

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARRYL L. DRAYTON,

APPELLANT

APPELLATE CASE NO. 2012-213295

RECORD ON APPEAL

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1 get to judge the credibility of the witnesses. You
2 get to decide whether or not they're believable.
3 Stephen Edwards is a bit of a colorful personality,
4 but you get the feel for whether or not he's
5 believable. And Todd Calhoun, the investigator from
6 Beaufort County, police officer previously in New
7 York, he saw him that day on Geothie Road. He got a
8 feel for him. You think that Stephen Edwards was in
9 Bluffton and went up there with them to Charleston?
10 Come on.

11 Let's talk about Stephen Edwards. And let me
12 say thank goodness for Stephen Edwards. He tells you
13 about the knock on the door that morning very early.
14 He tells us about what happens those days in a row,
15 the 9th, the 10th, the 11th. Because of Stephen
16 Edwards, we know about the Hilton Head trip. We know
17 about Luca Delatore, who testified. Because of
18 Stephen Edwards, we know about him pawning the ring.
19 We know about the plastic surgeon. And because of
20 Stephen Edwards, we know about the evidence. We know
21 about the diaper bag, the tire cover, the spare tire,
22 the tire insert, all of that, because of Stephen
23 Edwards.

24 Do you think for one second if that knife was
25 involved in the stabbing that Stephen Edwards would

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1 have said, oh, whoa, whoa, whoa, that's my knife,
2 that's my knife. Absolutely not. He said take it.
3 That man has his cans of food opened and discarded on
4 his floor. Todd Calhoun assessed the situation that
5 evening and the SLED officer has testified and the
6 SLED DNA officer has testified that knife had nothing
7 to do with this event. Todd Calhoun called it right.
8 Thank goodness for Stephen Edwards.

9 But let's don't lose sight of something. Let's
10 don't get lost in all of that. The items are at that
11 man's cousin's house. Low and behold, the same
12 person, Darryl Drayton, who Mike Bartley's fiancé said
13 I'm going with to Charleston. It's at his cousin's
14 house that the bloodied items are found.

15 Now, let's address this for a second. We don't
16 have the clothes he wore that night when he was
17 stabbing her and stabbing her and stabbing her and
18 choking her. We don't have the shoes he wore when he
19 was putting her in the trunk and dragging her out of
20 the trunk. We don't have her keys. We don't have her
21 pocketbook. We don't have her cell phone. That's
22 because cover-up man got rid of them.

23 And I'll tell you something else. All that time
24 he spent in Ravenel and Hollywood, he cleaned himself
25 up. He got rid of the bloody stuff. The blood we

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1 have from him is when he's still dripping. Golis says
2 he clean? Yeah. He cleaned himself up. He got rid
3 of the shoes, he got rid of the clothes, he got rid of
4 the knife, the glass, whatever sharp object he had
5 used. Forget this [indicates]. Absolutely he cleaned
6 himself up. Nothing motivates you to work fast other
7 than killing somebody. He moved quickly that night.
8 He was dropping her off, getting rid of the bloody
9 knife, getting rid of her pocketbook. But, boy, did
10 he hang onto that ring.

11 Think about something. When he put that body in
12 the trunk, that young woman bled on the diaper bag she
13 had packed for her babies. Her blood rested on the
14 bag where she put diapers and onesies.

15 Let's talk about the car for a second, because
16 the car tells us a lot. There is blood on primarily
17 the driver's side, the back, some on the passenger's
18 side. And we have police agencies who did a great
19 job. We had the Beaufort County Sheriff's Office do a
20 great job, we had the Charleston County Sheriff's
21 Office who did a great job, and we had SLED who did a
22 great job.

23 And when Kim Dinh came out there, she took
24 swabs. Beaufort County Sheriff's Office took a look
25 at it. They took further swabs. But one of the most

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1 important things that Kim Dinh told you was this:
2 they knew at this point that they had a woman's
3 vehicle and that her neck had been cut -- and that
4 vehicle had been driven after her death and that what
5 they needed to know was who drove it.

6 So the swabs they were interested in were in the
7 driver area -- the driver's area. And who did they
8 come back to? Darryl Drayton. The DNA proves it. I
9 put those reports into evidence because it can get
10 kind of confusing because sometimes there are
11 mixtures. The mixtures are great. But there are
12 enough of just him. He's on the window on the outside
13 and he's on the inside right on the driver's side.
14 Darryl Drayton drove that car after he killed her.
15 He's dripping blood. He's dripping blood. And as Kim
16 Dinh told you, that trunk had been cleared out. No
17 spare tire, no diaper bag, nothing in that trunk when
18 she processed the scene.

19 But there is something else interesting about
20 that vehicle. And I don't know how many of you have
21 young children. But the back seat didn't have any
22 blood, but it had the two children's seats, the child
23 seats, in the back. There hadn't been a third person
24 in that car. Stephen Edwards couldn't have fit in
25 that car to have ridden there from Bluffton. There

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1 was only enough room in that vehicle for two people to
2 have been in. But just forget about Stephen Edwards.
3 Drayton's blood paints a picture.

4 When you get back here and you have those
5 pictures to look at, look at the tail light and look
6 at that trunk area. And I think it was Sargent
7 McManigal that expressed it this way. Remember Kim
8 Dinh told you, too. Just to think of that young
9 girl's dark, long, curly hair clinging to the trunk
10 bottom. He's just putting her in and pulling her out,
11 her bloody body. I don't know if she was alive or
12 dead when he put her in the trunk initially, if she
13 died in the trunk or later. But her hair grabbed on
14 stuff in the trunk, lay clinging. And you'll see the
15 blood swipe of hair along the car. Drayton on the
16 inside; Drayton on the outside.

17 Let's think about Drayton's injury itself. Dr.
18 Delatore. You saw the pictures. When you get back
19 there -- for some reason it's a little hard to see
20 everything. But you'll have the actual photograph.
21 It is so injured, it is so lacerated, that it went to
22 the bone, that it fractured the bone. He was using
23 such force on her that in the fray, he hurt himself
24 that bad the act itself was so violent, so excessive.

25 Let's look at the words the defendant used.

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1 What did he tell Stephen Edwards? Yeah, three guys
2 jumped me and cut me. Three guys jumped me and cut
3 me. What did he tell Dr. Delatore fifty minutes
4 later? About ten o'clock last night I hurt my finger
5 on the saws-saw [phonetic]. What's harrowing about
6 that time is where they were around ten o'clock that
7 night. Look at the maps from Ken Aycok. Probably
8 about the time it happened. We don't know exactly
9 where it happened. We know it was in Charleston
10 County because neither of their phones leave
11 Charleston County. Somewhere there's a bloody scene.
12 Maybe he covered that up, too.

13 So Dr. Delatore, he says a saws-saw at ten
14 o'clock last night. Maggie Furchak, who knew him:
15 oh, it happened this morning on a piece of glass.
16 Now, is Mr. Pennington saying that the saws-saw and
17 the piece of glass aren't that far apart? Last night
18 at ten, this morning, isn't that far apart? A piece
19 of glass? A saws-saw? What did he tell Mr. Golis? I
20 was working on a chain-link fence. He doesn't even
21 make an attempt to get his stories straight. He's
22 that cold.

23 Well, what are some of his other words? He
24 tells Stephen, can you take me to Florida; this girl
25 will get you set up if you can take me to Florida.

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1 Oh, he wanted to get out of town. And he did tell
2 Stephen, I've got a class ring I want to sell.

3 What else did he tell Mr. Golis? That he found
4 the ring at Chevron. That he found the ring at
5 Chevron. Let's talk about the event at the jewelry
6 store, because it stuck out in Mr. Golis's mind. It
7 was a nice enough ring that Mr. Golis felt like he was
8 taking advantage of him: look, you'll do better if
9 you tried to sell it on e-bay. No; I just found it at
10 the Chevron. Well, then, why don't you go back there
11 and see if you could offer a reward; you'd make more
12 money off of a reward than what I'll give you. And
13 what are the words of Darryl Drayton hours after he
14 had done what he had done? I don't care. I don't
15 care. He just wanted some quick money. Doesn't that
16 really say it all?

17 And that text message that Mr. Pennington just
18 wants to sort of dismiss. He wanted some money for a
19 room. I want to get on the road early tomorrow, I've
20 got to get out of here, I've got to get out of here.

21 Let's focus on the scene. What does the scene
22 tell us? Well, it absolutely tells us she got dumped.
23 She got dumped on the side of the road like a bag of
24 trash. Look at the path of the tire tracks. And
25 you'll have it back there so you can see it a little

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1 bit better. But this is swinging in, dumping, and
2 moving on from whichever way. In and out.

3 Now, you may be asking, well, why did you bring
4 in the beer can and the Budweiser package if they
5 really didn't have anything to do with this? To show
6 you that when crime scene goes out there, they don't
7 know all the facts of the case and so when they
8 approach the scene and they see items nearby, they
9 collect them. And they do what they're supposed to
10 do. They see if there are fingerprints on it that
11 have any evidentiary value.

12 I will tell you I do not think for one second
13 that when Darryl Drayton was getting that body out of
14 the trunk, and just throwing it on the ground, that he
15 stopped and had a beer. And I certainly don't think
16 that when he drove out this way or out that way that
17 he was smoking a cigarette down the road. This
18 cigarette has absolutely nothing to do with this case.
19 You see where it is in relationship to the body.

20 But both Mr. Milz and Sargent McManigal told you
21 how the body was positioned. And that just shows us
22 that she was in the trunk. Her legs were bent up a
23 little bit and her arms are bent up a bit because
24 that's how she was in the trunk. Then she's put on
25 the ground. She's stiffened while she was in the

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1 trunk. And she had been set on fire. That's what the
2 scene showed.

3 Let's talk about those shoe prints. I brought
4 the shoe prints, the mold in, because they took them
5 all. Absolutely -- I'm going to put this up here for
6 just a second. Absolutely that mold print does not
7 match the shoes that Stephen Edwards told them, when
8 they came back to get the knife, were in the car. And
9 it's obvious. I never suggested they matched. We
10 didn't even send that to SLED because it's so obvious.
11 And, again, we know that he got rid of the bloody
12 shoes. He got rid of the bloody clothes. But, ladies
13 and gentlemen, they're the same size.

14 Her pocketbook, her keys, her cell phone, her
15 clothes, her shoes, shoes that are in the mold,
16 whatever he used to cut her, I don't know if he burned
17 them, I don't know if he put them in the trash can, I
18 don't know if he put them in the ground. But he put
19 them somewhere.

20 And Sargent McManigal told you, and as did
21 Mr. Milz, how her ankles looked. His bloody hand on
22 her ankles. If Sargent McManigal and Mr. Milz knew
23 then what we know now, that he was bleeding, they
24 probably would have swabbed them instead of focusing
25 on fingerprints. But at the time, they could tell

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1 that someone had touched her getting her in and out of
2 the trunk.

3 One of the most telling things, one of the most
4 telling things, is her shoes. Her shoes. The right
5 shoe is a mixture of her and him. And the left shoe,
6 Darryl Drayton. How else did Darryl Drayton's blood
7 get on her shoes? Alexis Lukaitis hadn't been walking
8 around Bluffton with Darryl Drayton's blood on her
9 shoe. It got there when he was strangling her and
10 cutting her. He got that blood when she got bloody,
11 when she got punctured, when she got cut and cut and
12 cut.

13 What does Dr. Presnell tell you? This is the
14 evening of August the 8th, early-morning hours of
15 August 9th, for Alexis Lukaitis. This is what she
16 endured. Puncture wounds, bruises, abrasions. This
17 is how she responded to the sharp object that Darryl
18 Drayton yielded towards her. She tried to defend
19 herself. Look at the cuts on her hands trying to
20 prevent being cut. Here are the slices to her neck.
21 One, two, three. At some point he put his hands
22 around her neck, tried to strangle her. And that
23 third one cut the trachea, cut it through. Cut
24 through the thyroid, cut through the esophagus, the
25 hands of Darryl Drayton.

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1 I think it's safe to say that what Darryl
2 Drayton wanted to happen in Charleston, Alexis
3 Lukaitis didn't and she paid the price.

4 The phone records set it all out. They were
5 both in Bluffton. They both traveled to Charleston.
6 And here is the path. You can see when she stops
7 answering phone calls. You can see when she never
8 picks up again. You can see where they are in
9 relationship to where her body is found. He killed
10 her. He hoped to get rid of the body. She tries to
11 defend herself. He silenced her. But what speaks
12 volumes is her ring. When did he pry it off her
13 finger? Did he do it when he put her in the trunk?
14 Did he do it when he took her out of the trunk? When
15 he put her on the ground? Did he think, well, maybe I
16 can get a little cash for that?

17 We are asking for a verdict of guilty. Ladies
18 and gentlemen, we've addressed this about the shoes
19 don't match. He hid the shoes. He hid the clothes.
20 We don't have the clothes because his cover-up was
21 successful as to that. But God knows we've got the
22 DNA where it counts. We want you to base your
23 decision on what you've heard from here [indicates],
24 what you've seen here [indicates]. But primarily we
25 want you to base it on what he did, Darryl Drayton,

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1 "D".

2 THE COURT: All right. Mr. Foreman, we've been
3 going for about an hour and a half. We're going to
4 take a short restroom break, no smoke breaks.

5 We'll take a short restroom break and then I'll
6 charge on the law and after that you can begin your
7 deliberations. So don't discuss the case amongst
8 yourselves.

9 We'll take about a short ten- or fifteen-minute
10 break.

11 [Whereupon, the jury exits the courtroom at
12 10:54 a.m.]

13 THE COURT: All right. We'll take about a ten-
14 minute break.

15 [Whereupon, a recess is taken from 10:55 a.m. to
16 11:01 a.m.]

17 THE COURT: All right. Bring us a jury, please.

18 [Whereupon, the jury enters the courtroom at
19 11:04 a.m.]

20 THE BAILIFF: All jurors are seated, Your Honor.

21 THE COURT: All right. Thank you very much.

22
23 - - -
24 - - -
25 - - -

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1 CHARGE OF THE COURT

2 THE COURT: All right. Mr. Foreman, ladies and
3 gentlemen of the jury, I'll instruct you on the applicable
4 law in this case at this time.

5 And I want to first tell you about the defendant
6 exercising his right to remain silent.

7 I instruct you and emphasize that the fact that
8 the defendant did not elect to testify on his own behalf
9 is not a factor to be considered by you in any way in your
10 deliberations and in your consideration on the question of
11 guilt or innocence of the defendant. It must not be
12 considered by you in any manner whatsoever. A defendant
13 has a constitutional right to remain silent and the
14 assertion of this right must not be considered by you in
15 your deliberations. I repeat: under your oath you are to
16 draw no conclusion whatsoever from the fact the defendant
17 in this case did not testify. The fact that this
18 defendant did not testify should not even be discussed in
19 the jury room. The burden of proof, as I will explain to
20 you later, is on the State. The defendant is not required
21 to prove his innocence. The burden of proof remains on
22 the State to prove the defendant guilty beyond a
23 reasonable doubt.

24 Now, I've allowed you, some of you, to take
25 notes during the course of the trial, but you've not been

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1 obligated to take notes. But if you have taken notes,
2 these should not -- should be used only as memory aids.
3 You should not give your notes precedent over your
4 independent recollection of the evidence. If you have
5 chosen not to take notes, you should rely on your own
6 independent recollection of the proceedings and you should
7 not be influenced by the notes of other jurors. I
8 emphasize that notes are not entitled to any greater
9 weight than the recollection and impression of each juror
10 as to what the testimony may have been. Now, these are
11 your personal notes. You may keep them or you may give
12 them to the clerk and the clerk will destroy them for you.

13 I will give you a copy of these instructions in
14 written form. During your deliberations you may refer to
15 the instructions to guide your decision-making. You must
16 consider the instructions as a whole and not follow some
17 and ignore others.

18 Mr. Foreman, please return the instructions to
19 the Court after you have reached a verdict.

20 The defendant has pled not guilty to this
21 indictment, which places the burden on the State to prove
22 the defendant guilty. A person charged with committing a
23 criminal offense in South Carolina is never required to
24 prove himself innocent.

25 I charge you that it is a vital, important rule

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1 of law that a defendant in a criminal trial, no matter
2 what the seriousness of the charge may be, must always be
3 presumed to be innocent until his guilt has been proven
4 beyond a reasonable doubt. This presumption of innocence
5 remains with the defendant at all times from the moment he
6 appears in court, throughout the trial, until you the jury
7 reach a verdict of guilt beyond a reasonable doubt based
8 on the testimony and evidence that's been presented. A
9 presumption of innocence is a substantial right to which
10 every defendant is entitled and until you've reached a
11 verdict of guilt beyond a reasonable doubt, if you, the
12 jury, cannot find a defendant guilty beyond a reasonable
13 doubt, it is your duty to acquit the defendant.

14 Now, what is reasonable doubt. A reasonable
15 doubt is the kind of doubt that would cause a person or a
16 reasonable person to hesitate to act. The State has the
17 burden of proving the defendant guilty beyond a reasonable
18 doubt. Some of you may have served as jurors in civil
19 cases where you were told that it's only necessary to
20 prove a fact that's more likely true than not true, such
21 as the greater weight of the evidence or preponderance of
22 the evidence. In criminal cases, the State's proof must
23 be more powerful than that. It must be beyond a
24 reasonable doubt. Proof beyond a reasonable doubt is
25 doubt that leaves you firmly convinced of the defendant's

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1 guilt. There are very few things in this world that we
2 know with absolute certainty and in criminal cases the law
3 does not require proof that overcomes every possible
4 doubt. If based on your consideration of the evidence
5 you're firmly convinced the defendant is guilty of the
6 crime charged, you must find the defendant guilty. On the
7 other hand, if you think there's a real possibility the
8 defendant is not guilty, you must give the defendant the
9 benefit of the doubt and find the defendant not guilty.

10 There are two types of evidence which are
11 generally presented during trial. Direct evidence is
12 the testimony of a person who claims to have actual
13 knowledge of a fact, such as an eyewitness. It is
14 evidence which immediately establishes a fact to be
15 proven. Circumstantial evidence is proof of a chain of
16 facts and circumstances indicating the existence of a
17 fact. It is evidence which immediately establishes
18 collateral facts from which the main fact may be inferred.
19 Circumstantial evidence is based on inference and not on
20 personal knowledge or observation. The law makes
21 absolutely no distinction between the weight or value to
22 be given to either direct or circumstantial evidence, nor
23 is a greater degree of certainty required of
24 circumstantial evidence than of direct evidence. You
25 should weigh all of the evidence in the case. After

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1 weighing all the evidence if you're not convinced of the
2 guilt of the defendant beyond a reasonable doubt, you must
3 find the defendant not guilty.

4 The evidence or lack of evidence from which you
5 are to decide the facts include the following: the sworn
6 testimony of a witness, both on direct and cross-
7 examination, regardless of which side called the witness;
8 the exhibits that have been received into evidence by the
9 Court; and any facts agreed or stipulated to by all the
10 parties. The following things are not evidence and you
11 may not consider them in deciding the facts. Arguments
12 and statements made by the lawyers are not evidence. The
13 lawyers are not witnesses. Their opening statements,
14 closing arguments, and other statements are intended to
15 help you interpret the evidence but are not evidence. If
16 the facts as you remember them differ from the lawyer's
17 statements, your memory controls. Questions and
18 objections by lawyers are not evidence. Lawyers have a
19 duty to their client to make objections when they believe
20 a question is not -- is improper under the rules of
21 evidence. You should not allow any objections, or the
22 Court's ruling on the objections, to influence you.
23 Testimony that has been stricken or that you've been
24 instructed to disregard is not evidence and must not be
25 considered. Anything you may have seen on television,

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1 read in the newspaper or on the internet or heard from
2 others while court is not in session is not evidence. You
3 should base your decision solely on the sworn testimony of
4 the witnesses, exhibits received into evidence by the
5 Court, and any facts agreed or stipulated to.

6 The fact that the defendant was arrested,
7 charged, and indicted in this case is not evidence and
8 cannot be considered as evidence of guilt, nor does it
9 create any presumption or inference of guilt. The
10 indictment is simply the formal written instrument which
11 contains the charges made against the defendant.

12 A defendant's mere presence where the crime is
13 being committed does not make the defendant guilty of that
14 crime.

15 Hearsay is a statement, other than one made by
16 the declarant while testifying at the trial or hearing,
17 offered to prove the truth of the matter asserted. An
18 exception to the rule against hearsay is a statement of
19 the declarant's then existing state of mind.

20 Expert witnesses: the rules of evidence
21 ordinarily do not permit witnesses to testify to opinions
22 or conclusions. An exception to this rule exists for
23 witnesses called expert witnesses. Witnesses who by
24 education, training or experience have become expert in
25 some art, science, or profession are permitted to give

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1 their opinion in certain areas if the Court qualifies them
2 as expert witnesses. An expert witness may also give the
3 reasons for their opinion. An expert opinion is evidence
4 for you to use in any way you see fit. You should give
5 the evidence the weight and credibility you believe is
6 appropriate. If you decide that the expert's opinion is
7 not based on sufficient education or experience, or you
8 decide that the reasons given in support of the opinion
9 are not sound or that the opinion is outweighed by other
10 evidence, you may disregard the opinion entirely.

11 Now, under our constitution and code of laws
12 only you, the jury, can make findings of facts in this
13 case. I'm not permitted to indicate to you how I may feel
14 about the testimony evidence which has been presented.
15 Throughout this trial it's been my intention to be fair
16 and impartial towards each of the parties involved.

17 Necessarily, you must determine the credibility
18 of the witnesses who have testified in this case.
19 Credibility simply means believability. It's your duty as
20 jurors to analyze and evaluate the evidence and determine
21 which evidence convinced you of its truth. As you decide
22 whether to believe a witness' testimony about a particular
23 matter, you may consider the following. The manner and
24 appearance of the witness while on the witness stand:
25 was he or she straightforward or hesitant in answering.

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1 The testimony of the witness: was it consistent or
2 inconsistent. How the witness came to know the facts that
3 he or she testified to: was the witness present during
4 the incident or did the witness happen on the scene after
5 the incident occurred. A reason the witness would want to
6 give testimony which would help or hurt one side or the
7 other: has the witness exhibited to you any interest,
8 bias, prejudice, or other motive in the case. Thus you
9 may consider whether a particular witness may gain some
10 reward, payment, personal advantage or vindication through
11 his or her testimony. The strength of the witness or the
12 testimony of the witness: was the testimony of the
13 witness strengthened or weakened by other testimony or
14 evidence. The duration or length of time between the
15 incident and when they were reported: would the duration
16 and length of time weaken or strengthen a witness' memory.
17 All prior statements: were prior statements made by the
18 witness consistent or inconsistent with the witness's
19 testimony.

20 In determining the believability of the
21 witnesses who have testified, you may believe one witness
22 over several or several over one. You may believe a part
23 of the testimony of a witness and reject the remaining
24 part of the testimony of the witness. You may believe the
25 testimony of a witness in its entirety or reject the

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1 testimony of witnesses in its entirety. Of course, you
2 should not determine the truth by merely counting the
3 number of witnesses presented by each side. Throughout
4 the process you have but one objective: to seek the
5 truth, regardless of its source.

6 The same constitution which designates and make
7 you the finders of the facts make me the sole instructor
8 of the law. It's my duty to charge you the law applicable
9 to this case and it's your duty as jurors to accept and
10 apply the law as I state it to you. The lawyers are the
11 not instructors of the law. You must accept the law and
12 apply the law exactly as I state it to you. You must not
13 base your decision-making on your idea of what the law is
14 or what you think the law should be.

15 Murder: the defendant is charged with murder.
16 The State must prove beyond a reasonable doubt that the
17 defendant killed another person with malice aforethought.
18 Malice is hatred, ill will, or hostility towards another
19 person. It is the intentional doing of a wrongful act
20 without just cause or excuse and with an intent to inflict
21 an injury or under circumstances that the law will infer
22 as evil intent. Malice aforethought does not require that
23 malice exists for any particular time before the act is
24 committed but malice must exist in the mind of the
25 defendant just before and at the time that the act is

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1 committed; therefore, there must be a combination of the
2 previous evil intent and the act. Malice aforethought may
3 be express or inferred. These terms express and inferred
4 do not mean different kinds of malice but merely the
5 manner in which malice may be shown to exist. That is by
6 either direct evidence or by inference from the facts and
7 circumstances which are proved. Express malice is shown
8 when a person speaks words which express hatred or ill
9 will for another or when a person prepared beforehand to
10 do the act which was later accomplished. For example,
11 lying in wait for a person or any other acts of
12 preparation going to show that the deed was -- in the
13 defendant's mind would be express malice.

14 The use of a deadly weapon permits you to infer
15 malice, but it does not require you to infer malice. A
16 deadly weapon is any object, instrument or substance which
17 is likely to cause death or great bodily harm. Whether an
18 instrument has been used as a deadly weapon depends upon
19 the facts and circumstances of each case. The following
20 examples are instruments which may be deadly weapons: a
21 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a
22 slingshot, metal knuckles, a razor, gasoline, a firebomb,
23 a Molotov cocktail, lighter fluid. A gun may be a deadly
24 weapon, even if it is not operating.

25 Now, you've been selected as fair and impartial

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1 jurors sworn to impartially try and determine the facts of
2 this case and when you comply with your oath to do so,
3 then no one will have the right to criticize your verdict.
4 You have fully discharged your duty as jurors if you
5 decide this case according to the testimony you've heard
6 from the lips of the sworn witnesses, along with other
7 evidence introduced.

8 I charge you as jurors you must make your
9 decision in this case without bias and without prejudice
10 to any party. You cannot allow yourself to be governed by
11 sympathy, prejudice, passion, public opinion, or any other
12 arbitrary factor. Both the State and the defendant have a
13 right to expect that each of you will carefully and
14 impartially consider all the evidence in the case and that
15 you will follow the law as I've explained it to you.

16 Nothing I may have said or done during the
17 course of this trial has been in any way to indicate,
18 express or suggest a view of this case or an opinion as to
19 the facts, the weight of the evidence, or the credibility
20 of the witness. If you believe any of my acts or words
21 have indicated otherwise, you must disregard such and form
22 your own view of this case or your own opinion as to the
23 facts, the weight of the evidence, and the credibility of
24 the witnesses.

25 Mr. Foreman, I have prepared a verdict form and

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1 the verdict form has the caption of the case with the case
2 number. And it says: as to indictment number 2010-GS-10-
3 8551, we, the jury, by unanimous consent, find the
4 defendant guilty of murder or not guilty. There's a place
5 for the foreperson to sign and date it.

6 As the form says, your verdict has to be
7 unanimous. All twelve of you have to agree. I will tell
8 you this is an collective-reasoning process. I would ask
9 you to respect each others opinions. If your opinions are
10 different, please listen to each others opinions, possibly
11 reevaluate your opinion if necessary. But as I said, it's
12 a collective reasoning and a collective decision on all
13 twelve of your part.

14 Now, Mr. Foreman, there's a lot of exhibits
15 here, well over 200. They will all be in the jury room
16 with you. Some of these bags with some of this old blood,
17 I would -- we're going to send some -- if you -- if any of
18 the jurors want to handle this or look at it or take it
19 out of the bags, there are some plastic gloves that will
20 be with you. Please use the plastic bags, don't handle --
21 excuse me -- the plastic gloves. Don't be handling any of
22 this without using the gloves, if you decide to handle any
23 of it. If any of it gets the odor too bad, give it to the
24 bailiffs and I'll keep it for you in the courtroom.

25 Now, Mr. Foreman, ladies and gentlemen of the

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1 jury, I'm going to have to go over my charge with the
2 lawyers. I may have left something out. I may have to
3 change something. I may have to bring you back and
4 correct my charge or change my charge, so please don't
5 begin your deliberations until the bailiffs have brought
6 you the verdict form, the charge book, and all of the
7 exhibits, and instruct you to begin your deliberations. I
8 hope that will be very shortly.

9 Mr. Foreman, if you and the jurors will go to
10 the jury room. I believe your order for lunch has already
11 been taken and hopefully that will be here around 12:00 or
12 12:30. You may take your notes with you to the jury room.

13 [Whereupon, the jury exits the courtroom at
14 11:21 a.m.]

15 THE COURT: All right. Any exceptions to the
16 charge from the State?

17 MS. SHEALY: No, Your Honor.

18 THE COURT: All right. The State had requested
19 a limited instruction on hearsay testimony. The Court
20 felt like that was fact-specific. I did give a charge
21 on hearsay testimony.

22 And I'll mark your specific request as Court's
23 Exhibit whatever the next number is.

24 [Whereupon, Court's Exhibit Number 13 is marked
25 by the court reporter]

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1 THE COURT: Mr. Pennington, I'll be glad to hear
2 you on any exceptions to the charge, other than the
3 one that we just mentioned.

4 MR. PENNINGTON: All right, sir.

5 I'll turn to the circumstantial evidence charge
6 first. And my objection is that --

7 THE COURT: Do you have -- do you have a
8 proposed charge that I can mark? I know you had one,
9 but I do not have a clean copy of it.

10 MR. PENNINGTON: I can pass up this one, Judge,
11 but I'm going to have to look over your shoulder to
12 make the argument.

13 THE COURT: Well, go ahead and make the argument
14 and we'll pass it up afterwards.

15 MR. PENNINGTON: All right. What I've done,
16 Judge, is that I have proposed, on circumstantial
17 evidence, both a charge with a short memorandum of
18 law.

19 In reading recent cases like State v. Hernandez,
20 which was reported in May of this year -- actually,
21 May of '09, but there are other cases since then --
22 that the trend seems to be moving back to giving what
23 had been the old circumstantial evidence charge. And
24 I base that on the notion that the cases that removed
25 this idea that the jury should be told that

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1 circumstantial evidence is to point conclusively to
2 the guilt of the accused to the exclusion of every
3 other reasonable hypothesis was struck down by Grippon
4 and Cherry, two decisions that were three-to-two
5 decisions, with Justice -- Chief Justice Toal offering
6 the dissent in both of those cases.

7 Since then, in all of the directed verdict cases
8 that we see they continually go back to this analysis
9 that there is an actual difference between direct and
10 circumstantial in how the Court approaches
11 understanding it, saying that they find that all the
12 circumstances -- for you to get past on a
13 circumstantial evidence case, all the circumstances
14 have to point and be proven to be consistent with each
15 other and, taken together, point conclusively toward
16 the whatever the matter that's intending to be proved,
17 intended to be proved, to the exclusion of every other
18 reasonable hypothesis.

19 Why I'm concerned is that during this period
20 where we're in the Grippon, Cherry era, the jury is
21 being told that no -- there is -- nor is a greater
22 degree of certainty required of circumstantial
23 evidence than of direct evidence, which I think from a
24 lay perspective and from a lawyer's perspective is
25 patently misleading in that there is this analysis the

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1 Courts have accepted. I believe that the Cherry and
2 Grippon cases were all about the fear of burden
3 shifting, that the defendant would have to come up
4 with a reasonable hypothesis or if he failed somehow,
5 that that would mean that he would be found guilty.

6 In no way do I feel, given your other charge,
7 the rest of your charge, the arguments of counsel,
8 that there's any risk that the jury would think that
9 the burden was on Mr. Drayton to prove the reasonable
10 hypothesis. But it is incumbent on the jury to sift
11 the circumstances to see if the circumstances are
12 proven beyond a reasonable doubt and are they
13 consistent with each other, taken together and
14 pointing conclusively to the guilt of the accused to
15 the exclusion of every other reasonable hypothesis.

16 So I would pass that up. And that would be my
17 tendered charge.

18 What I've done is I have underlined that
19 language in this document. You'll note I also go
20 further and say the old language that it's not
21 sufficient that they create a probability, though a
22 strong one, if assuming they be true they may be
23 accounted for by any reasonable hypothesis which does
24 not include the guilt of the accused, the proof has
25 failed.

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1 [Whereupon, Mr. Pennington proffers documents to
2 the Court]

3 MR. PENNINGTON: That may be climbing out on a
4 limb. I would be satisfied if the Court would
5 consider simply this first sentence, which I think is
6 an accurate statement of the law and points out the
7 essential salient difference between how we approach
8 circumstantial evidence as opposed to direct evidence.

9 THE COURT: You're talking about the first
10 sentence?

11 MR. PENNINGTON: The first sentence that I've
12 underlined with my pen.

13 THE COURT: You're talking about every
14 reasonable hypothesis?

15 MR. PENNINGTON: Yes, sir.

16 THE COURT: That request is denied.

17 And I'll mark this as a Court's Exhibit. Okay?

18 MR. PENNINGTON: Thank you, sir.

19 [Whereupon, Court's Exhibit Number 14 is marked
20 by the court reporter]

21 THE COURT: All right. Anything else?

22 MR. PENNINGTON: Your Honor, I think you've said
23 that my request for --

24 THE COURT: The request on the --

25 MR. PENNINGTON: Hearsay?

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VERDICT

THE COURT: Mr. Foreman, I understand you've reached a verdict; is that correct?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Would you hand the verdict form to the bailiff, please, sir.

[Whereupon, the foreperson complies]

THE COURT: Thank you very much.

[Whereupon, the bailiff proffers documents to the Court]

[Whereupon, the Court reviews documents]

THE COURT: Mr. Foreman, I have written on the indictment the jury's decision and I'm going to give it to the bailiff and ask you to sign your name -- I've dated it today, October the 5th, 2012 -- and ask you to sign it, please, sir.

[Whereupon, the foreperson complies]

THE COURT: Thank you very much.

THE CLERK OF COURT: Case number 2010-GS-10-8551, the State of South Carolina v. Darryl Drayton, as to indictment 2010-GS-10-8551, we, the jury, by unanimous consent, find the defendant guilty of murder. Signed foreperson, Lorne Walker.

Mr. Foreman, ladies and gentlemen of the jury, if this is your verdict, please raise your right hand.

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1 SENTENCING

2 THE COURT: All right. And as far as the
3 sentencing is concerned, I mean, the Court doesn't
4 have any choice because notice was served. Do you
5 question anything about the validity of the notice or
6 the prior record that the defendant had justifying the
7 notice for life without parole?

8 MR. PENNINGTON: No, I don't Your Honor. The --
9 he has the predicate prior conviction of a most
10 serious offense under 172545, I believe.

11 MS. SHEALY: That's correct.

12 MR. PENNINGTON: Which would make it a first
13 strike. This would be a second strike, meaning that
14 we agree that the sentence is automatic.

15 THE COURT: All right. Do you have the notice?

16 MS. SHEALY: I do, Your Honor. I just have --

17 THE COURT: Would you mark it as a Court's
18 Exhibit.

19 MS. SHEALY: Yes.

20 I would like to hand up the notice of intention
21 to seek a sentence of life without parole. Have that
22 marked as a State's Exhibit. It is accompanied by an
23 acknowledgment signed by Ashley Pennington, attorney
24 for the defendant; the acknowledgment of service by
25 the defendant, Darryl Drayton; and the service by my

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1 investigator, Keith Hair [phonetic].

2 And then, Your Honor, also to supplement the
3 record, I have a certified conviction of his having
4 been convicted of armed robbery and of his having been
5 convicted with possession with intent to distribute
6 cocaine within the proximity of a school that I would
7 like to have marked.

8 A second possession with intent to distribute
9 cocaine within the proximity of a school.

10 And then an assault and battery of a high and
11 aggravated nature charge. I have a certified
12 conviction for that, as well, Your Honor.

13 THE COURT: Okay.

14 MS. SHEALY: And those last three charges would
15 also factor in, independent from the armed robbery,
16 for purposes of an LWOP notice.

17 He also has additional charges, Your Honor,
18 including a lewd act upon a minor.

19 THE COURT: Okay. Mr. Pennington, normally I
20 would listen to you and your attorney and whoever you
21 wanted to hear from from a mitigation standpoint,
22 because under a normal murder I could do thirty to
23 life. In this situation, it's out of my control. I
24 mean, by state statute, once the notice is offered I
25 don't have any choice. So I don't know why I need to

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1 listen to anything.

2 MR. PENNINGTON: I agree.

3 THE COURT: All right. Indictment number --

4 MS. SHEALY: Your Honor, I'm so sorry, but --

5 THE COURT: I don't want to hear from the
6 victims. I mean, I don't have a choice in the matter.

7 MS. SHEALY: I understand that it would be
8 cathartic for the victim to be able to address the
9 Court, Your Honor.

10 THE COURT: Why? I've heard the testimony. I
11 understand it's a sad situation. I'm awful sorry for
12 it. Okay? But, I mean, the sentencing process, I
13 have to give him life without parole.

14 MS. SHEALY: He's fine with that, Your Honor.

15 THE COURT: Okay? I mean, I've heard him
16 testify, I've listened to --

17 MS. SHEALY: The father didn't testify.

18 THE COURT: -- the testimony.

19 MS. SHEALY: The father didn't testify.

20 THE COURT: Do you want me to hear from the
21 father? I'll be glad to hear from the father, out of
22 deference to the victim's family. Okay?

23 MS. SHEALY: Thank you, Your Honor.

24 MR. LUKAITIS: Joseph A. Lukaitis, Sr.

25 THE COURT: Thank you so very much for being

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1 here.

2 MR. LUKAITIS: I'm sorry, Your Honor. But --

3 THE COURT: Let me say I'm sorry for your loss.

4 Okay?

5 MR. LUKAITIS: Thank you, sir.

6 THE COURT: It's a tragic situation for both
7 families.

8 MR. LUKAITIS: This is my daughter and myself
9 and my two grandchildren -- I apologize -- the last
10 time we got to be together while I was down here on my
11 vacation.

12 And I don't know what happened. As a man, as a
13 father, she was supposed to bury me, I'm not supposed
14 to bury her. And I just want to say that as crazy as
15 it sounds, she's finally at peace today because a
16 verdict -- and that gentleman there, and I'm not going
17 to use any other words than gentleman -- he can't hurt
18 nobody else, Your Honor.

19 And I just want to thank everybody for your
20 support while we were down here. Thank you.

21 THE COURT: Okay. Thank you so very much. I
22 appreciate your being here.

23 Anybody else you would like for me to hear from?

24 MS. SHEALY: No, sir. Thank you.

25 THE COURT: Since I've given the defense that

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1 opportunity, is there anybody the State would like --
2 I mean, excuse me -- gave the State the opportunity,
3 anything the defense would like to say?

4 MR. DRAYTON: No, sir.

5 THE COURT: Anyone else you would like for me to
6 hear from, Mr. Pennington?

7 MR. PENNINGTON: No, sir.

8 THE COURT: All right. Indictment number 8551,
9 charged with murder, Darryl L. Drayton, sentenced to
10 the State Department of Corrections for a period of
11 life.

12 Thank you very much.

13 MS. SHEALY: Thank you, Your Honor.

14 MR. PENNINGTON: Thank you, Your Honor.

15 THE COURT: All right. Mr. Foreman, members of
16 the jury, follow the bailiffs to the jury room,
17 please.

18 [Whereupon, the jury exits the courtroom at
19 1:32 p.m.]

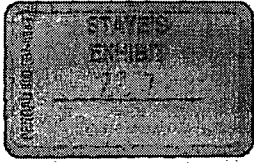
20 MR. PENNINGTON: Your Honor, you're going to
21 give me a week?

22 THE COURT: Well, ten days, isn't it?

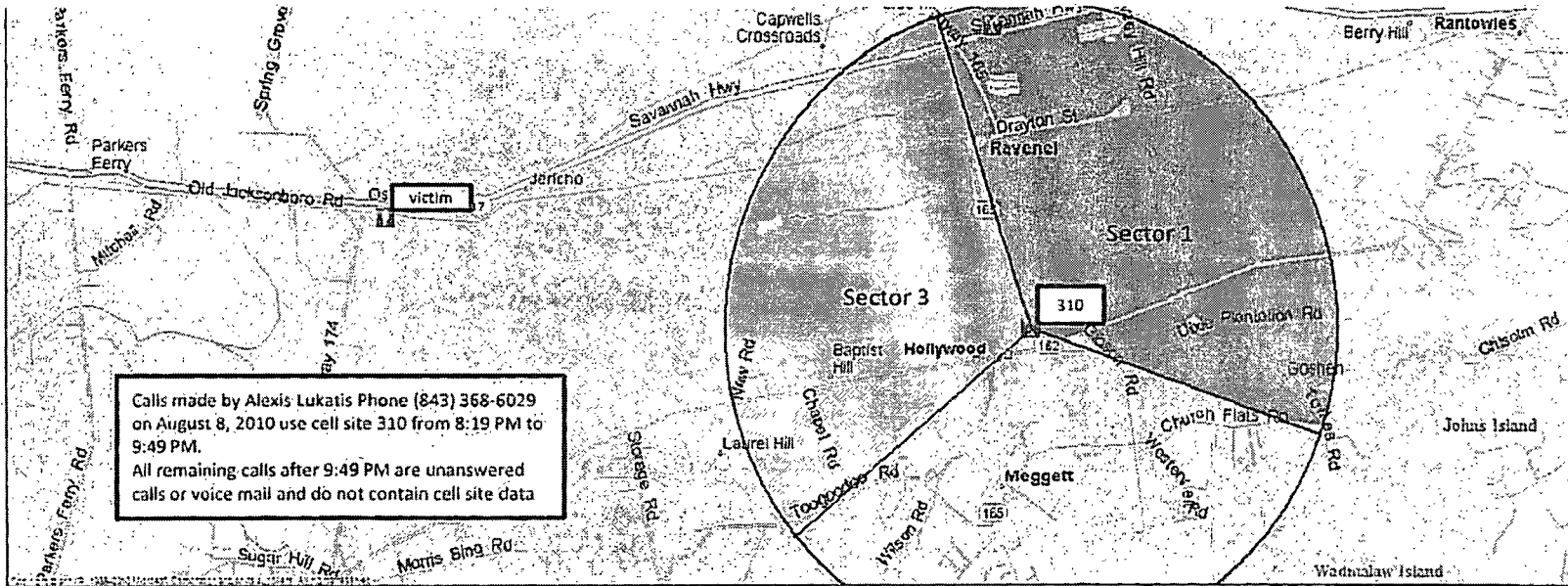
23 MR. PENNINGTON: That's fine.

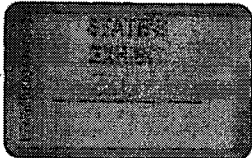
24 THE COURT: Isn't it ten --

25 MR. PENNINGTON: -- ten days is the statutory --

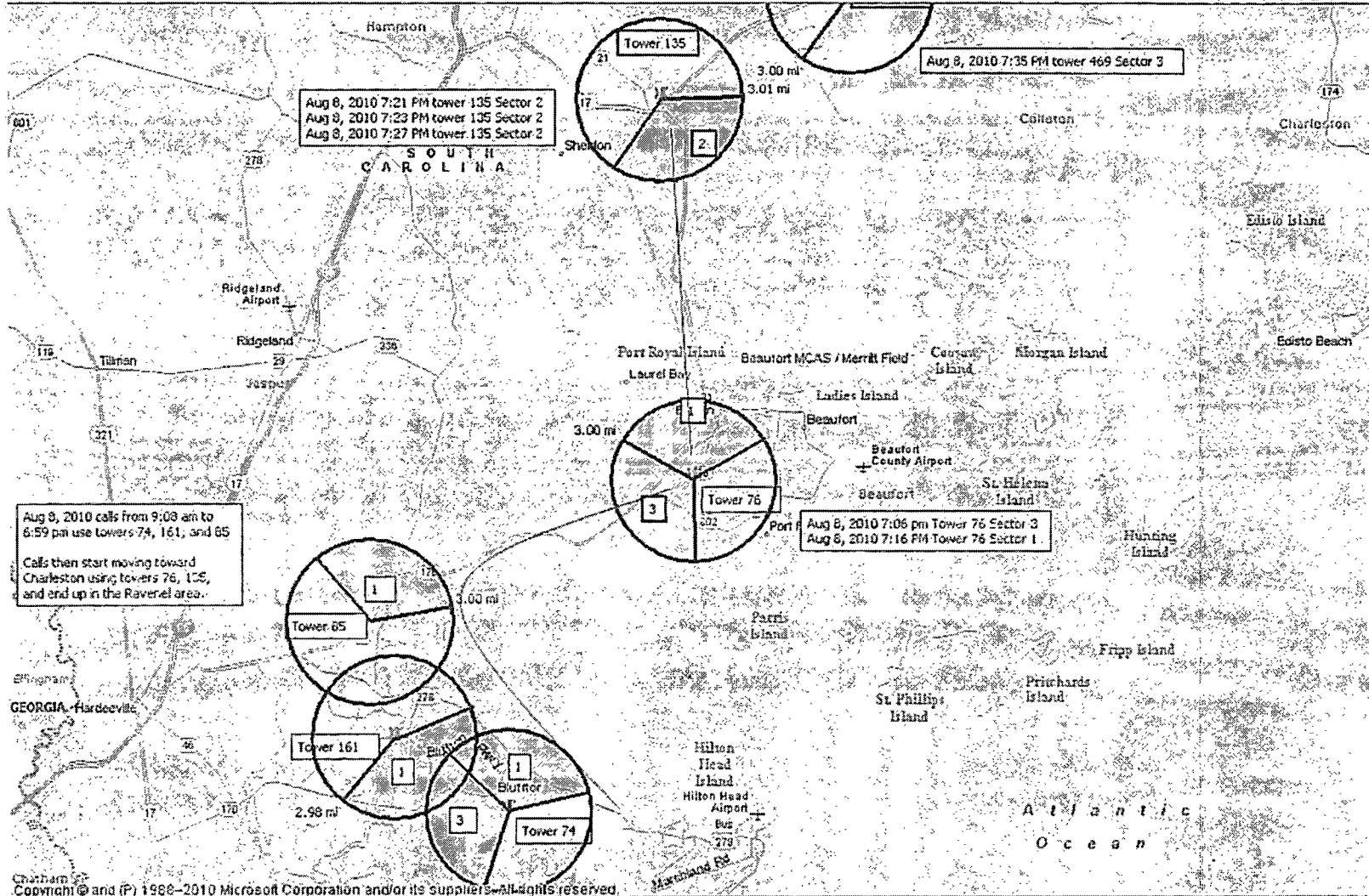


VERIZON RECORDS MADE BY ALEXIS LUKATIS PHONE (843) 368-6029 ON AUGUST 8, 2010 IN THE RAVENEL AREA



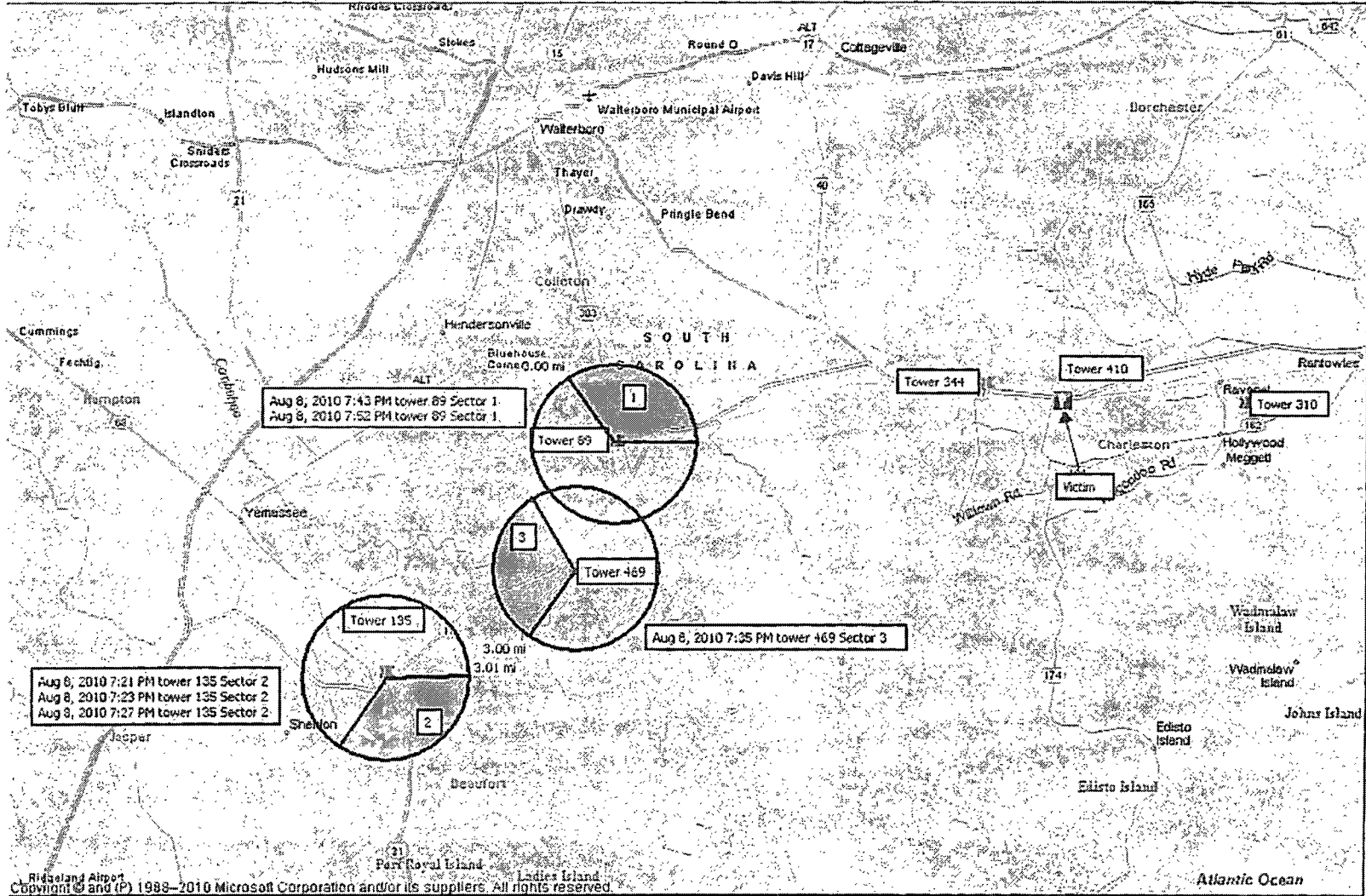


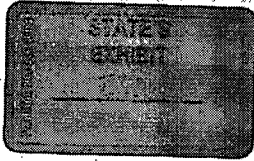
VERIZON RECORDS MADE BY DRAYTON'S PHONE (843) 368-9422 TRAVELING FROM BLUFFTON TO RAVENEL AREA ON AUGUST 8, 2010



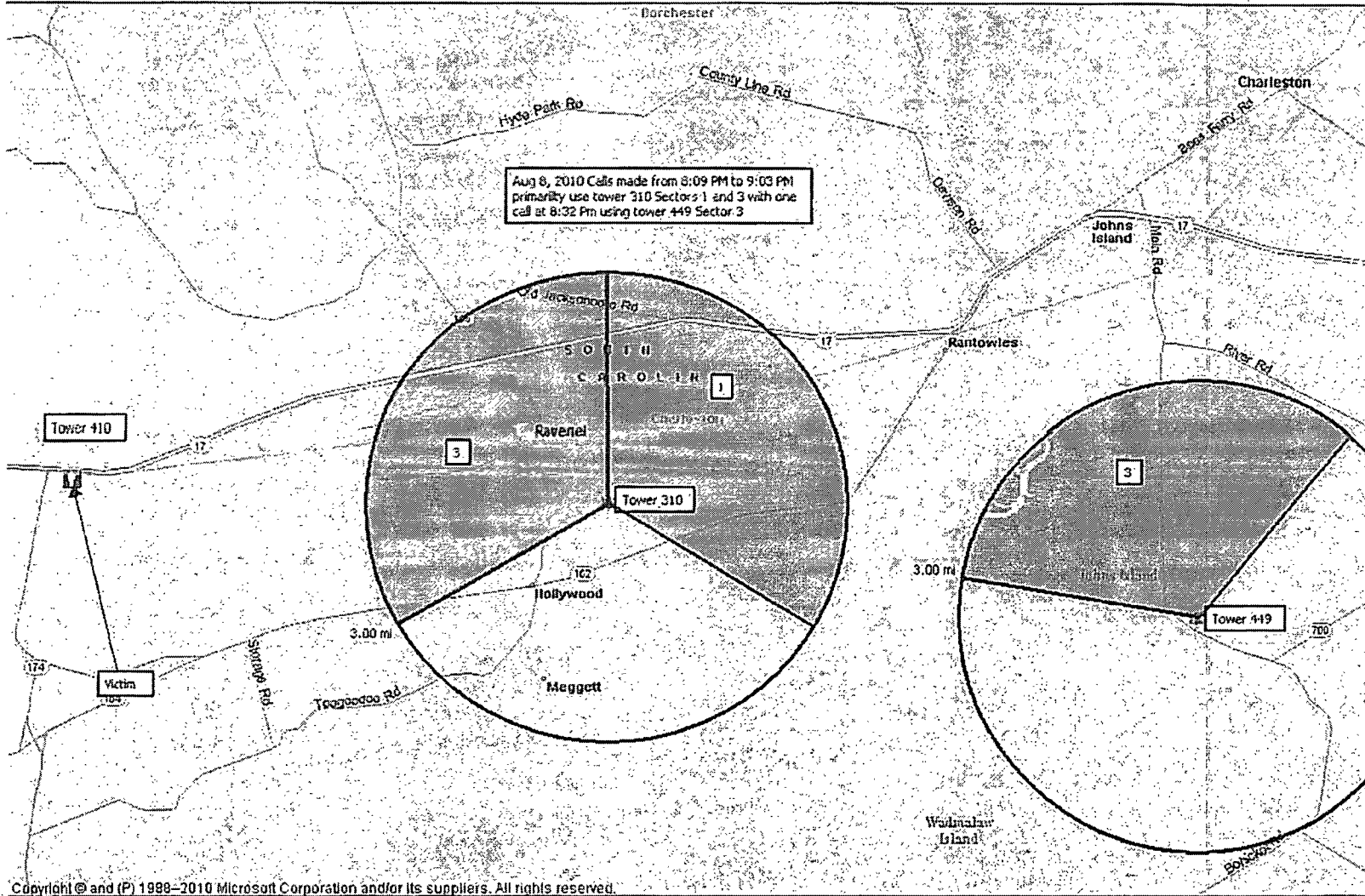


VERIZON RECORDS MADE BY DRAYTON'S PHONE (843) 368-9422 TRAVELING FROM BLUFFTON TO RAVENEL AREA ON AUGUST 8, 2010

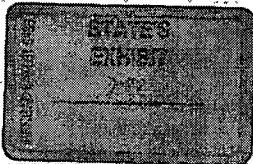




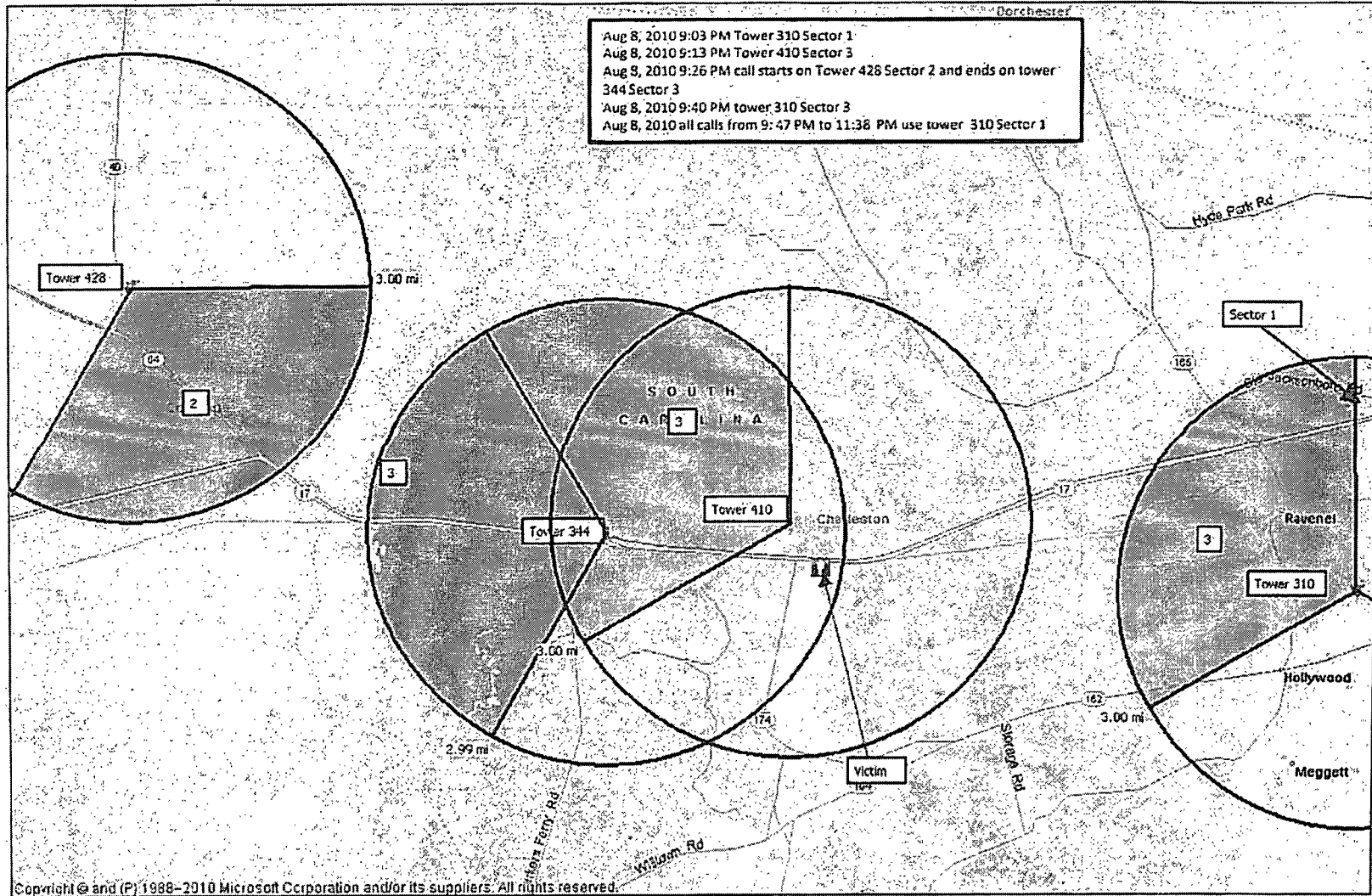
VERIZON RECORDS MADE BY DRAYTON'S PHONE (843) 368-9422 FROM 8:09 PM TO 9:03 PM ON AUGUST 8, 2010



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VERIZON RECORDS MADE BY DRAYTON'S PHONE (843) 368-9422 FROM 9:03 PM TO 9:40 PM ON AUG 8, 2010



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2010-GS-10-8551
	)	Warrant No: K304936
	)	Charge: Murder
STATE OF SOUTH CAROLINA)	
)	
vs.)	
	)	STIPULATION
DARRYL L. DRAYTON,)	
)	
Defendant)	

The State of South Carolina and the Defense in this case agree to the following facts as accurate and true:

Shannon H. Sakanina was an acquaintance of both the victim Alexis Lukaitis and the defendant Darryl Drayton at the time of Alexis' disappearance.


Alexis did not come home to Bluffton on the evening of Sunday, August 8, 2010. The next morning, Michael Bartley contacted Shannon H. Sakanina to see if she had information about Alexis' whereabouts. Shannon had no information about where Alexis went on Sunday August 8 or where she was on Monday morning, August 9, 2010. It is stipulated and you shall accept as true that Shannon H. Sakanina had no information at that time about Alexis' movements or activities on Sunday August 8, 2010. Police interviews and phone records establish that Shannon was not contacted by Alexis Lukaitis on Sunday August 8, 2010.

It is further stipulated and you shall accept as true that in the calls and conversations between Shannon H. Sakanina and Darryl Drayton on Monday August 9 and Tuesday August 10, 2010 that Darryl Drayton denied going to Charleston with Alexis on Sunday August 8 and denied any knowledge or involvement in Alexis' disappearance.



It is further stipulated and you shall accept as true that in ^alater conversation between Michael Bartley and Shannon H. Sakanina on Monday, August 9, 2010 that Michael Bartley told Shannon that Bartley had been told by Alexis Lukaitis on Sunday August 8, 2010 that Alexis was going to Charleston on Sunday with "D" to buy pills.

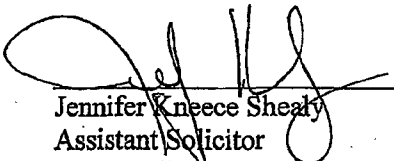
I HERBY AGREE:



D. Ashley Pennington
Counsel for Darryl L. Drayton

Dated: 30 Sept., 2012

I HEREBY AGREE:



Jennifer Kneece Shealy
Assistant Solicitor
Ninth Judicial Circuit

Dated: 10-1, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL
) SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) Case No.: 2010-GS-10-8551
) Warrant No: K304936
) Charge: Murder

STATE OF SOUTH CAROLINA)
)
 vs.)
)
 DARRYL L. DRAYTON,)
)
 Defendant)

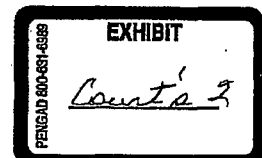
MOTION TO SUPPRESS

Because the affidavit in support of the search warrant used to secure the Defendant's cell phone records lacked probable cause, the search was illegal under the Fourth Amendment of the United States Constitution, Article 1, § 10 of the South Carolina Constitution, and South Carolina Code § 17-13-140. Consequently, Defendant hereby moves to suppress all evidence seized from Defendant's mobile phone provider.

I. Facts¹

In 2010 the victim, Alexis Lukaitis, was the fiancé of Michael Bartley. They lived together in an apartment complex in Bluffton SC, with their twin 1 ½ year old sons. According to a statement given to Beaufort County Sheriff's Deputy D/S Reynells on Monday August 9, 2010, Michael Bartley (Bartley) said that on Sunday August 8, 2010 that he asked the victim to go with him to his parent's home for Sunday dinner. As Bartley prepared to leave, the victim got out of the shower and "had a reaction to the new dryer sheets". The victim wanted to stay at the apartment, take Benadryl and sleep. Bartley left with the twins at 3:00 PM and returned to the apartment after the dinner at about 7:30 PM. The victim was not home.

¹ The following is based upon discovery material provided the Defense by the State.



The victim called Bartley at 8:00 PM (actually 8:19PM) to say that she was "on the road" on the way home. Bartley heard her speak to someone in the car but he could not determine who was riding with her. Bartley reported to Deputy Reynells that the victim had been talking to him earlier on Sunday afternoon about driving "D" to Charleston.

In the second of two interviews on Monday August 9, 2010 with Deputy Reynells, Bartley revealed that the victim was a user and seller of prescription medications. Bartley stated that the victim told him by phone on Sunday that she would be driving "D" to Charleston because "D" was going there to pick up a large quantity of prescription pills and that he would give her some free pills for her efforts. "D" was paying for the gas.

At approximately 7:00 AM on Monday August 9, 2010, the body of Alexis Lukaitis was found in Charleston County on Old Jacksonboro Road, near the intersection of Highways 174 and 17. She had been murdered and left on the side of the road. Her white 2001 Pontiac Grand Prix was missing.

On the evening of Tuesday August 10th, Detective Kip Cooke with the Sheriff's Office sought and received a search warrant for the Defendant's cell phone records from Magistrate Alvin Blidgen at the evening bond court. (Warrant and affidavit in support attached as EXHIBIT "A".) Specifically, the warrant sought:

Any and all information in reference to the Verizon cellular telephone number (843) 368-9422 to include, but not limited to, current subscriber information, account comments, billing records, outbound and inbound calls to include blocked call information from August 06, 2010 to August 10, 2010.

As the basis for the request, the affidavit stated as follows:

That on July 09, 2010, Charleston County Sheriff's Office Deputies responded to Old Jacksonboro Rd near Hwy. 174 in reference to a deceased person. Upon arrival deputies discovered the body of a female victim on the side of Jacksonboro Rd. On August 09, 2010, Alexis J. Lukaitis was reported missing to the Beaufort County Sheriff's Office. The body of the deceased was later positively identified as being Alexis J. Lukaitis. Mike Bartley the fiancée of the victim stated that he last spoke with the victim on August 8, 2010 and she informed him that she was traveling to Charleston SC with Darryl Drayton AKA "D".

A separate witness came forward and provided information about a conversation between Darryl Drayton and a friend and neighbor of the victim named Shannon in which they discussed the murder of the victim.

Bartley provided the Verizon cellular telephone number 843-368-9422 as a contact number for Darryl Drayton. It is believed that the call log and information contained therein will provide information that is pertinent to the death investigation. All evidence being sought will be compared with evidence already obtained in the investigation.

Simply put, law enforcement sought the Defendant's cell phone records, including the identities of individuals he called, the identities of all who called him, the times and duration of all calls and the location of cell towers associated with those calls, allowing law enforcement to track the movements of the phone and presumably the Defendant's movements, based on the uncorroborated claim of Bartley that the victim said to him that she was traveling to Charleston SC with "D" and the appearance of corroboration of a separate witness who came forward and described that Darryl Drayton and a friend and neighbor of the victim named Shannon had a conversation in which they "discussed the murder of the victim".

II. Argument

- A. The officer's affidavit contains no information establishing Michael Bartley's veracity as an informant. In fact, Bartley was under consideration by the Charleston County Sheriff's Office as a suspect at that time of this affidavit as he was the missing woman's fiancé and he had no alibi for the evening of her disappearance. On the same date as the search warrant affidavit was prepared and signed (August 10, 2010), the deputies took Bartley's DNA buccal swab for comparison to the evidence collected from the site where the victim's body was dumped.
- B. The deputies' search warrant affidavit tried to bolster Bartley's unreliable and uncorroborated claim with a second anonymous source of information, with no information as to the identity of the second source or that source's veracity.
- C. The second source's information was provided for the claim of probable cause and the magistrate's finding of probable cause because of law enforcement concerns about Michael Bartley as a suspect. The affiant deputy, Kip Cooke, after consulting with the lead deputies, Boyd and Perkins, admits today that the source never existed and was a ruse to mislead the defendant regarding how the deputies obtained statements by Shannon Sakanina. Cooke admits that there was no second source. In a later interview, deputy Boyd claims a source, Tina Johnson, although there is no documentation. So, the source of this information is uncertain at best.
- D. More importantly, the information attributed to the Shannon Sakanina is completely misleading to the magistrate. Its presence in the search warrant affidavit for Drayton's cellular phone records implies that the conversation about the murder is not merely idle, public gossip about the news of this investigation but instead has some evidentiary weight by significantly incriminating Drayton in some way and justifying the deputies' request for the warrant.

However it is now agreed that the described conversation did not contain incriminating statements. Instead they were Drayton's expressions of concern about the murder and denials of any involvement in the murder to Shannon Sakanina. The parties have stipulated and agreed that that in the calls and conversations between Shannon H. Sakanina and Darryl Drayton on Monday August 9 and Tuesday August 10, 2010 that Darryl Drayton denied going to

Charleston with Alexis on Sunday August 8 and denied any knowledge or involvement in Alexis' disappearance.

Consequently, the search warrant lacks probable cause because of an unreliable and uncorroborated source in Michael Bartley and the decision to mislead the magistrate with inaccurate information about a second source and by mischaracterizing the defendant's conversation with Shannon Sakanina by implying that it was incriminating. See *Franks v. Delaware*, 438 U.S. 154, 155-56, 171-72 (1978)

- E. Because the officers bolstered the warrant for Drayton's phone calls with deliberately or recklessly false information from an unnamed source, the good faith exception to the exclusionary rule does not apply as the officers lack an objectively reasonable basis for reliance on the warrant.
- F. The Inevitable Discovery Exception to the Exclusionary Rule is not applicable in that there is no other source of this information and there is no other lawful way to acquire these records that does not derive from this investigation.
- G. The detective's affidavit lacks probable cause on why the phone records are evidence. The statement of Bartley provides no nexus between the facts stated and the defendant's cell phone. Bartley's allegation that the victim was going to Charleston with "D" does not explain how the detectives have probable cause that the Defendant's mobile phone was used or that the Defendant's phone records contain evidence relating to this crime.

"The task of a magistrate when determining whether to issue a warrant is simply to make a practical, common sense decision as to whether, under the totality of the circumstances, set forth in the affidavit, *including the 'veracity' and 'basis of knowledge'* of persons supplying hearsay information, there is a fair probability that evidence of a crime will be found in a particular place. *State v. Driggers*, 473 S.E.2d 57 (1996), citing

Illinois v. Gates, 103 S.Ct. 2317 (1983), emphasis added. In *Gates*, the United States Supreme Court clarified the probable cause requirement for government searches based upon information provided by informants. In determining whether the information relied upon by law enforcement in seeking the warrant is reliable, the Court made clear that no one factor was necessary, or sufficient to establish probable cause. Instead, probable cause arises from the totality of the circumstances and "a deficiency in one (factor) may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id.* at 2329. The Court explained:

If, for example, a particular informant is known for the unusual reliability of his predictions of certain types of criminal activities in a locality, his failure, in a particular case, to thoroughly set forth the basis of his knowledge surely should not serve as an absolute bar to a finding of probable cause based on his tip. . . . Likewise, if an unquestionably honest citizen comes forward with a report of criminal activity – which if fabricated would subject him to criminal liability – we have found rigorous scrutiny of the basis of his knowledge unnecessary. . . . Conversely, even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case. *Id.*

Our courts have applied *Gates* in precisely this fashion, looking to the presence of one reliability factor, when another is lacking or even absent, in assessing the existence of probable cause. What is clear from the case law, as *Gates* mandates, is that the information provided must give the magistrate *some reason* to find the information reliable, based upon some combination of the following: the source of the information, the circumstances surrounding the giving of the information, and independent corroboration of the information by law enforcement.

Courts may deem an informant reliable when that person has provided truthful information in the past. *State v. Williams*, 377 S.E.2d 308 (1989). That a citizen comes

forward with information, without potential gain or possible bias, weighs in favor of finding the informant reliable. *State v. Sullivan*, 230 S.E.2d 621 (1976). The least reliable informants are those that provide information anonymously, with impunity for fabricating. *Gates*, 103 S.Ct. at 2332.

Specifically, our Court of Appeals found the following language deficient, even when supplemented with sworn testimony:

Within the past 72 hours a confidential informant has seen a quantity of marijuana in the residence to be searched. Also, in the past, agents with the Special Operations Div. of the Pickens County Sheriff's Office have received information the [sic] one of the persons who lives at the residence, (the suspect), is involved in illicit drug activity. *State v. Philpot*, 454 S.E.2d 905 (Ct. App. 1995)

The Court refused to uphold the search, finding it devoid of any information concerning the source's veracity. *Id.* at 907. Moreover, the affiant's supplemental testimony before the magistrate did not cure the defect. *Id.*

An affidavit weak on informant reliability, may nonetheless survive scrutiny if law enforcement corroborates the information provided. In *State v. Dupree*, 583 S.E.2d 437 (Ct. App. 2003), the Court upheld a search warrant, despite a finding that the affidavit in support thereof failed to establish the reliability of the informant, where the police were able to independently corroborate the information. There, a confidential informant made a controlled purchase of drugs from the defendant, while the officer-affiant waited near the incident location. *Id.* at 439. Despite the fact that the affidavit in support of probable cause did not establish the informant's reliability by detailing a history of the informant's providing reliable information in the past, the court concluded that the facts surrounding the transaction, independently corroborated by the affiant-officer, allowed the magistrate to issue the warrant. *Id.* at 443. Specifically, the affiant:

set up the controlled buy, confirmed that prior to entering the defendant's residence the informant had no drugs on his person, observed the informant enter the residence, and observed him return with the drugs. *Id.* The court held: "the warrant must be upheld not on the basis of the past credibility of the informant, but upon the independent verification of facts by the affiant. The information furnished by the informant taken as a whole in light of all the circumstances disclosed is reliable." *Id.*

Likewise, in *State v. Bellamy*, 519 S.E.2d 347 (1999), the Court upheld the issuance of a search warrant, despite an affidavit weak on informant reliability, where a named informant gave very specific information, based upon his observations, of criminal and incriminating activity on the part of the defendant, some of which law enforcement could corroborate. There, the State Law Enforcement Division had interviewed an inmate at the local detention center after learning he may have information about a recent burglary of the local police department where firearms were stolen. The search warrant for the defendant's residence contained no information concerning the informant's reliability. *Id.* at 347. However, the affidavit went into great detail concerning the incriminating and illegal activities witnessed by the named informant, specifically that he observed the defendant firing outside his residence a .25, .38 and .22 caliber weapon, all of the same caliber as the guns stolen in the burglary. *Id.* at 349. The informant observed the defendant place the weapons back inside his residence after firing them. *Id.* The informant made these observations within two weeks of the burglary. *Id.* He further stated that he had observed cocaine inside the residence. *Id.* The court held: "Although the affidavit is weak on the element of the reliability of

the informant, this deficiency is compensated for by the strong showing of specificity, first-hand observation, and partial corroboration." *Id.*

In *State v. Driggers*, 473 S.E.2d 57 (Ct. App. 1996), the Court, in addition to appealing to detailed, first-hand observations of incriminating activity on the part of the informant, upheld the issuance of a search warrant based upon the relationship between the informant and the defendant. There, the affiant presented the magistrate first-hand accounts of the defendant's criminal, suspicious activities, observed by the defendant's roommate, specifically: the defendant repairing a gun, cutting eye holes in black material, and then leaving the apartment around midnight, on the night of the robbery of a local restaurant where the perpetrators wore masks and carried guns; the defendant returning the morning after the robbery wearing wet clothes; the defendant counting out \$2,400.00 -- \$100.00 short of the take from the robbery; and the defendant offering the roommate \$100 to get a room in the hotel down the hall from where the defendant would be staying. *Id.* Finally, the roommate indicated authorities would find the defendant in the hotel, with the money. *Id.* The roommate provided law enforcement the above information only 10 days after the robbery. *Id.* In addition to the detailed facts, observed by the informant, the Court appealed to the fact that the information came from the defendant's roommate. "An informant is reliable if he possessed a special relationship and capacity to gain knowledge that should prompt belief in the veracity of his information."

Conversely, first-hand observation of illegal activity, without facts to establish reliability will not support a finding of probable cause. In *State v. Johnson*, 395 S.E.2d 167 (1990) our Supreme Court declined to uphold a finding of probable cause where the affidavit read, simply: "a confidential informant had seen a quantity of cocaine in

Johnson's home within the past seventy-two (72) hours." *Id.* at 169. Nothing in the affidavit indicated that the informant had in the past provided information later determined to be truthful. Nothing in the affidavit indicated law enforcement had corroborated the information provided. In finding the affidavit insufficient, the Court reasoned: "without any information concerning the reliability of the informant, 'the inferences from the facts which lead to the complaint' will be drawn not 'by a neutral and detached magistrate,' as the Constitution requires, but instead by a police officer 'engaged in the often competitive enterprise of fettering out crime,' or, as in this case, by an unidentified informant." *Id.*, citing *Aguilar v. Texas*, 84 S.Ct. 1509 (1964). *See also State v. Adolphe*, 441 S.E.2d 832 (Ct. App. 1994)(without showing of confidential informant's reliability or independent corroboration of information provided, affidavit not supported by probable cause).

Even where an informant revealed herself to the magistrate, signed the affidavit under oath swearing that she had personally observed drugs in the defendant's residence, and that the defendant told her the substances were marijuana and cocaine while she was in his residence, the seventh circuit refused to uphold a search warrant absent specific details and independent corroboration. *U.S. v. Peck*, 317 F.3d 754 (2003). There, the defendant's girlfriend swore before the magistrate to the above facts. However, because the only details she gave were that she had been in the house and shown drugs two days before, *Id.* at 756, the court found that "the minimal amount of detail in (the affidavit) does not support a finding of probable cause." *Id.* at 757. The scant amount of information, coupled with a lack of independent corroboration, *Id.*, rendered the affidavit

defective. Thus, personal observation of illegal substances in a defendant's residence, will not suffice to establish probable cause.

Our cases, collectively, stand for the following proposition. Where the affidavit is weak on the issue of informant reliability, the affidavit will nevertheless support a finding of probable cause where the information provided, given the totality of the circumstances, possesses certain indicia of reliability, specifically, some combination of: independent corroboration by law enforcement, *Dupree*; detailed, partially corroborated, first-hand observations of criminal activity on the part of the suspect, *Bellamy, Driggers*; specific details arising from relationship to the suspect that would grant the informant access to incriminating information, *Driggers*. Furthermore, "while perhaps no one of these factors independently could have been dispositive, the totality of all these circumstances certainly satisfies the credibility prong." *Sullivan*, 230 S.E.2d at 624.

Here, there is no information as to Bartley's reliability as witness, nothing indicating he had provided truthful information in the past, nothing indicating he acted as a concerned citizen, nothing indicating he had any relationship with the Defendant allowing him access to information otherwise unavailable to others. From the affidavit, the magistrate would have no knowledge as to why investigators met with Bartley, whether he came forward as a concerned citizen or whether investigators interviewed him as a suspect. As such, nothing in the affidavit would have allowed the magistrate to assess Bartley's credibility.

Secondly, nothing in the affidavit compensates for the complete lack of information as to Bartley's reliability in a way that would have allowed the magistrate to find the information provided, as a whole, reliable. Nothing in the affidavit indicates

Bartley had provided law enforcement reliable information in the past. Nothing in the affidavit corroborated the information Bartley provided.

In determining whether probable cause to search a location exists, the crucial element is not whether the target of a search is suspected of committing a crime, but whether there is sufficient reason to believe that evidence of criminal activity will be found in the location specified. *Zurcher v. Stanford Daily*, 98 S.Ct 1970 (1978).

Nexus Problem

Here, the affidavit makes no mention of the Defendant's cell phone. It does not indicate that Darryl Drayton's cell phone was used in any criminal activity. It does not indicate witnesses place the Defendant with a cell phone at or around the time the victim was found. It does not indicate the Defendant was making calls on his cell phone at or around the time the victim was discovered, or if he was, why the records of such calls would prove who killed the victim. Indeed, it is clear the search warrant was an attempt to collect the very information law enforcement did not have, but would need, in order to justify the search.

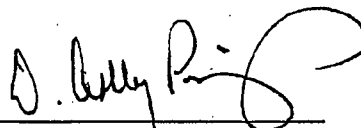
General search warrants, those that do not specify the items sought, are prohibited by the Fourth Amendment. "[T]he problem [posed by the general warrant] is not that of intrusion per se, but of a general, exploratory rummaging in a person's belongings.... [The Fourth Amendment addresses the problem] by requiring a 'particular description' of the things to be seized." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). This requirement "makes general searches... impossible and prevents the seizure of one thing

under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." Stanford v. Texas, 379 U.S. 476, 485 (1965), quoting Marron v. United States, 275 U.S., at 196. The language of the "description of property sought" is so broad in this case; it is hard to imagine any information within the Defendant's cell phone records that would not fall under the scope of the warrant. This was, essentially a "fishing expedition."

Conclusion

For all of the foregoing reasons, the Defendant moves that this Court suppress all evidence obtained as a result of the search of the Defendant's mobile phone provider on August 10, 2010.

Respectfully submitted,



D. Ashley Pennington
Ninth Circuit Public Defender
Counsel for Darryl L. Drayton

Charleston, South Carolina

Dated: 30 September 2012

STATE OF SOUTH CAROLINA }
 COUNTY OF CHARLESTON }

AFFIDAVIT

OCA # 2010-012983-B

Personally appeared before me, one Det. K. Cooke, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all information in reference to the Verizon cellular telephone number 843-368-6074 to include but not limited to subscriber information, account comments, billing records, blocked calls, outbound and inbound calls from August 06, 2010 to August 10, 2010. Subscriber information on other numbers listed in the report, call origination location, physical address of cell sites and coverage map, all stored communications, or files including voice mail, email, digital images, text messages, buddy lists, and any other files associated with the cellular target number 843-368-6074. Compliance can be made by e-mail to kcooke@charlestoncounty.org, by fax to (843) 554-9744 or by mail to Attn. Det. K. Cooke, Charleston County Sheriff's Office, 3505 Pinehaven Dr., N. Charleston, SC 29405.

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
 TO BE SEARCHED**

Cellco partnership DBA Verizon Wireless 180 Washington Valley Rd Bedminster NJ, 07921 Fax #(908) 306-7491.

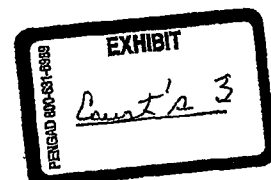
**REASON FOR AFFIANT'S BELIEF THAT THE
 PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

That on July 09, 2010, Charleston County Sheriff's Office deputies responded to Old Jacksonboro Rd near Hwy 174 in reference to a deceased person. Upon arrival deputies discovered the body of a female victim on the side of Jacksonboro Rd. On August 09, 2010, Alexis J. Lukaitis, was reported missing to the Beaufort County Sheriff's Office. The body of the deceased was later positively identified as being Alexis J. Lukaitis. Mike Bartley the fiancée of the victim stated that he last spoke with the victim on August 08, 2010 and she informed him that she was traveling to Charleston SC with Darryl Drayton AKA "D." Bartley provided the Verizon wireless cellular telephone number 843-368-6074 as his personal cell phone that he last spoke with the victim on. It is believed that the call log and information contained therein will provide information that is pertinent to the death investigation. All evidence being sought will be compared with evidence already obtained in the investigation.

Sworn to and Subscribed before me
 this 10 of August, 2010

[Signature] (L.S.)
 Signature of Judge

[Signature]
 Detective K. Cooke
 Charleston County Sheriff's Off.
 3505 Pinehaven Drive
 North Charleston, SC 29405
 (843) 554-2475



STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

see attached affidavit

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

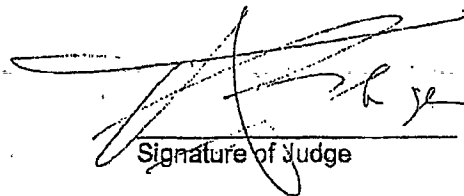
see attached affidavit

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to Issuing Magistrate within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of the Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place in such premises.

Charleston, SC
August 10, 2010


Signature of Judge L.S.

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

AFFIDAVIT

OCA # 2010-012983-B

Personally appeared before me, one Det. K. Cooke, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all information in reference to the Verizon cellular telephone number 843-368-6029 to include but not limited to subscriber information, account comments, billing records, outbound and inbound calls, including blocked call information from August 06, 2010 to August 10, 2010. Subscriber information on other numbers listed in the report, call origination location, physical address of cell sites and coverage map, all stored communications, or files including voice mail, email, digital images, text messages, buddy lists, and any other files associated with the cellular target number 843-368-6029. Compliance can be made by e-mail to kcooke@charlestoncounty.org, by fax to (843) 554-9744 or by mail to Attn. Det. K. Cooke, Charleston County Sheriff's Office, 3505 Pinehaven Dr., N. Charleston, SC 29405.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Cellco partnership DBA Verizon Wireless 180 Washington Valley Rd Bedminster NJ, 07921 Fax #(908) 306-7491.

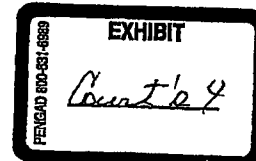
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Sworn to and Subscribed before me
this 10 of August, 2010

[Signature] (L.S.)
Signature of Judge
9:07 PM

[Signature]
Detective K. Cooke
Charleston County Sheriff's Off.
3505 Pinehaven Drive
North Charleston, SC 29405
(843) 554-2475



STATE OF SOUTH CAROLINA }
 }
COUNTY OF CHARLESTON }

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

see attached affidavit

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

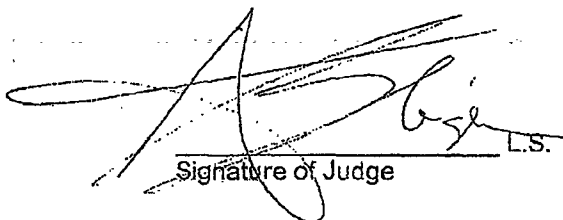
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A copy of the Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place in such premises.

Charleston SC
August 10, 2010



Signature of Judge L.S.

STATE OF SOUTH CAROLINA }

COUNTY OF CHARLESTON }

AFFIDAVIT

OCA # 2010-012983-B

Personally appeared before me, one Det. K. Cooke, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all information in reference to the T-Mobile cellular telephone number 843-227-8952 to include but not limited to subscriber information, account comments, billing records, outbound and inbound calls to include blocked call information from August 06, 2010 to August 10, 2010. Subscriber information on other numbers listed in the report, call origination location, physical address of cell sites and coverage map, all stored communications, or files including voice mail, email, digital images, text messages, buddy lists, and any other files associated with the cellular target number 843-368-9422. Compliance can be made by e-mail to kcooke@charlestoncounty.org, by fax to (843) 554-9744 or by mail to Attn. Det. K. Cooke, Charleston County Sheriff's Office, 3505 Pinehaven Dr., N. Charleston, SC 29405.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

T Mobile Law Enforcement Relations Group 4 Sylvan Way Parsippany NJ, 07054 Fax # (973) 292-8697

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

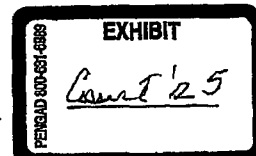
That on July 09, 2010, Charleston County Sheriff's Office deputies responded to Old Jacksonboro Rd near Hwy 174 in reference to a deceased person. Upon arrival deputies discovered the body of a female victim on the side of Jacksonboro Rd. On August 09, 2010, Alexis J. Lukaitis, was reported missing to the Beaufort County Sheriff's Office. The body of the deceased was later positively identified as being Alexis J. Lukaitis. Mike Bartley the fiancée of the victim stated that he last spoke with the victim on August 08, 2010 and she informed him that she was traveling to Charleston SC with Darryl Drayton AKA "D." A separate witness came forward and provided information about a conversation between Darryl Drayton and a friend and neighbor of the victims named Shannon in which they discussed the murder. Bartley provided the T-Mobile cellular telephone number 843-227-8952 as a contact number for Shannon. It is believed that the call log and information contained therein will provide information that is pertinent to the death investigation. All evidence being sought will be compared with evidence already obtained in the investigation.

Sworn to and Subscribed before me
this 10 of August, 2010.

[Signature] (L.S.)
Signature of Judge

9:07 pm

[Signature]
Detective K. Cooke
Charleston County Sheriff's Off.
3505 Pinehaven Drive
North Charleston, SC 29405
(843) 554-2475



STATE OF SOUTH CAROLINA }

COUNTY OF CHARLESTON }

AFFIDAVIT

OCA # 2010-012983-B

Personally appeared before me, one Det. K. Cooke, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all information in reference to the Verizon cellular telephone number 843-422-8665 to include but not limited to subscriber information, account comments, billing records, outbound and inbound calls including blocked call information from August 06, 2010 to August 10, 2010. Subscriber information on other numbers listed in the report, call origination location, physical address of cell sites and coverage map, all stored communications, or files including voice mail, email, digital images, text messages, buddy lists, and any other files associated with the cellular target number 843-368-9422. Compliance can be made by e-mail to kcooke@charlestoncounty.org, by fax to (843) 554-9744 or by mail to Attn. Det. K. Cooke, Charleston County Sheriff's Office, 3505 Pinehaven Dr., N. Charleston, SC 29405.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

Cellco Partnership dba Verizon Wireless, 180 Washington Valley Rd., Bedminster NJ 07921, Fax # (908) 306-7491.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

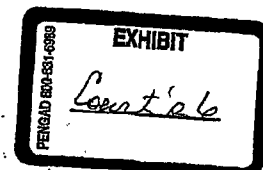
That on July 09, 2010, Charleston County Sheriff's Office Deputies responded to Old Jacksonboro Rd near Hwy 174 in reference to a deceased person. Upon arrival deputies discovered the body of a female victim on the side of Jacksonboro Rd. On August 09, 2010, Alexis J. Lukaitis, was reported missing to the Beaufort County Sheriff's Office. The body of the deceased was later positively identified as being Alexis J. Lukaitis. Mike Bartley the fiancée of the victim stated that he last spoke with the victim on August 08, 2010 and she informed him that she was traveling to Charleston SC with Darryl Drayton AKA "D." A separate witness came forward and provided information about a conversation between Darryl Drayton and a friend and neighbor of the victim named Shannon in which they discussed the murder of the victim. Bartley provided the Verizon cellular telephone number 843-422-8665 as a contact number for Darryl Drayton. It is believed that the call log and information contained therein will provide information that is pertinent to the death investigation. All evidence being sought will be compared with evidence already obtained in the investigation.

Sworn to and Subscribed before me
this 10 of August, 2010

[Signature] (L.S.)
Signature of Judge

9:07 PM

[Signature]
Detective K. Cooke
Charleston County Sheriff's Off.
3505 Pinehaven Drive
North Charleston, SC 29405
(843) 554-2475



STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

see attached affidavit

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

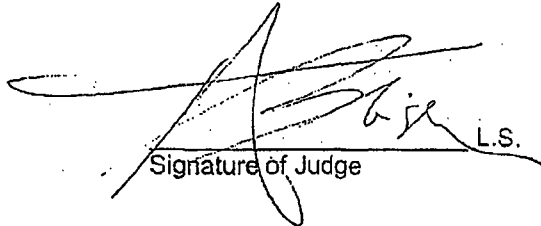
see attached affidavit

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to Issuing Magistrate within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of the Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place in such premises.

Charleston, SC
August 10 2010

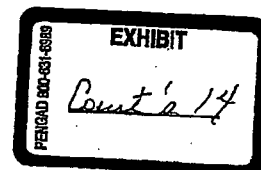

Signature of Judge L.S.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2010-GS-10-8551
	)	Warrant No: K304936
	)	Charge: Murder
STATE OF SOUTH CAROLINA)	
)	
vs.	)	DEFENDANT'S REQUESTED
	)	JURY CHARGE NO.: _____
DARRYL L. DRAYTON,)	
)	
Defendant)	

"Every circumstance relied upon by the state [must] be proven beyond a reasonable doubt; and... all of the circumstances so proven be consistent with each other and taken together, pint conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilty of the accused, the proof has failed." *State v. Edwards*, 298 S.C. 272, 275; 379 S.E. 2d 888, 889 (1989).

Memorandum in Support of Request

In *State v. Cherry*, 361 S.C. 588, 606 S.E. 2d 475 (2004), a majority of the Supreme Court held the only remaining jury instruction in South Carolina regarding circumstantial evidence is the instruction approved in *State v. Grippon*, 327 S.C. 79, 489 S.E. 2d 462 (1997). Both *Grippon* and *Cherry* were three-to-two decisions. Chief Justice Toal authored the dissenting opinions in both cases. Recently in *State v. Hernandez*, (S.C. S.Ct. Op. No. 26654) (filed May 26, 2009) (WL 1456616) fn. 2, a unanimous Supreme Court, in an opinion authored by the Chief Justice, cited the *Edwards* circumstantial evidence instructin with approval because it illustrated the lack of evidence in the case. The Supreme Court, therefore, is poised to overrule *Cherry* when presented with the appropriate case.

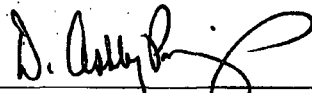


The Defendant also argues that the defense should have been able to get into the specifics of the victim's toxicology which would have revealed that she was engaged in more activities than simply obtaining a few pills.

The Defendant further argues that the Court was in error on its circumstantial evidence charge by only providing the partial process for the evaluation of circumstantial evidence as reliable and omits the portion where the jury should look for reasonable alternatives other than guilt.

Based on all these objections, the Defendant moves for a directed verdict of not guilty or in the alternative an order for a new trial pursuant to Rule 29 of the S.C. Rules of Criminal Procedure.

Respectfully submitted,



D. Ashley Pennington
Ninth Circuit Public Defender
Counsel for Darryl L. Drayton

Charleston, South Carolina

Dated: 10 Oct., 2012

BY MA
JULIE J. ARMSTRONG
CLERK OF COURT

2012 OCT 10 AM 9:14

FILED

572

JKS20100804530

WITNESSES

JAMES B. PERKINS
Charleston County Sheriff

AGENCY CASE NUMBER

2010012983B

ARREST WARRANT NUMBER

K304936

DATE OF ARREST

August 27, 2010

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury DEC 06 2010
Date:

VERDICT

Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2010GS1008551

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

December Term 2010

THE STATE

vs.

10-4589 (01)

DAROLD L DRAYTON

B/M

Indictment for

Murder

FILED

12/14/2010 10:49:52 AM
JULIE J. ARMSTRONG
CLERK OF COURT

574

STATE OF SOUTH CAROLINA

COUNTY OF Charleston VS. STATE

Darold L Drayton

AKA: AKA Darryl Drayton

Race: BLACK Sex: M Age: 34

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: BLUFFTON, SC 294490000

DL#: [redacted] SID#: [redacted]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was TO: MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS1008551

A/W#: K304936

Date of Offense: 8/27/2010

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

[X] CONVICTED OF or [] PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

[] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST:

Kneece Sheath, Jennifer

SC Bar# 1919

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of life days/months/years or [] under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on:

[] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

[] Set by SCDPPPS

Recipient:

*Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

PTUP days/hours Public Service Employment

Obtain GED []

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling []

Random Drug/Alcohol testing []

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

[] Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Mia Renee

SCCA/217 (03/2011)

Presiding Judge


Judge Code: 2117

Sentence Date: 10/5/12

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 4th, 2014



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

RECEIVED

APR 04 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARRYL L. DRAYTON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of April, 2014.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of April, 2014.

[Signature] (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022