 Q. Right. And when you said that that's like a chrome
15 or silver top, do you believe that's a chrome or silver
16 slide?

17 A. Yeah.

18 Q. And when you said that the bottom part of that pistol
19 is black --

20 **MR. GRAHAM:** Objection. Leading.

21 **THE COURT:** Sustained. Rephrase your question.

22 **MR. PHILLIPS:** Your Honor, I'm gonna also ask for a
23 little more leeway as far as the gun. There's a big point
24 of contention in how far the distance was, but I'd like to
25 ask him so we can get that squared away if he can step

1 down.

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

3 **MR. PHILLIPS:** If you will step down here.

4 (Whereupon, the witness steps down from the witness
5 stand.)

6 **MR. PHILLIPS:** And he can hold it?

7 **THE COURT:** He can hold it as long as you're right
8 there.

9 BY MR. PHILLIPS:

10 Q. And you said -- now you tell me when -- I know you
11 can't hold your arm out.

12 **THE COURT:** Why don't you reverse roles and you play
13 his part and let him stand and say how far.

14 **MR. PHILLIPS:** All right. Well, how about I'll walk
15 out and then we'll switch.

16 **THE COURT:** Okay.

17 BY MR. PHILLIPS:

18 Q. Can you tell me how far away Paula was when you said
19 you shot her? This is obviously very important.

20 A. Right there. Come back some. Right there.

21 Q. Was she standing like this?

22 A. Sort of angled to the left.

23 Q. Like this?

24 A. Go back to the right a little bit. Yeah.

25 Q. Like that?

1 A. Yeah.

2 Q. And then you said you had your arm out?

3 A. My arm was extended.

4 Q. Like this?

5 A. Yeah.

6 Q. Any other special things about it?

7 A. To the back of the head.

8 Q. How long had you had this gun before this?

9 A. I don't remember.

10 Q. Did you get the stolen pistol to use in this crime or
11 to protect yourself?

12 A. To protect myself.

13 Q. Why would you need a gun to protect yourself?

14 A. Because I was selling drugs.

15 Q. How long had you been selling drugs?

16 A. Three or four years.

17 Q. Had this been the first time you'd ever murdered
18 somebody?

19 A. I'm not gonna answer that question.

20 Q. You can go back to the stand.

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

22 BY MR. PHILLIPS:

23 Q. It's your sworn testimony to these people. It's your
24 sworn testimony. You've written a letter, you wrote a
25 statement. You killed Paula Justice?

1 A. Yeah.

2 Q. Are you lying?

3 A. No.

4 Q. Why would you do this? What is there to gain? What's
5 the purpose?

6 A. I already told you the purpose.

7 **MR. GRAHAM:** Asked and answered.

8 **THE COURT:** Sustained.

9 BY MR. PHILLIPS:

10 Q. At the end of the day what you wrote in the letter and
11 what you've testified to here today; you didn't want to see
12 an innocent man go to prison?

13 A. Exactly.

14 Q. Is that true?

15 A. Yes.

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

17 **MR. GRAHAM:** Your Honor, I have a matter of law we
18 need to discuss.

19 **THE COURT:** Ms. Williams, y'all step out. I'll have
20 you back in here in a couple of moments. You can't discuss
21 the case.

22 (Whereupon, the jury retires to the jury room at
23 1:46 PM.)

24 **THE COURT:** Does the witness need to be in here or
25 not?

1 **MR. GRAHAM:** There are questions related I was gonna
2 ask him. I think that's fine, Your Honor.

3 **THE COURT:** Okay.

4 **MR. GRAHAM:** Earlier Mr. Phillips had made a motion,
5 I think, to keep out reference to gang activity and we
6 agreed to it. At this part I believe that it's relevant
7 to come in. Mr. Wallace in June of 2012 admitted to an
8 officer, Michelle McLaren, that he was a member of the
9 Bloods, specifically a G-Shine sect of the Bloods. In an
10 interview with Detective Spivey on June 22, 2016, Detective
11 Spivey asked him about being -- whether he was in the same
12 gang sect with Mr. Hart in this case and he said that they
13 were in the same gang sect and that they were both Bloods,
14 and I believe that this goes to his -- it's evidence of
15 bias under 608(c) for why he would lie and take charges for
16 another person. I've also got a photo of a five-pointed
17 star with a "5" in it, which is on Mr. Wallace's body,
18 which is also indicative of being involved with the Bloods.
19 I'm not making a claim at this time that Mr. Hart is a
20 Blood, I'm making the claim that he believes that he's a
21 Blood and that would influence why he would take the
22 charges; otherwise, I'm gonna have nothing to argue about.
23 I mean, that's it. That's his bias. That's his motive to
24 lie. I understand that Your Honor needs to do a balancing
25 test about the probative versus prejudicial.

1 **MR. PHILLIPS:** There has been other testimony by
2 Deandre Staley that he had the same set of relationships,
3 gang activity, and that was not presented, and that would
4 have went directly contradicting this very nature. So it
5 doesn't come in through Staley, who I could have then said
6 you're in a gang, why aren't you protecting him, but now
7 we're gonna allow the opposite to happen and say that
8 Mr. Wallace is protecting him because of the gang, but I
9 couldn't do that to Mr. Staley, who's not protecting him,
10 and Mr. Staley provided a lot of information about how
11 close the relationship was with the G -- with the gangs
12 and the Bloods.

13 **THE COURT:** All right. Let me go to Mr. Graham.

14 **MR. GRAHAM:** He made the motion to stay out of it,
15 I stayed out of it. He never said that he wanted to
16 cross-examine Mr. Staley about being a Blood. If he would
17 have, I would have let it in. I would have loved to have
18 that in for the relationship, exactly what I'm doing now,
19 but I assumed that Mr. Phillips would object to it.

20 **MR. PHILLIPS:** And I didn't reference gangs during my
21 direct examination with Mr. Wallace.

22 **THE COURT:** The gangs -- y'all steered clear of the
23 gang references. Both sides have.

24 **MR. GRAHAM:** But at this point it's relevant.

25 **THE COURT:** The closest Mr. McNair got was y'all are

1 good friends and go way back or something like that and
2 that wasn't -- that was a fair question. That's about as
3 close as he got to it. More than friends.

4 **MR. GRAHAM:** This one's different, Judge. I mean,
5 he's -- he's admitted that he's a documented gang member
6 and it goes to -- that's the only reason that I'm gonna be
7 able to say why he's taking these charges. That's the
8 probative value. It's incredibly relevant. If you exclude
9 that, I don't have a reason for why he's lying. I'm not
10 implying that Mr. Hart, the Defendant, in this case is a
11 Blood. I'm implying that he thinks he is.

12 **MR. PHILLIPS:** But the only problem is that's the only
13 other implication that can be made. It's impossible to do
14 one without implicating the other.

15 **THE COURT:** /I may be wrong, it won't be my first time,
16 but I don't think that the cross-examination about his
17 involvement in gangs should be allowed. I think it would
18 be unduly prejudicial and then almost burden shifting to
19 Mr. Hart that he would have to disprove involvement in
20 the gang and I don't think that would be fair to him. In
21 light of what's been presented thus far, I'm not gonna
22 allow it. And y'all -- Mr. Phillips said no gang
23 references, y'all steered clear of it, both sides, but
24 I'm gonna stick with that ruling. I'm not gonna allow
25 that kind of cross-examination. I think the State's got

1 ample evidence to discredit factually that's out there
2 from what the Court's seen. There's evidence going both
3 ways.

4 **MR. GRAHAM:** I understand, Your Honor. For the
5 record, I would say that he has -- two times to two people
6 while he's in custody he's admitted that he's a gang member
7 of the Blood sect, which required -- as far as documenting
8 nationwide and in the state of South Carolina, that's all
9 that's required. He has the additional tattoo on him that
10 is a five-pointed star with the number "5", which is also
11 associated with the Bloods. He is an admitted gang member.
12 There are benefits for a gang member for taking charges
13 for another person. There's a gang expert who would come
14 testify to that potentially depending on how it develops.
15 I'm not implying that Mr. Hart is. I mean, he -- my
16 understanding is he is:

17 **THE COURT:** There would be no other implication.

18 **MR. GRAHAM:** No.

19 **THE COURT:** Yeah, it would. Think about it. There's
20 no way someone would protect someone else if they weren't
21 in the same group. One gang member won't take another not
22 of his gang member's rap I don't think.

23 **MR. GRAHAM:** If he's -- all I'm saying is that he
24 believes it. I'm not saying it's true. I'm just saying
25 that that's his belief. It goes to his motive to lie.

1 **THE COURT:** I'm not gonna allow it. I'm sorry. I
2 don't think that's -- I think that's unduly prejudicial
3 to Mr. Hart and it comes close to shifting the burden on
4 him to disprove it and I'm not gonna do that. This is an
5 awful case, but I'm not gonna allow the gang testimony to
6 come in. It hasn't come in and I'm not letting it in now.

7 Let's take a couple of minutes if y'all want to. Be
8 back here about 2:00. That gives you six minutes.

9 (Recess taken.)

10 **BAILIFF:** All rise.

11 **THE COURT:** You may be seated.

12 Mr. Graham, do you want to proffer any of that
13 testimony?

14 **MR. GRAHAM:** Yes, Your Honor, I would.

15 **THE COURT:** Okay.

16 **MR. GRAHAM:** Thank you.

17 **MR. PHILLIPS:** I missed that. I'm sorry.

18 **THE COURT:** He wants to proffer the testimony he was
19 trying to elicit for the record.

20 **MR. PHILLIPS:** Of course.

21 EXAMINATION (In-Camera)

22 BY MR. GRAHAM:

23 Q. Mr. Wallace, you're member of the Bloods; isn't that
24 correct?

25 A. Yeah.

1 Q. I'm sorry?

2 A. Yeah.

3 Q. Could you move the microphone toward you? I have
4 trouble hearing. Yes?

5 A. Yes.

6 Q. And you have a five-pointed star with the number
7 "five" on your back; is that correct?

8 A. My chest.

9 Q. On your chest. And that's an indication of your
10 membership in the Bloods gang?

11 A. Yes.

12 **MR. GRAHAM:** Your Honor, the State would mark this
13 for a Court's exhibit.

14 **THE COURT:** Certainly.

15 (Court's Exhibit Number 7 was marked for
16 identification.)

17 BY MR. GRAHAM:

18 Q. Isn't it true that Mr. Hart -- or you believe that
19 Mr. Hart is a member of the Bloods as well?

20 A. No.

21 Q. Isn't it true that you believe that he is a member of
22 the G-Shine sect?

23 A. No.

24 Q. Do you admit or deny that on June 22, 2016, that you
25 spoke with Detective Spivey at the Lexington County

1 Detention Center and you were asked by him whether you were
2 in the same gang sect with Hart and you said that you were?

3 A. I deny that.

4 Q. You deny that? And you were asked what gang sect it
5 was and you told him the Bloods?

6 A. Yeah, I deny that.

7 **MR. GRAHAM:** Your Honor, that would be the only thing
8 on this matter other than I would call Detective Spivey to
9 show that that was not what was said.

10 **THE COURT:** Do you want to do that right now?

11 **MR. GRAHAM:** We can. Whatever Your Honor wants to do
12 it.

13 **THE COURT:** Let's do it. I think you do that in
14 reply, but we'll do it in-camera in reply because I don't
15 want to do it in front of the jury since this is in-camera
16 also, all right? Fair enough.

17 Bring in the jury.

18 **DEPUTY:** Do you want him to sit right there or do you
19 want him --

20 **THE COURT:** No, no. Mr. Graham is gonna call the
21 detective later also in-camera just like we did without
22 the jury, so we'll do that later, but he'll be allowed
23 that benefit.

24 Go get them.

25 (Whereupon, the jury returns to the courtroom at

1 2:02 PM.)

2 CROSS-EXAMINATION

3 BY MR. GRAHAM:

4 Q. Mr. Wallace, how old are you now?

5 A. Nineteen.

6 Q. The other crime that you got arrested for was a murder
7 and a burglary first, correct?

8 A. Yes.

9 Q. And the facts in that case is that you and Terrance
10 Flagler broke into a house and while you were in there the
11 homeowner came home; isn't that correct?

12 A. I'm not gonna answer that question.

13 Q. I'm sorry?

14 A. I'm not gonna answer that question.

15 Q. I'm sorry?

16 A. I'm not gonna answer that question.

17 **MR. GRAHAM:** Your Honor, please direct him that he
18 cannot take the stand and not answer questions.

19 **THE COURT:** Ask the question one more time.

20 BY MR. GRAHAM:

21 Q. Mr. Wallace, isn't it true that yourself and
22 Mr. Flagler broke into a house in Lexington County, went
23 inside, the homeowner came home, you ordered him down onto
24 the ground, he refused to go down on the ground, there was
25 a struggle and you shot and killed him?

1 A. Yes.

2 Q. And you told the police -- you admitted to the police
3 that, didn't you?

4 A. Yes.

5 Q. That wasn't an execution, was it?

6 A. No.

7 Q. You were breaking into his house and you got caught
8 inside and trapped, didn't you?

9 A. What's that have to do with this?

10 Q. It has everything to do with this. Isn't that
11 correct?

12 A. No.

13 Q. What's not correct about it?

14 A. I didn't get caught.

15 Q. The homeowner came home while you were inside,
16 correct?

17 A. Yes.

18 Q. And you were trapped and you couldn't get out the back
19 door; isn't that right?

20 A. I could have got out plenty of ways.

21 Q. Didn't you tell Detective Spivey during your interview
22 on your arrest that you were trapped on the back room and
23 you couldn't get out?

24 A. Couldn't get out the door. There was a window.

25 Q. Didn't you tell him that you could not get out?

1 A. Yeah, I told him that.

2 Q. You told him that. But now you're saying that's not
3 true?

4 A. No, it's not true.

5 Q. So you're lying right now or you lied then. Which one
6 is it?

7 A. Lied then.

8 Q. It was not an execution though, was it? It was not
9 an execution for money, it was a burglary gone bad?

10 A. Yeah.

11 Q. Terrance Flagler was with you inside the house when
12 this happened, wasn't he?

13 A. Yeah.

14 Q. You lied to the police and told the police that
15 Mr. Flagler wasn't involved to protect a friend, didn't
16 you?

17 A. I never said he wasn't involved.

18 Q. You deny telling Detective Spivey during your
19 interview upon your arrest that it was all on you and that
20 Terrance Flagler has nothing to do with this and was not in
21 the house?

22 A. That's -- that's different than having someone
23 involved. He was there involuntarily.

24 Q. Did you tell him that he wasn't in the house?

25 A. Repeat the question.

1 Q. Did you tell Detective Spivey during your interview
2 upon your arrest that Terrance Flagler was not in the house
3 with you when you committed the burglary and the murder;
4 yes or no?

5 A. He wasn't in the house when I kicked the door in, but
6 he was when the murder happened.

7 Q. So you lied to the police when you told them that he
8 wasn't in the house when he was killed, correct?

9 A. I never said that.

10 Q. You deny saying that?

11 A. I never said he wasn't in the house.

12 Q. You lied to protect a friend, yes?

13 A. No.

14 Q. You did not tell the police that he was involved with
15 the burglary or murder though, did you?

16 A. Man, this is -- he was there, but he didn't know what
17 I was gonna go do. It was involuntary.

18 Q. He knew you were doing the burglary and went in with
19 you?

20 A. He didn't go in. He tried to get me out.

21 Q. He was inside the house with you while you were doing
22 the burglary?

23 A. Yes.

24 Q. Did you tell that to the police?

25 A. Yes.

1 Q. On that charge of murder and burglary first, you're
2 looking at fifteen years to life on the burglary first,
3 correct?

4 A. Yes.

5 Q. And you're looking at thirty to life on the murder;
6 isn't that correct?

7 A. Yes.

8 Q. So you admitting and lying about taking on another
9 murder doesn't really hurt you at all, does it?

10 A. Why would you say that?

11 Q. I'm sorry?

12 A. Why would you say that?

13 Q. It doesn't hurt you at all to take another murder
14 charge, does it?

15 A. Yeah, it would.

16 Q. It would? What would it do to you? You're already
17 looking at life on a burglary first and life on murder.

18 A. That doesn't mean it's over with.

19 Q. In January of 2016 -- from January the 11th of 2016
20 to June of 2016, you were on the same floor and the same
21 wing as Mr. Hart at the Lexington County Detention Center;
22 isn't that true?

23 A. Yes, sir.

24 Q. So January the 11th -- so your testimony is that you
25 knew him before that day, you knew him back on the streets?

1 A. Yeah.

2 Q. Back in 2013?

3 A. Yes.

4 Q. When you were selling drugs?

5 A. Yes.

6 Q. And, I believe, offering protection to prostitutes;
7 is that correct?

8 A. Yes.

9 Q. And how old were you then?

10 A. Fifteen.

11 Q. And how did you get around because you weren't driving
12 a car, were you?

13 A. Females were driving me around.

14 Q. So what hotels did you meet Mr. Hart at?

15 A. A couple.

16 Q. Which ones?

17 A. Travelodge. A couple of places.

18 Q. Travelodge and what?

19 A. Travelodge.

20 Q. Just one, the Travelodge? How well did you know him?

21 A. Well enough to trust him to call him.

22 Q. He's ten years older than you, isn't he?

23 A. Yes, I assume so.

24 Q. How much time did you spend with him on the street?

25 A. Almost all the time.

1 Q. So how long did you know him back in 2013?

2 A. About seven, eight months.

3 Q. And were y'all working together?

4 A. Yes.

5 Q. Tell me how you were working together.

6 A. Selling drugs and running prostitution.

7 Q. Were you selling for him?

8 A. No.

9 Q. So how were you working together?

10 A. Using the same hotels.

11 Q. You didn't share money with him though, did you?

12 A. Sometimes.

13 Q. Why would you share money with him if you're selling
14 your drugs and he's selling his drugs?

15 A. I've got come of his clients.

16 Q. I'm sorry?

17 A. I've got some of his clients.

18 Q. January the 11th of 2016 when you saw him on the same
19 floor, in the same wing, y'all would rec together, how
20 close were your cells to each other?

21 A. I don't know.

22 Q. Y'all talked though, correct?

23 A. Not really.

24 Q. You didn't talk?

25 A. No.

1 Q. When you saw him January the 11th when y'all were
2 there together on rec, you knew who he was?

3 A. I don't rec with him.

4 Q. I'm sorry?

5 A. I never rec'd with him.

6 Q. January the 11th, 2016, when you were on the same
7 floor, in the same wing, you saw him, correct?

8 A. Yes.

9 Q. And you knew who he was?

10 A. Yeah, I know who he was.

11 Q. Because you knew him -- because you had spent seven or
12 eight months with him before back in 2013, right?

13 A. Yeah.

14 Q. Did you talk to him then?

15 A. Not much.

16 Q. Well, he was somebody who was a business associate of
17 yours, you were in there and he was in there, you'd spent
18 seven or eight months sharing money back and forth with
19 each other with the same customers. You talked about what
20 you were in there for, correct?

21 A. Yes.

22 Q. So on January the 11th he told you that he was in
23 there for a murder charge, right?

24 A. Yes.

25 Q. He told you it was for killing Paula?

1 A. Yes.

2 Q. And you're here today saying that it's not right to
3 let an innocent man go free. I mean, have to face a charge
4 for something you did, correct?

5 A. Yes.

6 Q. So January the 11th, 2016, when he told you they got
7 me hooked up on a bad charge saying I killed Paula, you
8 knew that wasn't true, right?

9 A. Yes.

10 Q. In fact, he knew that he took Paula to you, right?

11 A. Yeah.

12 Q. And so when he told you that, what, if anything, did
13 he say to you about clearing his name?

14 A. I didn't know he was locked up for the thing with
15 Paula.

16 Q. You just told me you did. You just testified under
17 oath that on January the 11th, 2016, you discussed your
18 charges and he told you that he was locked up for killing
19 Paula.

20 A. That's when he told me.

21 Q. Correct.

22 A. That's when I found out.

23 Q. Correct.

24 A. I didn't know beforehand.

25 Q. You knew on January the 11th of 2016?

1 A. Yes.

2 Q. And what, if anything, did he say to you about what
3 you needed to do?

4 A. He didn't say anything.

5 Q. So John Christopher Hart was arrested for killing
6 Paula Justice, he was in the detention center, you saw him
7 on January 11, 2016, and he told you AJ, they got me
8 arrested for killing Paula, you know you did it, you need
9 to do something, you need to clear my name. He didn't say
10 that to you?

11 A. No, he didn't say that.

12 Q. He didn't say anything?

13 A. No.

14 Q. And you expect the jury to believe that?

15 A. If he would have said something, he would have said
16 something when he got locked up.

17 Q. I'm sorry?

18 A. If he would have said something, he would have said
19 something when he got locked up.

20 Q. I'm talking about when he talked to you. You're the
21 man who said you called Paula Justice.

22 A. Yeah.

23 Q. And you're telling me that he didn't say anything to
24 you about clearing his name?

25 A. No.

1 Q. He didn't threaten you in any way?

2 A. No.

3 Q. He didn't put pressure on you?

4 A. No.

5 Q. He didn't tell you go tell the cops that you're the
6 one that killed her, clear me because I'm looking to going
7 to prison for murder?

8 A. No.

9 Q. So what was it then between January 11th, 2016, and
10 June 22nd, 2016, that made you change your mind? Because
11 on January 11th you knew he'd been arrested and charged for
12 killing Paula and you're here saying that's not true and
13 you did it, so why did you wait six months to come forward
14 and tell the police this story that you're telling today?

15 A. A lot to think about.

16 Q. There's nothing to think about if your answer is I'm
17 doing it because it's the right thing to do, is it?

18 A. Yeah, well, it's also a murder charge that I didn't
19 get arrested for, so.

20 Q. It's also taking a murder charge?

21 A. Yeah.

22 Q. But you're already looking at murder, you're already
23 looking at life and life for a burglary first and a murder,
24 aren't you?

25 A. Yeah, I'm looking at it. That don't mean I got it.

1 Q. Oh, I'm pretty sure you got it. You confessed on the
2 stand today.

3 A. Yeah, well.

4 Q. You confessed to the police at the time. You lied to
5 protect a friend, but on January the 11th, 2016, when you
6 knew that he was, under your story, wrongly in there, you
7 didn't call the police and say I need to confess, I need
8 to clear my conscience, I need to tell the truth for an
9 innocent man. Why did you wait six months? Did it take
10 him that long to convince you to take the charge?

11 A. He didn't convince me to do anything.

12 Q. Did it take that long for you to come up with an
13 answer when he asked you to take the charge?

14 A. He didn't ask me to take anything.

15 Q. Taking a charge for someone else can help you when
16 you go to prison, can't it?

17 A. I don't know. I never been to prison.

18 Q. Anybody ever told you that it could?

19 A. I don't believe what people tell me half the time.

20 Q. Has anybody ever told you that taking a charge --

21 A. No.

22 Q. -- for somebody else can help you when you're in
23 prison?

24 A. No.

25 Q. So what's your answer for why it took you six months

1 if you're here to do the right thing?

2 **MR. PHILLIPS:** Your Honor, it's asked and answered.

3 **THE COURT:** I don't think he ever answered it.

4 **MR. PHILLIPS:** Oh, didn't he?

5 **THE COURT:** I'm gonna allow the question. Your
6 objection's noted.

7 BY MR. GRAHAM:

8 Q. What's your answer? Why did you wait six months? If
9 it's the right thing to do, why did you wait six months
10 before you told the police that you killed Paula?

11 A. Hart was frustrated that he had been in this long time
12 being locked up for the charge and at one point in time I
13 was like fuck it, you here for it, but then after I sat on
14 it I could understand why he was frustrated.

15 Q. When did that conversation happen?

16 A. I don't know. Sometime when I was on the wing.

17 Q. After he told you that he was frustrated for being in
18 there for something he didn't do that you did, how long was
19 it before you contacted Detective Spivey?

20 A. Maybe a month, two months.

21 Q. But you're telling me that on January the 11th of
22 2016, which would have been three years after Paula was
23 killed when you first talked about it and he told you that
24 he was in there for the murder of Paula and knew that you
25 did it, he wasn't frustrated then?

1 A. He was frustrated then.

2 Q. That's not what you testified to earlier, is it?

3 A. I don't believe I answered the question.

4 Q. Earlier didn't you testify that he didn't say anything
5 else about it, he just told you that he was in there for
6 killing Paula?

7 A. Frustration is an emotion. I could hear it in his
8 voice.

9 Q. You didn't say that earlier when we asked that
10 question though, did you?

11 A. You didn't ask that question.

12 Q. Okay. So you wrote a request to Detective Spivey and
13 said I want to talk to you, correct?

14 A. Yes.

15 Q. And you interviewed with him and as soon as you said
16 that you killed Paula, he read your Miranda rights to you;
17 is that correct?

18 A. Yes.

19 Q. You waived those rights and agreed to speak with
20 him and you gave both a verbal statement and a written
21 statement; is that right?

22 A. I never gave a verbal.

23 Q. You didn't talk to him at all?

24 A. I talked to him, but --

25 Q. So prior to --

1 A. -- it wasn't recorded.

2 Q. I'm sorry. Go ahead.

3 A. It wasn't recorded, so I wrote something.

4 Q. Okay. Prior to you writing the statement for him,
5 didn't you have conversations with him about it?

6 A. Yeah.

7 Q. Okay. So you talked to him about it and then after
8 you were done talking about it, you wrote a statement?

9 A. Yes.

10 Q. All right. Let me show you State's Number 60. Do
11 you recognize that?

12 A. Yeah.

13 Q. That's your handwriting?

14 A. Yes.

15 Q. And he read your rights and you waived your rights and
16 then this nine-page statement is your handwriting except
17 that Detective Spivey wrote the questions and you answered;
18 is that right?

19 A. Yes.

20 Q. Let's go through that.

21 A. What, read it?

22 Q. Sure.

23 A. I, Alex Jermaine Wallace, confess to the murder of
24 Paula Justice. Any allegations against John Hart are
25 incorrect. I know Hart from selling drugs out of motels

1 in the West Columbia area. Me and Hart both know Paula
2 Justice because she was a prostitute. Paula owed me \$1,250
3 at the time. I would called her phone, which was a 363
4 number --

5 Q. Let me stop you for a second. So what's Paula's phone
6 number; do you know?

7 A. I just remember the first three digits.

8 Q. You know it's a 363 number?

9 A. Yeah.

10 Q. When I talk about discovery, do you know what I'm
11 talking about?

12 A. No.

13 Q. So in your case where you're charged with murder and
14 you're charged with burglary first, we have to turn over a
15 bunch of documents about the case to your lawyer.

16 A. Yeah.

17 Q. And you've reviewed those documents with her, right?

18 A. Yes.

19 Q. Do you have those in the detention center with you?

20 A. For my case, yeah.

21 Q. Sure. Mr. Hart had his with him, too, didn't he?

22 A. I wouldn't know.

23 Q. So during the six months that he was frustrated about
24 this, you didn't see his discovery?

25 A. No.

1 Q. During the six months that he was frustrated with
2 this, he didn't give you details about what he was charged
3 with?

4 A. No.

5 Q. He just told you he was frustrated --

6 A. Yeah.

7 Q. -- about a month before you came and gave the
8 statement?

9 A. Yeah.

10 Q. And other than him being frustrated, that's the only
11 conversation that y'all had about his case?

12 A. Yeah.

13 Q. Continue on.

14 A. And she would constantly ignore my calls. I knew that
15 Hart knew Paula as well, so I called him and told him to
16 bring Paula to me. I told him that it was a money meeting
17 about getting Paula to do prostitution. He called me back
18 and told me he was on the way. I was walking down
19 Greenwood Drive and emerged onto Lumberjack when I saw a
20 car pull up.

21 Q. Let's stop for a second. So what number -- how many
22 phones did he have?

23 A. Who's he?

24 Q. Mr. Hart.

25 A. I wouldn't know.

1 Q. Did he have one phone or two phones?

2 A. I wouldn't know.

3 Q. Did you ever see his phone?

4 A. A couple of times.

5 Q. What did it look like?

6 A. I don't know. It was a phone. I don't really know
7 how to describe a phone that's four years old.

8 Q. If I told you that he had two phones, one for business
9 and one for friends, would you been on the friend phone or
10 would you have been on the business phone?

11 A. I would have been on both of them.

12 Q. You would have been on both?

13 A. (Nods head.)

14 Q. I'm sorry?

15 A. Yeah, I would have been on both.

16 Q. You would have been on both. Do you remember any of
17 his numbers?

18 A. No.

19 Q. If I said them to you, would you remember?

20 A. Most likely not.

21 Q. But you're saying you called him on your phone
22 probably on one or both of those phones; is that right?

23 A. Yeah.

24 Q. Do you remember your numbers?

25 A. Yeah.

1 Q. What were your numbers?

2 A. I don't remember the whole number. I remember the
3 areas codes.

4 Q. What were they?

5 A. 773, 704 and 803.

6 Q. And that's not the number that you gave to Detective
7 Spivey, is it?

8 A. No, I gave him the 803 number.

9 Q. So if you're trying to clear an innocent man, why
10 would you lie and not tell the truth to Detective Spivey?

11 A. Because I assumed at the time when I talked to Spivey
12 that that was the number I called him off of, but I had
13 multiple phones.

14 Q. So you did give him other numbers at the time, but now
15 you know a different number?

16 A. Just the area code. I don't remember my numbers.

17 Q. All right. Slow down a minute because I've got lots.

18 **THE COURT:** Mr. Graham, y'all come up.

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

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

21 BY MR. GRAHAM:

22 Q. If I understood you correctly, you don't remember the
23 phone numbers because you're saying that you had three
24 phones with three different area codes?

25 A. Yes, sir.

1 Q. Okay. Slowly for me, what were the three area codes?

2 A. 773, 704 and 803.

3 Q. Other than the area codes, you don't remember any of
4 the numbers?

5 A. No.

6 Q. From which one of those would you have called him on
7 his two phones?

8 A. Most likely the 803 or 704 number.

9 Q. All right. The next thing says -- you stopped at
10 I was walking down Greenwood Drive and emerging onto
11 Lumberjack when I saw the car pull up. Let me show you
12 State's Number 61. It's a map of the Greenwood, Lumberjack
13 area. Do you recognize Greenwood there and Lumberjack,
14 Gator, Earline, railroad tracks?

15 A. Yeah.

16 Q. Where did you live?

17 A. I lived in this corner.

18 Q. Okay. I'm gonna put this on the overhead. There's a
19 laser pointer right here. Do you see it on the far left?
20 If you will push that red button and point it to the
21 screen, we'll all be able to see what you're talking about.
22 Maybe.

23 A. I can't really see that.

24 Q. Me neither.

25 **MR. GRAHAM:** Your Honor, can I have him step down?

1 **THE COURT:** Sure.

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

4 BY MR. GRAHAM:

5 Q. State's 61 -- we're gonna go twice, here and down
6 there -- would you show the jury with your finger where you
7 lived?

8 A. In the corner.

9 Q. That's on Greenwood. You lived there with your mom?

10 A. Yeah.

11 Q. All right. When you talked about -- in your statement
12 you said you emerged onto Lumberjack. There's Lumberjack,
13 correct?

14 A. Yes.

15 Q. So you came off of Greenwood and came right onto
16 Lumberjack?

17 A. Yeah.

18 Q. Let's go back up there. You stated that you were on
19 Greenwood, you live up here and that you emerged onto
20 Lumberjack?

21 A. Yeah.

22 Q. And Lumberjack runs all through here, down here to
23 join Gator Road, correct?

24 A. Yes.

25 Q. Have a seat. Thank you.

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

2 BY MR. GRAHAM:

3 Q. You said that you emerged onto Lumberjack and you saw
4 the car pull up. Now we're talking about whose car?

5 A. Hart's car.

6 Q. All right. And you described that car as a tan or
7 orange car, correct?

8 A. Tan, yeah.

9 Q. I'm sorry?

10 A. Tan or beige.

11 Q. Tan or beige. My bad. State's Number 30, let me show
12 you that. Do you recognize that?

13 A. Yeah.

14 Q. Is that Mr. Hart's car?

15 A. One of them, yes.

16 Q. So he has more than one car?

17 A. Yes.

18 Q. How many Lincolns does he have?

19 A. I don't remember the make and models of the cars that
20 he had.

21 Q. The tan or beige car that you saw him in that night,
22 it wasn't this car though, was it? Because this isn't tan
23 or beige. That's a bluish color or silver, isn't it? It's
24 a light color.

25 A. It was dark. It could have been because the car did

1 have rims on it.

2 Q. But in your statement you wrote tan or beige, correct?

3 A. It was also nighttime with headlights on.

4 Q. In your statement you wrote tan or beige, correct?

5 A. That's what I wrote, yeah.

6 Q. And when you wrote that statement, you were telling
7 the truth about everything, right?

8 A. From what I remember.

9 Q. Because you were trying to clear an innocent man,
10 weren't you?

11 A. Yes.

12 Q. So you just came out onto Lumberjack from Gator Road
13 and you saw the car driving towards you?

14 A. Greenwood.

15 Q. I'm sorry?

16 A. I came off Greenwood.

17 Q. You're right. You came off of Greenwood onto
18 Lumberjack and you saw the headlights?

19 A. Yeah.

20 Q. The car continued to drive toward you?

21 A. No, it stopped.

22 Q. It stopped where?

23 A. In the -- in the crevice where Lumberjack turns.

24 Q. Looking at State's Number 61, where are you talking
25 about?

1 A. Right there.

2 Q. So you're pointing -- you correct if me if I'm wrong,
3 you're pointing at the intersection of Lumberjack and Lowry
4 Road?

5 A. Right before that.

6 Q. Right before that?

7 A. Yeah.

8 Q. Where my thumb is?

9 A. Yes.

10 Q. That's where the car stopped?

11 A. Yes.

12 Q. Not back near Gator Road, not back near Earline Road,
13 but right before Lumberjack and Lowry, correct?

14 A. Yeah.

15 Q. The car stopped. The headlights are facing you?

16 A. Facing Lowry.

17 Q. Facing which way?

18 A. Kind of like an angle facing Lowry.

19 Q. Facing Lowry. So they're up there right at that Y?

20 A. Yeah, right before.

21 Q. And facing Lowry?

22 A. Yeah.

23 Q. All right. So it's right at the Y and the headlights
24 are facing Lowry on that tan or beige car and you're coming
25 off of Lumberjack, correct? You're off of Greenwood onto

1 Lumberjack?

2 A. Yeah.

3 Q. What happens next?

4 A. Hart -- Hart and Paula get out of the car.

5 Q. All right. Let's go on with your statement. I walked
6 down Lumberjack and greeted Hart and Paula. Paula didn't
7 say anything to me and Hart asked me where was the customer
8 and I told him it was a few houses up. I told Paula to
9 walk ahead of me so Hart and I could talk. What did you
10 and Hart talk about?

11 A. We didn't talk about anything.

12 Q. Well, why did you write in your statement so Hart and
13 I could talk?

14 A. That was just to get her in front of us.

15 Q. Oh, that was a lie you told to Paula?

16 A. Yeah.

17 Q. When she did that, that's when I pulled my 45 caliber
18 gun out and shot her once in the back of the head.

19 A. Yeah.

20 Q. As soon as I shot her, I ran up Lumberjack back to
21 my house on Greenwood. I didn't hear anything from Hart
22 afterward and wasn't notified if anyone was locked up for
23 it, so I thought the case went cold. Hart did not murder
24 Paula Justice. You described the gun as how?

25 A. All black with a chrome cartridge and black grips.

1 Q. What's chrome?

2 A. I really know it to be on cars. It's metal.

3 Q. Okay. Like the -- like the rims? I guess these are
4 -- are those 22's?

5 A. I don't know.

6 Q. Like the rims on that Lincoln, right? That's chrome?

7 A. Maybe a little lighter, yeah.

8 Q. Shiny, right? Correct?

9 A. The color, yeah.

10 Q. You would agree with me that this gun, although it
11 does have metal up at the top, is not chrome. That's
12 stainless steel, isn't it?

13 A. It's the same color.

14 Q. The color -- the color on here is the same color as
15 chrome on a car? The car bumper? The old car bumpers are
16 chrome. You're saying this is the same color?

17 A. It's gray.

18 Q. That's not what you wrote, though, is it? You wrote
19 chrome.

20 A. I was also fifteen.

21 Q. Did Mr. Hart tell you that it was chrome?

22 A. No.

23 Q. Continue on reading.

24 A. The car that Hart and Paula came in was tan and beige.

25 Q. Which we decided was not this car, correct?

1 A. It could have been because I remember the rims. It
2 was dark with the lights on, so I might have got the color
3 mixed up.

4 Q. All right. Keep reading.

5 A. I was wearing a dark green and beige camo hoodie with
6 black pants and black and beige Jordans.

7 Q. Continue.

8 A. I am owning up to the murder of Paula because an
9 innocent man should not be charged for something he
10 obviously didn't do.

11 Q. The next question by Detective Spivey was: What kind
12 of gun was it, and what did you say?

13 A. A Glock, 45 caliber.

14 Q. You know guns?

15 A. I know how to use them.

16 Q. I'm sorry?

17 A. I know how to use them.

18 Q. Louder.

19 A. I know how to use them.

20 Q. You know how to use them? According to you, you
21 killed two people with them, right?

22 A. Yeah.

23 Q. This isn't a Glock, is it?

24 A. It looked like a Glock when I bought it. Obviously
25 it's not a Glock.

1 Q. When did you buy it?

2 A. A couple of months before that happen.

3 Q. So you had the gun for two months?

4 A. Probably two, three.

5 Q. Two or three months. You handled it, you shot it,
6 learned how to use it?

7 A. No.

8 Q. Did you ever look at it?

9 A. I'd just hold it. I never needed to use it. Just
10 looked at it.

11 Q. It's got a K on it. You talked about that. You
12 didn't put it in your statement, but you talked about it
13 on direct, correct?

14 A. Yeah.

15 Q. Okay. And you see up here at the top it says Karr.
16 You do see that, right?

17 A. Yeah, I see it.

18 Q. You know Karr's a brand name, right?

19 A. I didn't know it was a brand.

20 Q. It doesn't say Glock anywhere on here, does it?

21 A. No.

22 Q. How many rounds does it hold?

23 A. Seventeen.

24 Q. This gun holds seventeen rounds?

25 A. No, that one probably holds about eight or seven.

1 Q. Why did you say seventeen?

2 A. I don't know. I'm thinking of something completely
3 different.

4 Q. I'm sorry?

5 A. I'm thinking of something else.

6 Q. What were you thinking of?

7 A. Nothing relevant.

8 Q. I'm sorry?

9 A. Nothing relevant.

10 Q. I asked you the question how many rounds this had --
11 how many rounds that gun held and you responded immediately
12 seventeen. So what were you thinking of? Because this gun
13 doesn't hold seventeen rounds.

14 A. Yeah, I know that.

15 Q. So what were you thinking of?

16 A. Nothing.

17 Q. It holds seven or eight. You had the gun for
18 two months. You don't even know how many rounds it holds?

19 A. I didn't shoot it either.

20 Q. I'm sorry?

21 A. I didn't shoot it either.

22 Q. You didn't shoot it?

23 A. No.

24 Q. What kind of bullets were in it?

25 A. 45 bullets.

1 Q. 45. Do you remember the brand?

2 A. No.

3 Q. Do you remember the color of the casing? When I say
4 casing, that would be the part that's left after you shoot
5 it.

6 A. Brass.

7 Q. Brass? You mean like brass, right?

8 A. Like a brownish color.

9 Q. State's Number 14 was a shell casing found at the
10 scene that you say you shot and killed Paula Justice with.
11 What color is that?

12 A. Silver.

13 Q. Yeah, it's silver, isn't it? It's not brass. You're
14 just mistaken about that or are you lying about it?

15 A. I'm not lying.

16 Q. Okay. How many rounds were left in the gun?

17 A. Whatever was left.

18 Q. How many?

19 A. I only shot once.

20 Q. Was the clip full?

21 A. Yes.

22 Q. So if you're saying there should have been seven or
23 eight in there, with one in the chamber, then seven or
24 eight more inside or seven or eight total?

25 A. Just seven or eight total, I guess.

V

1 Q. So there should have only been six or seven rounds
2 left, right?

3 A. If I only shot one, yes.

4 Q. Any explanation for why there was only four?

5 A. No answer..

6 Q. Any reason?

7 A. (Shakes head.)

8 Q. Were you just mistaken or are you lying?

9 A. I'm not lying.

10 Q. Okay. The bullets themselves, what did the bullets
11 look like? So we've got a brass casing that's actually
12 silver. The bullet part, what did it look like?

13 A. That must have been what was brass.

14 Q. That was brass. You know the difference between a
15 full metal jacket and a hollow point?

16 A. No.

17 Q. A full metal jacket, on the top of the bullet -- or
18 the projectile covers -- the brass covers it. It's
19 actually copper, not brass. The copper covers it all the
20 way and seals it, okay?

21 A. Yeah.

22 Q. A hollow point has a hole at the top of that so the
23 copper comes around and goes in so that when it's fired it
24 can spread out. What kind of bullet did you have in your
25 gun?

1 A. I believe they were hollows.

2 Q. I'm sorry?

3 A. I believe they were hollows.

4 Q. You believe they were hollow points, brass-jacketed
5 hollow points?

6 A. (No verbal response.)

7 Q. Let's keep reading.

8 A. You want me to read the question, too?

9 Q. Sure.

10 A. Who shot Paula? I said: I did.

11 Q. The next one?

12 A. How far were you from Paula when you pulled the
13 trigger? I said: About four, five feet away with my arm
14 extended.

15 Q. All right. Let me stop you for a second. Do you
16 remember telling Detective Spivey during the verbal part of
17 this interview before you wrote it that you were five or
18 six feet away from Paula when you shot her?

19 A. No.

20 Q. So did you not tell him that or you just don't
21 remember?

22 A. I don't believe I told him that.

23 Q. Just keep reading.

24 A. How do you know it was a Glock and how certain are you
25 to it being a Glock? I said: When I bought it that's what

1 I was told it was. I'm positive.

2 Q. I'm positive. Next page.

3 A. What color was the gun? All black, chrome cartridge.

4 Q. Keep going.

5 A. Top part, not magazine.

6 Q. The next question?

7 A. How did you contact Hart to come meet you and Paula?

8 I said: By phone.

9 Q. Next question?

10 A. What number did you call Hart from and whose phone
11 does the number belong to? I said: 803-822-8057. It did
12 belong to me in my momma's name. It was stolen when I got
13 locked up in June of 2013.

14 Q. Stop right there. Your answer in your handwriting,
15 what did you write? What's the phone number you wrote
16 down?

17 A. 803-822-8057.

18 Q. In fact, you gave -- do you admit or deny you gave
19 Detective Spivey a different number when you talked to him
20 verbally?

21 A. No.

22 Q. It was one digit off from this.

23 A. That's the only number I can remember fully, so that's
24 the number I believed I called from.

25 Q. So this is the number you called him from?

1 A. I could have called him from all three of the numbers
2 I told you.

3 Q. The 703 and the other one as well?

4 A. 773.

5 Q. 773. And the other area code was what?

6 A. 704.

7 Q. But you didn't write that down though, did you?

8 A. No, because I believed it was that one.

9 Q. Any reason why when an expert looked through John
10 Hart's phone numbers and Paula Justice's phone numbers that
11 that 803-822-8057 didn't show?

12 A. It had to be the 704 number then.

13 Q. Isn't it true that the only number that you had
14 working at the time was a wi-fi number?

15 A. No.

16 Q. So if you told your co-defendant, Terrance Flagler,
17 while you-all were in jail together you only had wi-fi,
18 that would be wrong?

19 A. Yeah, that was wrong.

20 Q. But you don't have an explanation of why that number
21 isn't on their records, do you?

22 A. That's the one I believe I called from.

23 Q. All right. Keep reading.

24 A. I believe it was a Glock gun you said you shot Paula
25 with. We talked about mine being midsize on my hip, a

1 smaller one on my leg and the size that Detective Stout has
2 being a full-size.

3 Q. All right. During that -- let's stop for a second.
4 During that time Detective Spivey showed you that he had a
5 mid-size on his hip, correct?

6 A. Yeah.

7 Q. Detective Spivey showed you that he had a baby Glock
8 on his ankle, correct?

9 A. Yes.

10 Q. And Detective Stout showed you that he had a full-size
11 on his hip?

12 A. Yes.

13 Q. And you said it was a full-size, didn't you?

14 A. That's what I wrote.

15 Q. And a full-size police holds about seventeen rounds,
16 doesn't it?

17 A. Yes.

18 Q. Is that why maybe you got confused because you were
19 thinking about a full-sized gun when I asked you that
20 question earlier?

21 A. No.

22 Q. You would agree with me that this is not a full-size
23 gun, is it?

24 A. Yeah.

25 Q. This is like the baby Glock size gun, isn't it?

1 A. Yes.

2 Q. All Glocks are black, aren't they?

3 A. I don't know.

4 Q. So were you just mistaken or did you lie when you said
5 it was full-size or is that just something that Chris Hart
6 didn't tell you?

7 A. I was mistaken.

8 Q. Keep reading.

9 A. What number did you call Paula on and when did you
10 last try to call her prior to her being shot? The same
11 number I called Hart on the night before and several other
12 times.

13 Q. Let me stop you for a second. Any reason why that
14 number wouldn't show up on Paula's records?

15 A. It must have been the 704 number.

16 Q. But you didn't give that number to the police, did
17 you?

18 A. No.

19 Q. And you were trying to be honest and clear an innocent
20 man, so you would agree with me that anything that could
21 potentially go to explain how you did this would have been
22 important to have Mr. Hart be innocent? You would agree
23 with that, wouldn't you?

24 A. Yeah.

25 Q. Okay. Keep reading.

1 A. How many times did you try to call Paula the night
2 before the incident? I said: Twice.

3 Q. Next page.

4 A. What was Paula wearing on the night? I said: I'm
5 not sure, but I believe it was a gray or white shirt and
6 sweatpants.

7 Q. Let's stop there for a second. So she's walking four
8 or five feet in front of you -- is it in front of you or in
9 front of your gun? When you say four or five feet, is that
10 four or five feet from the end of the gun or four or five
11 feet from you?

12 A. Four or five feet from me.

13 Q. Four or five feet from you.

14 A. (Nods head.)

15 Q. You saw her walking towards you all the way from the
16 intersection of Lowry and Lumberjack up Lumberjack towards
17 you, right?

18 A. No.

19 Q. Well, that's where you testified their car parked when
20 they got out?

21 A. That's where they got out.

22 Q. All right. So they walked toward you and you walked
23 toward them?

24 A. Yes.

25 Q. And they're in the headlights? The headlights are

1 actually pointed the other way, so you got a good view of
2 her, didn't you?

3 A. No, not really.

4 Q. So when she came up to you and you talked to her and
5 said I need to walk with Hart, walk on ahead, you didn't
6 take a look at her?

7 A. No.

8 Q. This is somebody that you're gonna put a bullet into
9 their head and you didn't even bother to look them?

10 A. It really didn't matter.

11 Q. You're just that bad of a cold-blooded killer that you
12 don't even care what she looked like or what she was
13 wearing? Her life didn't mean anything to you?

14 A. No.

15 Q. So then why did you even write down what she was
16 wearing if it didn't even matter?

17 A. I answered the question.

18 Q. So if I told you that she was wearing not a gray or
19 white shirt, but a black shirt, would you disagree with me?

20 A. No.

21 Q. If I told you that she was wearing jeans and not
22 sweatpants, would you disagree with me?

23 A. No.

24 Q. So you just wrote down something to write down
25 something?

1 A. I said I'm not sure, but I believe so, yeah.

2 Q. A better answer would have been I don't know because
3 that's the truth, right? That's your story. You don't
4 even know what she was wearing, do you?

5 A. No.

6 Q. So you lied when you wrote that down. You were just
7 giving a description to give a description?

8 A. Pretty much.

9 Q. But you're not lying today?

10 A. No.

11 Q. Who else -- you keep reading.

12 A. Who else was with Hart and Paula and how did they get
13 there? I said: Nobody. They drove.

14 Q. Let's stop there for a second. Tevin Deloach, do you
15 know him?

16 A. No.

17 Q. Heard of him?

18 A. No.

19 Q. You didn't even know he was a co-defendant in this
20 case?

21 A. No.

22 Q. John Christopher Hart never told you that Tevin
23 Deloach was ratting on him? In all the times you talked
24 about his case and his frustration, he never said that
25 there was snitch on his case, that his co-defendant was

1 pointing the finger at him for killing Paula?

2 A. He never told me, but other people have.

3 Q. So you have heard of Tevin Deloach?

4 A. I heard that he had a co-defendant. I never heard his
5 name.

6 Q. So Chris Hart's charged with murder and he doesn't
7 tell you anything about his case?

8 A. No.

9 Q. He's just frustrated?

10 A. Yeah.

11 Q. Not mad, not threatening you?

12 A. No.

13 Q. So you didn't see anybody else?

14 A. No.

15 Q. Who was driving the car?

16 A. I assumed it was Hart.

17 Q. You saw him get out of the driver's side?

18 A. No.

19 Q. You didn't see him get out of the driver's side?

20 A. No.

21 Q. Well, let's read down a little bit more. The next
22 question says: What did they drive? We already covered
23 that one. A Lincoln or a Crown Vic. Go to the next one.

24 A. Where was the car parked at and where did they get out
25 of the car? It was on a dirt road. Hart got out of the

1 driver's side and Paula got out of the opposite side.

2 Q. The let's stop there. Just a second ago, you said you
3 didn't know -- you assumed he was driving. You didn't see
4 him get out of the driver's side, right?

5 A. Yeah.

6 Q. You but wrote Hart got out of the driver's side,
7 didn't you?

8 A. Yeah, I did.

9 Q. So which one is true or are you just mistaken again?

10 A. He got out of the passenger side.

11 Q. Hart got out of the passenger side?

12 A. I wrote the wrong thing down or --

13 Q. You wrote Hart got out of the driver's side and you
14 testified you had no idea. What's the answer?

15 A. He got out of the passenger side because him and Paula
16 got out of the same side.

17 Q. He got out of the passenger side?

18 A. Yeah.

19 Q. Why did you write Hart got out of the driver's side?

20 A. I don't know.

21 Q. It was a lie, right?

22 A. Yeah.

23 Q. Why would you lie about that?

24 A. I don't know.

25 Q. Or is that just something you didn't know because he

1 didn't tell you?

2 A. No, I know this. It's just the day that I did this
3 statement I wasn't too much on the right side.

4 Q. Right. You had six months to think about doing the
5 right thing over clearing a frustrated, innocent man. You
6 came to tell the truth to clear his name and you wrote in
7 your handwriting Hart got out of the driver's side and
8 you're saying it's a lie. I just want to make sure I
9 understand what you're saying. That's correct, right?

10 A. Yeah.

11 Q. All right. Paula got out of which side?

12 A. The same side he did.

13 Q. So now you're saying that he got out of the passenger
14 side and she got out of the passenger side?

15 A. Yeah.

16 Q. So who was driving the car?

17 A. I don't know.

18 Q. Huh?

19 A. I don't know.

20 Q. All right. So let's back up. At the top the question
21 was -- the second question: Who else was with Hart and
22 Paula and how did they get there? What was your answer?

23 A. I said: Nobody. They drove.

24 Q. Who else was with Hart and Paula and your answer was
25 nobody, right?

1 A. Yes.

2 Q. That's a lie, right?

3 A. No.

4 Q. If he got out of the passenger side and she got out of
5 the passenger side, who the heck was driving the car?

6 A. I don't know.

7 Q. Keep on going.

8 A. Where did they come from prior to getting there? I
9 said: I don't know.

10 Q. So when you called -- because your story is that you
11 called Hart and said get Paula?

12 A. Yeah.

13 Q. How did you know that he was gonna be able to get her?

14 A. Because he was the only one that I worked with with
15 her.

16 Q. He didn't tell you where Paula was staying?

17 A. No.

18 Q. He didn't tell you where he was gonna pick Paula up?

19 A. No.

20 Q. How much money did you tell John Hart that you were
21 gonna give for tricking her out?

22 A. The same thing that we usually get.

23 Q. How much?

24 A. 150.

25 Q. 150?

1 A. Yeah.

2 Q. For how many guys? One, two, three, four, five? How
3 many guys was she gonna turn tricks with?

4 A. I didn't say all that.

5 Q. You just said bring her out and I'll give you 150?

6 A. Yeah.

7 Q. So of that 150, how much was John Hart going to get?

8 A. 50.

9 Q. And how much was Paula gonna get?

10 A. 25.

11 Q. How much?

12 A. 25.

13 Q. And you were gonna keep the rest of for yourself?

14 A. Yeah.

15 Q. So you were gonna keep 75 of the 150, he was gonna get
16 50 and she was gonna get 25 for having sex with somebody?

17 A. Yeah.

18 Q. Nothing about two guys and 150 apiece; is that right?

19 A. No.

20 Q. And Paula would have expected -- do you believe me if
21 I said that Paula expected to be able to make enough money
22 to pay her rent at her hotel?

23 A. If she was doing more than just that night, then,
24 yeah.

25 Q. Well, if she was only gonna get \$25 for turning this

1 trick for you and for John Hart, why would she think she
2 was gonna be able to pay back somebody for a hotel room and
3 have money left over to give to Hart for helping her out?

4 A. She's did less.

5 Q. She what?

6 A. She's done less.

7 Q. Louder for me?

8 A. She's done less.

9 Q. She's done less?

10 A. Yeah.

11 **THE COURT:** Mr. Graham, let's take a break. I know
12 you've got some more questions, but let's take a break and
13 let the jury step in the jury room. So take a few minutes.
14 If you want to step outside, you can. You can't discuss
15 the case and we'll have you back in here in twelve or
16 fifteen minutes.

17 (Whereupon, the jury retires to the jury room at
18 2:55 PM.)

19 **THE COURT:** All right. We'll stand at ease for about
20 fifteen minutes.

21 (Recess taken.)

22 **BAILIFF:** All rise. Court's in session.

23 **THE COURT:** You may be seated.

24 All right. Ready to keep going?

25 **MR. GRAHAM:** The State's ready.

1 **THE COURT:** All right. Bring them in.

2 (Whereupon, the jury returns to the courtroom at
3 3:09 PM.)

4 **THE COURT:** All right. We'll continue on.

5 Mr. Graham, it's still your witness.

6 BY MR. GRAHAM:

7 Q. Mr. Wallace, we're on page 4 and we were just talking
8 about who got out of what side of the car. The next
9 question -- I know we just finished where they came from
10 and you said I don't know. What did Hart do after you shot
11 Paula is the next question. What was your answer?

12 A. I don't know because I ran.

13 Q. All right. So when you shot Paula, how far away from
14 Paula were you?

15 A. Four feet.

16 Q. Four to five feet. And where was John Christopher
17 Hart?

18 A. Beside me.

19 Q. Beside you on your right or your left?

20 A. Right.

21 Q. All right. So which way are you facing? Are you
22 facing toward Gator Road on Lumberjack or are you facing
23 toward Greenwood?

24 A. Toward Greenwood.

25 Q. You're facing toward Greenwood?

1 A. Yeah.

2 Q. And you were up there near -- you're past Lowry up on
3 Lumberjack toward Greenwood, right?

4 A. Yeah.

5 Q. But no question he knew you shot her and knew you
6 killed her, right?

7 A. Yeah.

8 Q. The next question: What did you say to Hart before
9 you supposedly pulled the trigger?

10 A. I said: Hart asked me where was the customer at and
11 I told him just a few houses up. He asked again and I
12 didn't reply.

13 Q. So was there a conversation or did you just shoot
14 Paula?

15 A. I shot Paula.

16 Q. So you didn't have a conversation with him?

17 A. He asked me where it was and I said just few houses
18 up. That's when I told her to walk in front of us. He
19 asked me again and I didn't reply.

20 Q. So that statement is true, you didn't tell him?

21 A. Yeah.

22 Q. I got you. All right. The next one says: Tell me
23 what you did with the gun after the incident. Your answer?

24 A. I got rid of it.

25 Q. You got rid of it?

1 A. Yeah.

2 Q. Not John Hart?

3 A. No.

4 Q. John Hart did not leave Lumberjack Road with that
5 murder weapon, you did, right?

6 A. Yeah.

7 Q. Where did you get rid of it? We're on page 5.
8 Describe it completely.

9 A. I said: A pond near Irmo. A couple of trees near a
10 railroad track and there was a relatively close housing or
11 apartment complex.

12 Q. How did you get there?

13 A. By car.

14 Q. Your answer? Go ahead and read what you wrote.

15 A. A friend gave me a ride since I was going to a
16 friend's house.

17 Q. The next question: Who is your friend and what kind
18 of a vehicle were you --

19 A. I said: I don't know their government name. A black
20 Honda.

21 Q. What else was around the pond?

22 A. I just saw trees.

23 Q. What did you do with the gun when you got to the pond?

24 A. Threw it in the pond.

25 Q. Now did you throw it in the pond with the clip in it

1 and the bullets in it or did you just throw the gun and
2 have the clip and the bullets somewhere else?

3 A. I just -- I just threw the gun in the pond.

4 Q. Was the clip with it?

5 A. Yes.

6 Q. The bullets in it?

7 A. Yes.

8 Q. Are you guessing or do you know?

9 A. I believe so, yeah. I don't remember taking them out.

10 Q. Okay. Where was your friend when you threw the gun
11 in the pond?

12 A. He was in the car.

13 Q. All right. The next page. How did you find this
14 place?

15 A. On the way to my friend's house I saw it.

16 Q. Okay. So tell me about driving to friend's place and
17 seeing this. What did you see? Where were you driving and
18 what did you see?

19 A. I was just driving through Irmo.

20 Q. I'm sorry?

21 A. I was driving through -- I was riding with him through
22 Irmo.

23 Q. Okay. What street?

24 A. Lost Creek.

25 Q. Lost Creek?

1 A. Yeah.

2 Q. And what did you see from Lost Creek?

3 A. I seen where the pond and the trees was.

4 Q. Okay. How big of a pond was it?

5 A. A small pond.

6 Q. Tell me how big that is.

7 A. It wasn't a big pond, a small pond. I don't know how
8 to size a pond up.

9 Q. A pond as big as this courtroom or is it smaller?

10 A. Smaller.

11 Q. Was it bigger or smaller to this door where I'm at?

12 A. I -- I couldn't remember.

13 Q. Is it about as big as this area, right here?

14 A. I couldn't remember how big it was completely.

15 Q. So how far out did you throw it in the pond? Out in
16 the middle of it?

17 A. I assume so. It was dark. I threw it in the pond.

18 Q. You threw it in the pond and it was dark and it was a
19 round -- was it round?

20 A. I believe so. A pond.

21 Q. Okay. It was a round pond with a couple of trees
22 around it. Anything else around it?

23 A. I don't remember seeing anything else around it.

24 Q. And how did you get there off the road? How far off
25 the road did you see it that you had to turn in and go to

1 it or was it just right there off that main road? Was it
2 right there off of Lost Creek?

3 A. I don't remember. It was off of Lost Creek, but I
4 don't remember all the main roads.

5 Q. Okay. I mean, was it like Lost Creek and you-all
6 stopped right there and there was the pond?

7 A. Yeah, pretty much.

8 Q. Okay. So you didn't have to turn off of Lost Creek,
9 you were just there?

10 A. I believe we turned in off of Lost Creek, but I
11 believe it's still Lost Creek though.

12 Q. Okay. Is it a paved road or are you on a dirt road
13 just by the pond?

14 A. I couldn't really remember.

15 Q. Where did your friend live is the next question. What
16 was your answer?

17 A. Lost Creek. Well, he did live on Long Creek.

18 Q. Long Creek, not Lost Creek. It's Long Creek that you
19 wrote down, right?

20 A. Yeah.

21 Q. Not Lost Creek. So were you on Lost Creek or Long
22 Creek?

23 A. I meant to write Lost Creek. I wrote Long Creek.

24 Q. Okay. What time of day was this when you threw the
25 gun in the pond?

1 A. Nighttime. Maybe 10:00, 10:30.

2 Q. How long after you shot Paula did you get rid of the
3 gun in the pond?

4 A. A couple of days later. Maybe three.

5 Q. When did you shoot Paula?

6 A. Around 11:30 PM somewhere around the 8th or 9th of
7 April, 2013.

8 Q. If somebody else said that John Hart threw that gun
9 in a pond, would that be the truth or a lie?

10 A. That would be a lie.

11 Q. Because you threw the gun in, right?

12 A. Yeah.

13 Q. The next question: What was Paula doing when you shot
14 her and how many times did you shoot her?

15 A. She was slowly walking. I shot her once.

16 Q. She was walking away from you, she was in front of
17 you, correct?

18 A. Yeah.

19 Q. And she was walking up Lumberjack toward Greenwood?

20 A. Yeah.

21 Q. You shot her once, right?

22 A. Yes.

23 Q. What was Hart wearing?

24 A. I don't remember.

25 Q. If I told you that he was wearing all red, would you

1 agree with me?

2 A. I don't remember.

3 Q. Okay. The next question: What phone number did you
4 call Hart on? And, again, we've already talked about
5 that. That's the 803-822-8057. That's the number you
6 gave Detective Spivey in your statement, right?

7 A. Yes.

8 Q. You didn't give him any of the other numbers you're
9 talking about today?

10 A. No.

11 Q. And you're saying those areas codes, again, were what?

12 A. 773, 704 and 803.

13 Q. If I told you that those numbers -- those area codes,
14 there were no area codes for those numbers on Hart's phone
15 or Paula's phone, how would you explain that?

16 A. They had to be on that phone.

17 Q. And the next question?

18 A. What's Hart's phone number that you called him on?

19 I said: I don't remember. I think it was long distance.

20 Q. And the next one?

21 A. At the pond, how far from your friend -- at the pond,
22 how far were you from your friend and could he see you? I
23 said: About 30, 35 yards. And then no, because the car
24 was parked with its trunk towards me at an angle so he
25 could pull out.

1 Q. I thought you testified that the pond -- the little
2 round pond was just right off the road?

3 A. We drove in and drove off. I don't know if that was
4 still Lost Creek or not.

5 Q. So you drove past the pond?

6 A. No.

7 Q. Then how was he 30 or 35 yards away?

8 A. Because he kept driving around the curve.

9 Q. And he went that way so that he could just go straight
10 out of there?

11 A. Yeah.

12 Q. So he pulled past the pond -- he came in, pulled past
13 the pond and stopped so that you could go throw it in and
14 he could come in and he could drive right out?

15 A. Yeah, pretty much.

16 Q. Did they know -- did he know what you were doing since
17 he was parked ready to pull out?

18 A. No, he was ready to go to a party and he parked like
19 he -- how he did because it was a long turnaround.

20 Q. So the next one says: Draw me the pond and everything
21 around it like it was on the night you got rid of the gun.
22 I'm gonna put that up on the overhead.

23 **MR. GRAHAM:** This is State's 60, Your Honor.

24 **BY MR. GRAHAM:**

25 Q. All right. This is a drawing that you gave for

1 Detective Spivey explaining where you threw the gun away,
2 correct?

3 A. Yes.

4 Q. Can you see that on the overhead?

5 A. Yes.

6 Q. All right. These little dashes up here, those are the
7 trees you're talking about, right?

8 A. Yes.

9 Q. You drew the pond as a circular pond, right?

10 A. Yes.

11 Q. You've got a "me" showing you throwing the gun in the
12 pond, correct?

13 A. Yes.

14 Q. You've got a road right here. That's the road you're
15 talking about coming in where he's 30 to 35 away, right?

16 A. Yeah.

17 Q. He's got his trunk towards you and he's facing this
18 way to get out?

19 A. Yeah.

20 Q. There's a little bit of grass or dirt and there's
21 another straight road right there, so is that Long Creek or
22 Lost Creek you're talking about?

23 A. Yeah.

24 Q. All right. On the other side of the road over here,
25 is there anything else there?

1 A. I don't remember.

2 Q. Okay. Let me show you State's Number 26. Are you
3 familiar with Chestnut Hill Plantation?

4 A. No.

5 Q. The gun was found in this pond right here. You would
6 agree with me that's not a little round pond, right?

7 A. I also didn't remember the size of the pond.

8 Q. You didn't say anything about the -- this actually --
9 if you look at other photos there's ponds all over this
10 place, but the only one you saw was a small circular pond,
11 right?

12 A. Yeah.

13 Q. Any idea how the gun got here?

14 A. I threw it in a pond.

15 Q. Okay. This isn't the pond you threw it in though?

16 A. That's a pond.

17 Q. Well, where in your drawing -- show me in your drawing
18 where it's got tennis courts.

19 A. I didn't see any tennis courts.

20 Q. Show me in your drawing where the clubhouse is.

21 A. I don't -- I don't remember any of that.

22 Q. Show me where the park -- this big parking lot is.

23 A. That's it right there.

24 Q. Well, you're saying there's a little road and a
25 straight road. Show me in State's 26 where there's a

1 curved road with a straight road. It's not there, is it?

2 A. (No verbal response.)

3 Q. Do you see it up there?

4 A. It's a curved road right there.

5 Q. Yeah, I see the curved road. Here's a curved road.

6 Where's the straight road? Where's this road right here
7 that you drew? Show me where that straight road is.

8 A. I guess I'm mistaken.

9 Q. It's not there, is it?

10 A. No.

11 Q. Because you didn't throw the gun there, did you?

12 A. Yes, I did.

13 Q. Because Chris Hart's the one that killed Paula Justice
14 and he's the one that left with the gun. You weren't even
15 there, were you?

16 A. I was there.

17 Q. The next page. How long have you known Hart and
18 Paula?

19 A. You want me to read something to you?

20 Q. Yes. I'm sorry. The next page. The question was:
21 How long have you known Hart and Paula?

22 A. I don't have anything to read.

23 Q. You're right. I'm sorry. (Handing..)

24 A. I said: I knew them for maybe seven to eight months
25 before the incident.

1 Q. Where is Hart at Lexington County Detention Center in
2 comparison to you?

3 A. At the time, the same floor.

4 Q. How often do you see or talk to him?

5 A. I see him once a day if I'm not sleep. We don't talk
6 that often.

7 Q. And then it goes on to say talking about whether you
8 were promised anything. Nobody promised you anything, did
9 they?

10 A. No.

11 Q. Nobody threatened you in any way?

12 A. No.

13 Q. You were asked even if Hart threatened you or promised
14 anything and you said no, correct?

15 A. Yes.

16 Q. How tall was Paula?

17 A. About five-seven, five-eight.

18 Q. How much did she weigh?

19 A. She was heavy.

20 Q. What color was her hair?

21 A. Brownish color.

22 Q. I'm sorry?

23 A. Brownish color.

24 Q. Brown what?

25 A. A brown color.

1 Q. It wasn't blond?

2 A. No.

3 Q. What if I told you it was black?

4 A. I'd still believe it was brown.

5 Q. State's 29. Who is that? Do you know who that is?

6 A. Yeah.

7 Q. Is that Paula or is that somebody else?

8 A. That's Paula.

9 Q. Are you sure?

10 A. Yeah.

11 Q. What color is her hair?

12 A. It looks black.

13 Q. Black, not brown. You got that one wrong, didn't you?

14 A. (No verbal response.)

15 Q. Let's talk about how you shot Paula.

16 **MR. GRAHAM:** Judge, I have a mock gun. It's rubber.
17 There's nothing here. It's been checked by courthouse
18 security. I'd like him to step down from the stand.

19 **THE COURT:** Okay.

20 **MR. GRAHAM:** My paralegal is five foot seven and I'd
21 like him to reenact how he shot Paula Justice that night.

22 **THE COURT:** Okay.

23 (Whereupon, the witness steps down from the witness
24 stand.)

25 BY MR. GRAHAM:

1 Q. Did you have the gun that low or was it higher?

2 A. Well, I wasn't handcuffed.

3 Q. I understand. I'm asking you do you need to be
4 uncuffed so that you can do this?

5 A. Yes.

6 **THE COURT:** Judge?

7 **THE COURT:** Subject to security. I'm not in charge
8 of that.

9 (Whereupon, the witness was un-handcuffed.)

10 BY MR. GRAHAM:

11 Q. So how far down the road did Paula walk before this
12 happened?

13 A. Not far.

14 Q. Give me a distance.

15 A. Not that far.

16 Q. Was she getting suspicious of why she was on a dirt
17 road having to walk way down a dirt road in the middle of
18 the night?

19 A. No.

20 Q. She never had a clue this was coming?

21 A. No.

22 Q. All right. So this is Paula. Where do you want her
23 to be? Which way does she need to be facing?

24 A. That way.

25 Q. How close to you is she?

1 A. About here.

2 Q. And she's walking which way?

3 A. Straight.

4 Q. And which way are you walking?

5 A. I'm not walking.

6 Q. You stopped. All right. Show me how you shot her.

7 A. Like that.

8 Q. And how far away are you from her right now about?

9 A. About three, three and a half feet.

10 Q. About three feet. That's right. And the angle --
11 show the jury -- stand over here and show the jury which
12 way the angle was.

13 A. (Witness complies.)

14 Q. So if it went straight through, it would come out
15 right over here in her forehead. Do you agree with me?

16 A. No.

17 **MR. PHILLIPS:** Your Honor, that's an -- entirely a
18 mischaracterization.

19 **THE COURT:** I don't think he's qualified to testify
20 to that. I think that would be expert testimony.

21 BY MR. GRAHAM:

22 Q. If you -- put the gun back up there again, please. If
23 that gun went -- if the bullet went straight through, it
24 would travel along this line and come right over here; is
25 that correct?

1 **MR. PHILLIPS:** Your Honor, that's what we just went
2 into. You know that they can call an expert for that.

3 BY MR. GRAHAM:

4 Q. And you're three feet away?

5 A. About three and a half, four.

6 **THE COURT:** For the record, the objection's sustained.

7 **MR. GRAHAM:** You can have a seat.

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

9 BY MR. GRAHAM:

10 Q. So how close was the gun to her head?

11 **THE COURT:** Hang on so he can be re-cuffed.

12 **MR. GRAHAM:** I'm sorry.

13 **MR. PHILLIPS:** And could the record reflect that the
14 gun was pointing in a downward angle?

15 **THE COURT:** He demonstrated. I'm not gonna described
16 what the courtroom just saw for the record. He had the gun
17 in his hand and he demonstrated what he remembered doing.

18 **MR. GRAHAM:** The jury saw it. The jury saw it.

19 **THE COURT:** The jury saw it from different angles.

20 **MR. PHILLIPS:** They did.

21 BY MR. GRAHAM:

22 Q. So how close was the end of the gun to her head?

23 A. Probably about a couple of inches.

24 Q. A couple of inches?

25 A. Yeah, four or five.

1 Q. Four or five?

2 A. Yeah. I mean, maybe about four.

3 Q. Four or five inches, four inches?

4 A. Yeah.

5 Q. No more than four?

6 A. No.

7 Q. No closer than four?

8 A. I wouldn't believe so.

9 Q. And you're three feet away. That's what you said,
10 right?

11 A. Yeah, about three and a half, four.

12 Q. Not five or six?

13 A. Yeah, about four or five, like I said.

14 Q. Not the five or six that you told him though, right?

15 A. Yeah, I --

16 **THE COURT:** He's asked and answered that question a
17 bunch of times. Let's get --

18 **MR. PHILLIPS:** I've allowed a tremendous amount of --

19 **THE COURT:** I understand. I think he's had ample
20 cross-examination.

21 BY MR. GRAHAM:

22 Q. You have a prior conviction for receiving stolen goods
23 from 2014?

24 A. Yeah.

25 Q. You've got this pending murder charge?

1 A. Yes.

2 Q. And a pending burglary first charge?

3 A. Yes.

4 Q. And you actually have an obstruction of justice charge
5 for what you're doing today, don't you?

6 A. No.

7 Q. You haven't?

8 A. I wasn't served a warrant.

9 Q. You haven't been served a warrant yet for it.

10 Terrance Flagler, who's he?

11 A. My co-defendant on my other charges.

12 Q. Co-defendant on your murder and burglary?

13 A. Yeah.

14 Q. A good friend?

15 A. Yeah.

16 Q. Like your brother?

17 A. Yeah.

18 Q. That's the one you lied for to try to keep him out of
19 trouble? That's the one you lied to the police about to
20 keep him out of trouble. Is that who we're talking about?

21 A. I didn't lie to the police.

22 Q. You stayed with him on the first floor of the
23 detention center in November of 2015, didn't you?

24 A. No -- well, 2015, yes.

25 Q. I'm sorry?

1 A. 2015, yes.

2 Q. 2015. Is that not right? You spent time with him at
3 the detention center in November?

4 A. Yeah.

5 Q. Yes?

6 A. Yes.

7 Q. All right. He's a good friend of yours and you talked
8 about this with him, didn't you?

9 A. Talked about this with him?

10 Q. Yeah.

11 A. No.

12 Q. So do you deny that you told him that you were gonna
13 take Bhris's murder charge?

14 A. Yeah, I deny it.

15 Q. Do you deny telling him that when he asked you why you
16 didn't answer and all you did was shake your head?

17 A. Yeah, I deny that.

18 Q. Do you deny telling him that you had Bhris's discovery
19 and you were studying it?

20 A. Yeah, I deny that.

21 Q. Do you deny telling him that you told him that Bhris
22 had you brainwashed and had convinced you to take the
23 charge for him?

24 A. Yeah, I deny that.

25 Q. Everything you've testified to today is the truth? Is

1 that your story?

2 A. Yes.

3 Q. You killed Paula Justice?

4 A. Yeah.

5 Q. All these mistakes and lies doesn't change the fact
6 that you're still here saying you killed Paula, right?

7 A. No.

8 Q. And you're not gonna get anything for taking a murder
9 charge for Bhريس, right?

10 A. No.

11 Q. No status?

12 A. No.

13 Q. No protection?

14 A. No.

15 Q. Nothing?

16 A. No.

17 Q. You're just taking this because you're a good citizen?

18 A. Yes.

19 **MR. GRAHAM:** Nothing further, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. PHILLIPS:

22 Q. The solicitor asked you about studying discovery and
23 you said you didn't; is that right?

24 A. Yeah.

25 Q. Had you studied things that had very specific facts,

1 you would know a lot of specific facts?

2 A. Yeah.

3 Q. Why are you trying to protect John Hart getting rid of
4 that gun?

5 A. Because he didn't get rid of the gun.

6 Q. In your burglary case, you tried to get your
7 co-defendant to get rid of that gun, too?

8 A. (No verbal response.)

9 Q. Your answer?

10 A. No.

11 Q. And he refused?

12 A. No.

13 Q. So if your co-defendant was to testify, he wouldn't
14 say that you tried to get him to get rid of the gun?

15 A. No, he wouldn't say that.

16 Q. This was over four years ago -- or four years ago and
17 a month; is that right?

18 A. Yeah.

19 Q. And you were fifteen years old?

20 A. Yeah.

21 Q. And you were living the street life so to speak?

22 A. Yes.

23 **MR. GRAHAM:** Objection. These are all leading
24 questions, Your Honor.

25 **THE COURT:** Sustained.

1 BY MR. PHILLIPS:

2 Q. It was brought up about you having a prior murder
3 case, facing life in prison without parole. You have not
4 been sentenced on that case?

5 A. No.

6 Q. In fact, the solicitor brought up that you're almost
7 guaranteed to get life in prison if you're gonna take
8 another one. Is that what he said?

9 A. Yeah.

10 Q. But you have not been sentenced yet?

11 A. No.

12 Q. And you have confessed to another murder?

13 A. Yeah.

14 Q. Now when we spoke and your attorney was in the room
15 and my investigator was in the room, we talked about
16 growing up in the area, talked about growing up a quarter
17 mile, you said you walked through a cut. What is a cut?

18 A. Like a little walkway.

19 Q. Like in the woods, it's trails?

20 A. Yes.

21 Q. A couple of things that the solicitor pointed out
22 and went past was -- and there were things that were, of
23 course, focussed on, the bullets are hollow point bullets
24 that are in evidence; is that right?

25 A. Yes.

1 Q. Because that's what they were, hollow points?

2 A. Yeah.

3 Q. And it was four years ago when you got the stolen
4 pistol. Also in your statement -- he kind of went pretty
5 quick about this. We went a spent a lot of time talking
6 about a lot of stuff, but when asked what car was it you
7 wrote in your statement a Lincoln or another car. I
8 can't specifically say what it was, but one of the cars
9 identified was a Lincoln.

10 A. Yeah.

11 Q. And I think the solicitor was like we're moving on.
12 This situation is a lot of -- you had two recreations of
13 what happened, a lot of talk about it. How -- I mean, in
14 the instant when you made the decision to kill Paula, how
15 fast was it when you had pulled out the gun? It was an
16 instantaneous decision? Was it slow motion? Did you hold
17 the gun like this? Was it fast?

18 A. It was fast. I just pulled it, shot her and got out.

19 Q. So it wasn't as if in this situation where you make
20 the determination that now's the time you're gonna shoot
21 her, it's pitch black on a dirt road, she's walking in
22 front of you, all this discrepancy about three and a half,
23 four feet, five feet, three inches, four inches, five
24 inches, you said this all happened very fast?

25 A. Yeah.

1 Q. Four years ago?

2 A. Yes.

3 Q. And you were fifteen?

4 A. Yes.

5 Q. Are you nervous?

6 A. Now?

7 Q. Yes.

8 A. No.

9 Q. Admitting to a cold-blooded murder, you're not
10 nervous?

11 A. No.

12 Q. Talk about being brainwashed, are you somebody that
13 can be brainwashed?

14 A. No.

15 Q. Why can't someone brainwash you?

16 A. Too intelligent.

17 Q. Because you do what you want; is that fair to say?

18 A. Pretty much.

19 Q. Did you kill Paula Justice?

20 A. Yes.

21 **MR. GRAHAM:** Objection. This has already been asked
22 and answered.

23 **THE COURT:** Asked and answered.

24 **BY MR. PHILLIPS:**

25 Q. Is that the truth?

1 A. Yes.

2 THE COURT: Anything else?

3 MR. PHILLIPS: Nothing further, Your Honor.

4 THE COURT: Okay.

5 MR. GRAHAM: I've got nothing else for this witness.

6 THE COURT: You may step down.

7 (Witness excused.)

8 MR. PHILLIPS: The Defense calls John Christopher
9 Hart. And actually, Your Honor, I think legally we've got
10 to go through a whole colloquy, so.

11 THE COURT: I've got to speak to Mr. Hart before he
12 testifies. I want y'all to step in the jury room and we'll
13 have you right back out of here.

14 (Whereupon, the jury retires to the jury room at
15 3:39 PM.)

16 THE COURT: All right. Are you ready, Mr. Phillips?

17 MR. PHILLIPS: Yes, sir. Certainly at this point I
18 need to put on the record that I have advised him that he
19 has an absolute right not to testify, but it's his decision
20 and his decision alone, it's not mine to make. I have
21 advised him of the consequences of him testifying, the --
22 of course, the advantages and risks and how trials work and
23 the procedure of my direct examination and the solicitor's
24 cross-examination. With that, it's his decision. I would
25 ask Your Honor to make sure that his rights are preserved

1 to give him the standard colloquy.

2 **THE COURT:** Okay. Ms. Frick, would you place him
3 under oath for me.

4 **THE CLERK:** Please stand and raise your right hand.
5 (Whereupon, John Christopher Hart was duly sworn by
6 the Clerk of Court.)

7 **THE COURT:** Mr. Hart, you've heard the comments your
8 lawyer made and you heard the comments I've given the jury
9 as the trial has gone on. You have an absolute right to
10 remain silent and not have to present any evidence, any
11 testimony, anything whatsoever, in this trial. It's up to
12 you after having sufficient time to talk with your lawyer
13 or whoever else you want to to decide whether or not you
14 wish to testify. Do you understand that right?

15 **THE DEFENDANT:** Yes, sir, I do.

16 **THE COURT:** Now do you understand if you don't
17 testify, if you remain silent and invoke your right to
18 remain silent, the last thing that I will tell the jury in
19 my closing instructions is they must decide the case based
20 upon the evidence which has been presented and they're not
21 allowed to even discuss your silence, your decision to
22 invoke your right to remain silent and you're not
23 testifying. That subject of you're not testifying is not
24 to be discussed by the jury just because you invoke that
25 right. The State is not allowed to even argue it to the

1 jury. Your silence is not to be discussed in the jury
2 room. Do you understand I give that instruction?

3 **THE DEFENDANT:** Yes, sir, I do.

4 **THE COURT:** Do you understand that Mr. Graham when he
5 does his closing argument he can't point over there and say
6 he's not testifying because he's hiding something from you
7 or make any type of comment towards your silence? Do you
8 understand that?

9 **THE DEFENDANT:** Yes, sir, I do.

10 **THE COURT:** Now you also understand if you take the
11 witness stand your attorney's gonna ask you questions and
12 Mr. Graham's gonna get an opportunity to cross-examine you
13 and he's gonna ask you all sorts of questions I'm certain.

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Perhaps questions you don't want to
16 answer, but once you take the stand you've to answer them.
17 Do you understand?

18 **THE DEFENDANT:** Yes, sir, I do.

19 **THE COURT:** Now have you had enough time to discuss
20 whether or not you wish to testify in your trial with your
21 lawyer, Mr. Phillips?

22 **THE DEFENDANT:** Yes, sir, ample time.

23 **THE COURT:** Do you need any more time to discuss
24 anything I've gone over with you thus far?

25 **THE DEFENDANT:** No, sir, I don't.

1 **THE COURT:** Okay. So you understand the risk and
2 the rewards. This is up to you. It's your decision.
3 Mr. Phillips can't tell you what to do.

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

5 **THE COURT:** He can give you advice, but ultimately
6 it's your decision. Do you understand?

7 **THE DEFENDANT:** Yes, sir, I do.

8 **THE COURT:** All right. Do you want to testify?

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

10 **THE COURT:** So be it.

11 All right. That's sufficient.

12 **MR. PHILLIPS:** And as far as his prior record for
13 impeachment, it appears, and they can certainly tell me,
14 in 2009, ABHAN, blackmail, extortion; 2008, breaking in
15 auto, petit larceny, pointing and presenting. Is that
16 right?

17 **MR. McNAIR:** That's correct, Your Honor.

18 **THE COURT:** Okay. Do y'all want a minute or are
19 y'all ready? The jury may be using the restroom.

20 **MR. PHILLIPS:** I'll take a minute.

21 **THE COURT:** All right.

22 **MR. GRAHAM:** Judge, I think for the ones -- I could
23 be mistaken, but I think that for the ones that don't
24 involve dishonesty -- like petit larceny, that's
25 dishonesty, breaking into motor vehicle, I guess, petit

1 larceny goes with it, but the other ones I believe Your
2 Honor has to do a balancing test of the probative value
3 versus the prejudicial effect when it's the accused.
4 That's why sometimes I believe some judges will exclude
5 certain crimes that carry more than a year.

6 **MR. PHILLIPS:** And that's entirely my fault for
7 glossing over it. He's absolutely right.

8 **THE COURT:** What were the other ones? There was a
9 blackmail, extortion and what else?

10 **MR. PHILLIPS:** So in 2009, it's an ABHAN, blackmail
11 and extortion. Certainly the first biggest one based on
12 the balancing test would be -- and I've got it in my book.
13 Essentially the ABHAN --

14 **THE COURT:** Is that the old common law ABHAN? I think
15 it is.

16 **MR. PHILLIPS:** I'm not sure when the law changed.

17 **MR. McNAIR:** Yes, it is, Your Honor. '09, that would
18 be under the old ABHAN.

19 **THE COURT:** So that would be a ten year misdemeanor
20 ABHAN.

21 **MR. PHILLIPS:** That's right.

22 **THE COURT:** What I'd call an aggravated assault.

23 **MR. PHILLIPS:** Let me -- let me get my book.

24 **THE COURT:** Was that aggravated assault and blackmail,
25 extortion, the same series of events -- or sequence of

1 events? The same incident --

2 **MR. McNAIR:** Let me check, Your Honor.

3 **THE COURT:** -- or were they separate?

4 **MR. PHILLIPS:** I don't know that, Your Honor. I just
5 know that's when they -- they all pled at the same time.

6 **MR. McNAIR:** I think the offense date was the same on
7 the -- the breaking into a motor vehicle, petit larceny and
8 pointing and presenting looks like same incident date.

9 **MR. PHILLIPS:** And I don't know if Your Honor would
10 determine whether ABHAN would be similar. Obviously a
11 murder is, in its own case, but the case law does have that
12 enhanced prejudice for similar prior crimes and there's a
13 set list of factors from Green v. State that the Court
14 must consider; impeachment value, point in time of the
15 conviction, subsequent history, similarity between the
16 past and the charged crime; importance of defendant's
17 testimony, the centrality of the credibility issue and,
18 of course, then the balancing test.

19 **THE COURT:** Breaking into a motor vehicle and petit
20 larceny certainly would be crimes of dishonesty. Those
21 would be allowed. It seems to me to avoid what I'm going
22 to call the Lyle issues.

23 **MR. PHILLIPS:** Yes, sir. The pointing and presenting?

24 **THE COURT:** I think I'd keep the pointing and
25 presenting out. The aggravated assault and the blackmail

1 and extortion can come in.

2 **MR. GRAHAM:** Your Honor, if needed, I have the
3 indictment for the breaking into motor vehicle because I
4 know now there's a question on burglary and what the intent
5 was of whether it comes in under the fact that it had theft
6 or not. The breaking into motor vehicle says that he did
7 break in with the intent to steal something, so I think it
8 would come in. I just want that on the record.

9 **THE COURT:** I think I'd allow that and I think the
10 only thing that I would say to steer clear of because of
11 prior similar conduct would be the pointing and presenting.

12 **MR. McNAIR:** Could we refer to that as a felony
13 conviction and the date, but not what the offense is?

14 **THE COURT:** I think you've got plenty. Blackmail,
15 extortion, aggravated assault, breaking into a motor
16 vehicle, petit larceny. That's two instances and five
17 convictions; two in one and three out of the other. Is
18 that -- am I mishearing y'all on the prior record?

19 **MR. McNAIR:** I believe that's correct.

20 **THE COURT:** Okay. Those would be allowed.

21 **MR. GRAHAM:** Just so I'm clear, Your Honor, breaking
22 into motor vehicle is allowed, petit larceny is allowed
23 and pointing and presenting?

24 **THE COURT:** No, that's the one I'm concerned about.

25 **MR. GRAHAM:** You just want us to strike that totally

1 off?

2 **THE COURT:** Yes. Put the aggravated assault, the
3 blackmail, extortion allowed.

4 **MR. GRAHAM:** It's called an ABHAN. Do you want me to
5 call it assault and battery?

6 **THE COURT:** No, you can call it assault and battery
7 of a high and aggravated nature under the old common law.
8 That's what it is. I mean, I'm not gonna explain to the
9 jury it's an old ten year misdemeanor that's been replaced
10 by a new law that now carries up to twenty. We're not
11 getting into that. It is what it is. Assault and battery
12 of a high and aggravated nature in '09.

13 **MR. PHILLIPS:** Will I be able to say it's a ten year
14 crime?

15 **THE COURT:** You can.

16 **MR. PHILLIPS:** That's what I wanted to ask.

17 **THE COURT:** Sure. You're gonna run it out in front,
18 I assume?

19 **MR. PHILLIPS:** I try to inoculate that.

20 **THE COURT:** All right. We're gonna take a few
21 minutes.

22 **MR. GRAHAM:** Your Honor, the sentence range is not
23 appropriate. I mean, I don't --

24 **THE COURT:** I'm trying to give y'all everything.
25 Y'all went into that over here with the twenty-five to

1 life and the fifteen to life. It's been out there. I'm
2 trying to treat y'all -- I wouldn't do it, but I'm going
3 to let you do it if you want to. Assault and battery high
4 and -- they won't know what it is, so.

5 **MR. PHILLIPS:** I know. I'll mull it over. I will
6 say that.

7 **THE COURT:** Okay.

8 (Recess taken.)

9 **BAILIFF:** All rise.

10 **THE COURT:** All right. Are you ready?

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

12 All right. Go get them, please.

13 (Whereupon, the jury returns to the courtroom at
14 3:59 PM.)

15 **THE COURT:** All right. Are you ready?

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

17 **THE COURT:** Ms. Williams, just so y'all understand,
18 one of the protections afforded to people accused is they
19 have the right to remain silent. I had to go over those
20 rights with Mr. Hart and that's what I did outside y'all's
21 presence and he's already been placed under oath, so he
22 can come to the witness stand.

23 **THE CLERK:** Hold up.

24 **THE COURT:** No, he's already -- Ms. Frick, he's --

25 **THE CLERK:** It was without the jury.

1 **THE COURT:** Yeah.

2 **THE CLERK:** You're fine with that?

3 **THE COURT:** I just told them he's under oath.

4 **THE CLERK:** I'm sorry. I didn't hear you.

5 **THE COURT:** All right. Your witness.

6 JOHN CHRISTOPHER HART,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PHILLIPS:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. It's been a long time coming --

13 A. Yes, sir, it has.

14 Q. -- you sitting in that chair?

15 A. Yes, sir.

16 Q. Four years?

17 A. Four years.

18 Q. Let's cut to the chase. Did you kill Paula Justice?

19 A. No, sir, I did not kill Paula Justice.

20 Q. Did you know that Alex Wallace was gonna kill Paula
21 Justice?

22 A. No, sir, I didn't.

23 Q. Have you always denied killing Paula Justice?

24 A. Yes, sir, I have.

25 Q. What's the one thing in this crime that you're guilty

1 of?

2 A. I am completely responsible for disposing of the
3 weapon.

4 Q. Why would you do that?

5 A. Honestly, when the situation happened, when it was --
6 when the gun was dropped, I picked it up because I didn't
7 want anything to be around, scared, and I ran back to the
8 car.

9 Q. Everyone at that hotel knew you and Paula?

10 A. Yes, sir.

11 Q. Even Jessica Ussery said Tina, Paula, these were
12 people you were always around?

13 A. Yes, sir.

14 Q. And they knew Paula was gonna meet you that night?

15 A. Yes, sir.

16 **MR. GRAHAM:** Your Honor, objection to leading.

17 **THE COURT:** Sustained as to leading.

18 **MR. PHILLIPS:** I'll broaden it up.

19 BY MR. PHILLIPS:

20 Q. How were you contacted -- how did you know Paula?
21 We'll just start from the beginning.

22 A. Well, I knew Paula from selling her drugs and previous
23 prostitution arrangements.

24 Q. Just so the -- we don't have the feedback from the
25 microphone, just, you know, give it a little space.

1 How did you know Alex Wallace?

2 A. I bumped -- I bumped into him because we did the same
3 thing in the streets that's -- you know, like I help you,
4 you help me, and we made money like that.

5 Q. Let's call it what it is.

6 A. Yes, sir.

7 Q. Drug dealing?

8 A. Yes, sir.

9 Q. And you don't deny being a drug dealer?

10 A. No, sir, I don't.

11 Q. Are you a murderer?

12 A. No, sir, I am not.

13 Q. Have you at any point threatened Alex Wallace?

14 A. No, sir.

15 Q. Have you at any point had anyone else threaten Alex
16 Wallace?

17 A. No, sir.

18 Q. Have you at any point confessed to Deandre Staley?

19 A. No, sir.

20 Q. Have you at any point threatened Deandre Staley?

21 A. No, sir.

22 Q. Did you have someone stab Deandre Staley?

23 A. No, sir, I didn't.

24 Q. Have you at any point threatened Tevin Deloach?

25 A. No, sir.

1 Q. You said you were afraid. Let's talk about that.

2 Why were you afraid when Paula got shot?

3 A. Honestly, because when I came to the location I was
4 told that it was only supposed to be a prostitution
5 arrangement, so when the situation occurred and she was
6 shot, I'd never been around it or saw anything like that
7 before, so I was scared.

8 Q. What did you think was gonna happen?

9 A. I thought that she was gonna trick, I was gonna get
10 paid, take her back to where she came from, and it was
11 gonna be over.

12 Q. What did you think was gonna happen after she got
13 shot? What was gonna happen to you?

14 A. I thought that if I didn't get away or try to do
15 something to clean it up, they was gonna blame me because
16 everybody knew that she was with me.

17 Q. So you were afraid the murder was gonna get pinned on
18 you because everybody knew you were with Paula?

19 A. Yes, sir.

20 Q. Well, everybody knew -- well, you had been calling her
21 back and forth?

22 A. Yes, sir, I did.

23 Q. How much did you tell her she was gonna get paid?

24 A. I told her that she would get paid \$150 for the
25 prostitution arrangement.

1 Q. Per person?

2 A. Per person, yes, sir.

3 Q. Deandre Staley testified that you had a third phone.

4 How many phones did you have and how often did they change?

5 A. I've had numerous phones because when I sell drugs, I
6 have to switch my number up and switch the types of phones.

7 That's not rare. I do that all the time. I may have
8 three, four, two phones. I always have more than one.

9 Q. The phone number Deandre Staley said you had, was that
10 one of your phones?

11 A. Yes, sir, it was.

12 Q. With Alex Wallace, talk more about your relationship
13 with him.

14 A. It was basically I bumped -- I bumped into him when
15 I made sales and we would kick it. Not -- not long or
16 anything, I would make it brief. We might bring something
17 together or talk about how I could help him get sales or
18 he could help me get sales, but he still did his own thing
19 and I did my own thing.

20 Q. Did you give your discovery paperwork in this case to
21 Alex Wallace?

22 A. No, sir. I'm housed alone and rec alone at the
23 detention center.

24 Q. And people talk a lot in jail?

25 A. Yes, sir, a lot.

1 Q. In coming to the detention center, did you confess to
2 Deandre Staley within twenty-four hours that you killed
3 Paula Justice?

4 A. No, sir, I didn't.

5 Q. While at the hospital, the child being born, Tevin
6 Deloach calls you and says he wants to buy weed. Is that
7 true?

8 A. Yes, that is true.

9 Q. Was it true that you went out and sold him weed?

10 A. Yes, sir, I did.

11 Q. What did y'all do? You paid him fifty bucks to drive
12 around and make drug deals?

13 A. Yes, sir. That was -- that was normal. We always
14 did that.

15 Q. So it's something that happened on an often basis?

16 A. Yes, sir.

17 Q. And you paid him \$50?

18 A. Yes, sir, I paid him \$50.

19 Q. When y'all were pulling into the Waffle House to pick
20 up Paula, did you tell him we're about to kill Paula
21 Justice?

22 A. No, sir, I didn't.

23 Q. Did you say she was a spy?

24 A. No, sir, I didn't.

25 Q. There was talk about Paula's hair color. You knew her

1 well. Would it be absolutely classified that she has black
2 hair?.

3 A. No, sir, she didn't have black hair.

4 Q. Now you said you're a drug dealer. You admit you've
5 got prior convictions?

6 A. Yes, sir, I do.

7 Q. The last time you were convicted was in 2009?

8 A. Yes, sir.

9 Q. So when you were arrested in 2013, it had been
10 four years since you had been arrested?

11 A. Yes, sir.

12 Q. And you were convicted of extortion?

13 A. Yes, sir.

14 Q. Blackmail?

15 A. Yes, sir.

16 Q. Assault and battery?

17 A. Yes, sir.

18 Q. Under the old law, high and aggravated nature?

19 A. Yes, sir, it was high and aggravated nature.

20 Q. Back then you faced ten years on that?

21 A. Yes, sir.

22 Q. And then in 2008 you had an auto breaking and a petit
23 larceny?

24 A. Yes, sir.

25 Q. You admit to these convictions?

1 A. Yes, sir, I do.

2 Q. Have you ever killed anyone?

3 A. No, sir, I haven't.

4 Q. And it's your testimony today under oath before God
5 on that witness stand in front of these jurors that you
6 didn't kill Paula Justice?

7 A. Yes, sir.

8 Q. You didn't know what Alex Wallace was going to do?

9 A. No, sir, I didn't know at all.

10 Q. A very important part. All this time goes by. Why
11 didn't you snitch on him?

12 A. Because when I first got to the detention center, I
13 didn't want to snitch and I didn't want to say anything
14 about it.

15 Q. And killed somebody. You're gonna go down for murder?

16 A. I was afraid. I mean, I didn't want to say nothing.

17 Q. You didn't tell on Tevin Deloach either?

18 A. No, sir, I didn't.

19 Q. You didn't write a statement against him either?

20 A. No, sir, I never wrote a statement.

21 Q. You didn't write a statement on anybody?

22 A. No, sir.

23 Q. And you denied from the very beginning to police that
24 you killed Paula?

25 A. Yes, sir.

1 Q. You've never confessed to such?

2 A. No, sir, I haven't.

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

4 CROSS-EXAMINATION

5 BY MR. GRAHAM:

6 Q. The last question was you didn't write a statement
7 snitching on anybody because why?

8 A. Because I didn't want to snitch and I didn't want to
9 say anything.

10 Q. What you told the police was you didn't know anything
11 about this, right?

12 A. Yes, sir.

13 Q. So you were willing to go down on a murder charge?

14 A. At first I didn't say anything.

15 Q. You haven't said anything until today, correct?

16 A. Correct.

17 Q. So for four years you said nothing?

18 A. Nothing at all.

19 Q. What would have happened if Alex Wallace wouldn't have
20 come up? Were you going to snitch on him?

21 A. Yes, sir, I would have.

22 Q. When would you have done it? Today?

23 A. I would have -- I can't say the time, but eventually
24 I would have done it.

25 Q. Let's talk about Jeremy Washington. You know Jeremy

1 Washington, right?

2 A. Yes, sir, I do know him.

3 Q. Fat Boy and Munchkin, those are his names?

4 A. Yes, sir.

5 Q. He supplied you with drugs?

6 A. Yes sir.

7 Q. The phone activity that we showed, you don't deny that
8 you had contact with him, whatever it was, twenty something
9 times, between April 8th and April 11th, do you?

10 A. No, sir.

11 Q. State's 76, that's you calling him, right?

12 A. Do you mind bringing it a little bit closer, sir, so I
13 can see?

14 Q. Sure.

15 A. Thank you. Yes, sir.

16 Q. Okay. Do you recognize your phone number?

17 A. Yes, sir.

18 Q. And you recognize his?

19 A. Yes, sir.

20 Q. So which one is which? I see an 803-239-6168. Who's
21 that?

22 A. That's Jeremy Washington.

23 Q. And then the 603-498-3318?

24 A. That would be one of my phones.

25 Q. That was the phone under Tevin Deloach's account?

1 A. Yes, sir.

2 Q. The phone he got for you just like he testified to,
3 right?

4 A. Yes, sir.

5 Q. That was your phone that you used for family?

6 A. Yes, sir.

7 Q. Do you remember running into Jeremy Washington at the
8 Lexington Medical Center on April 8th of 2013?

9 A. No, sir, I don't.

10 Q. You don't?

11 A. No, sir.

12 Q. Do you remember what you talked to him about that day?

13 A. No, sir, I don't.

14 Q. Do you admit or deny that you had a conversation with
15 him where he told you at Lexington Medical Center that a
16 bitch named Paula set him up with charges in Richland
17 County?

18 A. I deny it.

19 Q. Do you admit or deny that he told you that Justice --
20 Paula Justice set other people up as well?

21 A. I deny it.

22 Q. Do you admit or deny that you said he told you that
23 somebody needed to take her out?

24 A. Deny.

25 Q. Do you admit or deny that you told him that you would

1 do it?

2 A. Deny.

3 Q. At some point after that, do you admit or deny at
4 that same conversation that he said, quote, a mother fucker
5 would take care of you if you did this?

6 A. Deny.

7 Q. Do you admit or deny that after Paula was killed that
8 you got five circles of crack cocaine?

9 A. Deny.

10 Q. You saw the exhibits with the cell tower. You were in
11 the courtroom for that, right?

12 A. Yes, sir, I was.

13 Q. One of those had your phone, the number we've got here
14 that you said is the one you were calling Jeremy Washington
15 on, the 603 number, calling from a tower near that point,
16 calling him. That's when you were calling him when you
17 were driving away from killing Paula Justice, wasn't it?

18 A. I didn't kill Paula Justice and I don't remember
19 making a call to him at that specific time, sir.

20 Q. All right. But the records -- you wouldn't dispute
21 the records if they reflect that?

22 A. Sir?

23 Q. You don't dispute the records?

24 A. Referring to --

25 Q. Yeah. Are you saying that you didn't call her or you

1 just don't -- I mean, you didn't call Jeremy Washington or
2 you just don't remember?

3 A. I called him, but I don't remember the specific times.

4 Q. Do you admit or deny that you called him as you were
5 driving away from Paula's murder on Lumberjack Drive?

6 A. I deny.

7 Q. So if the records show that, the records are lying?

8 A. They would have to be, but as I say, I don't remember
9 specifically every call that I made, so.

10 Q. So you don't remember?

11 A. Yes, sir.

12 Q. You didn't tell him something like it's done --

13 A. No, sir.

14 Q. -- referring to Paula being dead?

15 A. No, sir, not at all.

16 Q. You admit you don't like snitches though, right?

17 A. I said that.

18 Q. You knew Paula was a snitch?

19 A. No, sir, I knew nothing about that at all.

20 Q. How long had you been working with Jeremy Washington?

21 A. I can't give a specific time, but I was in prison for
22 four years, so I hadn't seen him in a while when I was
23 released.

24 Q. When did you get out?

25 A. I got out March 1, 2012.

1 Q. All right. So March 1, 2012, when you got out of
2 prison -- let me ask you a question. Where did you meet
3 Deandre Staley?

4 A. MacDougall Correctional Center.

5 Q. You were both in prison together, right?

6 A. Yes, sir.

7 Q. Y'all were friends?

8 A. Yeah.

9 Q. Tight?

10 A. Yes, sir.

11 Q. What reason does he have to lie about you?

12 A. I don't know, sir.

13 Q. Between March of 2012 and April of 2013, how much
14 dealings did you have with Jeremy Washington?

15 A. I'm not sure. I couldn't be specific about it.

16 Q. When did you start dealing with him?

17 A. It was a while back.

18 Q. Like right after you got out?

19 A. You're in reference to when I was released from
20 prison?

21 Q. Yes, in March of 2012.

22 A. I'm not sure, but it had to be at least three or
23 four months after I was released.

24 Q. So it's your testimony you didn't know anything about
25 him being hooked up on a trafficking charge where he could

1 get up to twenty-five years?

2 A. No, sir, I knew nothing about that.

3 Q. And you didn't know anything about Paula maybe setting
4 him up and she was looking at charges for that as well?

5 A. No, sir, I didn't.

6 Q. There wasn't even rumors on the street about that
7 either?

8 A. No, sir.

9 Q. The text messages that we showed, State's 75, those
10 are text messages between -- not your family phone, but
11 your business phone. Would you take a look at that?

12 A. Yes, sir.

13 Q. Is that correct?

14 A. Yes, sir, it is.

15 Q. All right. And you told her you were gonna come -- I
16 mean, she basically said so. When she said things like
17 thank you, I'm gonna hook you up tonight except for my rent
18 for you helping me, what is she talking about?

19 A. In reference to what?

20 Q. Well, is that where she's talking about you setting
21 her up for the prostitution?

22 A. Honestly, in that text message that you showed me, I
23 honestly don't remember that, but I know that number
24 because that was my number.

25 Q. So how much money -- I think you said -- you thought

1 she was being set up for two people?

2 A. Yes, sir.

3 Q. At \$300? She was gonna get \$300?

4 A. 150 apiece, yes, sir.

5 Q. Okay. How much money were you gonna get?

6 A. I honestly was supposed to get paid from Wallace.

7 Q. How much?

8 A. For setting it up. I honestly don't remember the
9 exact amount, sir.

10 Q. Okay. You would agree with me that Mr. Wallace talked
11 about 150, but that's not correct, is it?

12 A. 150 for what?

13 Q. He said one person 150?

14 A. No, it was supposed to be two. I remember
15 specifically two people.

16 Q. And if somebody testified that Paula was only gonna
17 get \$25, that would be incorrect?

18 A. Yes, sir, it would.

19 Q. That wasn't your understanding?

20 A. To my knowledge, it was 150 per person.

21 Q. Okay. All the phone calls -- when did you find out
22 that Paula and Washington had charges together?

23 A. When I got my discovery.

24 Q. You never knew before?

25 A. No, sir, I didn't.

- 1 Q. All right. So on April 10, 2013, you knew Paula was
2 shot and killed, right?
- 3 A. It happened right in front of me.
- 4 Q. You were there?
- 5 A. Yes, sir, I was at the scene.
- 6 Q. And in none of your conversations with Washington did
7 you tell him that Paula had been killed?
- 8 A. No, sir, I didn't.
- 9 Q. And you didn't meet with him after Paula was killed
10 and get paid five circles of crack cocaine?
- 11 A. No, sir, I didn't.
- 12 Q. You went by KG when you were dealing, right?
- 13 A. Yes, sir, I did.
- 14 Q. And you used a business phone, right?
- 15 A. Yes, sir.
- 16 Q. The 348 number I think is what it was?
- 17 A. I had more than one.
- 18 Q. Okay. Those are unregistered, prepaid phones?
- 19 A. Yes, sir.
- 20 Q. You and drug dealers use those so people can't be
21 tracked down, right?
- 22 A. Yes, sir.
- 23 Q. So Paula knew you as KG, right?
- 24 A. Yes, sir, she did.
- 25 Q. And Tina Perry knew you as KG?

1 A. Yes, sir.

2 Q. None of those people knew you as John Christopher Hart
3 though, did they?

4 A. No, sir.

5 Q. So all they knew was that you were KG and you had a
6 phone that you couldn't be traced on, right?

7 A. Yes, sir. I had more than one.

8 Q. So when you left with her that night, would you agree
9 with me you didn't think they were gonna find you?

10 A. Find me for what?

11 Q. For whatever. Do you -- do you admit or deny that you
12 talked with Tina Perry on the phone and Tina told you that
13 your Lincoln was there and the police were all over saying
14 you killed somebody and telling you to come there and you
15 told her you didn't even know who she was and you gave her
16 a different name?

17 A. Yes, sir, I remember that conversation.

18 Q. And that's what you told her, right? What did you
19 tell her?

20 A. Can you reiterate for me?

21 Q. My understanding is that when you talked to her she
22 told you to come clear your name, that you were accused of
23 -- that's the first time you knew, I guess, that you were
24 being accused of it, right?

25 A. Yes, sir. I remember her saying that.

1 Q. What did you tell her? She said come clear your name,
2 your car is here, the police are all over the place, come
3 clear your name. What did you tell her?

4 A. I didn't say anything. I hung up the phone.

5 Q. And why didn't you go there?

6 A. Because I was scared and I didn't -- I knew that the
7 murder happened in front of me and I didn't want any time,
8 so I honestly didn't know what to do. I'd never been in
9 that situation before.

10 Q. It didn't have anything to do with you being the
11 killer?

12 A. Sir?

13 Q. It didn't have anything to do with you being the
14 killer?

15 A. No, sir. I'm not a killer.

16 Q. You wondered how they found you though. You would
17 agree with me on that?

18 A. No, sir, I knew because Tevin Deloach bought my bus
19 ticket to New York.

20 Q. Well, let's talk about Tevin then. So Tevin's story
21 is that he met you when y'all were doing a GED program?

22 A. Yes, sir.

23 Q. Y'all smoked weed together?

24 A. All day.

25 Q. You were dealing at the time?

1 A. Yes, sir, I was.

2 Q. You were bringing him into the business with you a
3 little bit?

4 A. No, I wouldn't -- I wouldn't say that. He was just
5 like -- he was a driver. If I needed him and wanted him
6 to drive, he would do it.

7 Q. He would drive your Lincoln around for you or whatever
8 car?

9 A. His car, my car, other cars. It didn't matter.

10 Q. While you were out serving customers?

11 A. Yes, sir.

12 Q. He came and met you at Lexington Medical Center,
13 right, because he wanted some weed that day, on April 10th?

14 A. Yes, sir.

15 Q. What were you wearing at that time when he came and
16 picked you up; do you remember?

17 A. I honestly -- not everything, but I know I had on a
18 jacket and jeans and shoes.

19 Q. If I said that you had changed your clothes to all
20 black, would you disagree with me?

21 A. Changed? I don't remember what I had on, so I
22 couldn't say if I changed or not.

23 Q. You don't remember being at the hospital earlier in
24 the day, leaving and then coming back at seven or whatever
25 time it was in changed clothes?

1 A. I don't remember changing clothes, I don't remember
2 what I had on, but I remember being at the hospital back
3 and forth.

4 Q. Okay. Your baby had been born on [REDACTED], right?

5 A. Yes, sir.

6 Q. M. ?

7 A. M. , yes, sir.

8 Q. And I think M. had jaundice and couldn't be
9 released for a while; is that right?

10 A. Yes, sir.

11 Q. And Jessica was having to go up there to feed M. ?

12 A. Yes, sir.

13 Q. On April 10, 2013, she was gonna be discharged, wasn't
14 she?

15 A. Yes, sir, I would assume. I don't remember the exact
16 date, but I know it was around there.

17 Q. You don't remember the date that you saw Paula get
18 killed?

19 A. Not the exact date, no, sir.

20 Q. You don't remember that date being the date that your
21 baby momma was gonna be released from the hospital?

22 A. It could have been. I don't want to say I do remember
23 when I really don't remember the exact date.

24 Q. You were supposed to take her home from the hospital,
25 right?

1 A. Yes, sir, I was.

2 Q. But you didn't?

3 A. No, sir.

4 Q. Instead of taking her home from the hospital, you went
5 out and sold drugs and took Paula out to the country,
6 didn't you?

7 A. Yes, sir.

8 Q. What's more important about that than taking your baby
9 momma home after she's given birth to your baby? Why is
10 that important?

11 A. I wouldn't say that I considered it more important,
12 but my money fed her and her kids, so it was all important.

13 Q. You made a choice, right? You promised her that you
14 were gonna take her home and then you broke that -- you
15 lied to her and you went out and did business?

16 A. I didn't lie, something else came up. My intentions
17 weren't to leave her stuck at the hospital.

18 Q. What came up that was more important was that you had
19 to go kill Paula Justice, wasn't it?

20 A. Sir, I didn't kill Paula Justice.

21 Q. But you had to take that Karr 45 and put it to the
22 back of her head and pull the trigger and kill her for
23 Jeremy Washington. Isn't that true?

24 A. No, that's not true, sir.

25 Q. Did you put her down on her knees when you did it?

1 A. I didn't do it at all, sir.

2 Q. Do you remember talking to Sergeant Roy Mefford after
3 you got arrested in Utica, New York?

4 A. Yes, sir.

5 Q. He's the one that was talking to you about
6 extradition.

7 A. Yes, sir. I remember that.

8 Q. And what did you tell him?

9 A. I asked him when were they coming to get me.

10 Q. What did you say about a gun?

11 A. I didn't say -- I said something about a gun because
12 when I was apprehended Rome PD was throwing all kind of
13 things in my face about I was wanted for a murder and the
14 police already had stuff on me. They were already saying
15 things like that to me before I spoke to any officer in
16 South Carolina.

17 Q. Saying things like what?

18 A. That I was wanted for murder and they know that I
19 did it. Basically badgering me without anybody knowing.

20 Q. So why did you ask -- well, I mean, what did they
21 tell you? Just basically South Carolina's got you, they
22 know you killed this woman, you're wanted for murder?

23 A. Yes, sir. They told me I was wanted for murder. He
24 didn't -- Mefford didn't go into details, but he told me
25 I was wanted for murder and I asked him specifically when

1 are y'all coming to get me so I can go back to South
2 Carolina.

3 Q. Okay. Prior to talking to Sergeant Mefford on the
4 phone, what did the Rome -- when you got arrested in
5 Rome -- it's Rome, New York, right?

6 A. Yes, sir. Oneida County.

7 Q. What did the Rome police officers tell you about your
8 South Carolina charges?

9 A. When I was sitting in a restaurant they came through
10 the back and front door and I was apprehended. When I got
11 there, I was placed in a room. I can't specifically
12 remember what it was like, but it was only me and the
13 officers and they were all in my face about they got me,
14 I'm wanted for murder in South Carolina and an officer
15 wants to speak with me, would I talk to him, and I said
16 yeah, I'll speak to him.

17 Q. Did they tell you anything else other than that?

18 A. They didn't go into detail. They said I was wanted
19 for murder and they had me and stuff like that.

20 Q. All right. So when Sergeant Mefford got on the phone
21 with you, you said something about fingerprints on a gun,
22 right?

23 A. No, sir, I don't remember that.

24 Q. You didn't talk to him or say anything to him about a
25 gun?

1 A. About a gun, no, sir.

2 Q. Okay. So if he testified to that, that would be a
3 lie?

4 A. Yes, sir, it would.

5 Q. When the police came up and talked to you -- do you
6 remember Sergeant Spivey?

7 A. Yes, sir, I remember him.

8 Q. Okay. He came up and saw you on April 19th -- well,
9 before we get there let me ask you a question. When did
10 you go to New York?

11 A. I go back and forth to New York a lot because I have
12 a family up there and another son.

13 Q. So this time you were running to New York though,
14 right?

15 A. Yes, sir, I was.

16 Q. Your testimony is it's not because you killed Paula,
17 it's because why?

18 A. When Spivey called my cell phone with me knowing that
19 I was at the murder scene, I was nervous and I went to the
20 farthest spot that I could get to.

21 Q. Do you admit or deny that you told one of your family
22 members that you were gonna go away for a long time?

23 A. I admit.

24 Q. If that's not on the murder charge, that was on what?
25 Why did you tell them that?

1 A. I told my son that when I was up there because he's
2 old enough to comprehend what I'm saying and I said I -- I
3 referred to I would be gone for a while, but I don't know
4 how long.

5 Q. Why didn't you buy the ticket in your own name?

6 A. I don't know. It wasn't a specific reason. He was
7 driving and I just told him to do it for me. He does
8 things like that for me.

9 Q. Why did you not get the hotel room in your own name?

10 A. I couldn't answer that. I don't know honestly. I do
11 that all the time, put hotels in my name, somebody else's
12 name. It doesn't matter.

13 Q. Did you do that before or after you got the first
14 phone call from Sergeant Spivey?

15 A. That was before.

16 Q. So you got a hotel not in your name and you were
17 buying bus tickets because you were at a murder scene, not
18 because the police were looking for you?

19 A. I bought a bus ticket after I spoke to Sergeant
20 Spivey.

21 Q. So you were running at that point?

22 A. Yes, sir.

23 Q. He called you on the phone and you were asking
24 questions about what he was calling you about, right?

25 A. Yes, sir.

1. Q. You knew what he was calling you about, didn't you?

2 A. I asked him -- I told him that it had to be important
3 if he was calling me this late.

4 Q. Right. And you could have gone to him and cleared
5 this up?

6 A. I could have.

7 Q. You could have gone and told him I was here and I
8 was taking Paula to a prostitution, I didn't know anything
9 about it, and AJ came and put a bullet in her head and I
10 picked up the gun because I was scared and I threw the gun
11 away. You could have -- you could have told the police
12 that?

13 A. Yes, sir, I could have.

14 Q. Why didn't you do that?

15 A. I didn't want to snitch, as I said before, and I was
16 scared.

17 Q. You'd rather catch a murder charge than snitch?

18 A. I wouldn't refer to it as that.

19 Q. But that is exactly what happened though, isn't it?

20 A. That's what happened.

21 Q. And you haven't said anything different until today?

22 A. When I was asked to testify, yes, sir, but I had said
23 things previous when I spoke with my lawyer.

24 Q. With your lawyer. So on 4-19-2013, they read you your
25 Miranda rights up in the Oneida County jail, you waived it

1 and you agreed to speak with them, right?

2 A. Before my rights, as I can remember, I was under
3 the influence of marijuana, alcohol and Xanax bars.

4 Before my rights were read to me, when I walked into the
5 interrogation room a picture of a gun with prints on it was
6 in my face and pointed and said that it was my gun before
7 my rights were read to me.

8 Q. So they violated your constitutional rights?

9 A. Yes, sir, they did.

10 Q. Okay. Did they ever even bother to read you're your
11 rights?

12 A. Yes, sir, when I refused to write a statement. That
13 was after I was shown a gun with prints on it.

14 Q. All right. So they're putting a picture of a gun with
15 prints on you as soon as you come in the room. Did you ask
16 for a lawyer?

17 A. No, sir, I didn't.

18 Q. Did you say you didn't want to speak to them?

19 A. I told them that when he showed me the gun with the
20 prints and he said that's your gun. I said no, sir, that's
21 not my gun.

22 Q. That was the very first thing that happened when you
23 walked in the door?

24 A. That's the very first thing that happened when I
25 walked in the door.

1 Q. All right. Before they read you any rights?

2 A. Before they read me my rights. My rights weren't read
3 to me until the statement form was put in front of me and
4 he read everything, too.

5 Q. All right. When was that statement form put in front
6 of you?

7 A. After he showed me the picture of the gun.

8 Q. Okay. Were there any other questions or was it just
9 the picture of the gun and asking you -- we've got your gun
10 with your thumbprint? Did any other conversation happen
11 before they read your rights to you?

12 A. There was conversation, but I can't remember exactly
13 what was said.

14 Q. They showed you -- they did go over your rights at
15 some point and you did waive your rights and agree to speak
16 with them?

17 A. Yes, sir, I did.

18 Q. Okay. After they violated your rights, you did agree
19 to speak with them?

20 A. Yes, sir. I didn't know any better to be honest with
21 you.

22 Q. They showed you State's 52 and 53. Do you recognize
23 those two photographs?

24 A. Yes, sir, they showed me.

25 Q. And they showed those to you?