

CONFIDENTIAL

VOL I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Thomas A. Russo, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SHAWN WILLIAM SHARPE,

APPELLANT

APPELLATE CASE NO. 2013-001915

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

Attorneys for Respondent

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON —) 2011-GS-32-02448
) 2011-GS-32-02449
) 2011-GS-32-02450

STATE OF SOUTH CAROLINA)
)
) vs. TRANSCRIPT OF RECORD
)
SHAWN WILLIAM SHARPE) VOLUME 1
)
) DEFENDANT —)

August 26, 2013
Lexington, South Carolina

B E F O R E:

HON. THOMAS A. RUSSO, Judge and a jury.

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

SAMUEL R. HUBBARD, III, DEPUTY SOLICITOR
DAVID SHAWN GRAHAM, DEPUTY SOLICITOR
Attorneys for the STATE

AIMEE J. ZMROCZEK, ESQ.
Attorney for the DEFENDANT

CAROL M. THUEME, RPR
Official Court Reporter

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1 THE COURT: Ladies and gentlemen, before I
2 recognize the State for the calling of the first case, let
3 me -- I don't know if I need to do this, but I felt like I
4 probably should.

5 I'm -- it's not lost on me that for some of us
6 that are Gamecock fans, that there's a ball game this
7 week, okay? That's not lost on me, and I realize that
8 Clemson's ball game is on Saturday. So it won't interfere
9 with anything. But you may be concerned because South
10 Carolina plays Thursday night.

11 I will assure you, anyone who may be concerned
12 about that, that the Court and the staff are just as
13 concerned. And so regardless of where we're at in our
14 work, we will end court in time for anyone who may have
15 either tickets or want to get to a television -- and on
16 that note, you all, please leave Ms. Addison alone. I'm
17 sure she has enough people hounding her for tickets, and
18 I'm going to before court's over -- no, I'm just kidding,
19 ma'am -- but seriously, I say all that -- obviously the
20 work that we do here is vastly more important than any
21 football game, but I also recognize that, you know, you
22 can do both. You can do the work you need to do and also
23 do the entertainment side.

24 So if anyone has tickets for the game and you
25 have concern, I want to tell you that because I don't want

1 you sitting out there being concerned, what if I get
2 selected on a jury and I'm stuck and I've got tickets --
3 you know, we will not interfere with that. All right?

4 So having said that, we're now ready to proceed
5 and I would recognize the State for the first case.

6 MR. GRAHAM: Thank you, Your Honor.

7 The State calls Indictment 2012-GS-32-2448, the
8 State versus Shawn William Sharpe. It's an indictment for
9 murder.

10 Indictment 2012-GS-32-2449, the State versus
11 Shawn William Sharpe, an indictment for burglary in the
12 1st degree.

13 Indictment 2012-GS-32-2450, the State versus
14 Shawn William Sharpe, an indictment for armed robbery.

15 THE COURT: Thank you, sir.

16 All right. Ladies and gentlemen, you have heard
17 the Solicitor call the case of the State of South Carolina
18 versus Shawn William Sharpe. There are three indictments
19 that bring allegations against Mr. Sharpe into this court.

20 Let me begin by letting you know if you don't
21 already know, an indictment, ladies and gentlemen, is
22 simply a piece of paper that contains the allegations made
23 against a defendant. It is just the formal charge that
24 brings the case into this court. The contents of these
25 indictments are not evidence in any way against a

1 defendant. They are merely the allegations that the State
2 brings, and they are not evidence.

3 To these indictments, to these allegations
4 Mr. Sharpe has pled not guilty. And that plea of not
5 guilty places the burden of proof upon the State to prove
6 guilt beyond a reasonable doubt. Mr. Sharpe, as he sits
7 here before you, is presumed innocent of these charges.

8 Now, I'm going to go over these allegations,
9 though, so that you have some idea of what the case is
10 about so that you can answer the questions that I'm going
11 to ask you.

12 Indictment 2012-GS-32-2448 charges Mr. Sharpe
13 with the offense of murder. And it alleges that Shawn
14 William Sharpe along with Charles Plumley and/or Angela
15 Griffin, did in Lexington County on or about September 21,
16 2011, unlawfully kill one Leon Justice with malice
17 aforethought, by shooting the victim and the victim died
18 as a proximate result thereof, in violation of Section
19 16-3-10 of the South Carolina Code of Laws, 1976, as
20 amended.

21 Indictment 2012-GS-32-2449, alleges and charges
22 Mr. Sharpe with the offense of burglary in the 1st degree.
23 And those allegations are as follows: That Shawn William
24 Sharpe along with Charles Plumley and/or Angela Griffin,
25 did in Lexington County, South Carolina, on or about

1 September 21st of 2011, knowingly and willfully enter a
2 dwelling, to wit: Victor road in Gaston, South
3 Carolina, and being the dwelling of Leon Justice and/or
4 Rose Lucas, without consent and with the intent to commit
5 a crime therein and when, in effecting entry or while in
6 the dwelling or in immediate flight, he and other
7 participants in the crime was armed with a deadly weapon
8 and/or caused physical injury to a person who is not a
9 participant in the same and/or the entering or the
10 remaining occurred in the nighttime, all in violation of
11 Section 16-11-311 of the South Carolina Code of Laws,
12 1976, as amended.

13 And then Indictment 2012-GS-32-2450, charges
14 Mr. Sharpe with the offense of armed robbery. And the
15 allegations are that Shawn William Sharpe along with
16 Angela Griffin and/or Charles Plumley did in Lexington
17 County, South Carolina, on or about September 21st of
18 2011, knowingly and willfully while armed with a deadly
19 weapon, to wit: A firearm, feloniously take from the
20 person or presence of Rose Lucas and/or Leon Justice, by
21 means of force, threats or intimidation goods or monies
22 being described as follows: U.S. currency with the intent
23 to deprive the owner of such property in violation of
24 Section 16-11-330(A) of the South Carolina Code of Laws,
25 1976, as amended.

1 Now, those are the allegations that the State
2 has brought against Mr. Sharpe: Murder, burglary 1st, and
3 armed robbery.

4 As I indicated to you, to those allegations he
5 has pled not guilty, which places the presumption of
6 innocence upon him unless the State removes that
7 presumption by guilt satisfying -- by evidence satisfying
8 you of his guilt.

9 What I need to ask you is this: Ladies and
10 gentlemen, based on that limited information that I've
11 just given you, is there any member of the jury panel who
12 knows anything about this case, these charges at all? If
13 so, please stand.

14 (There was no response.)

15 THE COURT: Thank you. There are none.

16 I'm going to get the attorneys to stand and
17 introduce themselves to you. If you'd please listen
18 carefully.

19 MR. HUBBARD: My name is Rick Hubbard. I'm the
20 deputy solicitor here in Lexington.

21 MR. GRAHAM: My name is Shawn Graham. I'm a
22 deputy solicitor here in Lexington County.

23 MS. ZMROCZEK: My name is Aimee Zmroczek and I'm
24 an attorney here in Lexington.

25 MR. BANK: Bobby Bank. I'm a law clerk. I'll

1 be working with the Richland County Public Defender's
2 Office.

3 THE COURT: All right.. And, Aimee, if I could
4 get you to introduce your client.

5 MS. ZMROCZEK: This is our client, Shawn Sharpe.

6 THE COURT: Thank you, Mr. Sharpe. You may have
7 a seat, sir.

8 Ladies and gentlemen, is there any member of the
9 jury panel -- either any member of the jury panel either
10 have a close business relationship with, is related by
11 blood, connected by marriage, or who has any personal
12 relationship or been represented by either one of the
13 attorneys for the State? If so, please stand.

14 (There was no response.)

15 THE COURT: Thank you. There are none.

16 You met the two attorneys for the defense. Is
17 there any member of the jury panel who is related by
18 blood, connected by marriage, or has any close business or
19 personal relationship or who has been represented by
20 either one of these folks? If so, please stand.

21 (There was no response.)

22 THE COURT: Thank you. There are none..

23 You've met Mr. Sharpe. Is there any member of
24 the jury panel who is related by blood, connected by
25 marriage, or who has any close business or personal

1 relationship with Mr. Sharpe? If so, please stand.

2 (There was no response.)

3 THE COURT: Thank you. There are none.

4 Now, ladies and gentlemen, that question that I
5 just asked you as it relates to Mr. Sharpe, are you
6 related by blood, connected by marriage, or have any close
7 business or personal relationship with him, that's the
8 question that I'm going to be asking as it relates to
9 these folks whose names I'm about to call.

10 I'm going to call out to you the names of people
11 who are potential witnesses in this case. These folks may
12 or may not testify during the course of this trial. But
13 keeping that question in mind, related by blood, connected
14 by marriage, close business or personal relationship,
15 keeping that in mind, as I call these names out, if that
16 question applies to any one of these folks that I'm going
17 to call out, if that applies to you, I would ask that you
18 please stand.

19 Now, there are a bunch of names that I'm about
20 to call. And what I'm going to do is I'm going to kind of
21 break them up into segments. So I'm going to call about
22 ten names out. If that question applies, go ahead and
23 stand if you hear a name that it applies to you, okay?

24 Now, if you do stand, continue to listen as I
25 call out names because it may be that you know more than

1 one individual on this list, okay?

2 So the following are possible or potential
3 witnesses that may testify during this case. And if I
4 mess anyone's name up, please correct me. If any of these
5 witnesses are in the courtroom, if you'd please stand,
6 face the jury panel for just a few seconds and then have a
7 seat.

8 Jason Bonnett, Joe Chappell, Steve Collins, Troy
9 Crump, Billy Derrenbacher, Shelby Derrick, Scott Ellis,
10 Cathy Etheridge, Bill Freund, Shawn Grant, Kevin Howard,
11 Jesse Laintz, Lieutenant Mayrant, Matthew McCaw, Roy
12 Mefford, Doug Novak, Mike Phipps, Glenn Ross, Chris Stout,
13 Renee Strickland.

14 All right. Ma'am, let me ask your name, please,
15 first?

16 THE PROSPECTIVE JUROR: Barbara Ronan, I'm 173.

17 THE COURT: All right. And who on that list did
18 you know?

19 THE PROSPECTIVE JUROR: I'm not sure, but the
20 name was Lieutenant Merritt. Is that Jerry Merritt?

21 THE COURT: Well, I may have mispronounced it.
22 It's Mayrant.

23 MR. GRAHAM: It's not Jerry Merritt.

24 THE PROSPECTIVE JUROR: Okay.

25 THE COURT: I apologize. I just mispronounced

1 it.

2 All right. Continuing with the names. Please
3 continue to listen carefully. Patsy Cannon Anz, Barbara
4 Bailey, James Luther Davis, Rondell Davis, Robert Gainey,
5 Steven Graham, Larry Wayne Grubbs, Phillip Earl Helms,
6 William Lewis Billy Hinson, Ashley Jeffcoat, Daniel Cecil
7 Lewis -- or excuse me -- Lucas, Rose Hiott Lucas, Olivia
8 Mason.

9 Ma'am, your name?

10 THE PROSPECTIVE JUROR: April Jeffcoat.

11 THE COURT: All right.

12 THE PROSPECTIVE JUROR: Juror No. 97.

13 THE COURT: All right. Ms. Jeffcoat, I'm
14 assuming you stood for Ashley Jeffcoat?

15 THE PROSPECTIVE JUROR: Yes. Is she from
16 Gaston, South Carolina?

17 THE COURT: Yes, ma'am. Are you related?

18 THE PROSPECTIVE JUROR: Yes, we're related.

19 THE COURT: What degree of --

20 THE PROSPECTIVE JUROR: She's my husband's
21 niece.

22 THE COURT: Your husband's niece. All right.

23 Let me ask you this, Ms. Jeffcoat: If Ashley
24 Jeffcoat was to appear as a witness or someone to testify
25 in this case, would that affect your ability to give both

1 the State and the defense a fair trial?

2 THE PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: All right. I'm going to get you
4 to -- I'm going to set your name aside for the purposes of
5 this case, okay? Please have a seat.

6 All right. Continuing on: Angela Griffin
7 Plumley, Charles Plumley, Raymond Danny Plumley, Raymond
8 Plumley, Sr., Debra Plumley, Julia Sharpe, Michael Sharpe,
9 Robert Taylor, Todd Allen Thomas, Emma Vasquez, Lillian
10 Yon, Felicia Vasquez, Judge Jeffcoat, Judge Meyers, Betty
11 Butler, Suzanne Cromer, Catherine Leisy, Bob Wetherell,
12 Nikki Rogers, Janice Ross, Will Herring, John Michael
13 Rowe, Emily Campbell, Scott McDonald, Shane Laird, Sharon
14 Hunt, Kevin Conroy, Christen Spencer, Courtney Plumley,
15 Rick Hazewinkle, E.V. Kirkland, T.W. Hamilton, Sergeant
16 Hare of the Lexington County Sheriff's Department, James
17 Clawson, Sergeant Anderson of the Lexington County
18 Sheriff's Department, Lillian Yon, Cherish Tedder, David
19 Condrey, Jerry Lucas, Wayne Condry, Emma Watton, Todd
20 Roof, Rebecca Campbell, Phillip Miller.

21 All right. Ladies and gentlemen, my next
22 question, is there any member of the jury panel who is a
23 member of or a contributor to any group which has as its
24 primary concern the promotion of law enforcement or
25 victims rights? These groups that I'm referring to,

1 ladies and gentlemen, I'm going to give you some examples,
2 they include these organizations, but it's not exclusive,
3 but stuff like MADD, Mother's Against Drunk Drivers; SADD,
4 Students Against Drunk Drivers; CAVE, Citizens Against
5 Violence; the Fraternal Order of Police, the South
6 Carolina Sheriff's Association, any of those types of
7 organizations. Either if you're a member of or a
8 contributor, either by financial means or by volunteering
9 of your time to any of those organizations. If so, please
10 stand.

11 (There was no response.)

12 THE COURT: Thank you. There are none.

13 Is there any member of the jury panel or a
14 member of your immediate family or close relationship or
15 friendship ever have attended meetings of groups such as
16 Narcotics Anonymous or is it ALANON or Alcohol Anonymous,
17 any of those types of organization? If so, please stand.

18 Your name, ma'am?

19 THE PROSPECTIVE JUROR: Maureen Davis, Juror 46.

20 THE COURT: All right, Ms. Davis. And yourself
21 or a member of your family or a friend?

22 THE PROSPECTIVE JUROR: My husband's attended
23 Alcoholics Anonymous and I attended one ALANON.

24 THE COURT: Ms. Davis, would that in any way
25 affect your ability to be fair and impartial, giving both

1 the State and defense a fair trial?

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: Thank you, ma'am. You may have a
4 seat.

5 Your name, ma'am?

6 THE PROSPECTIVE JUROR: Charlene Ellsworth, No.
7 No. 62.

8 THE COURT: All right. Now, Ms. Ellsworth, let
9 me ask, were you one of the ones that needed to be excused
10 for tomorrow?

11 THE PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: I'm going to remove your name from
13 this because you're going to be excused for tomorrow and
14 so you wouldn't be able to serve on this panel. So thank
15 you very much, ma'am, but I'm going to be excusing you for
16 the purposes of this trial.

17 THE PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Ladies and gentlemen, is there any
19 member of the jury panel who has formed or expressed an
20 opinion about any issue or matter that you have heard
21 about in this case? If so, please stand.

22 Your name, sir.

23 THE PROSPECTIVE JUROR: Everett Sox, Juror 193.

24 THE COURT: All right. And, Mr. Sox, I'm going
25 to get you to come forward and give me your response up

1 here at the bench if you would, please.

2 Yes, sir.

3 THE PROSPECTIVE JUROR: Yes, sir. In the names
4 that you have called --

5 THE COURT: Yes, sir.

6 THE PROSPECTIVE JUROR: -- me being that I'm a
7 business owner in West Columbia, a lot of those names are
8 very familiar to me, but I don't have a face to put with
9 them. But there were several names in there that are very
10 familiar to me.

11 THE COURT: Okay. And I understand. Those
12 folks may or may not appear.

13 THE PROSPECTIVE JUROR: Right.

14 THE COURT: And if they do, they may be -- I
15 don't know what they would testify to. I have no way of
16 knowing. But would that interfere with your ability to be
17 fair and impartial, giving both sides a fair trial? And I
18 don't know if they'd be called by the State or the defense
19 or what.

20 THE PROSPECTIVE JUROR: If some of those were to
21 show up they could be very loyal customers of my business,
22 and it might. There were several names in there that I
23 just didn't feel like standing every time I heard a name,
24 but being from Gaston, I've got a lot of customers from
25 Gaston.

1 THE COURT: Okay. I'm going to set your name
2 aside for the purposes of this trial. Thank you, sir.

3 THE PROSPECTIVE JUROR: Okay.

4 THE COURT: Ladies and gentlemen, if you've
5 noticed, any time I've asked a question and anyone has
6 stood up, my follow-up question is always would that in
7 any way affect your ability to be fair and impartial.

8 In every case that's tried in this courtroom
9 before a jury, whether it's a criminal case or a civil
10 case, that's our ultimate goal, that's our desire that
11 we're trying to achieve here, and that is, to impanel
12 folks that can listen to the evidence and make the
13 decision based solely on the evidence that's presented in
14 this trial, setting aside any of your experiences outside
15 of this courtroom and give both the State and the defense
16 a fair trial. That's what we're looking for.

17 I could probably ask you questions all afternoon
18 to try to determine whether or not there's something that
19 I haven't hit on that might affect your ability to be fair
20 and impartial. So maybe the easiest way to do this is to
21 simply ask you as a panel, is there any member of the jury
22 panel who knows of any reason why you would not be able to
23 give both the State and the defense a fair and impartial
24 trial if you are selected as a member of the jury? If so,
25 please stand.

1 (There was no response.)

2 THE COURT: Thank you. There are none.

3 Are there any additional questions or voir dire
4 from the State?

5 MR. HUBBARD: No, sir, Your Honor.

6 THE COURT: Anything additional from the
7 defense?

8 MS. ZMROCZEK: No, Your Honor.

9 THE COURT: All right. Ladies and gentlemen,
10 let me tell you how we go about selecting a jury in
11 General Sessions court.

12 Your names appear on this roster. Some of you
13 have stood when you've given your name and given your
14 juror number. And that's because this roster, when it's
15 assembled, you appear on this roster in alphabetical
16 order. Well, Madam Clerk is about to prepare a new list
17 from the jury roster and what she does is her computer
18 will -- she'll hit a couple of keys and it will produce a
19 list that takes this roster and completely reorders the
20 names randomly.

21 I may be Tommy Russo, Juror 134. I may be on
22 this new list as Juror No. 14. There is no rhyme or
23 reason to it. It just completely jumbles the names.

24 We used to do it -- and I will tell you this.
25 This shows you about technology. Technology's awesome,

1 but not always. When we first went over to this system,
2 before we used to use a cigar box and put everybody's name
3 in a cigar box and reach in and draw names out. That
4 never failed. This system on occasion has shut down on
5 us. So sometimes technology isn't always the best, or
6 maybe not the most reliable. But it's working fine today.
7 And what it's going to do is reorder your names.

8 Then what's going to happen is, Madam Clerk is
9 going to take that reordered list and she's going to start
10 with number one and she's going to call you up here. And
11 what you'll do is you'll come forward and right here where
12 the bailiff is standing, you'll come stand right there and
13 face the back of the courtroom.

14 At that time she will recognize first the State
15 and say basically words along these lines: What say you
16 for the State? The State can either excuse you -- and if
17 they excuse you, you'll go back and have a seat in the
18 jury pool -- or they can present you, and if they present
19 you, you'll remain standing.

20 Then she'll ask of the defense the same
21 question: What say you for the defense? The defense has
22 two options: They can either excuse you -- and if they
23 excuse you, you can go have a seat back in the audience --
24 or they can seat you, and if they seat you, then you'll
25 come around and have a seat in the jury box.

1 We will go through that process until we have
2 selected our jury. So no one knows at the time your name
3 is called, if your name is called, whether or not you're
4 going to be going back to your seat or sitting up here.
5 So if your name is called, please bring with you any items
6 you brought to the courtroom here today, a pocketbook, a
7 book, an umbrella, anything. Bring your personal
8 belongings with you because it may be that you won't be
9 going back to your seat, you may be sitting over here. So
10 please do that if your name is called.

11 Is the State ready to proceed then to jury
12 selection?

13 MR. GRAHAM: State's ready, Your Honor.

14 THE COURT: Defense ready?

15 MS. ZMROCZEK: Ready, Your Honor.

16 THE COURT: All right.

17 THE CLERK: May I approach?

18 THE COURT: Yes, ma'am.

19 (A bench conference was held between the Judge
20 and the Clerk.)

21 THE CLERK: Proceed, Your Honor?

22 THE COURT: Yes, ma'am.

23 THE CLERK: No. 173, Barbara Ronan (White
24 female). That's perfect.

25 What say you for the State?

1 MR. GRAHAM: Please present Ms. Ronan.

2 THE CLERK: What say you for the defense?

3 MS. ZMROCZEK: Please excuse Ms. Ronan from this
4 case.

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

6 No. 216, Kathryne Wescott (White female).

7 What say you for the State?

8 MR. GRAHAM: Please present Ms. Wescott.

9 THE CLERK: What say you for the defense?

10 MS. ZMROCZEK: Please seat Ms. Wescott.

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

12 No. 187, Judy Skow (White female).

13 Am I pronouncing that right, ma'am?

14 THE PROSPECTIVE JUROR: It's Skow, but it's
15 okay.

16 THE CLERK: Okay. What say you for the State?

17 MR. GRAHAM: Please present Ms. Skow.

18 THE CLERK: What say you for the defense?

19 MS. ZMROCZEK: Please present Ms. Skow.

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

21 No. 189, Charles Smoak (White male).

22 What say you for the State?

23 MR. GRAHAM: Please present Mr. Smoak.

24 THE CLERK: What say you for the defense?

25 MS. ZMROCZEK: Please excuse him.

1 THE CLERK: Return to your seat, please, sir.
2 190, Katie Smyers (White female).
3 What say you for the State?
4 MR. GRAHAM: Please present Ms. Smyers.
5 THE CLERK: What say you for the defense?
6 MS. ZMROCZEK: Please seat Ms. Meyers.
7 THE CLERK: Have a seat in the jury box, ma'am.
8 123, Olivia Lykes (Black female).
9 What say you for the State?
10 MR. GRAHAM: Please present Ms. Lykes.
11 THE CLERK: What say you for the defense?
12 MS. ZMROCZEK: Please seat Ms. Lykes.
13 THE CLERK: Have a seat in the jury box, ma'am.
14 215, Bruce Wells (White male).
15 What say you for the State?
16 MR. GRAHAM: Please present Mr. Wells.
17 THE CLERK: What say you for the defense?
18 MS. ZMROCZEK: Please excuse Mr. Wells.
19 THE CLERK: Return to your seat, please, sir.
20 218, Duane Wilkinson (White male).
21 What say you for the State?
22 MR. GRAHAM: Please excuse Mr. Wilkinson.
23 THE CLERK: Return to your seat, please, sir.
24 85, Charles Hardin (White male).
25 What say you for the State?

1 MR. GRAHAM: Please present Mr. Hardin.

2 THE CLERK: What say you for the defense?

3 MS. ZMROCZEK: Please seat Mr. Hardin.

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

5 No. 60, Jeffrey Elliott (White male).

6 What say you for the State?

7 MR. GRAHAM: Please present Mr. Elliott.

8 THE CLERK: What say you for the defense?

9 MS. ZMROCZEK: Please seat Mr. Elliott.

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

11 14, Patrick Blatt (White male).

12 What say you for the State?

13 MR. GRAHAM: Please present Mr. Blatt.

14 THE CLERK: What say you for the defense?

15 MS. ZMROCZEK: Please excuse Mr. Blatt from this
16 trial.

17 THE CLERK: Return to your seat, please, sir.

18 65, Iris Favor (Black female).

19 What say you for the State?

20 MR. GRAHAM: Please present Ms. Favor.

21 THE CLERK: What say you for the defense?

22 MS. ZMROCZEK: Please present Ms. Favor.

23 THE CLERK: Have a seat in the jury --

24 THE COURT: That's is a good try, Ms. Favor.

25 THE CLERK: No. 8, Donna Barnhard (White

1 female).

2 What say you for the State?

3 MR. GRAHAM: Please present Ms. Barnhard.

4 THE CLERK: What say you for the defense?

5 MS. ZMROCZEK: Please excuse Ms. Barnhard from
6 this trial.

7 THE CLERK: Return to your seat, please, ma'am.
8 177, Sandra Sandidge (White female).

9 What say you for the State?

10 MR. GRAHAM: Please present Ms. Sandidge.

11 THE CLERK: What say you for the defense?

12 MS. ZMROCZEK: Please excuse Ms. Sandidge from
13 this trial.

14 THE CLERK: Return to your seat, please, ma'am.
15 89, Kimberly Griffin (White female).

16 What say you for the State?

17 MR. GRAHAM: Please present Ms. Griffin.

18 THE CLERK: What say you for the defense?

19 MS. ZMROCZEK: Please seat Ms. Griffin.

20 THE CLERK: Have a seat in the jury box, ma'am.
21 88, Ciera Hickson (Black female).

22 What say you for the State?

23 MR. GRAHAM: Please present Ms. Hickson.

24 THE CLERK: What say you for the defense?

25 MS. ZMROCZEK: Please seat Ms. Hickson.

1 THE CLERK: Have a seat in the jury box, ma'am.
2 46, Maureen Davis (White female).
3 What say you for the State?
4 MR. GRAHAM: Please excuse Ms. Davis.
5 THE CLERK: Return to your seat, please, ma'am.
6 196, William Strickland (White male).
7 What say you for the State?
8 MR. GRAHAM: Please present Mr. Strickland.
9 THE CLERK: What say you for the defense?
10 MS. ZMROCZEK: Please excuse Mr. Strickland.
11 THE CLERK: Return to your seat, please, sir.
12 Number 7, Laura Barnes (White female).
13 What say you for the State?
14 MR. GRAHAM: Please present Ms. Barnes.
15 THE CLERK: What say you for the defense?
16 MS. ZMROCZEK: Please seat Ms. Barnes.
17 THE CLERK: Have a seat in the jury box, ma'am.
18 117, Nancy Addison (White female).
19 What say you for the State?
20 MR. GRAHAM: Please present this juror.
21 THE CLERK: What say you for the defense?
22 MS. ZMROCZEK: Please seat Ms. Addison.
23 THE CLERK: Have a seat in the jury box, ma'am.
24 Number 11, Frances Bendenbaugh (White female).
25 What say you for the State?

1 MR. GRAHAM: Please present Ms. Bendenbaugh.
2 THE CLERK: What say you for the defense?
3 MS. ZMROCZEK: Please seat Ms. Bendenbaugh.
4 THE CLERK: Have a seat in the jury box.
5 Alternates, Your Honor?
6 THE COURT: We'll have two, please.
7 THE CLERK: Yes, sir.
8 THE COURT: One and two on each.
9 THE CLERK: Yes, sir.
10 206, Amanda Trapp (Black female).
11 What say you for the State?
12 MR. GRAHAM: Please present Ms. Trapp.
13 THE CLERK: What say you for the defense.
14 MS. ZMROCZEK: Please seat Ms. Trapp.
15 THE CLERK: Have a seat in the jury box.
16 That's Alternate No. 1, Your Honor.
17 No. 138, Melissa McIntosh (White female).
18 What say you for the State?
19 MR. GRAHAM: Please present Ms. McIntosh.
20 THE CLERK: What say you for the defense?
21 MS. ZMROCZEK: Please excuse Ms. McIntosh.
22 THE CLERK: Return to your seat, please, ma'am.
23 92, Rebecca Hopper (White female).
24 What say you for the State?
25 MR. GRAHAM: Please present Ms. Hopper.

1 THE CLERK: What say you for the defense?

2 MS. ZMROCZEK: Please seat Ms. Hopper.

3 THE CLERK: Have a seat in the jury box.

4 That's Alternate No. 2.

5 (The jury is impaneled at 12:24 p.m)

6 THE COURT: Are there any motions regarding jury
7 selection from the State?

8 MR. GRAHAM: No, Your Honor.

9 THE COURT: Anything from defense?

10 MS. ZMROCZEK: None from defense, Your Honor.

11 THE COURT: All right. Thank you, ladies and
12 gentlemen.

13 All right. Let me get the lawyers to step up
14 here real quick.

15 (A bench conference was held with the judge and
16 attorneys in the presence of the jury but out of the
17 hearing of the jury.)

18 THE COURT: Ladies and gentlemen, those of you
19 that are remaining in the jury pool, I'm going to excuse
20 you for the balance of the day and all of tomorrow, but I
21 do need you to call -- do they have the number, Hope.

22 MR. HUBBARD: Yes, sir, they have the number and
23 the website.

24 THE COURT: Okay. Either check the website or
25 the phone number you have, call that number after

1 6 o'clock in the evening. There'll be instructions on
2 there to let you know either whether you need to return on
3 a particular day or whether you're excused for the week.
4 I don't know what that message is going to say because at
5 this point I don't know whether or not we're going to need
6 you back. But I will confer with the Solicitor's office
7 to see what the needs are for the jury panel for the
8 balance of the week. But I do know that we won't need you
9 for the balance of today or tomorrow.

10 So please, if would you, call that number or
11 visit that website after 6 o'clock tomorrow night and
12 follow whatever those instructions are, okay?

13 So, ladies and gentlemen, everyone else remain
14 seated while the members of the jury are excused.

15 (The remaining jury panel members were excused
16 at 12:26 p.m.)

17 THE COURT: And, folks, while they're filing
18 out, what I'm going to share and I'm going to talk to you
19 all in a little bit more detail, but I'm also going to
20 tell you that I'm about to excuse you for the balance of
21 the day and we're going to begin this trial first thing in
22 the morning, okay? But I need to send you away with a
23 little bit more instruction than I gave the other folks.

24 Ladies and gentlemen, as I told when we were
25 going through the process of selection, you are to -- as a

1 juror in this case, you are the judges of the facts of
2 this case. And you must judge those facts based solely on
3 the evidence that is presented during the course of this
4 trial. So when you leave here, obviously you're going to
5 be exposed to the outside world and everything.

6 The first thing I have to tell you, we used to
7 not have to do this, but we live in an age of technology
8 now and so I need to tell you this: You are to do
9 absolutely no investigation of your own, okay? You -- as
10 far as this case goes, everything -- and easy way to say
11 this is this: When you return tomorrow, you should not
12 know one more thing about this case than you know right
13 now. Do not try to do any Google searches or anything
14 like that. You're to judge this case based solely on the
15 evidence in this trial.

16 Also, when you leave, if your spouse is anything
17 like mine, they'll be very interested in whether or not
18 you were selected. And if you were, oh, my gosh, what
19 kind of case is it? My wife would have a thousand
20 questions. And what I would have to tell her and what I'm
21 asking you to tell your either spouse or significant other
22 or friends or whoever, family members, and that is this:
23 You can tell them that you have been selected on a case
24 and that you have to be back tomorrow. And that's where
25 it needs to stop. To say something as innocent as, well,

1 it's a young man charged with whatever these charges are,
2 murder, armed robbery, whatever, that could possibly bring
3 out a response that may in some way affect our ability to
4 be fair and impartial. So to avoid that, we just have to
5 be completely quiet and we can't even speak about what the
6 charges are or who the defendant is or who the State's
7 witnesses are, or anything of that nature.

8 What you can tell them is, one, I am on a panel,
9 I have to be back tomorrow; and two, when it's over, I'll
10 tell you everything you want to know. Because this is a
11 court of record, but -- and it is a public forum, but
12 you're not to have any conversation outside of this jury
13 box. So, please do that and just ask them, whoever may be
14 inquiring, ask them to please be patient, you'll tell
15 them all they want to know when it's over, but until that
16 time, you're not allowed to have any conversation.

17 I'm going to ask you, if you would, we're going
18 to start back at 9 o'clock. So I would ask you to
19 please -- you know, my wife gets on me a lot of times.
20 She said, People tell me you refer to me all the time when
21 you're in the courtroom. Well, it's my point of
22 reference, you know. So my wife, if we have to be across
23 town somewhere for a gathering at 7 o'clock, she thinks
24 we're on time if we leave the house at 7 o'clock. Well,
25 obviously, we're late. Don't leave your house at 9

1 o'clock tomorrow, okay? I need you here at 9 o'clock
2 tomorrow, okay? So please, whatever distance you have to
3 travel, parking, getting in the courthouse, if you would,
4 see if everybody can be here at 9 o'clock and we'll get
5 started once everyone's reconvened, okay?

6 Now, when you do reconvene, one last instruction
7 is this: Sometimes jurors will look at me a little funny
8 when I say this. When you're together in the jury room,
9 you're to have no conversation about this case. Now,
10 jurors look funny and sometimes they go, Well, I thought
11 that's what we do as a jury? Well, you do. But you don't
12 do anything until all of the evidence is in, everyone has
13 had an opportunity to address you with their closing
14 arguments and I've given you the law. That's when you're
15 allowed to discuss the case amongst yourselves. But up
16 until that point, any time you're not sitting in this jury
17 box and you're either in the jury room or outside this
18 courtroom, you're to have no conversation with anybody
19 about the case.

20 Tonight, try to have a good evening. Get some
21 rest. You'll find this week that jury service is not
22 physically taxing from a muscular standpoint, but it is
23 from a mental standpoint. So try to get a good night's
24 rest so that you're well rested when you come back in the
25 morning and ready to go to work, okay?

1 Now, I'm going to excuse you now. I'm going to
2 ask you to go out this way. The bailiff is going to show
3 you where the jury room is so you'll get familiar with
4 where that is. And then when you come back in the
5 morning, come straight up here and come to the jury room,
6 okay? And if you need some little snacks or something
7 like that, we'll have some stuff for you.

8 So everyone remain seated. Ladies and
9 gentlemen, we'll see you up here at 9 o'clock in the
10 morning, please. Okay?

11 (The jury left open court at approximately 12:32
12 p.m. and was excused for the day.)

13 THE COURT: Unless we see different as we
14 progress, I told them 9:00 instead of 9:30 just to give us
15 that additional time if we need it. And if we -- we can
16 adjust. If we later on see that we need to adjust, we can
17 do that, okay?

18 It is about 25 minutes to 1:00. Why don't we
19 start back at 2 o'clock. And then we'll start back at
20 2:00 with motions and anything else we need to take up.

21 (A lunch break was taken.)

22 THE COURT: Tell me what order you want to take
23 them in, what we have.

24 MR. GRAHAM: The only motion the State has, Your
25 Honor, is we have two officers for a Jackson v Denno

1 hearing for statements made by the defendant.

2 THE COURT: All right. Are you ready to handle
3 those?

4 MS. ZMROCZEK: That's fine, Your Honor.

5 THE COURT: Let's go ahead and take care of
6 those first.

7 MR. GRAHAM: The State calls Joe Chappell.

8 (WHEREUPON, The Court's Exhibits Nos. 1-2 were
9 marked for purposes of the record.)

10 JOE CHAPPELL, after being duly sworn, testified
11 as follows:

12 THE CLERK: Have a seat, please, sir.

13 Once you're seated, speak up loud and clear,
14 stating your full name, spelling your last, please.

15 THE WITNESS: My name is Joseph Chappell. Last
16 name is C-H-A-P-P-E-L-L. Lexington County Sheriff's
17 Department.

18 IN CAMERA DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q Detective Chappell, how long have you been employed
21 with the sheriff's department?

22 A Between four and a half and five years.

23 Q And what are you current doing?

24 A Currently I'm an investigator with the crime scene
25 unit.

1 Q Back in 2011, what did you do?

2 A I was a major crimes investigator.

3 Q As a major crimes investigator, did you have an
4 opportunity to work on the case that we're in the
5 courtroom for today?

6 A I did. I assisted in the investigation.

7 Q Do you remember responding to Fields Lane in
8 Lexington County?

9 A I do.

10 Q What was your purpose in going there?

11 A I was instructed, given information about possible
12 involvement or at least knowledge that Shawn Sharpe, who
13 had a residence out on Fields Lane, that may have some
14 information about our investigation, the murder
15 investigation. So Detective Shawn Grant and I went out
16 there.

17 Q Do you remember what day that was?

18 A It was September 22nd of 2011.

19 Q And when did the murder of Leon Justice occur?

20 A September 21st.

21 Q The day before or the night before?

22 A Correct.

23 Q Did you have an opportunity to talk to Julia Sharpe
24 who is Shawn Sharpe's mother?

25 A I did. That's -- when Detective Grant and I arrived

1 on scene, that's the first woman we met with was Julia
2 Sharpe, and she was in the yard.

3 Q And did you locate Shawn Sharpe at that time?

4 A No, sir. He was not on the scene. We spoke to Julia
5 Sharpe where I asked for the location of Shawn Sharpe, and
6 she --

7 Q In fact, didn't Julia Sharpe call or she's told you
8 that she called Shawn Sharpe?

9 A Yeah, she called Shawn Sharpe while we were there.

10 Q You weren't able to overhear anything coming on the
11 other side of the line of that conversation?

12 A No, sir. She actually -- we were separated by a
13 fence. Me and Detective Grant were kind of in the
14 roadway, like on the easement, and then she was across the
15 fence. So when she got on the phone, she kind of walked
16 away from that fence area and more deeper into the yard.

17 Q When she came back, did she inform you that her son
18 would be willing to speak with you?

19 A She said yes, that Shawn wanted to speak to me and
20 gave me the phone number that she said belonged to Shawn.

21 Q And what phone number did she give you?

22 A She gave me the number of (803) -5429.

23 Q And did you call that number?

24 A I did. I called that number with my county-issued
25 cell phone.

1 Q And did somebody answer?

2 A They did.

3 Q And did that person identify themselves at that time?

4 A I don't exactly know that it's identification, but
5 pretty much I usually say when I call somebody, I say is
6 this is Shawn or is this who I'm asking, but verbatim I
7 don't exactly know how I identified -- I do identify
8 myself and ask, hey, is this, you know, the person.

9 Q Did he confirm that he was Shawn when you talked to
10 him?

11 A Yes.

12 Q What, if anything, did you tell him?

13 A I asked him -- well, I told him I'd like to speak to
14 him about -- just reviewing my notes to make sure -- I
15 told him I'd like to speak to him about an incident
16 involving Charlie Plumley last night that he may have some
17 information about.

18 Q At that time did you give him any more information
19 other than that statement?

20 A No, sir.

21 Q What was his response?

22 A He said that he was not with Charlie last night at
23 that time.

24 Q After he told you he wasn't with Charlie, what, if
25 anything, did you say?

1 A That I would like to speak to him in person.

2 Q And what did he respond?

3 A He said that he would come meet me at his mother's
4 house and he'd be there in about 20 minutes.

5 Q Approximately 20 minutes later did somebody show up?

6 A They did. Shawn Sharpe arrived in a gray Ford
7 Taurus. We then introduced ourselves.

8 Q When we're talking about Shawn Sharpe, do you see him
9 in the courtroom?

10 A I do.

11 Q And where is he?

12 A At the table, the defense table.

13 Q Orange jumpsuit, the defendant?

14 A Correct.

15 Q When he introduced himself when he arrived at
16 Fields Lane, what, if anything, did you tell him?

17 A Well, I asked him if he would like to sit down with
18 me in a comfortable place instead of sitting in my car or
19 standing in the street. We weren't far away from
20 headquarters, so I asked him if he wanted to ride with us
21 back to headquarters and sit in an interview room and sit
22 at a table and speak.

23 Q And what did he say?

24 A He asked if he'd be coming back.

25 Q And what did you tell him?

1 A I told him he wasn't under arrest. To that he said
2 that he did not want to be railroaded by us and admit to
3 something that he did not do.

4 Q And after he said that, what did you say to him?

5 A Well, I told him that his coming with us was
6 voluntary and that, again, he wasn't under arrest, he
7 didn't have to come, but he ultimately agreed to ride with
8 us back to the sheriff's department.

9 Q In this conversation at his mother's house or right
10 outside of his mother's house, was he in custody at that
11 time?

12 A No, he wasn't.

13 Q Being detained even?

14 A No.

15 Q Did you make any threats or promises to him?

16 A I did not.

17 Q Did you coerce him in any way to come with you to the
18 sheriff's department and speak with you?

19 A No, sir. I made sure it was understood at least by
20 what I could tell him that, one, he wasn't under arrest
21 and he wasn't being detained and his coming with us was
22 voluntary.

23 Q And, in fact, did he come with you to the sheriff's
24 department?

25 A He did.

1 Q How did you -- and I believe Detective Grant was with
2 you at the time. How did you all make it to the sheriff's
3 department with the defendant, Mr. Sharpe?

4 A We were in my Crown Victoria. We had Shawn Sharpe
5 sit in the front seat, I was the driver, and I had
6 Detective Grant in the back seat. And Shawn -- I mean,
7 there was no handcuffs, no restraints or anything because
8 he was --

9 Q When you arrived at the sheriff's department, what
10 did you do?

11 A We walked with Shawn back to the interview rooms,
12 which is the hallway with three rooms. We again -- you
13 want me to go into the interview?

14 Q Yes. Again, he's not under arrest?

15 A No, we sat him down in the interview room and told
16 him again he wasn't under arrest. But I wanted to -- when
17 I went through the interview process, I wanted to be safe
18 and make sure that -- kind of get as best I could to
19 understand and let him know that he wasn't under arrest or
20 being detained, but I told him, I said, You're not under
21 arrest, but since we brought you here, you're in an
22 interview room, I'm going to advise you of your Miranda
23 rights before me speak.

24 Q And what, if anything, did you use to advise him of
25 his Miranda rights?

1 A We have a statement form that we use that has the
2 rights printed out that the person can initial.

3 Q And do you have the initial one that you used with
4 Mr. Sharpe with you?

5 A I have a copy. Is this the original? Yes, this is
6 the original.

7 MR. GRAHAM: Your Honor, the State would mark
8 this for State's ID.

9 THE COURT: That's State's 1. That's the
10 Miranda form?

11 MR. GRAHAM: That's the Miranda form, yes, sir.

12 (WHEREUPON, STATE'S Exhibit No. 1 was marked for
13 identification only.)

14 BY MR. GRAHAM:

15 Q Detective, looking at State's Exhibit No. 1 for ID,
16 what is that form?

17 A It's our Lexington County Sheriff's Department
18 statement form for -- with the Miranda rights on it and
19 initials.

20 Q There's two different sections of handwriting. The
21 first five or so lines at the very top, what are those and
22 who wrote them?

23 A That's my handwriting. I filled it out while
24 speaking with Shawn Sharpe.

25 Q What does it say?

1 A That the date, it was -- that we sat down was
2 September 22, 2011. The place where it was taken, which
3 was -- Gibson Road. The time that it started when
4 we sat down and started speaking was 1734 hours, 5:34 p.m.

5 Q Was it identified who you were speaking to?

6 A It was I was speaking to Shawn William Sharpe. At
7 the time he was 20 years of age. He gave me a date of
8 birth of . He told me he was born in Lexington
9 and his current address was . Fields Lane.

10 Q Below that there's several lines that are commonly
11 referred to as the Miranda rights, correct?

12 A Correct.

13 Q Would you describe how you use that form to go over
14 those rights with Mr. Sharpe?

15 A I did it this way and usually do it whatever way to
16 make sure it's consistent, how I read the rights. I read
17 the rights. I kind of get with the person and sit close
18 enough to where they can read it along with me. So I read
19 it to them as they read along. I'll place a circle around
20 the one as I read it. And as I read it, I ask them if the
21 person understands. If they understand it, I'll have them
22 initial, place their initials on the line after and then
23 place my initials before it.

24 Q Starting with the first right, would you explain what
25 you did?

1 A Sir, I read it, I have the right to remain silent,
2 and then I asked Shawn Sharpe if he understood that right.

3 Q And what did he say?

4 A Immediately he said that he did not have that right.

5 Q And after he told you that, what did you say to him?
6 What did you do?

7 A Well, I stopped and kind of asked him what he meant.
8 I asked him what he meant by that he couldn't -- that he
9 didn't have that right to remain silent. He said that we
10 would make him talk and he said he didn't want to admit to
11 anything -- admit to something that he did not do. And
12 then I again reminded him that he didn't have to speak to
13 us.

14 Q And after you reminded him that he didn't have to
15 speak to you, what did he do?

16 A He wished to continue, so we started again. And then
17 I started at the same line again, that I have the right to
18 remain silent and asked him if he understood that right.

19 Q What, if anything, did he do to indicate that he
20 understood that right?

21 A He placed his initial which were SS.

22 Q You have any question that he understood that he had
23 a right to remain silent?

24 A No, sir.

25 Q After you circled and initialed it, what's the next

1 right that was read to him?

2 A The next one was anything I say can and will be used
3 against me in a court of law.

4 Q And how did he indicated that he understood -- did he
5 understand that right?

6 A He did understand it and he placed his initials.

7 Q And your initials as well?

8 A Correct.

9 Q The next right?

10 A The next right is I have the right to talk to a
11 lawyer for advice before I ask any questions, to have him
12 or her present with me during questioning.

13 Q And did he indicate that he understood that right?

14 A He did. He placed his initials.

15 Q And you initialed it as well?

16 A Correct.

17 Q And the next right?

18 A The next right, number four, I usually allow the
19 person I'm interviewing to read it. So I had Shawn Sharpe
20 read the right to me, which was if I have no money for
21 lawyer fees, lawyer's fees, the court will appoint one to
22 represent me without cost to me if I wish. And then I
23 asked him -- I would ask if he understood that right, and
24 he did. He placed his initials.

25 Q And is there anything else on that sheet before you

1 started to talk with him?

2 A There was one more that I read: If I decide to
3 answer questions now without a lawyer present, I would
4 still have the right to stop answering questions at any
5 time. I also have the right to stop answering questions
6 at any time until I talk with a lawyer.

7 Q And did he indicate that he understood those rights?

8 A He did and placed his initials.

9 Q All those rights that we're talking about, in your
10 conversations with him, did he appear to understand your
11 conversation with him?

12 A He did.

13 Q Did he appear to understand the rights that you
14 explained to him?

15 A Yes, sir.

16 Q Did he appear to be under the influence of alcohol or
17 drugs?

18 A No, sir.

19 Q Did you make him any promises or threats?

20 A No, sir.

21 Q Did you coerce him in any way to speak with you?

22 A No, sir.

23 Q And is it your opinion that his decision to speak
24 with you was made freely and voluntarily of his own will?

25 A It was.

1 Q After you went over the Miranda rights with him, tell
2 me about your conversation with him.

3 A Well, there was one more initial that we do on the
4 forms.

5 Q What is that? I'm sorry.

6 A That -- I have him read that this last statement says
7 I have read this statement of my rights and I understand
8 what my rights are. And at that time I usually ask are
9 you willing to continue with this interview with us,
10 and --

11 Q Did he indicate that he understood that?

12 A He did. He placed his initials. Yes, he placed his
13 initials.

14 Q After you asked him if he was willing to speak with
15 you, what did he say?

16 A I asked him about the actions the night prior.

17 Q And what did he tell you?

18 A He said that he was with Charlie from 1900 to 2100
19 hours.

20 Q So that was different that what he had told you over
21 the phone; is that correct?

22 A It is. I stopped him and asked why, you know, the
23 disparity, why the change from what he told me on the
24 phone that he wasn't with Charlie to now that he was with
25 Charlie.

1 Q Did he acknowledge that he spoke to you on the phone?

2 A He did. He just said he didn't know why he -- why
3 the change.

4 Q What did he say next?

5 A He said that he was over Charlie's house and then
6 that they dropped him off at a girlfriend's house after
7 2100 hours, and that he was with his girlfriend until the
8 day we spoke with him when he checked in with his parole
9 officer.

10 Q What else did he have to tell you?

11 A I asked him if he and Charlie went to the Victor lane
12 area. And he said that they did not.

13 Q And the Victor Lane area is the --

14 A The incident location.

15 Q So he denied going to Victor Lane?

16 A Correct.

17 Q What else did you ask him?

18 A I asked that he and Charlie borrowed the truck from
19 Blackville Road. And he said that he only rode in a PT
20 Cruiser.

21 Q What else did he say?

22 A He said that -- Shawn denied being with Charlie after
23 2100 hours and that he had no involvement in any incident
24 at Victor Lane and that he recommended that I should talk
25 to his girlfriend about his location last night.

1 Q And after he mentioned his girlfriend, what, if
2 anything, did you ask him?

3 A I asked him for information about his girlfriend so
4 we could speak to her next.

5 Q And who did he identify as his girlfriend?

6 A He said that her name was Ashley, and he called her
7 Taco. She lived off of Mimosa Drive and gave us her phone
8 number. And then I gave -- I left the room for a little
9 bit and gave the phone number to another detective, which
10 was Detective Etheridge who was going to call this Ashley
11 while I was speaking to Shawn.

12 Q After he provided you his girlfriend's name and
13 contact information, did you have any further conversation
14 with him?

15 A I asked him a few more questions about the incident
16 just to try to summarize.

17 Q And what did he say?

18 A Well, he just asked why I kept asking the same --
19 repeated the same questions again and again, that he
20 wasn't involved with any murder, and then he told me that
21 he was done talking.

22 Q After he told you he was done talking, did you
23 question him any further?

24 A I did not.

25 Q What did you all do at that time?

1 A I clarified with Detective Etheridge that he was
2 speaking to Shawn's girlfriend Ashley and then Detective
3 Grant and I transported Shawn back to Fields Lane.

4 Q So you took him back to his mom's house at Fields
5 Lane and let him get out of the car and then you went on
6 and continued working?

7 A Yes. Then we went down to Shawn's girlfriend's
8 house.

9 MR. GRAHAM: Your Honor, I believe that's all
10 the questions that I have for this hearing.

11 THE COURT: All right.

12 MS. ZMROCZEK: Thank you, Your Honor.

13 IN CAMERA CROSS-EXAMINATION

14 BY MS. ZMROCZEK:

15 Q You, in fact, were interrogating Mr. Sharpe, weren't
16 you?

17 A No.

18 Q You were specifically given information by one of the
19 people you had already arrested that he was the shooter,
20 correct?

21 A I was asking him what his involvement was.

22 Q Okay. I didn't ask the question correctly.

23 Prior to contacting Shawn Sharpe, you were told,
24 you were given information that identified him as the
25 shooter, correct?

1 A Give me one second. I want to make sure I have what
2 you're looking at.

3 You're referring to the part of my supplemental
4 where it says Detective Etheridge was told by Angela and
5 Detective Freund was told by Danny that Charlie and Shawn
6 were all at the incident location?

7 Q What I'm looking at is, Detective Grant and I
8 returned?

9 A Yes.

10 Q Yes. Because you at that point had information that
11 Charlie and Danny robbed -- or excuse me, that Charlie and
12 Shawn robbed the location?

13 A Right. That's a possibility that we wanted to follow
14 up on.

15 Q So you wanted to question him about that?

16 A Wanted to get more -- further information, yes,
17 ma'am.

18 Q And how is it that we get information?

19 A We speak to somebody, question them.

20 Q And so you went to his house and he wasn't there and
21 you got some information. And can you describe the car
22 that he was -- that he arrived in you said 20 minutes
23 later after he was contacted?

24 A All I remember is a gray Ford Taurus.

25 Q Who was with him in that car?

1 A Unknown.

2 Q Was there anyone?

3 A There was somebody that drove the car and drove the
4 car away, but I didn't get the information of who was in
5 the car.

6 Q Okay. How far is it from 228 Fields Road to the
7 sheriff's department?

8 A I don't know the exact mileage.

9 Q Less than ten minutes, more than ten minutes?

10 A I would say less than ten minutes without traffic,
11 but that time of night it should have been less than ten
12 minutes.

13 Q And so he rides in the front seat and then you take
14 him to the sheriff's department and now you said you take
15 him to an interview room. To get to this interview room,
16 can anybody walk -- can I walk in right now and go to an
17 interview room?

18 A No.

19 Q What is required to get to the interview rooms?

20 A Well, you have to have a proxy card to get to the
21 investigative areas in the sheriff's department and then
22 there's -- the interview rooms are kept in a corridor with
23 like a cipher lock.

24 Q So there are two locks to get to the interview room?

25 A Yes.

1 Q Are they equipped with recording capabilities?

2 A No, they aren't.

3 Q Do you have a tape recorder from which you can tape
4 record your interviews?

5 A No, ma'am.

6 Q You would agree with me that that way it would be
7 more preserved, correct?

8 A It could be, but you could also turn it on and turn
9 it off whenever you wanted, so it's not all encompassing
10 better.

11 Q So you're in the sheriff's department and then you're
12 in the interview room and I believe you said that he -- do
13 you have that document with you?

14 A Yes, this.

15 Q You wanted -- you told him that he wasn't under
16 arrest but then you went ahead and -- you read him his
17 Miranda rights just to protect yourself?

18 A I wanted to make sure he understood his rights as
19 well.

20 Q Okay. And he hesitated when he said -- or he
21 actually stopped when he said; I don't have the right to
22 not talk to you, right?

23 A Right.

24 Q And you told him, You're not under arrest so you
25 don't need a lawyer?

1 A No.

2 Q That's not what you told him?

3 A I didn't tell him he didn't need a lawyer, no.

4 Q You did tell him he wasn't under arrest?

5 A I told him he wasn't under arrest and that he
6 could -- I wasn't going to make him say something he
7 didn't do.

8 Q And then did you at that time start the rights over
9 or did you just continue down the line?

10 A We read that right over again after we discussed it.

11 Q And it was your understanding that he knew that he
12 could at that point say, Please take me home, even though
13 he's behind two locked doors?

14 A Yes, sir.

15 Q Okay. The information -- and I just want to make
16 sure I understood the statement correctly, the statement
17 that he gave you -- he was with Charlie from 1900 to 2100
18 hours, 7:00 to 9:00. He went -- he said that -- okay. So
19 the first thing he said was he was with Charlie from 7:00
20 to 9:00 and then you stopped him before he could say
21 anything else, right?

22 A Yes.

23 Q Because already the first words, the first statement
24 out of his mouth you disagree with and so you ask him -- I
25 stopped him and I asked him why he told me on the phone

1 that he was not with Charlie. And your response as you
2 wrote it said he didn't know. So he said he acknowledged
3 that he told you that, but he really just said, I don't
4 know.

5 Did you ask him on the phone call if he was with
6 Charlie or was this the first time you questioned him?

7 A I asked him about the incident. I asked him about an
8 incident involving Charlie Plumley last night.

9 Q Right, right.

10 A And he said he was not with Charlie on the phone with
11 me.

12 And I just want to clarify real quick, when I
13 stopped him and asked him -- when he said that he was with
14 Charlie from 7:00 to 9:00, he said that I stopped him when
15 he -- when I disagreed with him. I'm not here to
16 disagree. I wanted to clarify a point because I was
17 getting information and taking a statement from him, so I
18 wanted to clarify to make sure I was on the right path.

19 Q Okay. If you'll go back to the statement that you
20 gave, the testimony that you provided earlier, I told
21 Shawn I'd like to speak with him about an incident
22 involving Charlie Plumley last night. Shawn told me he
23 was not with Charlie last night. I asked if he could --
24 if we could meet up about the incident.

25 So when he said he was with Charlie between 19

1 and 2100 and then you stopped him and said why did he tell
2 you he wasn't with Charlie, were you confirming or were
3 you trying to get a better understanding of what his idea
4 of what night was, or last night? Did you ever get any
5 clarification on that?

6 A I wanted to clarify why he told me on the phone he
7 wasn't with Charlie last night.

8 Q Last night?

9 A Which was the night prior. And then he told me that
10 he was between the 7:00 and 9:00. So I wanted to clarify
11 what his position was and his history of what he was doing
12 that night prior.

13 Q Okay. And then he said he was at Charlie's house and
14 they dropped him off at his girlfriend's house after 2100.
15 And then you asked him a bunch of questions about -- and
16 you kept asking him the same things about his involvement
17 with Charlie and with a truck and going over to Victor
18 Lane, and at that point he advised you to talk to somebody
19 else, told you where she lived and said he wished to stop
20 talking, right?

21 A Sounds correct.

22 Q So the statements that he made to you, then, I just
23 want to make sure I understand, were he was with Charlie
24 between 7:00 and 9:00, Charlie dropped him off at his
25 girlfriend's until he left the next morning?

1 A And also on the phone that he was not with Charlie.

2 Q Last night, but you never got any clarification?

3 A What do you mean?

4 And I apologize. I'm speaking as we are that
5 date, the 22nd, the day after the incident. So when I
6 refer to "last night," I'm not --

7 Q Of course.

8 A I don't want to be confusing.

9 Q But on the phone when you said you wanted to speak to
10 him about an incident with Charlie last night, you didn't
11 clarify at what time that you were inquiring and that's
12 why you said how about you kind of talk to us?

13 A Right. It was fairly general. I wanted to speak to
14 him about an incident with Charlie Plumley last night,
15 which he replied, I wasn't with Charlie last night.

16 Q And you didn't ask him for a clarification of his
17 definition of "last night"?

18 A No, I didn't.

19 Q Okay. Because you were specifically referring to
20 "last night" and the incident in the same sentence?

21 A We were investigating an incident that night prior
22 where his name came up. I wanted to --

23 Q But when you asked him, you said, I want to talk to
24 you about an incident with Charlie Plumley last night on
25 the phone?

1 A Yes.

2 Q And he said, I wasn't with Charlie last night?

3 A Yes.

4 Q Meaning he wasn't at the incident with Charlie last
5 night?

6 A I don't know what he meant by it. I just know he
7 meant I was not with Charlie last night. That's what I
8 heard and what I wrote down.

9 Q And we didn't get any further clarification on that?

10 A Well, tried to at the interview, but then he stopped
11 me, so we took him back.

12 Q So he wasn't inconsistent when he said he wasn't with
13 Charlie at the incident? He didn't give you two separate
14 statements about not being with Charlie, he never admitted
15 to being with Charlie during the incident?

16 A I asked him about an incident with Charlie Plumley.
17 He said he was not with Charlie. He didn't say I went
18 with Charlie at any incident.

19 MS. ZMROCZEK: Okay. I have no further
20 questions.

21 THE COURT: Anything further for this witness?

22 MR. GRAHAM: I have no questions as to the
23 freeness or voluntariness of the statements.

24 THE COURT: Thank you very have, sir.

25 THE WITNESS: Thank you, Your Honor.

1 MR. GRAHAM: Your Honor, we don't have any other
2 witnesses for this matter.

3 THE COURT: All right. Ms. Zmroczek?

4 MS. ZMROCZEK: I have no witnesses.

5 THE COURT: Okay. Now, did I understand that
6 there were -- was there another statement? Is there
7 another -- do we need to have another hearing?

8 MR. GRAHAM: No, Your Honor.

9 THE COURT: All right. Well, I'll hear from you
10 then with regard to this statement.

11 MR. GRAHAM: Your Honor, I don't think the --
12 the only testimony that you heard is that he was not under
13 custody, his rights were explained to him. The first
14 conversation happened over the phone, the next one was in
15 person. He wasn't under custody for either one of those.
16 They asked him if he would come. He came voluntarily.
17 They read his rights to him. The officer indicated that
18 he understood his rights, that he didn't make any promises
19 or coerce him in any way and he had a conversation with
20 the defendant. The defendant at some point said that he
21 was done talking, so he obviously understood his rights
22 and knew that he could do that, and then he was released.
23 I don't think that there's a problem with this statement
24 being admissible, Your Honor.

25 THE COURT: Okay. Ms. Zmroczek.

1 MS. ZMROCZEK: Your Honor, I have several
2 problems which I think is going kind of be the basis for a
3 lot of the motions today.

4 The first is, I'm a little unclear as to the
5 statement. That's why I kept trying to ask him what the
6 statement was. Because he kept saying that there were two
7 statements. So I'm trying to understand what the
8 statement was.

9 And as far as I could tell from the testimony,
10 the statement was he wasn't with Charlie during the
11 incident and "call my girlfriend, I was with her until I
12 went to the PO."

13 Okay. Obviously I have no problem saying he
14 wasn't with Charlie during the incident. But here's where
15 the problem starts and I think it's going to begin
16 throughout this case. Well, one, I would object to any
17 inference that he had a parole officer, that he had some
18 previous arrest unless, of course, he gets up to testify.
19 Two, his girlfriend is deceased, and that's the big
20 problem with this case because they're almost compelling
21 him to put up an alibi defense when I can't put up an
22 alibi defense because the alibi is dead. So the only
23 thing that he can -- the only thing that we can do at this
24 point is for him to get up there and say, you know,
25 whether he was or wasn't with her, whether they did or

1 didn't get into a fight. There are so many questions that
2 are unanswered.

3 The jury's going to hear the officer say --
4 basically him establishing an alibi. Then the jury's
5 going to look at me and go, okay, where's the girlfriend.
6 And they're not going to understand that we can't put her
7 up and we can't explain or question her or have her
8 provide additional information. So, Your Honor, that's
9 the problem that I have with any reference to Ashley
10 Vasquez that's again going to roll over into our other
11 cases.

12 THE COURT: What would be the purpose of -- and
13 I realize it is a statement that he gave, and it is what
14 it is. But what would be the -- would there be any reason
15 to not redact just the portion that says, I was with my
16 girlfriend?

17 MR. GRAHAM: Your Honor, eventually what
18 happened because of this statement, Detective Chappell who
19 testified went over to speak with Ms. Vasquez, did speak
20 with her. She, in fact, gave a statement implicating the
21 defendant stating that he had come over the night before,
22 had confessed to shooting the man in this case --

23 THE COURT: But she's the one who's deceased?

24 MR. GRAHAM: And left the gun. So when the
25 officer came and talked to her, he got all that

1 information. I understand that his statements to her
2 don't come in. I'm very aware of that.

3 THE COURT: But that's the reason the officer
4 ends up over there?

5 MR. GRAHAM: Your Honor, because of the
6 conversation with her she says, I had a gun and I was
7 going to -- I believe she got upset, was going to commit
8 suicide with the gun. A friend of hers who we have will
9 come testify that she wrestled a gun from her hand and
10 took it from her and then subsequently when the officers
11 came to talk with Ashley Vasquez, they ended up finding
12 out about another girl named Ashley Jeffcoat. And the gun
13 was ultimately recovered by Detective Chappell from
14 Ms. Jeffcoat.

15 The gun was sent to SLED. It was matched
16 against a shell casing at the scene and an unfired bullet
17 at the scene, and it was also matched with projectiles
18 that were taken from Mr. Justice's head during the
19 autopsy, and that is the murder weapon. So that is the
20 way that the murder weapon is found. It comes in through
21 a girlfriend of the deceased -- I mean of the defendant.

22 The testimony of co-defendants are going to
23 place him -- last time they see him with a gun is him
24 leaving the car when they do drop him off over at his
25 girlfriend's house which is around midnight. So they're

1 going to say, you're going to hear testimony and the
2 jury's going to hear testimony, they drop off Mr. Sharpe,
3 that's the last time they see the gun at his girlfriend's
4 house near -- on or near Mimosa Drive. So that's the only
5 way that this gun comes in, is because of him saying, Go
6 talk to my girlfriend.

7 THE COURT: All right.

8 MS. ZMROCZEK: Which now apparently we've
9 started to spill over into the gun.

10 THE COURT: I would like to have that
11 information.

12 MS. ZMROCZEK: But that's -- I mean but that's
13 why I brought it up, because that's the problem. The
14 problem is Sixth Amendment confrontational. He has a
15 right to confront the witnesses against him. The jury is
16 going to be left with --

17 THE COURT: Hold on now. He -- in listening to
18 the officer's statement, he makes the statement to the
19 officer, I was not with Charlie.

20 MS. ZMROCZEK: Last night.

21 THE COURT: Last night. I was with my
22 girlfriend, you can go check with her.

23 Where's the person he can't confront?

24 MS. ZMROCZEK: It comes -- as you said, it goes
25 on from --

1 THE COURT: Well, it goes on. They end up going
2 to the girlfriend's house.

3 MS. ZMROCZEK: Him saying that -- I mean, him
4 saying I was with Charlie from -- and that's what I said,
5 I have no problem with him saying I was with Charlie from
6 1700 to 1900.

7 THE COURT: But the information is clearly
8 relevant. They don't -- I mean, I'm assuming that maybe
9 something else came up at some point, but they end up at
10 the girlfriend's house because of that, because of him
11 telling them, go talk to my girlfriend.

12 MS. ZMROCZEK: Right. But what he does is he
13 gives them an alibi.

14 THE COURT: Well, that's what he says to them.
15 I mean, I'm just -- I'm dealing with the statement now.
16 So that's what he says to them.

17 MS. ZMROCZEK: Right.

18 THE COURT: All right.

19 MS. ZMROCZEK: The problem with allowing that
20 part of the statement in is then the jury's left to
21 wonder, okay, we're going to hear from the girlfriend.

22 THE COURT: Well, I'm confident that information
23 she's no longer alive will come out, will it not? I don't
24 know. I mean, I'm sure they want to know that she's not
25 alive.

1 MS. ZMROCZEK: Right.

2 THE COURT: So that won't be a question in their
3 mind as to why she's not here.

4 MS. ZMROCZEK: But it will -- at this point it's
5 almost compelling him to get up and testify to say he was
6 with his girlfriend because if his co-defendants are going
7 to say --

8 THE COURT: He said that. I mean, if that
9 statement comes in, and I haven't ruled yet, but if that
10 statement comes in, then that's -- you know, and again,
11 what they believe, but they may believe that he was with
12 his girlfriend. That's what he said. It doesn't require
13 him to get up and repeat it.

14 MS. ZMROCZEK: But what they're going to do, the
15 co-defendants are going to testify he gave a specific time
16 period at which time he was with his girlfriend. The
17 co-defendants are going to say no, it wasn't then, we
18 dropped him off later and it was with the gun.

19 THE COURT: Well, that certainly wouldn't be the
20 first time in criminal history that co-defendants have
21 come in and said --

22 MS. ZMROCZEK: But at that point -- but at that
23 point I can't call the girlfriend to confirm that.

24 THE COURT: I understand.

25 MS. ZMROCZEK: So they get to put up testimony

1 and I --

2 THE COURT: Well, here's where I'm not
3 following. They're not putting up any testimony. They're
4 not going to put up any testimony as to what the
5 girlfriend said. They're not going to put up any
6 testimony as to what the girlfriend told them when they
7 went and talked to her. None of that -- I mean, none of
8 that's coming in.

9 MS. ZMROCZEK: I understand that. But the
10 problem is that they are going to put up testimony that
11 says that yeah, they dropped him off at his girlfriend's
12 at a different time.

13 THE COURT: All right.

14 MS. ZMROCZEK: So at that point he's either
15 compelled to get up there and say the time or explain what
16 happened or I can put her up there to confirm, but I can't
17 do that.

18 THE COURT: Well, I understand you can't do
19 that. There's going to be a clear understanding why you
20 can't do that. So, I mean, I guess I'm not understanding
21 why it compels him to get up and just -- that's just two
22 witnesses pitted against each other. I dropped him off at
23 his girlfriend's at 10:00. No, I was at my girlfriend's
24 at 8:00.

25 MS. ZMROCZEK: Well, what I think, Your Honor,

1 obviously you don't know that they're going to say he
2 couldn't have been with his girlfriend because she was
3 calling his phone.

4 THE COURT: I don't know. Ms. Zmroczek, I'm at
5 a little bit of a disadvantage obviously because I don't
6 know all the testimony in the case. You know, at this
7 time the statement does appear to have been given freely,
8 voluntarily, having had his rights read; that he
9 understood his rights; that there didn't seem to be any
10 coercion or undue influence, and he even questioned
11 something about his rights, those questions were answered
12 and he chose to continue on with his statement.

13 At this time I don't see any problems with the
14 statement coming in. I'm going to allow it in.

15 MR. GRAHAM: Thank you, Your Honor. That's the
16 only motion from the State.

17 THE COURT: All right. Ms. Zmroczek, we have
18 several. Whatever order you want to take them up in.

19 MS. ZMROCZEK: Well, I guess while we're on the
20 topic now that you've had a preview of the issue that
21 we're going to run into, Your Honor, I filed several
22 motions and wrote the memo which I've marked for a Court
23 exhibit.

24 THE COURT: Good. Thank you.

25 MS. ZMROCZEK: And I just went ahead and marked

1 both of them. But the one that we can put as No. 1 is the
2 memo in support of his motion in limine to suppress DNA.

3 THE COURT: DNA.

4 MS. ZMROCZEK: The gun, DNA from the gun, and
5 any statements. And I guess that's marked as Court
6 Exhibit 2.

7 Your Honor, I'm unsure to go about -- I mean,
8 it's so confusing and that's why I'm trying to clarify.

9 Here's the problem. The problem is, as the
10 solicitor told you, he tells the officers I was at my
11 girlfriend's, so they go and talk to the girlfriend. And
12 I guess the problem is is that her statement confirms the
13 times he was there, but then she says other things -- her
14 statement is all over the place. It's full of things that
15 raise flags in my mind.

16 THE COURT: But you would agree her statement
17 doesn't come in?

18 MS. ZMROCZEK: Absolutely. But at that point,
19 they get the gun.

20 THE COURT: But they don't get the gun from her,
21 right?

22 MS. ZMROCZEK: They get the gun from --

23 THE COURT: Someone else.

24 MS. ZMROCZEK: Someone else. But that someone
25 else, the only statement that she gives is they -- the way

1 that I understood them telling the Court was -- and if I'm
2 wrong, correct me -- she had the gun, she was going to
3 kill herself because she was upset over Shawn and her
4 friend, Ashley Jeffcoat, saw it and wrestled it away from
5 her and took it.

6 THE COURT: Right.

7 MS. ZMROCZEK: But the statement that Ashley
8 Jeffcoat gives is something different. So I guess she
9 needs to testify. If she can testify -- if she's going to
10 testify differently than what she wrote in her statement,
11 but her statement has no connection -- it doesn't mention
12 Shawn and doesn't even say where Ashley Vasquez, in fact,
13 got the gun.

14 THE COURT: We're talking about Ashley's
15 statement?

16 MS. ZMROCZEK: Right, Ashley Jeffcoat.

17 THE COURT: Now, who's the girlfriend?

18 MS. ZMROCZEK: Ashley Vasquez. We call her Taco
19 because that was what everybody called her.

20 THE COURT: The girlfriend?

21 MS. ZMROCZEK: Yes.

22 THE COURT: The girlfriend's Taco and then we'll
23 go with Ashley Jeffcoat as being the other witness?

24 MS. ZMROCZEK: Yes.

25 THE COURT: It makes it easier for this focus

1 anyway.

2 MS. ZMROCZEK: Yes. Taco -- the problem is, the
3 gun comes from Taco originally. Or they say it comes from
4 Shawn to Taco.

5 THE COURT: Their theory is that Taco got the
6 gun from --

7 MS. ZMROCZEK: Shawn.

8 THE COURT: -- from Shawn. But their actual
9 testimony, the actual testimony is going to be that they
10 got it from Ashley, correct?

11 MS. ZMROCZEK: From Ashley Jeffcoat. And then
12 the inevitable question is, well, where did Ashley get it
13 from.

14 THE COURT: Well, I imagine -- Ashley's on the
15 witness list. I imagine she'll tell us where she got it
16 from.

17 MS. ZMROCZEK: Right. Which then makes the
18 jury, oh, you got it from Shawn's girlfriend? So then
19 there's going to be an improper inference that Shawn gave
20 it to her and I can't question where Ashley -- where Taco
21 got the gun to give to Ashley Jeffcoat, or that Ashley
22 Jeffcoat took from her.

23 MR. GRAHAM: Your Honor, if that's the way the
24 testimony comes, it's not an inference, it a testimonial
25 fact. Ms. Jeffcoat will say she got it from Taco. How

1 Taco got it, that's conjecture, I agree. We don't know.
2 I have no witness who's going to say that he gave it to
3 Taco because Ashley Vasquez is dead, but that's just the
4 way it is.

5 THE COURT: That's one of those swords that cuts
6 both ways. That could work to your advantage, that the
7 gun wasn't Shawn's, it was Taco's.

8 MS. ZMROCZEK: But the problem is this, Your
9 Honor, is that the only reason that Taco enters this case
10 is because of a statement from Shawn.

11 THE COURT: Correct. Well, no, not the only
12 reason. Ashley took it away from Taco. She didn't tell
13 him that?

14 MS. ZMROCZEK: She did tell him that. But the
15 only reason that she told him that was because they were
16 there questioning Taco about where the gun was.

17 THE COURT: Okay. Go ahead.

18 MR. GRAHAM: Judge, the only thing that I would
19 add by way of analogy is if there's a suspect on any kind
20 of criminal case and they go do a search warrant on that
21 defendant's house and they find stuff in the house,
22 there's nothing who's nobody to say that that person
23 brought stuff in the house. It's just a relationship
24 because some piece of evidence material to a crime is in
25 his house. That's no different in this case. I wish that

1 Ms. Vasquez was here to testify, but she's not. What I've
2 got is the police recovering a gun that was used as a
3 murder weapon that some witnesses will place in his hands
4 before the murder, after the murder, and is found in his
5 girlfriend's house. That's what it is. I mean, it is
6 what it is and that's what it is. And just because she
7 and her client don't like it, that's not a reason for it
8 not to come in.

9 THE COURT: Well, I'm trying to see if -- I
10 mean, I want to flesh out to see if there is a reason that
11 it shouldn't come in. I'm not sure of --

12 MS. ZMROCZEK: Well, Your Honor, the reason is
13 this: He said that it's just a search warrant and that
14 the gun was found at her house. No, the gun wasn't found
15 at her house.

16 THE COURT: I understand that. I understand
17 that. But here's the thing. She is deceased, but it's no
18 different than if she also went and goes to move to
19 Montant.

20 MS. ZMROCZEK: I'm sorry?

21 THE COURT: It's no different whether she's
22 deceased or whether she just after this occurred up and
23 moved to Alaska and left the area. I mean, as far as
24 she's not available, okay? And I think you're saying
25 because she's not available, nothing should come in about

1 her. But it's not like she's unavailable at the hands of
2 law enforcement or the State. So I'm not understanding
3 why it should be omitted.

4 MS. ZMROCZEK: Your Honor, because she can't
5 say -- Ashley Jeffcoat can say she got the gun from Taco,
6 but Taco can't tell us where she got the gun.

7 THE COURT: I understand.

8 MS. ZMROCZEK: And so the problem is, is that I
9 can't put Taco on the stand and say that that was your
10 gun. I can't confront her, I can't cross-examine her. I
11 can't let the jury know that maybe she was suicidal and
12 that was her gun. So instead, all they have is this
13 causal link that she was Shawn's girlfriend and they're
14 going to continue to say, well, she had the gun, it was
15 his girlfriend, where do you think she got it. And I
16 can't confront that. How do I know what time gun got
17 there? How do I know how many people were at her house?
18 How do I know how many hands it passed through between
19 wherever it came from to Taco to Ashley Jeffcoat? Those
20 are questions that the jury I think will need to know.

21 THE COURT: So based on your theory, none of
22 this can come in, which would just really set a precedent
23 for anyone to drop off evidence and then tell the people,
24 leave, go away, because then if they find that, there's no
25 way they can ever link it to me.

1 MS. ZMROCZEK: But if the person -- if they go
2 and leave to Alaska, I think that's where you said --

3 THE COURT: Well, anywhere, Brazil.

4 MS. ZMROCZEK: They could still be questioned or
5 interviewed. The police can then do their job,
6 investigate, talk to the witnesses and then bring the
7 witnesses in and then we can talk to them, and that's what
8 the law provides.

9 THE COURT: If they can't find them they can't.

10 MS. ZMROCZEK: Right. And if they couldn't find
11 them under a search warrant then it would come in because
12 they had probable cause, but there was no search warrant
13 here.

14 MR. GRAHAM: If I can, Judge.

15 Basically, Ms. Vasquez was still alive it would
16 be direct evidence. She would get up and testify that she
17 got it from Mr. Sharpe. Because of her death it's now I
18 would say circumstantial evidence. But Ms. Zmroczek still
19 gets to confront every witness we put up. When Ashley
20 Jeffcoat gets up and say that she got it from Ashley
21 Vasquez, from the residence, and that Ms. Vasquez was
22 Mr. Sharpe's girlfriend, Ms. Zmroczek can ask all the
23 questions that she just said. "You don't know that it was
24 Shawn's gun, do you? You don't know that she got that gun
25 from Shawn, do you?" She can say all those kind of

1 questions. But still, at the end of the day, this is now,
2 I believe, my looking at it, circumstantial evidence.
3 We've got witnesses on the front end leading in with that
4 location. The last time the gun is seen, the gun's
5 recovered from that incident location. The jury gets to
6 draw the inferences they want from it.

7 MS. ZMROCZEK: But it's not circumstantial, it's
8 direct evidence. It's a gun.

9 THE COURT: Circumstantial, where it came from.

10 MS. ZMROCZEK: From where it came is
11 circumstantial.

12 THE COURT: Correct.

13 MS. ZMROCZEK: But she's a crucial step. I
14 mean, she's the one, that's where the gun comes from is
15 Taco.

16 THE COURT: According to Ashley Jeffcoat.

17 MS. ZMROCZEK: Right.

18 THE COURT: Who can either be believed or
19 disbelieved. I don't know Ashley Jeffcoat. I don't know
20 what kind of witness she'll make. So that's just a
21 witness saying something and you're going to get to
22 cross-examine her. I mean you can say that. "You have no
23 idea whose gun that is, do you? You know when you say you
24 got it, but you have no way of knowing whose gun that is."

25 MS. ZMROCZEK: But then -- and that's --

1 honestly, I have no problem with the actual gun coming in.
2 But then the problem is is that they keep going to further
3 steps. Oh, but it was the gun that was --

4 THE COURT: Of course they're going to do that.
5 Of course they are.

6 MS. ZMROCZEK: But then they get to run the
7 ballistics and the DNA, and that's -- at that point the
8 ability to confront from where that came, Your Honor,
9 there are so many statements about who was involved in
10 this case. One of the names that has come more than once
11 is the client's brother who also knows Taco.

12 THE COURT: Sure. I mean, again, possibly all
13 kind of reasonable doubt. But it doesn't make it
14 inadmissible because it's not all direct evidence, because
15 this circumstantial.

16 MS. ZMROCZEK: But the DNA from the gun is not
17 circumstantial.

18 THE COURT: I have no idea because we haven't
19 gotten that far down the road.

20 They took DNA off the gun?

21 MS. ZMROCZEK: They did.

22 THE COURT: And the DNA I'm assuming came back?

23 MS. ZMROCZEK: It did not, but the magazine did.

24 THE COURT: Again, it came back to Mr. Sharpe?

25 MS. ZMROCZEK: The magazine could not exclude

1 him. The gun had no DNA -- or the gun -- it had two
2 samples on it.

3 THE COURT: So the magazine doesn't even put it
4 in his hands. It just says they can't exclude him.

5 MS. ZMROCZEK: Right.

6 THE COURT: If all of this is based on Taco's
7 not being alive, I think I've ruled on that. I think -- I
8 don't think that's crucial to making these items
9 inadmissible. You're going to have all the leeway that I
10 can give you in questioning any witnesses, whether it was
11 the police officer who talked to Ms. Jeffcoat, whether it
12 be Ms. Jeffcoat herself, anyone they put up with regards
13 to DNA or anything, you're going to be able to
14 cross-examine everyone. I'm clearly not going to allow
15 any statements in from Taco because that would be
16 improper. And so you're right, the only reason Taco's
17 name would be mentioned here is from two sources,
18 Mr. Sharpe's and Ms. Jeffcoat's.

19 MS. ZMROCZEK: Okay, Your Honor. But help me
20 understand, then, when the cop says -- or excuse me, when
21 the officer says then we went to Taco's house.

22 THE COURT: Based on the statement, let's go
23 over there, so they go over there.

24 MS. ZMROCZEK: Right.

25 THE COURT: I don't know what the State plans to

1 do at that point, how they intend to handle that, because
2 I'm not going to let them go into what Taco had to say.

3 MS. ZMROCZEK: Well, what Taco had to say was, I
4 wrestled the gun, I gave it to Ashley Jeffcoat, and so
5 then they call Ashley Jeffcoat.

6 THE COURT: Well, I mean --

7 MS. ZMROCZEK: So we go from the cops, the
8 officers going to Taco's house and then they're magically
9 getting the gun --

10 THE COURT: Not magically. I imagine there's
11 going to be -- I don't know, I'm not going to testify
12 here, but I imagine it's going to be something along the
13 lines of we went over to investigate. That investigation
14 led us to Ms. Jeffcoat. So we went over and talked to
15 her. I imagine it's going to be something like that.
16 Maybe not. I don't know. But we'll deal with it when it
17 comes up. If they go down a bad road, we'll stop it
18 before it gets down there.

19 Now, is that essentially the basis for the
20 introduction of the gun and the DNA evidence? There are
21 statements here by Ashley Vasquez, but I think we all
22 agree that those don't come in, or do you not agree with
23 that?

24 MR. GRAHAM: I'm sorry, Your Honor, I couldn't
25 hear.

1 THE COURT: I was just trying to review the
2 defense's motion dealing with the introduction of the gun,
3 the DNA evidence related to the gun, and then it mentions
4 any statements made by Ashley Vasquez. Do you all intend
5 to try to get in statements from Ashley Vasquez?

6 MR. GRAHAM: No, Your Honor. I would say that
7 we'll probably have our officer talking to Ms. Vasquez,
8 but not what her responses are. I mean, the officer may
9 very well come up and ask a question, Based on her
10 conversation with you, what did you do? We called Ashley
11 Jeffcoat, or whatever it is, but no, I'm not going to get
12 into any statements that Ms. Vasquez -- not attempt to get
13 any statements in that Ms. Vasquez said.

14 THE COURT: All right.

15 MS. ZMROCZEK: Just so I understand the ruling
16 now, is the gun's admissible and the DNA, if there are
17 issues that come up, then we can argue that?

18 THE COURT: Absolutely. In other words, we may
19 revisit admissibility on those things for other reasons,
20 if there are any.

21 MS. ZMROCZEK: Okay.

22 THE COURT: Now, there was a memo that you
23 submitted regarding admission of cell phone tower ping
24 evidence?

25 MS. ZMROCZEK: Correct. I have been provided

1 on -- Friday or Saturday I was provided -- and I knew it
2 was coming, so that's fine, Your Honor -- I was provided
3 with some information, of two separate sources of
4 information. The first one I think it's easier to address
5 is the cell tower pinging. It's my understanding the
6 State provided me with -- have they changed?

7 MR. GRAHAM: I think you have the latest one.

8 MS. ZMROCZEK: They provided me with maps --
9 quite honestly, we didn't get to speak this weekend
10 because we were both working, so I'm not quite sure what
11 they intend to introduce with the maps because they're
12 just colorful maps at this point, but it's my
13 understanding that they intend to put evidence in that
14 says that these colors somehow correspond with times and
15 phone calls made from Shawn Sharpe's phone, and that they
16 know that because they are using historical ping data.
17 When they subpoenaed the records they got this longitude
18 or latitude or which cell phone tower from which it pinged
19 off of. And, Your Honor, so this motion is specifically
20 to keep of any those maps or any of those location details
21 out on the basis of it being inaccurate science, and I
22 think they have somebody here to testify about that.

23 MR. GRAHAM: Judge, if I can, we prepared some
24 exhibits. Ms. Zmroczek has them. I'm going to pass them
25 up to you and maybe I can tell you what are plans are to

1 do with them and then we'll go from there.

2 THE COURT: All right.

3 MR. GRAHAM: Your Honor, the first map that
4 you're looking at is the one that has seven different
5 colors on it. It has numbers such as 21973, 21972. If
6 you'll look in the middle, there's a number called 2197
7 between those two.

8 What this is showing, the police officers sent a
9 search warrant to AT&T. They had phone numbers come back
10 on two numbers. One of them we attribute to Mr. Sharpe.
11 That was the phone taken from him on his arrest and the
12 phone number that Detective Chappell spoke with him on.
13 And we have another phone off of an AT&T account that we
14 associate with Charlie Plumley, the co-defendant.

15 During a certain time period of the night, what
16 this is showing numerically, the records that we retrieved
17 from AT&T for each one of those accounts show the date and
18 time of the call, they show which party called, the number
19 calling and the number receiving, both parties to the
20 call, and it also tells you which tower and which sector
21 that phone call was processed on. Each tower here has
22 three sectors. So depending on which provider, it could
23 be a 1, 2, 3; it could be A, B, C, different terminology
24 like that.

25 We took those records for a time period before

1 and after, and that's on the third page I believe of what
2 I handed Your Honor. This is a summary of that that's
3 taken directly from the records.

4 The colors there correspond with the two colors
5 on the two charts because there's another map also that
6 has different colors showing the cell towers. And so the
7 summary chart here, one is the defendant's phone that we
8 attribute to the other one, the co-defendant, and it has
9 every call, every text listed between approximately 8:39
10 at night and 9:22 a.m. the next morning.

11 What -- these two maps were made by AT&T. We
12 have the supervisor for the engineers here who is an
13 engineer himself. They call it a propagation map. And
14 this map represents from computer modeling the area they
15 predict for the best service for each sector off of each
16 tower, and we only had them include these sectors that
17 were relevant to our time and calls.

18 THE COURT: Uh-huh.

19 MR. GRAHAM: It is not a -- Ms. Zmroczek is
20 talking about a ping. A ping is when, for instance, there
21 is a fugitive on the run, that's realtime, so they will --
22 AT&T and other carriers can do that, and it's usually
23 through a court order, I believe, and that would be trying
24 to find a suspect, a kidnap suspect and those kind of
25 things. They can actually send a signal from them out to

1 the phone and then they would triangulate, if I understand
2 it right, and can get a small ten meter area or some kind
3 of area where they believe the suspect is. That's what
4 pinging is.

5 This is just based on historical records. And
6 the records just reflect which area or which tower and
7 which sector that every text or every call was processed
8 on, and that's all this is showing. Nobody -- none of the
9 witnesses are going to get up and say, this person was
10 standing here when it happened. The terminology you're
11 going to hear would be things like most likely, most
12 likely they're in this colored area or near there.
13 There's a bunch of different factors which I'm aware of
14 that have them being in other places, but that's what the
15 testimony's going to show. And it's going to show
16 basically that he's in areas that correspond -- both
17 defendants are together basically from what we're showing
18 is 8:39 a.m. until after midnight, which corresponds with
19 the story that the co-defendants gave to the police about
20 where they went and what they did and roughly when they
21 did it. It refutes what he said about being at his
22 girlfriend's house. This doesn't have him at his
23 girlfriend's house. It has him -- has his phone at a
24 bunch of different places.

25 THE COURT: But to be clear, this is tracking a

1 cellular device, not a person?

2 MR. GRAHAM: It's the phone, right.

3 THE COURT: It's a phone. So if he had my
4 phone, you couldn't put me there, you could just say my
5 phone was there.

6 MR. GRAHAM: From this evidence alone, correct.
7 All this evidence speaks to is this is a phone --

8 THE COURT: This is where this device was in
9 use.

10 MR. GRAHAM: Correct. This device is being used
11 on a particular date and it was most likely within this
12 area.

13 THE COURT: Okay. Yes, ma'am.

14 MS. ZMROCZEK: Your Honor, there are several
15 issues with historical data tracking, but the first of
16 which is the reliability. But like he said, most likely.
17 And if my phone was there or if I was there. So the only
18 way that -- to refute him or his co-defendant's statements
19 is to put him up and say somebody else had my phone. So,
20 A, they're trying to compel him to testify, but, B, what
21 very much concerns me is could have been or it's likely.
22 And, Your Honor, the federal court has recently ruled on
23 this and it's in my brief about the unreliability of --
24 this is scientific evidence that they're trying to put up,
25 that they're trying to say this is cell phone tower data,

1 this is where the area -- not pinpointing, but this is the
2 area where he could likely be. And that's the evidence
3 that they're going to put in. So if that's the evidence
4 that they're going to put in, then I think -- that's why I
5 was trying to do it ahead of time, was to try to have a
6 hearing on the admissibility of it under 702, 703. And I
7 believe that they do have their expert here to testify.

8 MR. GRAHAM: Your Honor, the State's prepared to
9 call witnesses.

10 THE COURT: All right.

11 MR. GRAHAM: The State calls Bob Wetherell.

12 ROBERT WETHERELL, after being duly sworn,
13 testified as follows:

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

16 THE WITNESS: My name is Robert Wetherell. Last
17 name is spelled W-E-T-H-E-R-E-L-L.

18 IN CAMERA DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q Mr. Wetherell, where are you employed, sir?

21 A With AT&T.

22 Q And how long have you worked for AT&T?

23 A Thirteen years.

24 Q And what -- over that 13-year period, what have your
25 job responsibilities been?

1 A I've been a performance and optimization engineer in
2 the South Carolina market, and about two years ago I took
3 over as the manager of engineers for South Carolina.

4 Q Can you pull the microphone up to you, Mr. Wetherell?

5 You said a something and optimization. What was
6 that?

7 A Performance and optimization.

8 Q As a performance and optimization engineer, what does
9 that mean? What do you do?

10 A Initially as far as performance is daily statistics
11 monitoring, where dropped calls happen, trying to resolve
12 them. Optimization is more of a long term, trying to fix
13 coverage holes, integrate new sites, integrate new
14 technology.

15 Q What is your educational experience?

16 A I have a bachelor's in electrical engineering from
17 Clemson and a MBA from Webster University.

18 Q And what kind of specialized training and experience
19 do you have regarding radio engineering?

20 A AT&T provides various vendor courses as far as the
21 technology, the parameters, how the system works, and I've
22 taken all those classes.

23 Q And is that something you have to stay current on?

24 A I'm sorry?

25 Q Is that something you have to stay current on?

1 A Yes, with multiple classes, yes.

2 Q What is radio engineering?

3 A What we do is it's basically the access part between
4 the cell phone and radio tower and how the cell phone
5 performs and how the radio tower performs in between there
6 from when you hit send to connect to the network with a
7 call.

8 Q As part of your job as an engineer or supervisor over
9 the engineers, what, if anything, do you use as far as
10 tools or maps to optimize the coverage of the AT&T
11 network?

12 A We have a propagation modeling tool that we use to
13 develop what we feel is the best estimate of the cell
14 phone propagation and coverage.

15 Q When you say a propagation tool, what is that device?

16 A It's a computer mapping program that one of our
17 vendors supplies that we've tweaked and modified using dry
18 test data to compare to the real world.

19 Q And what's the purpose of that tool?

20 A It's to give us the best estimate of that coverage
21 out there and help us plan for new cell sites or to view
22 the coverage for customers.

23 Q And how are propagation maps, how does that tool get
24 information to make a map representing -- when we say
25 propagation, what does that mean?

1 A The coverage pattern of the cell site, what
2 geographic area it actually covers.

3 Q Let me stop for a second. A cell tower does what?
4 What is the purpose of a cell tower?

5 A It's basically a radio link between cell phone and a
6 landline.

7 Q What is made up of a cell site or cell tower?

8 A Generally we have three sectors on each tower, each
9 sector being a separate radio element.

10 Q A separate radio element?

11 A Yes, like a separate radio. Effectively, whether
12 co-located on the same tower, it's a separate -- you could
13 look at it as separate towers.

14 Q Do they face in certain directions?

15 A Yes. Generally, probably 70 percent of the time,
16 they have bearings of zero, 120 and 240 degrees, but based
17 on coverage needs or terrains, sometimes that is modified.

18 Q Based on magnetic north?

19 A Yes.

20 Q So there's a tower and on the tower there are
21 three -- what did you call them?

22 A Radio sectors is what we call them.

23 Q Radio sectors. So really three separate antennas --

24 A Yes.

25 Q -- three cell faces I think is another terminology?

1 A Yes.

2 Q Each of those, normally typically one is pointed due
3 north on zero degrees, one is centered on 120 degrees, and
4 one is on 240?

5 A Yes.

6 Q So is it fair to say that you can think of coverage
7 as generally going out in a pie shape along 60 degrees to
8 the left and right of each one of those?

9 A That's correct.

10 Q And how is -- the propagation tool does what?

11 A So it uses a mathematical model based on some real
12 world input and geographic clutter that's put in to
13 estimate the signal loss between the site and a spot on
14 the ground.

15 Q And what do you all use the propagation map for?

16 A Designing new sites, viewing current coverage. If we
17 get a customer complaint, we can pull this up and go,
18 okay, well, they're in the hole, that would make sense why
19 they don't have coverage.

20 Q And how are they created? How are those boundaries
21 and areas, the propagation map, where does that
22 information come from?

23 A Our cell site data bases is in there as far as what
24 antennas are on every cell site, what azimuths those
25 antennas are set at, if there's any tilt to those antennas

1 and then --

2 Q If I use the term "dry run," what does that mean to
3 you?

4 A That's an initial -- that would be like an initial
5 estimate of the coverage. So when we first got the tool,
6 we did a dry run and the coverage looked poor, so we had a
7 vendor go out and drive test certain geographic areas to
8 get a comparison of what the tool showed and what was
9 actually out in the field as far as signal level and what
10 sector was covering which geographic area, and then they
11 tweaked the models based upon those drive tests.

12 Q And how long have you been using this propagation
13 tool or a similar tool in your job?

14 A Thirteen years, since I started.

15 Q And is this something that only AT&T does or how does
16 this compare?

17 A No, other companies may use different tools, but it's
18 a sort of standard propagation model. There's three or
19 four real big ones, but it's a standard tool.

20 Q So there are three or four vendors that sell
21 propagation tools?

22 A Yes.

23 Q But that's something that's widely used?

24 A Yes.

25 Q If you're a cell phone provider, you use one?

1 A Yes.

2 Q How many years has those propagation tools been in
3 use by cell phone providers?

4 A I would say at least 20 or 30, since it started.

5 Q The maps specifically that we're talking about, do
6 you have any with you right now?

7 A I don't.

8 Q Do you recognize those two maps?

9 A I do.

10 Q Are those maps that you actually created?

11 A No, one of my engineers did.

12 Q Based on the propagation tool that we're talking
13 about?

14 A Yes.

15 Q You've had a chance to review them?

16 A Yes.

17 Q And are they accurate?

18 A Yes.

19 MR. GRAHAM: Your Honor, the State would mark
20 these for ID for this hearing.

21 THE COURT: All right.

22 (WHEREUPON, STATE'S Exhibit No. 2 was marked for
23 identification only.)

24 BY MR. GRAHAM:

25 Q Mr. Wetherell, looking at State's 2, those are the

1 propagation maps that we're talking about. Just in
2 general terms, tell me what those maps are representing.

3 A In general, it's showing the approximate coverage of
4 the sectors listed there, for example, 21972, the
5 approximate coverage areas of those.

6 Q Are they showing every possible area that that tower
7 or cell face could serve?

8 A No.

9 Q What is it showing?

10 A It's an approximation of coverage.

11 Q An approximation of what signal strength? Good
12 coverage, bad coverage, any coverage?

13 A Good outdoor coverage.

14 Q So when we compare the records as well for one and
15 let's say that it says for our discussion here that a call
16 or text was served by 21973, what does that tell us on
17 this propagation map?

18 A That that call or text was most likely initiated in
19 the coverage area shown.

20 Q We know the call was served by that --

21 A Initiated.

22 Q -- by that tower in that sector, no question about it
23 actually being served by that, right?

24 A Yes.

25 Q The propagation map, does it pinpoint -- can you say

1 one hundred percent sure that the person was inside -- if
2 it's 29173, that the person was inside the blue area?

3 A No.

4 Q What can you say?

5 A That they are most likely within that coverage area
6 shown.

7 Q And why do you feel that you are able to say that
8 it's most likely?

9 A Based on the drive tests and the model tuning that
10 we've done on this tool, it's fairly accurate from what
11 we've seen in real world tests.

12 Q If it wasn't fairly accurate, what would be the
13 results for the real world AT&T business?

14 A We would have problems planning our cell sites, they
15 wouldn't correct, we'd have unhappy customers.

16 Q You'd have gaps of coverage, overlapping coverage,
17 wasted money --

18 A Yes.

19 Q -- subscribers who'd quit. So the purpose of this is
20 to optimize your business, isn't it?

21 A Yes.

22 Q And everything is done to ensure its reliability and
23 accuracy?

24 A Yes.

25 Q Are you aware of whether there are any publications

1 or peer review articles regarding propagation and how it
2 relates to AT&T and other cell phone providers?

3 A I'm not really, no.

4 Q Are you aware of whether AT&T has testified to the
5 use of these propagation maps in --

6 A Yes.

7 Q -- in federal or state courts?

8 A I believe there have been multiple cases in South
9 Carolina in the last few years, yes.

10 Q As far as quality control procedures used to ensure
11 the reliability of it, are you aware of anything specific
12 or what can you say to address those issues?

13 A We do quarterly drive tests with a third party
14 competitive test to verify what the coverage is out there,
15 so that's always compared to what the predicted coverage
16 is. In addition, we did pay a vendor to come in and tune
17 the models.

18 MR. GRAHAM: Mr. Wetherell, I believe that
19 that's everything at this moment. If you would answer any
20 questions from Ms. Zmroczek.

21 IN CAMERA CROSS-EXAMINATION

22 BY MS. ZMROCZEK:

23 Q Is it Wetherell?

24 A Yes, ma'am.

25 Q How many times have you testified in court?

1 A This is my first time.

2 Q You kept using the words "best estimate."

3 A Yes.

4 Q And you able to put a percentage on that best
5 estimate?

6 A I'm not, no.

7 Q You can't sit up there and say to any degree of
8 scientific certainty that this is accurate? Most likely
9 it is --

10 A Most likely, yes.

11 Q -- but you can't say --

12 A No, not specifically, no.

13 Q You said there have been no peer review articles
14 about this?

15 A I'm sure there have. I'm just not aware of them.

16 Q You're not familiar?

17 A No.

18 Q You don't participate in any training specifically
19 for this kind of information?

20 A No. We've kind of chosen our tool and we've stuck
21 with it, so as far as comparisons with other things, no.

22 Q These estimated or, excuse me, approximated I think
23 was the word, areas that you use are based on historical
24 data?

25 A And mathematical propagation creation which is

1 provided by the tool.

2 Q In a propagation tool, what are things that affect --
3 what are things that affect the readings from the towers?

4 A Could be terrain, could be a lot of trees.

5 Q Could it be the make and model of the phones?

6 A Generally not. I mean, there's is a tolerance range
7 used for AT&T, but they're fairly consistent. And all of
8 our phones go through headset field trials and they have
9 various receive levels that they're held to, a standard.

10 Q And can you say with certainty that the phones that
11 you tracked went through that training?

12 A I cannot.

13 Q Because I could have an AT&T phone but have Verizon,
14 correct?

15 A No.

16 Q I could have an iPhone?

17 A Yes. I would assume -- I would assume. I don't know
18 what other carriers' specifications are on their site, on
19 their phones.

20 Q But some can pull from other towers?

21 A If you're in an AT&T area with an AT&T SIM card and
22 there is AT&T coverage you will stay on AT&T. Any of the
23 other roaming part -- or any of the other cell phone
24 providers would have your SIM card locked out to where you
25 couldn't get on their network in those areas.

1 Q What were the wattage outputs for the cellular
2 phones? Can that affect the towers?

3 A The towers' propagation is generally consistent. So
4 as far as what the tower propagates, it's not affected by
5 the phone.

6 Q So what about with the phone --

7 A It can, but, like I said, it's -- they're generally
8 fairly consistent.

9 Q Does it matter whether a phone call is made from
10 inside or outside the house?

11 A Inside, obviously the signal level will be less.

12 Q So it does change? It could change?

13 A It could, but at the end of the day, if you hit send
14 on your call and it pings off of -- or the billing record
15 shows that cell ID, that's the cell that you were on.

16 Q What's the tower, complete tower range?

17 A What do you mean by that?

18 Q You said if it pings off or hits off the tower then
19 that's the tower you were on. What's the range of
20 coverage for a tower?

21 A It depends.

22 Q Okay. What's the range of coverage for these towers?

23 A Approximately what we show on these maps is what
24 we're showing for a good outdoor call. There could be
25 areas in white space here where you could still make a

1 call and be on that cell site.

2 Q And there's no way to know?

3 A That's correct. But it will show that you were on
4 that cell site.

5 Q And my question is, how large is the cell site? Can
6 it go up to 400 miles?

7 A No. In my -- you know, I believe there's a hard
8 coded limit of 32 kilometers in the system, but
9 realistically in a situation like this, I cannot imagine
10 it being more than a half mile outside or even a quarter
11 mile outside of what the coverage pattern shows.

12 Q But you're simply speculating?

13 A Yes.

14 Q You can't say that for sure.

15 What was the weather on the night you tracked
16 these phone calls?

17 A I don't know.

18 Q Weather can affect readings from cell towers,
19 correct?

20 A Well, it can decrease signal levels slightly. The
21 cell sites may go down. But in these cases if a cell
22 phone record was notched, the cell was up and functioning.

23 Q And you have the records to show that there were no
24 outages?

25 A I don't have any outage records, but again, if the

1 call makes it all the way through to the system, the whole
2 pipeline was open and everything is working.

3 Q And so it wouldn't matter if they were in or out or
4 what the topography was or what the weather was because
5 you could still say that they were in this tower?

6 A Yes. I mean, if that call record shows they were on
7 that tower, that's generally where they're at, in that
8 coverage area. Now, they may be outside of it an little
9 bit.

10 Q You keep saying "generally." And I guess that's my
11 concern. You can't say that they were in these color
12 maps?

13 A Not one hundred percent, no.

14 Q Not even with some scientific certainty?

15 A Not hundred percent.

16 Q You would agree with me that there are several
17 factors, I have 20 listed and I can read them all out to
18 you, that affect cell tower distance and information,
19 correct?

20 A Yes.

21 Q And you will agree with me that you don't have any
22 information as to how those towers were working that day?

23 A I do not.

24 Q So you would agree with me that the best testimony
25 you could give is an estimation?

1 A Yes.

2 MS. ZMROCZEK: I have no further questions.

3 THE COURT: Anything further?

4 MR. GRAHAM: One question, Your Honor.

5 IN CAMERA REDIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q Mr. Wetherell, to be clear, when we're talking about
8 matching the phone records here, when the records show
9 that a call was processed by -- those records which you're
10 the custodian of for the purposes of our trial, those
11 records would tell us which tower and which cell face
12 served a particular date of transmission, correct?

13 A Correct.

14 Q And what these maps show are where those -- where
15 that device most likely was during that transmission?

16 A Yes.

17 Q You're not here to say one hundred percent that they
18 were in any particular location or that they couldn't have
19 been outside of that coverage area?

20 A Correct.

21 Q Can you answer this question to a reasonable degree
22 of professional certainty as a radio engineer, is it most
23 likely that a call identified by your records that
24 identifies the tower and sector, that that device was in
25 the propagated color area that you're showing for that

1 particular tower?

2 A Yes, sir.

3 Q Can you answer that question?

4 A Yes.

5 MR. GRAHAM: That's all, Your Honor.

6 MS. ZMROCZEK: I just have a few questions.

7 IN CAMERA RECROSS-EXAMINATION

8 BY MS. ZMROCZEK:

9 Q What degree of certainty, professional certainty?

10 A Yes.

11 Q That wasn't scientific certainty?

12 A Correct.

13 Q Because you can't say to a degree of scientific
14 certainty?

15 A Correct.

16 Q And you can say what towers it was from and where the
17 coverage was, so we know where the tower was, but you
18 can't say where the phone was?

19 A That's correct.

20 MS. ZMROCZEK: I have no further questions.

21 THE COURT: I have a question just to clarify.

22 Mr. Wetherell, I understand your testimony and
23 I'm just going to use. If I have this area that is listed
24 as 21973, this aqua area -

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: And it's my cell phone and it showed
2 in your billing records or your records that it was coming
3 from that area, what you're saying this you might not can
4 tell me that it was in this part of the shaded region or
5 this part of the shaded region, but am I correct that
6 clearly I wasn't over here?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: That it would have to have been in
9 that region?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: And what we're talking about is not
12 tower strength, wattage, or whether a tower was working or
13 not, you're dealing only with numbers that actually went
14 through the system and showed up on the system and worked?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Thank you, sir.

17 Anything further?

18 MR. GRAHAM: Not for this witness, Your Honor,
19 but we do have another witness with very similar type
20 information.

21 THE COURT: All right. I just want to let Mr.
22 Wetherell step down.

23 MR. GRAHAM: The State would call Lieutenant
24 Scott McDonald.

25 SCOTT MCDONALD, after being duly sworn,

1 testified as follows:

2 THE CLERK: Have a seat, please, sir.

3 Once you're seated, state your full name,
4 spelling your last on the record, please.

5 THE WITNESS: Scott McDonald, M-c-D-O-N-A-L-D.

6 IN CAMERA DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q It's Lieutenant McDonald?

9 A Yes, sir.

10 Q Where are you employed, Lieutenant?

11 A Richland County Sheriff's Department.

12 Q And how long have you worked there?

13 A Twenty-five years.

14 Q Over the past decade or more, have you been involved
15 with cell phone and cell phone tracking?

16 A Yes, sir, I have.

17 Q Would you describe what your experience is in that
18 field?

19 A In cell phone tracking, cell phone investigations, I
20 first became involved back in 2001 working on a murder
21 case. I began to learn through Sprint at that time, it
22 was actually a Spring phone that we were focused on, how
23 the networks work, the coverage areas, the cell sites, the
24 sectors, that type of involvement. Since then, I've
25 attended numerous classes and seminars on this topic.

1 It's ever changing, so we constantly have to stay on top
2 of it. I do all the cell phone investigations in Richland
3 County.

4 Q And have you testified as an expert in the state
5 courts in South Carolina before?

6 A Yes, I have, on five occasions.

7 Q How many times have you been qualified as an expert?

8 A Five.

9 Q And what have you been qualified as?

10 A As an expert on cell phone investigations with the
11 tracking and the sectors.

12 Q So particularly in those five cases that you
13 testified in the past, what have you testified to?

14 A Call detail records which are cell phone records
15 where the initiating cell phone tower was provided, the
16 ending cell phone tower sectors. In addition to that,
17 looking at phone calls that were being placed around the
18 time of an incident to try to identify co-defendants,
19 defendants in the case. It's kind of an all encompassing
20 thing. We not only look at actual phone calls that were
21 placed but actual location of the defendants or the
22 possible defendants with those cell phones possibly around
23 the crime scene or other areas.

24 Q Specifically on this case, were you asked to consult
25 with us regarding Verizon phone records?

1 A Yes, I was.

2 Q And let me show you two maps and ask if you prepared
3 these.

4 A Yes.

5 Q And those are maps that you prepared?

6 A They are.

7 MR. GRAHAM: Your Honor, the State would mark
8 them for ID for the hearing.

9 THE COURT: All right. State's 3 for
10 identification.

11 (WHEREUPON, STATE'S Exhibit No. 3 was marked for
12 identification only.)

13 BY MR. GRAHAM:

14 Q This is labeled State's ID 3, there's two different
15 maps. The map with the circles, there are two circles,
16 what does that map purport to show?

17 A On this particular cell phone that I was asked to
18 look at, I was asked to look at around the time of this
19 incident, which I believe was 2237 hours on November 21,
20 to see where this phone was, what sector it was hitting
21 on. There was a call one minute prior to that at 2236
22 hours, which on the call detail records I was provided by
23 the Solicitor's office and Verizon, this phone was hitting
24 off tower 9, sector 1, which is illustrated here, the top
25 circle.

1 Q So that's the yellow shaded area in the top circle?

2 A That's correct.

3 Once I get those call detail records, it gives
4 me the azimuths for all three circles, all three sectors
5 within that circle. Those azimuths are mapped onto this
6 location. That's why you'll see a little bit of
7 difference between the top and the bottom. The azimuths
8 are slightly tilted, so they're not always uniform.

9 Q Now, the size of the circle, where does that
10 information come from?

11 A That is just an arbitrary, that's for illustrative
12 purposes. On this particular one, I believe it was
13 4.26 miles diameter range we went out.

14 Q So then if I ask you specifically the call that came
15 out at 10:36 on 9:21:01 that was processed by tower nine,
16 section one, are you saying or are you not saying that it
17 had to be in that yellow area?

18 A It could be less than that outer boundary or it could
19 be past. I can't give you a range of how far in or out on
20 that. That's just merely illustrative purposes for this.
21 You can think of it as kind of a pie-shaped wedge with no
22 outer barrier because it could be within a half a mile or
23 a mile or closer or it could be four or five miles.
24 There's no definite boundary that I'm provided with.

25 Q Now, is it your testimony or would it be your

1 testimony that that phone that was used to make that call
2 the records indicate was processed by tower nine, sector
3 one, does it have to be in that yellow shaded area?

4 A It has to be in that general area, somewhere within
5 those boundaries of that pie shape extending outward.

6 Q Okay.

7 A And extending how far outward, I can't give you that
8 information.

9 Q There's a second circle in the pie area below that.
10 What is that supposed to indicate?

11 A That is tower number 543, also sector number one.
12 The next call or the previous call before this one at 2236
13 hours, the previous call that was placed either to that
14 phone or from that phone was that phone hitting on tower
15 534 in sector one.

16 Q There are a bunch of thumb tacks, drop pins on that
17 map. What are those drop pins supposed to show?

18 A Those are all the Verizon towers in this area. When
19 I put them on this map I actually did all the ones for
20 South Carolina, and that's as September 2011, the towers
21 that were present and where they were at that time.

22 Q There's one that has a box associated with it in the
23 center of the map, kind of right at the border of the two
24 circles. What is that?

25 A That actually has an arrow -- that an indication of

1 where the incident location on this incident was, at
2 Victor Road.

3 Q And what software did you use to make this map?

4 A This was Microsoft Map Point.

5 Q The second map that you produced, what is that map
6 showing us?

7 A This is a map of just tower number nine, sector
8 number one, once again using a different software where
9 the azimuths are entered, the coverage area is shown
10 extended to an area of 2.99 miles. I was asked to
11 illustrate the distance between that tower and the
12 incident location on Victor Road, and when I did that
13 as the crow flies, it was 4.28 miles.

14 Q And what mapping software did you use to make that
15 map?

16 A This was I believe also Map Point. It was used in a
17 program called Pen Link where we import the phone records,
18 the data into Pen Link. We then identify which record we
19 want to illustrate, which was this particular one at this
20 particular time. It then illustrates -- the program then
21 illustrates, drawing the sector, and I merely draw through
22 the line from one point to another with a measuring device
23 that's included in the software.

24 Q To a reaonsable degree of certainty as an expert in
25 cell phone investigation, what, if any, opinion do you

1 have as to the location of the physical phone that was
2 used to make the two calls that you have shown on that
3 first map and the one call made on the second map?

4 A Starting with the first map, that first tower, tower
5 number 534, sector one, obviously we know this particular
6 phone was somewhere in that general area of that one
7 sector which is in close proximity to the incident
8 location. The next call, which is approximately 30
9 minutes later, about a minute I believe before the 911
10 call was placed, that phone was a minimum of 4.28 miles
11 away based on the sector it's hitting in. That's as the
12 crow flies, not necessarily the way traffic or a roadway.
13 It could be a little bit further.

14 MR. GRAHAM: Thank you, Lieutenant. Please
15 answer any questions Ms. Zmroczek has.

16 IN CAMERA CROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 Q Lieutenant, you said with a reasonable degree of
19 expert certainty or something. What was the degree of
20 certainty you gave?

21 A As far as to which question?

22 Q As far as to being able to place these phones at
23 those locations.

24 A All I can say is they're in this general area of this
25 sector. I can't say specifically this phone was at, you

1 know, 3.2 miles away. When I was speaking of the distance
2 of the tower and the incident location, that is merely the
3 actual cell phone tower and the distance to the incident
4 location. That phone could be anywhere in that particular
5 sector, though. So it could be a minimum of 4.28 miles.
6 It could be even further.

7 Q It could be in Lexington?

8 A Well, Lexington is a big place. I mean, this is --

9 Q Exactly.

10 A This area is considered part of Lexington where the
11 sector is.

12 Q You put on the map all the different Verizon towers
13 that are located in South Carolina, I believe, correct?

14 A In the Lexington area on this particular map when I
15 dropped it, it was all South Carolina, yes.

16 Q So when I -- if I have Verizon and I'm driving
17 through the country or I go into a lower topographical
18 area or this cell phone tower is getting 20 calls and I
19 need to make a call, my phone's going to pull from another
20 tower, correct?

21 A Not necessarily, no.

22 Q Could it?

23 A It could. Whatever tower it's pulling from would be
24 reflected in the records.

25 Q And you can tell me exactly or within a general area

1 of where I am, but you can't define that general area to
2 the best of -- I think you said 4.2 miles?

3 A I can tell you were in a general area around this
4 sector, okay? The only thing I'm saying on the 4.28 miles
5 is the incident location to the location of the actual
6 cell tower where that call hit off on that particular
7 sector, that tower's 4.28 miles away.

8 Q And how big is the sector?

9 A The sector can be several square miles. But in that
10 particular sector it's going away from the incident
11 location. That particular sector is facing away from the
12 incident location, not towards the location, so, in other
13 words, you couldn't be closer than that 4.28 miles
14 necessarily.

15 Q You said necessarily. So it's impossible?

16 A There's possibility and there's probability. It
17 could snow tomorrow, that's possible. It's not very
18 probable, though.

19 Q You said that you testified as an expert. Have you
20 written articles?

21 A No.

22 Q Has anyone peer reviewed --

23 A No.

24 Q -- the information that you provided?

25 A No. I have been through several classes and tested

1 for court certification purposes where there is some
2 review of my work with those, yes.

3 Q You said that -- I just want to make sure I heard
4 what you said. Bear with me.

5 You relied on the historical cell phone data to
6 make these maps?

7 A That's correct.

8 Q And I know you heard the other questions that I asked
9 the previous witness.

10 Would you agree that there are at least 20
11 different factors that could affect the information
12 provided from cell phone towers?

13 A There are a number of factors that affect the call
14 quality and distance and things like that, but the actual
15 information provided is going to be the actual tower that
16 that phone hit off and the sector that it hit off. I'm
17 sure terrain -- if we're in downtown New York City with
18 skyscraper, that affects it and things like that, but in
19 rural Lexington County where it's basically flat in
20 general areas, you wouldn't expect a whole lot of those
21 factors to play in.

22 Q And you said that it was -- you wouldn't expect it to
23 but you don't have any information to show that it did or
24 didn't?

25 A No. All I have is the information from the phone

1 company telling me that that phone call hit on that
2 particular tower in that sector on that date.

3 Q And I believe that you testified that this is ever
4 changing and you have to stay on top of it?

5 A The technology is. Azimuths change. Towers from
6 years ago, they may have been changed slightly to help
7 with coverage, things like that. But as long as you take
8 the data from the time period you're receiving it and go
9 back to those particular towers that were in play at the
10 time of those azimuths, it is accurate.

11 Q So you can tell me exactly which way those towers
12 were facing two years ago?

13 A Yes, I can. I have a Website, CALEA website that
14 provides all the major carriers, archive all their cell
15 site information and I can go back in time, which is what
16 I did on this because I wouldn't want to put down August
17 2013 information on something that's two years old. That
18 could be inaccurate. They may be the same, but not
19 necessarily.

20 Q And you checked all update and maintenance data for
21 those towers as well?

22 A No. What I'm provided with are the actual tower
23 locations and the azimuths of those towers for any
24 particular time. And this particular time frame, I went
25 back to September 20, 2011, and the towers that were in

1 place from Verizon in this area are illustrated on this
2 map and the azimuths that were utilized to draw these
3 circles is represented here. I didn't do azimuths for
4 every tower here because they weren't in play, only the
5 two on these particular phone calls.

6 Q But you didn't go back to see when those towers were
7 adjusted?

8 A That really isn't germane to what I'm looking at.
9 All I'm looking at is what those towers -- the way they
10 were on this particular time. And when they're updated,
11 the Verizon comes along and updates it on the site.

12 Q And what they could have shown? The area they could
13 have been?

14 A I'm not following you.

15 Q You said you're just interested in where the phone
16 hit which towers and then showing from where that call
17 could have been made?

18 A I'm interested in the location of the tower at that
19 time, which towers don't generally move obviously, but
20 sometimes the azimuths may be adjusted. With time and
21 population and call volume, things like that, sometimes
22 they're adjusted slightly to increase or help with call
23 volume.

24 Q Okay. Because if they're not, that can affect the
25 readings?

1 A Not the readings I'm look at, no.

2 Q Okay.

3 A What I'm provided from Verizon is what I'm testifying
4 to.

5 Q And you said these were for illustrative purposes
6 only?

7 A Talking about the outer bands of the circle. That's
8 four miles. Sometimes we use a standard of around
9 3 miles. I can't tell you that tower has a three-mile
10 range, a 20-mile range. You know, it can tell in general
11 with the other towers around it, it probably hasn't got
12 that far of a range because you'd have some serious
13 overlapping which isn't really cost effective for the
14 phone companies to do, so...

15 Q But you can't --

16 A I can't give you an exact, no.

17 Q But you did testify to a degree of certainty as to
18 the information you provided?

19 A Yes, ma'am. I can say that that phone was somewhere
20 in that general area of that sector at that particular
21 time.

22 MS. ZMROCZEK: I have no further questions.

23 THE COURT: Anything further of this witness?

24 MR. GRAHAM: No, Your Honor. Thank you.

25 THE COURT: Thank you very much, sir.

1 Anything further from the State on these?

2 MR. GRAHAM: Not as far as witnesses, Your
3 Honor.

4 THE COURT: All right.

5 MS. ZMROCZEK: Your Honor, first we would argue
6 that this testimony is inadmissible. It clearly doesn't
7 meet the standards. They're proffering scientific
8 evidence. And if they're not proffering -- I guess one of
9 them was proffering professional evidence, but then, Your
10 Honor, we would say, okay, if it's not scientific
11 evidence, then what's the relevance? Under the Jones
12 standard, Your Honor, he kept using the words -- they kept
13 using the words "general approximation." These aren't
14 words that we should be giving to a jury to guess.

15 THE COURT: See, this is where -- and please
16 correct me if I'm wrong, either side -- this is where I
17 think you might not be getting it for what they're trying
18 to say. And that's why I asked the question of Mr.
19 Wetherell. The general -- the vicinity, the area, the
20 general area, all of those were not -- from what I
21 gathered from the testimony, had nothing to do with the
22 accuracy of the information you're getting. It had to do
23 with -- and it is what it is. Again, this very different
24 from ping-pong where we're trying to locate a spot.

25 For example, from what I understood from this

1 last witness is there was no question under his opinion
2 and education and all the experience he's got in this
3 area, that on this tower nine at 2236 hours, that that
4 phoned had to be in that yellow area. Now, not the yellow
5 area that we're looking at where it cuts off right there,
6 because as he said, this pie shape goes on out and we
7 don't know. But he was able to say that it would have
8 been no closer than the 4.2 that's shown here because this
9 tower goes away from that location.

10 So even though he can't say it was here, but I
11 think,-- and if I'm wrong, correct me -- but he can
12 without question say it wasn't over here or it wasn't over
13 here, without question.

14 MS. ZMROCZEK: Okay. Right. But then my
15 question becomes, then what's the relevance? Why is he
16 testifying to that if somebody wants to say where they
17 were or --

18 THE COURT: I don't know what their purpose is
19 in trying to use this evidence. I mean, if they're trying
20 to say he was four miles from the incident site at that
21 time frame, I don't think they can do that because that's
22 not what this shows. But it does show that -- and, first
23 of all, it doesn't show "he," period.

24 MS. ZMROCZEK: Right.

25 THE COURT: It's shows that phone. But it does

1 show that at 2236, that phone was in this vicinity and was
2 not over here. I don't know if there's any relevance to
3 that at all because I don't know the case that you're
4 putting up and I don't know all the details. But I just
5 wanted to clarify from what I was hearing, because I know
6 what your concern was, nobody got up and said to a
7 reasonable degree of mathematical certainty or a
8 reasonable degree of scientific certainty or reasonable
9 degree of certainty of this, but I think they did say
10 that, but they didn't say it as to -- in other words, I
11 think both experts admitted we can't tell you where that
12 phone was, we can't tell you where that phone was, we can
13 tell you what sector that phone was in is my
14 understanding.

15 MS. ZMROCZEK: That's what I understood, too,
16 Your Honor, and that's why I -- and I'm asking this Court
17 to then examine that what testimony can --

18 THE COURT: The relevance?

19 MS. ZMROCZEK: Yes, what it can provide to the
20 jury except for it just tends to confuse them because they
21 can say it was generally in this area.

22 THE COURT: Well, I don't know because of this
23 reason. I mean, I don't know what the testimony's going
24 to be. I don't know if some witness is going to -- and
25 I'm going to use this map as a general example. You know,

1 this -- for example, the witness who just testified would
2 probably say absolutely there was no chance that this call
3 at this time was made from Wagener, okay? I don't know if
4 there's going to be any testimony that he was in Wagener
5 at that time. And again, it doesn't go to your client.
6 It goes to a phone, a cellular device.

7 MS. ZMROCZEK: But the concern is this, Your
8 Honor: He's testifying as an expert. An expert's allowed
9 to testify to hearsay, they get to rely on other things.

10 THE COURT: Right.

11 MS. ZMROCZEK: And, Your Honor, I don't think
12 that it meets -- their answers to my questions alone do
13 not meet the standard for expert testimony that this State
14 has set. Sure, they can generally say that. And I found
15 it interesting that when I asked the question about so I
16 had to be in this blue area to the first witness, I
17 couldn't be anywhere else. Well, no, I'm not saying you
18 couldn't be in the white area. But then when you asked
19 the question again, oh, no, you're in the blue area.

20 THE COURT: No, no. My question was, I would
21 have to be in the vicinity of this blue area. That was my
22 question.

23 MS. ZMROCZEK: Okay.

24 THE COURT: And he said, yes. Because I said,
25 in other words, I can't be over here.

1 MS. ZMROCZEK: Right.

2 THE COURT: And he said correct. And that's
3 what I was trying -- see, I'm trying to figure out what is
4 the purpose of using -- what is the purpose. And it is
5 what it is.

6 MS. ZMROCZEK: But it isn't scientific
7 testimony.

8 THE COURT: Sure it is.

9 MS. ZMROCZEK: And I don't think that it
10 meets --

11 THE COURT: Why isn't it scientific testimony?

12 MS. ZMROCZEK: Well, if it is scientific
13 testimony, then I don't think that it meets the standard
14 for scientific testimony. It's not been peer reviewed.
15 It's not been --

16 THE COURT: There's no requirement that
17 anything's peer reviewed. There's no requirement.

18 MS. ZMROCZEK: There is no requirement. But the
19 requirements that are listed is that the underlying
20 science is reliable. The evidence will assist the trier
21 of fact. The publication and peer review of the technique
22 is one of the factors, Your Honor.

23 THE COURT: To be considered?

24 MS. ZMROCZEK: Right, to be considered.

25 Prior application of the method to the type of

1 evidence involved in the case and the quality and control
2 and the consistency.

3 Your Honor, what they intend to do is get up and
4 put scientific testimony that somebody was generally in a
5 place. Expert testimony and the words "general" and
6 "approximate" don't go together.

7 THE COURT: That's a completely false statement.
8 That's completely a false statement.

9 The expert testimony here is, we can put that
10 phone, that device in this general vicinity. That is --
11 if it meets the other standards -- I think what you're
12 confusing it with, ma'am, is that you think that if they
13 can't tell us the exact part, then it's not useful. Or if
14 they can't tell us the exact -- within a certain
15 parameter, they're not putting it up -- or if they try to,
16 they're not going to be able to.

17 They can't put it up to say -- all they're
18 trying to do or all they can do, if they even get it in,
19 is going to be that it was in this particular sector. It
20 was in this particular vicinity. And that's all that
21 these experts are saying. They're not -- both of them
22 have been adamant that they can't tell you, they can't
23 pinpoint; in other words, this is not that pinging
24 technology we were talking about.

25 MS. ZMROCZEK: Certainly. And I wasn't -- and

1 if I stated otherwise, I certainly apologize. I wasn't
2 trying to say that they should be able to testify to a
3 place. But when they testify to a general location -- but
4 when I was asking for the mileage or the parameters of
5 that general location, that's the information, that's the
6 specific information that I was looking for, not a
7 specific place.

8 THE COURT: Well, they did give you the sector.

9 MS. ZMROCZEK: But like when I asked how big was
10 a sector, maybe 32 kilometers --

11 THE COURT: Well, it's like he just testified
12 and it's here on the map, if you look at the map with the
13 yellow circles. When you asked about how far -- since he
14 specifically stated that the outer ring of that pie is not
15 accurate, in other words, it goes out from there, you
16 asked how far out, and he said, Well, I wouldn't imagine
17 much further because then it overlaps the other towers and
18 then it's not efficient and they wouldn't do that.

19 MS. ZMROCZEK: So if I'm reading it correctly
20 and what you're telling me is that the 48 miles and the
21 152 miles, that the general --

22 THE COURT: I don't even know what those numbers
23 are.

24 MS. ZMROCZEK: And I guess that's what I was
25 just trying to find out was what was the general sector

1 coverage area. That's what I was trying to find out.

2 Because on these maps, there's no scale, I don't know what
3 the mileage is.

4 THE COURT: And I don't know what those are
5 because I see there's a 98 mile right at the tower, then
6 there's 152 mile, and just above that there's a 48 mile.
7 And that may not be miles.

8 MS. ZMROCZEK: But that's where I get confused.
9 I was just trying to get the -- that's what I was trying
10 to draw out with the testimony.

11 THE COURT: Let's ask him what that means.

12 MS. ZMROCZEK: Okay.

13 MR. McDONALD: Those mean nothing. That's --
14 when that yellow gets shaded in on the highlight feature
15 when you release the stylus, sometimes those numbers pop
16 up. I can't get rid of them. That has nothing to with
17 any kind of mileage or anything like that.

18 THE COURT: Those numbers are not a part of your
19 data?

20 MR. McDONALD: No, that has nothing to do
21 with -- just trying to shade in that particular area. We
22 can try to redact that in some way.

23 THE COURT: All right.

24 MS. ZMROCZEK: But then, Your Honor, you see the
25 question I'm left with, what is the mileage or the

1 approximate mileage or coverage for that sector or area.

2 THE COURT: Right. But that's what I'm saying
3 is they're not -- they're not proposing to do that.
4 They're not proposing to take the stand and say he had
5 to -- or this device had to be within so many miles of
6 this location. They're just saying that when it pinged --
7 I use the term ping, I guess that's improper -- when it
8 hit the tower at 2236, it was in this sector.

9 MS. ZMROCZEK: And that's the question. What's
10 the sector?

11 THE COURT: Well, the map shows the parameters
12 of the sector as far as the two sides of the pie. Now how
13 far it extends out --

14 MS. ZMROCZEK: But the map doesn't -- it shows a
15 pie, but it doesn't give me measurements.

16 THE COURT: I mean, you can ask that.

17 MS. ZMROCZEK: But that's what I was trying to
18 ask him was what's the sector. Not how many miles was the
19 phone away, what's the general -- if it's in the general
20 vicinity or within this sector, what are the parameters of
21 the sector? That's all I need to know.

22 THE COURT: Well, I think you can ask him that.

23 MS. ZMROCZEK: Would you rather me do that
24 during trial or would you rather me do it now?

25 THE COURT: Right now I'm just trying to

1 determine the admissibility of this testimony.

2 There must be way to measure sectors. I mean,
3 they've got sectors. I don't know how they measure them.
4 But as he said, not necessarily out because that is
5 depending on so many factors.

6 MS. ZMROCZEK: If I could recall and ask the
7 questions.

8 THE COURT: Sir, when I look at this pie, I see
9 like a tower, for example, has three sectors, three
10 sections. Is there a distance?

11 MR. McDONALD: The width of that is 120 degrees.
12 I can't give you how many miles that is.

13 THE COURT: Because as it goes out further
14 obviously it gets bigger, broader?

15 MR. McDONALD: But there's 120-degree sector
16 width on that particular tower. We're dealing with --
17 there's 360 degrees on the tower. We're dealing with 120.
18 And the azimuths, which is the midsection of that on that
19 particular tower is 30 degrees. So the actual boundaries
20 on that particular sector are from 330 degrees just to the
21 left straight up, zero, to 90 degrees to encompass that
22 120-degree range.

23 MS. ZMROCZEK: And what would be the mileage or
24 coverage area?

25 THE COURT: That's what he says he can't give

1 you because at the tower, it's going to be --

2 MR. McDONALD: Zero.

3 THE COURT: -- zero, and as it goes further out,
4 it becomes a mile, two miles, four miles, whatever.

5 MS. ZMROCZEK: But to be able to say in that
6 sector it's a mile, two miles, four miles, whatever, I
7 think it becomes relevant.

8 THE COURT: Let me ask.

9 On the map that you have provided, and this is a
10 map purporting to be this area of Lexington County, are
11 those pie-shaped areas, are those the degree -- are those
12 accurate in relation to this map?

13 MR. McDONALD: Yes. I mean, I can do -- on this
14 particular program, I can stick a point on each end where
15 I have it extended there and it will give me how many
16 miles that is.

17 THE COURT: So in other words, you could put a
18 point here and a point there.

19 MR. McDONALD: I can put a point anywhere on
20 that map and point to another point.

21 THE COURT: And it will give you that mileage?

22 MR. McDONALD: Yes, if that's what you would
23 like. I don't have a definite end point --

24 THE COURT: Right. I understand.

25 MR. McDONALD: -- to give you one specific

1 location on mileage. But if you want a specific mileage,
2 I can give that to you.

3 THE COURT: All right. Again, I'm inclined to
4 allow the testimony for what it is. Now, obviously if --
5 you're going to have the opportunity to cross, and if
6 they -- if any person gets up and tries to put that phone
7 here, you certainly can cross-examine that. And I think
8 the whole purpose of this is, I think we're dealing with
9 sections of an area of a county and not exact locations.
10 And all that does, for example, in this example, tower
11 nine, section one, 9-21-2011 at 2236, that that call --
12 the call that came in didn't generate out of Swansea or
13 Wagener. It was in that section that is shown. It had to
14 come from that section where it's shown. That's really
15 all I think that testimony's going to be good for. I
16 don't think it's going -- they're not going to be able to
17 put it anywhere else.

18 MS. ZMROCZEK: And I understand, Your Honor.
19 And I guess I'll just ask him on cross or whatever that
20 that section has no parameters. It could be --

21 THE COURT: Well, no, it has parameters. You
22 can -- he said that in relation to this map, that it's
23 accurate as we're seeing it. So I mean, it does have
24 parameters. I know you want harder numbers, which you can
25 ask for, but it does have some parameters.

1 MR. HUBBARD: Judge, I have a question,
2 clarification, too.

3 The evidence Your Honor is saying that at this
4 point is admissible. I'm assuming that, those testifying,
5 you would find them qualified to testify to what they're
6 testifying to and that the information presented is
7 reliable for purposes of this hearing?

8 THE COURT: Correct.

9 MR. HUBBARD: Thank you.

10 THE COURT: In that limited area.

11 MR. HUBBARD: Yes, sir.

12 THE COURT: Let me return these.

13 MR. HUBBARD: Your Honor can keep those if you
14 want.

15 THE COURT: All right.

16 MS. ZMROCZEK: Your Honor, I can move on to the
17 next issue?

18 THE COURT: Yes, ma'am.

19 MS. ZMROCZEK: It deals with the indictments. I
20 made this argument before, and just to preserve the record
21 I'm making it again.

22 Your Honor, this client sat in jail for a period
23 of one year and almost seven months before being indicted.
24 The indictments that were handed down, Your Honor, two of
25 them -- and it maybe a clerical error, but I still think I

1 need to point it out.

2 On the indictment for armed robbery, it says at
3 General Sessions court convened on November 12, November
4 2012, the grand jurors of Lexington County presented under
5 their oath what they presented. Your Honor, but the front
6 of the indictment states that it was the May term of 2013.
7 I'm just concerned with the accuracy of the indictment.

8 THE COURT: Solicitor, were these three charges
9 presented at the same term of the Grand Jury in May?

10 MR. GRAHAM: Yes, Your Honor. I don't have them
11 in front of me. I don't know. I know that the foreperson
12 of the Grand Jury signs it, so there should be a date.

13 THE COURT: There is a date, and all of them
14 were done at the same term of court. That appears to be a
15 scribe's error.

16 Ms. Zmroczek, I don't send the indictments back
17 to the jury. And when I read the allegations contained in
18 the indictments, I didn't publish that to the jury.

19 It appears that the other two show the May 2013
20 term. It appears to be a scribe's error.

21 MS. ZMROCZEK: I agree, Your Honor. And my --
22 I'm not asking that it be resubmitted. In fact, I'm
23 agreeing that that can be --

24 THE COURT: Needs to be corrected.

25 MS. ZMROCZEK: Corrected, yes, sir, before it's

1 handed to the jury.

2 THE COURT: But I don't hand -- I know some
3 judges might do it. I don't give the indictments to the
4 jury. But it still needs to be corrected.

5 MS. ZMROCZEK: Also, Your Honor, the fact that
6 the Grand Jury convened on May 6 of 2013, when Mr. Sharpe
7 was arrested September 22 of 2011, and under Rule 3(C) of
8 the South Carolina Rules of Criminal Procedure, the case
9 is directly to be indicted or somehow continued. And I
10 understand that there's no remedy. Your Honor, I would
11 ask that his indictments be dismissed based on (a) my
12 former arguments -- just making sure that I preserve the
13 record -- but also the fact that he suffered great
14 prejudice sitting in jail for a year and seven months and
15 the only reason that they were able to indict him was
16 because his co-defendant who was also in for a year and
17 seven months was trying to get a bond, so in order to get
18 a bond, he testifies against the client. But for a year
19 and seven months he's sitting in jail when it wasn't
20 presented to the Grand Jury, which all it means to me is
21 that they didn't have enough information to present it to
22 the Grand Jury.

23 THE COURT: Was there ever a motion for a speedy
24 trial?

25 MS. ZMROCZEK: We did.

1 THE COURT: What was the result of that?

2 MS. ZMROCZEK: I think it was set for this case.

3 THE COURT: It was set for this term?

4 MR. GRAHAM: I don't remember a speedy trial
5 ever being filed in this case.

6 MR. HUBBARD: If there is, Your Honor, it would
7 be in the actual file.

8 MS. ZMROCZEK: Right.

9 MR. HUBBARD: We had a status conference meeting
10 with the judge. We ask for it to be set for trial with
11 Judge Keesley, the chief judge. If there is a speedy
12 trial motion it would be in the file. But I know we were
13 asking for a date certain on this case.

14 THE COURT: I'm going to respectfully deny that
15 motion. I don't know that there's any prejudice shown.

16 Do you have anything over there, Hope?

17 THE CLERK: I just found the order that was
18 filed back in May to schedule a day certain for
19 August 26th so far.

20 MS. ZMROCZEK: It was an oral motion, Your
21 Honor, made at the time of the Schmerber hearing.

22 THE COURT: All right. I'm going to
23 respectfully deny that motion. I am going to -- now let
24 me ask you this. For purposes of -- again, I don't send
25 the indictments to the jury. Is there any objection to

1 the Court correcting that from November 2012 to May 2013
2 and I'll initial that?

3 MR. HUBBARD: No, Your Honor.

4 THE COURT: It's not going to go to the jury.

5 MS. ZMROCZEK: No objection.

6 THE COURT: I think it needs to be corrected.

7 All right. Anything else that we need to take
8 up today, this afternoon?

9 MS. ZMROCZEK: No, Your Honor. I just haven't
10 been --

11 THE COURT: Oh, I got an email from Mr. Tate.

12 MS. ZMROCZEK: Yes.

13 THE COURT: An email from Mr. Tate that said
14 he's got everything together for whenever -- and I don't
15 know what he has together for me to look at, but I was
16 going to just send it back to him and tell him to have it
17 over here first thing in the morning.

18 MS. ZMROCZEK: That's right. Actually, I was
19 getting ready to say that I know that they have provided
20 me with rap sheets of people that may or may not testify,
21 and so I didn't know if that was something that we could
22 try to cover today for tomorrow's witnesses or if we will
23 just take them up in the morning. I don't know if they
24 have the order of their witnesses or --

25 THE COURT: Well, let me ask this. I told you

1 all this before, I'm an early riser, I'll get here early,
2 but I'd rather not have the jury sitting around. When
3 they get here at 9, I'd like for us to get started. So
4 I'd rather take up things if we can.

5 Do you know of any State's witnesses that we
6 need to address the prior criminal history with that may
7 testify? Let's just say in the morning session.

8 MR. HUBBARD: Yes, sir. What we'll do, if it's
9 all right with Your Honor, I know some of these folks will
10 have rap sheets. And if we look at that, we should be
11 able to tell Your Honor pretty quick what we have, if
12 that's okay with Your Honor.

13 THE COURT: That's fine. And then let Aimee
14 look at it.

15 MS. ZMROCZEK: And I think they provided me by
16 email. I was just trying to help things move.

17 MR. HUBBARD: She should have the rap sheets of
18 these folks.

19 THE COURT: Well, and you guys, you're excellent
20 criminal lawyers, you all have done this a lot. Let's
21 just address any things that may be questionable. I mean,
22 you know whether -- if somebody's got a prior conviction
23 for grand larceny, you know that can be asked.

24 MR. HUBBARD: I do have a question. Is she
25 wanting every witness that we have tomorrow morning? I

1 mean, it's almost like previewing the case. I do have an
2 issue with that. But I certainly don't mind going through
3 these rap sheets. And I think there's going to be total
4 agreement because I think the standard's pretty clear.

5 THE COURT: The standard seems pretty clear. I
6 don't know if there's any question.

7 If there's any questions, I'll be here early.
8 What time can people get in the courthouse?

9 THE CLERK: 8 o'clock.

10 THE COURT: All right. Well, I won't be here at
11 8, but I'll be here shortly after that. And if you all
12 need to come back, just come on back and we'll discuss
13 anything regarding that we need to discuss.

14 MS. ZMROCZEK: And I know they have Dr. Ross on
15 the list. I didn't know about autopsy photos. Those are
16 things we can address in the morning.

17 MR. HUBBARD: We'll try to work out exhibits as
18 we go, Judge.

19 THE COURT: All right. But here's what I would
20 like. This would be very helpful. And I think Carol
21 would prefer this, too. I wouldn't mind if around 8:30 or
22 so, I'd like all exhibits to be at least premarked for
23 identification purposes.

24 MS. ZMROCZEK: Your Honor, the problem is I
25 don't know what impeachment or what item --

1 THE COURT: I know you don't know. Because you
2 don't know whether you're going to have to use something
3 or not. I'm just talking about the things that you intend
4 to get in, let's premark them so that when you are -- if
5 they're stipulated to, great, but if they're not, at least
6 when you're dealing with them in front of the jury it's
7 already been marked and you can address it.

8 MR. HUBBARD: We'll certainly try to do that.
9 There's going to be some that probably will depend on how
10 testimony goes whether we want to offer something and
11 there's some things we haven't decided on. But, Judge,
12 what we would do is before we come into this courtroom,
13 we'll get with Carol.

14 THE COURT: Here's my thing on that, Rick, and
15 that is this: I'd just as soon you mark everything
16 because if you decide not to use something, we'll just --
17 I mean it just won't be in. Because here's what ends
18 up -- my experience has been we end up spending a lot of
19 time during the trial having to stop and allow Carol or
20 any court reporter to get the sticker, do the thing, make
21 notes, and all that can be avoided if we just mark
22 everything. If we mark 50 State's exhibits and you only
23 use 35, that's not a problem, but at least they're marked
24 and ready to go in case you do need to use them.

25 MR. HUBBARD: And, Your Honor, in marking these,

1 say we have 50 that we mark but only 30 go in, if there's
2 gaps, is that going to be an issue with the record or with
3 the jury or anything?

4 THE COURT: No. Carol will be keeping up with
5 that, I keep up with it up here, and we'll get with you
6 all before anything goes back to the jury to verify that
7 that's what's in. We'll go over that.

8 MS. ZMROCZEK: And I just have one more
9 question, Your Honor. And I emailed them yesterday
10 regarding this.

11 On Friday morning I was provided with a letter
12 from the State with five sentences on it that said
13 potential Brady material, So-and-So said this, So-and-So
14 said this. And I said I appreciate the Brady material;
15 however, where are the statements that came along with it
16 or is it something said to the solicitors when they were
17 being prepped for trial? Your Honor, if they were just
18 being prepped for trial, I think I'm entitled to the notes
19 or something because I have no way to ask them about this
20 Brady letter that I got. I have nothing, no background
21 information on when, what date the statement was made, to
22 whom it was made. So I've asked for the notes, but I
23 haven't received anything.

24 MR. HUBBARD: We don't plan to give her our
25 notes. Judge, that's work product. We give her Brady

1 information. That's all we're required to give and that's
2 all we intend to give.

3 THE COURT: Well, you give her what was said.

4 MR. HUBBARD: Yes, sir.

5 MS. ZMROCZEK: But she's entitled to know when
6 it was said.

7 MR. HUBBARD: Yes, sir. And I think we can do
8 that. I think we might have, I don't know, but I will
9 look and see. That's not a problem.

10 THE COURT: I understand what you're saying
11 about the actual notes, I get that, but she certainly has
12 to have some context as to when that statement was made
13 and to who it was made.

14 MR. HUBBARD: That will be fine. We'll
15 certainly try to do that.

16 One question we do have. Also, we heard a bunch
17 of names that we weren't familiar with and obviously we
18 would ask for Socials and date of births on those folks as
19 well.

20 THE COURT: There were a lot of names.

21 MS. ZMROCZEK: Yes.

22 THE COURT: That sounds good.

23 All right. I'm going to get here early, you all
24 get here early. I'd like to -- I have such horrible
25 credibility with the juries when we don't start on time

1 because I'm the one telling them be here at 9:00 and then
2 we get started at 9:30 or quarter to 10:00 and they wonder
3 what's going on. That does happen, so that's okay. And I
4 always kind of make light of it and hope that they
5 appreciate this isn't an exact thing that we do here, but
6 I'd like to try to start as close to 9:00 as possible.

7 MR. HUBBARD: Yes, sir.

8 THE COURT: And they do -- am I correct, that
9 the courtroom is secured when everyone leaves for the
10 evening?

11 COURT OFFICER: Yes, sir, it is, Your Honor.

12 THE COURT: So if you all need to leave anything
13 or whatever, it's secure. It's up to you.

14 MS. ZMROCZEK: Thank you, Your Honor.

15 MR. HUBBARD: Thank you, Your Honor.

16 (The proceedings were concluded for the day, to
17 be reconvened on August 27, 2013.)

18 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

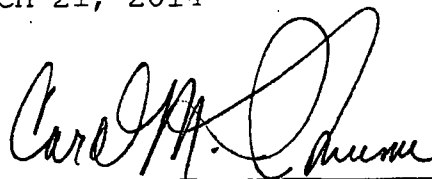
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1 CERTIFICATE OF REPORTER

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4 STATE OF SOUTH CAROLINA)5 COUNTY OF LEXINGTON)
6
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 26th day of
15 August, 2013.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19
20 March 21, 201421
22 23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	2011-GS-32-02448
	)	2011-GS-32-02449
	)	2011-GS-32-02450

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	VOLUME 2
SHAWN WILLIAM SHARPE	)	
DEFENDANT	)	

August 27, 2013
Lexington, South Carolina

B E F O R E:

HON. THOMAS A. RUSSO, Judge and a jury.

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

SAMUEL R. HUBBARD, III, DEPUTY SOLICITOR
DAVID SHAWN GRAHAM, DEPUTY SOLICITOR
Attorneys for the STATE

AIMEE J. ZMROCZEK, ESQ.
Attorney for the DEFENDANT

CAROL M. THUEME, RPR
Official Court Reporter

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1 (WHEREUPON, Defendant's Exhibits Nos. 1-62 were
2 marked for identification only.)

3 (WHEREUPON, State's Exhibits Nos. 4-80 were
4 marked for identification only.)

5 THE COURT: Anything we need to take up before
6 we bring the jury out from the State?

7 MR. HUBBARD: No, sir, Your Honor.

8 THE COURT: Anything from the defense?

9 MS. ZMROCZEK: No, sir, Your Honor. I will be
10 using a blank but colorful demonstrative during openings.

11 THE COURT: Okay. Any issue? I don't see any
12 issue here. That's fine. Okay.

13 All right. Well, if you would then have the
14 jury join us, please.

15 (The jury came into open court at approximately
16 9:31 a.m.)

17 THE COURT: All right. Ladies and gentlemen,
18 thank you all. Please have a seat.

19 I want to welcome everyone back. I apologize
20 for a little bit of a delay in getting started. What we
21 did and hopefully even though we had a little bit of a
22 delay in getting started, hopefully what we have done is
23 going to speed things up, and in the long run, we are
24 going to save time.

25 We had the court reporter go ahead and pre-mark

1 all these exhibits for identification purposes, which will
2 save us as we move through the trial, and as an exhibit is
3 presented, instead of passing it to the court reporter,
4 having her mark it and mark her sheet, we have everything
5 pre-marked, which I think will make things go a little
6 faster. So thank you for your patience.

7 Also, ladies and gentlemen, let me say a few
8 things before we get started. It's important that --
9 there's no one in this courtroom more important than you
10 folks. And so we want you to be comfortable. I don't
11 know to what extent we have the authority over the heating
12 and air system to raise it and lower it, but we want you
13 to be comfortable. If you're cold, let us know. If
14 you're too hot, let us know. We'll try to keep it
15 comfortable.

16 Also, on that topic of being comfortable, if at
17 any time during the course of this trial any one of you
18 needs to take a break, please don't hesitate to get my
19 attention. I mean, it doesn't matter if it's in the
20 middle of a witness's statement, we will stop because we
21 can always start back where we left off. We will stop and
22 let you guys take a break if you need one. Okay? So
23 please don't sit there being uncomfortable wondering, I
24 don't know if I can wait until this witness is over.
25 Don't do that. Just let me know you need a break, we'll

1 take one. Okay?

2 Ladies and gentlemen, we're about to begin this
3 jury trial of the State of South Carolina versus Shawn
4 Sharpe.

5 Now, before we begin the trial, I want to tell
6 you that this case would probably be very different from
7 what you might expect. And I don't say that because of
8 this particular case; I say that because most folks don't
9 have the opportunity to do what you're doing this week,
10 and that is to sit in on an actual jury trial. Most
11 folks' exposure to jury trials is what they've watched on
12 television or what they've read in books or what they have
13 seen in the movies. And, of course, those trials are
14 always full of high drama, intense action, and rivetting
15 circumstances. Those trials, that's Hollywood.

16 Now, while during the course of this trial, any
17 one of those things may occur, what is important for you
18 to keep in mind is this: And that is, that this trial is
19 not for your entertainment. This trial, ladies and
20 gentlemen, is a fundamental part of our democracy. This
21 is a search for the truth and making sure that justice is
22 done between the parties that are before the Court.
23 Searching for the truth and making sure that justice is
24 done oftentimes can be slow, it can be very deliberate,
25 sometimes it can be repetitive. In other words, it's very

1 different from what you see in movies, read in books or
2 watch on television.

3 This courtroom is a place of honor that is
4 dedicated to the protection and to the preservation of
5 citizens' rights through what many have called the
6 greatest justice system ever created. The attorneys that
7 appear before you during the course of this case are
8 advocates for the parties that they represent. But first
9 and foremost, they are officers of the court, sworn to
10 uphold the integrity and the fairness of our judicial
11 system and to help you in your search for the truth. You
12 should expect them to be professional, competent and
13 ethical in the representation of their client's interest.

14 Now, in just a moment, you're going to take an
15 oath to try this case and to reach a fair and a just
16 verdict. And so you are also expected to be professional,
17 reasonable and ethical in the performance of your duties,
18 and I have absolutely no doubt you'll do just that.

19 I want to thank you. I want to take this
20 opportunity before we get started to thank you for your
21 contribution to our system of justice here in Lexington
22 County and South Carolina.

23 Now, before I go any further, I'm going to get
24 you, if you would, to please give your attention to Madam
25 Clerk. She is going to place you under oath for your role

1 as jurors in this case.

2 THE CLERK: Please stand and raise your hand.

3 (WHEREUPON, the jury was sworn at 9:38 a.m.)

4 THE COURT: Ladies and gentlemen, now what I'm
5 going to share with you for the next couple of minutes is
6 basically an introduction to the trial of this case. This
7 is not a charge on the law. I will give you the law at
8 the end of the case once all the evidence has been
9 presented. But what I'm going to do now is merely go
10 through and explain to you the procedures that we're going
11 to follow so that you may get a better understanding of
12 the process as we go through it.

13 Now, the defendant in this case, Mr. Sharpe, is
14 charged by the indictments, which I shared with you
15 yesterday, and he is charged under those indictments with
16 the crime of murder, burglary in the 1st degree, and armed
17 robbery. The elements of those crimes, I will explain to
18 you when I give you the charge on the law. Now, as I said
19 to you yesterday, the indictment is simply a charge by
20 which the case is brought into court, and it is not in any
21 sense evidence of any of the allegations that it contains.
22 Mr. Sharpe has pled not guilty to those indictments. And
23 the State, therefore, has the burden of proving each of
24 the elements of those indictments beyond a reasonable
25 doubt.

1 It is going to be your duty, ladies and
2 gentlemen, to decide whether or not the State has met that
3 burden. Your purpose as jurors is to find and to
4 determine the facts of this case. You are the sole judges
5 of the facts in this case. If at any time I make any
6 comment regarding the facts, please disregard those
7 comments because only you, the jury, can determine the
8 facts in this case. You are to determine the facts from
9 the testimony that you hear from witnesses who are placed
10 under oath and take the witness stand as well as any
11 exhibits or other items that may be brought into the trial
12 of this case. It is up to you to determine the inferences
13 which you feel may be properly drawn from that evidence.
14 It is especially important that you perform your duty of
15 determining the facts diligently and conscientiously
16 because ordinarily there is no way for us to correct an
17 erroneous determination of facts by a jury.

18 Now, on the other hand, but with equal emphasis,
19 the same law that makes you the judges of the facts makes
20 me the judge of the law. The law as given by the Court is
21 the only law that you may consider. You must accept and
22 follow it even though you may disagree with it. I cannot
23 tell you anything about the facts of this case or make any
24 comment about the facts. And you are not to disagree with
25 me about what the law is or what you think the law should

1 be. Your job is to take the law as I give it to you and
2 apply it to the facts as you find the facts to be from the
3 testimony of the witnesses and any other evidence that is
4 introduced.

5 Now, until I tell you to begin your
6 deliberations, as I told you yesterday, you are not to
7 have any conversation with anyone about this case and that
8 includes amongst your fellow jurors. So when you're asked
9 to leave the courtroom or we take a break, you are not to
10 have any conversation about anything that has gone on in
11 the case until I tell you it's appropriate.

12 Now, it's important, ladies and gentlemen, that
13 you keep an open mind and that you do not decide any issue
14 in this case until all of the evidence has been presented,
15 the parties have made their closing arguments and I've
16 given you the instruction on the law. It is your solemn
17 responsibility to determine the guilt or the innocence of
18 the defendant. And your verdict must be based solely on
19 the evidence as it is presented to you in this trial and
20 on the law as I instruct it to you during the closing of
21 the trial.

22 Now, in just a moment, the Solicitor will have
23 an opportunity to make what we call an opening statement.
24 Now, an opening statement is basically his opportunity to
25 explain to you what the issues are in this case or at

1 least what he believes the issues are in this case. Once
2 he has concluded his remarks, then the attorney for the
3 defendant will have an opportunity to make an opening
4 statement, although she is not required to do that. What
5 is important for you to understand is this: What the
6 lawyers tell you in their opening statements is not
7 evidence. They are not under oath. It is not evidence in
8 the case. It is merely their contention or their beliefs,
9 what they believe the evidence will show.

10 The evidence in this case will be presented to
11 you by the testimony of sworn witnesses from the witness
12 stand and/or any exhibits which may come in during the
13 course of the trial. Now, during this trial, from time to
14 time you may hear one of the lawyers say something along
15 these lines: Judge, we've got a matter of law we need to
16 take up with the Court or, Your Honor, may we approach the
17 bench. During those times, I may find it necessary to ask
18 you to step back into the jury room. And if I do that,
19 the only reason I would do that is simply this: Sometimes
20 when I'm taking up a matter of law, it requires me to make
21 some comment about the testimony or about some facts that
22 were entered into evidence in connection with a ruling
23 that I need to make on the law. As I told you earlier,
24 I'm not going to have any influence over you about the
25 facts in this case. And so to protect you from those

1 comments, I may ask you to step into your jury room so
2 that I can do what I need to do to make a ruling on a
3 matter of law and then bring you back in and allow the
4 case to continue. And that way, I haven't stepped over
5 into your side of being a fact finder.

6 In determining what the true facts are in this
7 case, you must decide whether or not the testimony of a
8 witness is believable. It's going to be my responsibility
9 to rule as a matter of law whether certain testimony is
10 admissible at all or not. But once testimony is admitted
11 into this court, whether or not you believe it is solely
12 up to you to decide.

13 In deciding whether to believe a witness, you
14 have the right to consider the interest of the witness,
15 the bias of any witness, the opportunity for the witness
16 to have seen the matters and the things about which that
17 witness testifies, and the way a witness acts on the
18 witness stand. You have the right, ladies and gentlemen,
19 to consider anything that is in this record in helping you
20 to evaluate the testimony of witnesses. That means that
21 it is your duty to pay close attention to the witnesses.
22 Observe them, listen very carefully, pay close attention
23 to the attorneys and to the Court. Please do not let your
24 thoughts wander, but give strict attention to all of the
25 testimony and the evidence in this case so that at the end

1 of the case, you will then be in a position to retire to
2 your jury room to take, after the attorneys have had an
3 opportunity to address you with their closing arguments,
4 take that evidence and review it, look at it and determine
5 the facts in this case, apply the law to those facts and
6 reach a verdict.

7 Now, that's basically the way the trial is going
8 to play. But before I turn it over to the attorneys, let
9 me first ask of the State, are there any exceptions or
10 objections to the Court's opening remarks?

11 MR. GRAHAM: No, Your Honor.

12 THE COURT: Anything from the defense?

13 MS. ZMROCZEK: No, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, if
15 you would, please give the attorneys your close and
16 undivided attention as they address you with their opening
17 remarks.

18 Mr. Graham.

19 MR. GRAHAM: Thank you, Your Honor.

20 Two masked men, their faces covered, go to a
21 house to rob and to steal. And during the course of that,
22 Leon Justice is killed. One shot by a .45 caliber handgun
23 to the head and his life is gone. Two masked men, their
24 faces hidden, go over that night. They pick Leon Justice
25 and they pick Rose Hiott Lucas, the house on Victor

1 Road because they're drug dealers and they knew that Rose
2 and Leon would have drugs, crack cocaine, and they knew
3 they had money. They knew that they were old and they
4 were easy.

5 The State's not here to tell you that selling
6 drugs is okay, because obviously it's not. But that
7 doesn't make it right for their house to be broken into,
8 for them to be robbed at gunpoint and for them to be
9 killed. That's why we're here today. Two masked men went
10 in, their faces covered, and one of those individuals is
11 named Charlie Plumley. Through the course of this trial,
12 through evidence and testimony, the State will pull the
13 mask and coverings off the face of the other individual
14 and it will be Shawn Sharpe.

15 Charlie Plumley, he's a criminal. He's a thief,
16 he's a burglar, he's an armed robber. He's going to tell
17 you he was a murderer. He's going to tell you he didn't
18 pull the trigger; he's going to tell you that Shawn Sharpe
19 did. But by being there, being part of that, all of them
20 are guilty. All of them are guilty of armed robbery, all
21 are guilty of burglary and all are guilty of murder.

22 Angela Griffin Plumley, that's his wife, she was
23 the driver of the truck that took them over there that
24 night at about 10:37 p.m. on September 21st, 2011. She is
25 guilty of armed robbery, burglary and murder.

1 You'll hear their testimony. We'll tell you the
2 story, the plan. There will be several other witnesses
3 who will tell you that they saw Shawn Sharpe before, that
4 he was seen after. You'll see a videotape showing him
5 with them 20 minutes after Leon Justice was killed.
6 You'll hear that Shawn Sharpe was interviewed by the
7 police in the course of their investigation on the next
8 day, they were trying to figure out what happened. They
9 talked to this person, talked to that person, talking with
10 this person, eventually they go talk with Shawn Sharpe,
11 the defendant. The officer is going to ask him, I need to
12 talk to you about Charlie. Shawn Sharpe says, I wasn't
13 with Charlie last night. And the officer said, well, I'd
14 still like to talk to you.

15 So Shawn Sharpe -- that was over the phone.
16 Shawn Sharpe comes and he talks to the officer, and he
17 says, well, you know, were you with Charlie last night?
18 Well, yeah, I was with Charlie from 7:00 to 9:00. But you
19 just said that you weren't with him, that you weren't with
20 Charlie. I don't know why I said that. Now the lies are
21 beginning.

22 He says that he was dropped over -- he was with
23 Charlie between 7:00 and 9:00 and went over to his
24 girlfriend's house. The police go over to the
25 girlfriend's house. And you're going to hear how a gun

1 was recovered, the murder weapon was recovered, the
2 .45 caliber weapon that killed Leon Justice.

3 You're also going to hear evidence that doesn't
4 lie. People lie. There is motives for everybody to lie.
5 You're going to like some witnesses, you're not going to
6 like others. You're going to believe part of what they
7 say, you may believe all of what they say, you may believe
8 none of what they say.

9 But you're going to hear testimony about cell
10 phones. Cell phone companies keep track of the calls you
11 make, the texts you make, the texts you receive, the calls
12 you receive. They keep track of what cell towers they're
13 used on. And you're going to hear the testimony from the
14 phone company and from people that can explain that to
15 you. And what it's going to show is that Shawn Sharpe's
16 phone, the phone that was taken off him when he was
17 arrested, and Charlie Plumley's phone traveled together
18 that night. They were together starting at 8 o'clock
19 something that night before the murder and robbery and the
20 burglary at 10:30. And you're going to see not that it is
21 staying still at one location at his girlfriend's house,
22 but that Shawn Sharpe's phone was traveling. It was
23 traveling with Charlie's phone. And you're going to hear
24 where they went. And it isn't until after midnight that
25 phone stops moving. And that's what the evidence will

1 show you. Phones aren't going to lie, and they'll
2 corroborate the testimony that you're going to hear.

3 At the end of this trial, the mask, the
4 covering, the bandanna that Shawn Sharpe was wearing to
5 hide himself so he wouldn't be discovered will be removed.
6 The evidence will show that it was him, that he was there,
7 that he's guilty of armed robbery, that he's guilty of
8 burglary, that he's guilty of murder.

9 Thank you.

10 THE COURT: Thank you, Mr. Graham.

11 Ms. Zmroczek.

12 MS. ZMROCZEK: May it please the Court.

13 THE COURT: Yes, ma'am.

14 MS. ZMROCZEK: Good morning, ladies and
15 gentlemen.

16 Before we get started, I just want to tell you
17 that I have a spider bite. It's not contagious. I didn't
18 want you all to see it and think that I have something
19 wrong with me.

20 I, along with Mr. Bank, have the pleasure of
21 representing Shawn Sharpe. I saw you all were all
22 listening very intently to what Mr. Graham had to say. I
23 was, too. Because that's upward of the 20th story that I
24 have heard told in this event. And I am at a great
25 advantage because I've heard all the facts, I've heard all

1 the testimony, and now we have to show it to you because
2 we have a whole bunch of different stories.

3 Charlie Plumley, guilty of murder, burglary,
4 armed robbery. And they're going to pull the mask off
5 Shawn Sharpe. In order to do that, they have to provide
6 that testimony for you, and you have to believe what those
7 people are going to say. But you don't have to believe
8 all of it, you just have to believe the parts that they
9 want you to believe to make sense for that story.

10 You'll hear what witnesses say, that video that
11 you're going to see, that is Charlie and his brother.
12 You'll hear witnesses that will say it was Charlie and a
13 whole mess of people. I'm not sure what evidence the
14 State's going to put in front of you. But I will be sure
15 at the end of the trial that you will have all of the
16 evidence to be able to say, we can't lift that mask.
17 Because as the Judge told you this morning when he reads
18 the law to you and he says, listen to the evidence, make a
19 decision and decide beyond a reasonable doubt that Shawn
20 Sharpe is the other man. If the evidence says, and I
21 submit to you that it will say, it is not Shawn Sharpe,
22 then you will find him not guilty.

23 THE COURT: Thank you, Ms. Zmroczek.

24 All right. Solicitor, you may call first
25 witness.

1 MR. GRAHAM: Thank you, Your Honor.

2 The State calls Angela Griffin Plumley.

3 THE COURT: Bring her around, please.

4 ANGELA GRIFFIN PLUMLEY, after being duly sworn,
5 testified as follows:

6 THE CLERK: Have a seat, please, ma'am.

7 Once you're seated, speak up loud and clear,
8 stating your full name, spelling your last, please.

9 THE WITNESS: My name is Angela Griffin Plumley,
10 A-N-G-E-L-A G-R-I-F-F-I-N P-L-U-M-L-E-Y.

11 DIRECT EXAMINATION

12 BY MR. GRAHAM:

13 Q Ms. Plumley, you have been convicted of fraudulent
14 check in 2004; is that correct?

15 A Yes, sir.

16 Q You have been convicted of possession of cocaine base
17 or crack cocaine in 2008?

18 A Yes, sir.

19 Q You have a shoplifting conviction from 2011?

20 A Yes, sir.

21 Q And currently you're charged with burglary 1st, armed
22 robbery and murder involving the death of Leon Justice;
23 isn't that correct?

24 A Yes, sir.

25 Q Your husband, Charlie Plumley, is also charged with

1 those same things; isn't that correct?

2 A Yes, sir.

3 Q When did you meet Charlie?

4 A I met him around March or April of 2011.

5 Q Would you pull the microphone just a little bit
6 closer to you.

7 Thank you.

8 You said March or April of 2011?

9 A Yes, sir.

10 Q When did you get married?

11 A We got married August 4th, 2011.

12 Q And where were you living at the time?

13 A With Charlie's parents.

14 Q Do you remember the address of their home?

15 A It's 2946 Highway 6 in Gaston.

16 Q At some point, did you meet Shawn Sharpe?

17 A Yes, sir. I met him at a gas station when I was
18 there with my husband.

19 Q And what was -- were Shawn Sharpe and your husband
20 friends?

21 A Yes, sir.

22 Q You see Shawn Sharpe in the courtroom?

23 A Yes, sir.

24 Q Where is he?

25 A He's right there.

1 Q Is he the individual in the middle of the defense
2 table?

3 A Yes, sir.

4 Q And did Charlie have a brother, an older brother?

5 A He does.

6 Q What is his name?

7 A Raymond Plumley, Jr. We call him Little Danny.

8 Q He goes by Danny?

9 A Uh-huh.

10 Q Let me show you three photographs and ask if you
11 recognize these photographs and if they're correctly
12 marked. These are going to be what is marked for ID as
13 State's 4, 5 and 6.

14 Looking at State's 4, do you recognize that?

15 A Uh-huh. That's my husband.

16 Q State's No. 5?

17 A That's his brother, Little Danny.

18 Q And State's No. 6?

19 A And that's Shawn Sharpe.

20 MR. GRAHAM: Ms. Zmroczek?

21 MS. ZMROCZEK: Without objection.

22 MR. GRAHAM: Your Honor, the State would move
23 these into evidence at this time.

24 THE COURT: Any objection?

25 MS. ZMROCZEK: Without objection.

1 THE COURT: All right. Without objection,
2 that's 4, 5, 6?

3 MR. GRAHAM: Yes, Your Honor.

4 THE COURT: All right, sir.

5 (WHEREUPON, STATE'S Exhibits Nos. 4, 5, 6 were
6 admitted into evidence.)

7 BY MR. GRAHAM:

8 Q Where were you living at the time, Ms. Plumley?

9 A With Charlie's parents on No. 6.

10 Q And who all was living at this house?

11 A At the time, it was myself and my husband, his mom
12 and dad and his brother.

13 Q The day that this happened, September 21st, 2011, had
14 you been staying there or somewhere else?

15 A I was at my ex-boyfriend's house, Phil Helms.

16 Q Why were you there?

17 A Charlie and I had gotten into an argument earlier
18 that week, and he left during the night while I was
19 asleep. So when I -- when he did that, I left. I called
20 my ex-boyfriend to come pick me up.

21 Q That is State's No. 4. Who is that?

22 A That's my husband.

23 Q State's 5?

24 A That's his brother, Little Danny.

25 Q Who is that?

1 A And that's Shawn.

2 Q State's 6.

3 And the morning before this armed robbery,
4 burglary and murder happened, you said you were over at
5 Phil Helms' house?

6 A Yes, sir.

7 Q Where did Mr. Helms live?

8 A He lived at Blackville Court in Gaston.

9 Q At some point that day, did your husband, Charlie,
10 come over?

11 A He did.

12 Q And what did he do after he was there?

13 A He talked to Phil a little while, made arrangements
14 to borrow his truck and left again with Phil's roommate,
15 Todd.

16 Q At some point later, did he come back?

17 A He did.

18 Q And who was with him he come back?

19 A Shawn.

20 Q Do you remember what time of day that was?

21 A I want to say it was -- it was in the afternoon, 2:00
22 or 3:00, maybe.

23 Q Do you remember what Shawn Sharpe was wearing at that
24 time?

25 A At that time, he was wearing long jeans and just a

1 T-shirt.

2 Q How long did your husband, Charlie, and Shawn stay at
3 Phil Helms' home?

4 A Not very long, maybe -- maybe an hour at the most.
5 Thirty minutes to an hour.

6 Q And did they leave?

7 A Uh-huh.

8 Q Did you continue to stay at Phil's house?

9 A Uh-huh. Yes, sir.

10 Q Let me show State's 7 and 8 and ask if you recognize
11 these photographs?

12 A That is Phil Helms' house.

13 MR. GRAHAM: Your Honor, the State would move 7
14 and 8 into evidence at this time.

15 MS. ZMROCZEK: Without objection.

16 THE COURT: All right. 7 and 8?

17 MR. GRAHAM: It's misnumbered, Your Honor. This
18 is 8 and 9.

19 THE COURT: State's 8 and 9. Okay.

20 (WHEREUPON, STATE'S Exhibits Nos. 8, 9 were
21 admitted into evidence.)

22 BY MR. GRAHAM:

23 Q Looking at State's No. 9, what does that show us,
24 Angela?

25 A That's the front of Phil's house in the driveway.

1 Q And then looking at 8?

2 A That's the back of his house.

3 Q This side over here where that air conditioner is?

4 A Uh-huh. That's to the right of the house right
5 there.

6 Q That is the same side?

7 A Yes, sir.

8 Q So they left, they came back. Shawn was wearing --
9 Shawn Sharpe was wearing jeans at that time?

10 A Uh-huh.

11 Q What happened next?

12 A Charlie wanted to use the truck again, so we talked
13 to Phil again and made an arrangement to go and buy him
14 some medicine, some Sudafed, in exchange for using the
15 truck. So they left again.

16 Q And what, if anything, did you ask Charlie to do
17 while they were gone that night?

18 A I asked him stop by my house, our house, mine and
19 Charlie's to pick me up some clothes.

20 Q And they left?

21 A Uh-huh.

22 Q At some point, did they come back?

23 A They did.

24 Q And when they came back, did they have the clothes?

25 A They had some clothes, but it wasn't what I wanted so

1 I needed to go back to my house.

2 Q And what was Shawn Sharpe wearing at that time?

3 A At that time, he had changed in some white -- white
4 shorts and white shirt with some kind of print on it.

5 Q When is the first time that you heard any discussion
6 that there was going to be a robbery?

7 A I would say the first time that him and Shawn were at
8 Phil's together.

9 Q Is that before they left or when they came back? Was
10 it the first time or the second time?

11 A The first time.

12 Q That's when Shawn had jeans on at that time?

13 A Uh-huh.

14 Q What was the conversation that you heard?

15 A Well, they were in the kitchen, so I really -- I
16 really didn't -- I don't really know what they talked
17 about when they walked back in there. Charlie -- Charlie
18 had said something about going to do a lick.

19 Q So you saw Charlie and Shawn talk in the kitchen.
20 Was there anything about the way that they were acting
21 that made you suspicious?

22 A They were just being real secretive so -- there was
23 other people at Phil's, so no one else could hear them.

24 Q You used the word "lick." You said Charlie came back
25 and said they were going to do a lick, correct?

1 A Yes, sir.

2 Q What do you mean by "lick"?

3 A A robbery.

4 Q A robbery?

5 A Yes, sir.

6 Q Did you know what was going to be robbed at that
7 time?

8 A No, sir.

9 Q Later on when they came back and had your clothes and
10 Shawn had changed into shorts and a white shirt, was there
11 any more conversation about the lick?

12 A That's -- Charlie had asked me to get them something
13 to wear.

14 Q Did you get them something?

15 A Yes, sir.

16 Q What did you get them?

17 A I got Charlie a camouflage jumpsuit and Shawn, like a
18 blue, like kind of like a mechanic's suit, one piece, like
19 a one piece.

20 Q Like coveralls?

21 A Yes, sir.

22 Q One piece?

23 A Uh-huh.

24 Q Where did you find those?

25 A In the second bedroom at Phil's house, off of the

1 living room.

2 Q What did you do with them once you had them?

3 A I gave them to Charlie.

4 Q Do you know what he did with them at that time?

5 A No, sir.

6 Q Is it light or dark when you get the coveralls?

7 A It was like dusk. It was getting, maybe, 5:00 or
8 6 o'clock then.

9 Q Was there any more conversation about what was going
10 to happen?

11 A Not directly in front of me. That's apparently when
12 they -- when they would talk about it, they would go into
13 the kitchen and speak about it.

14 Q At this point, were you involved any more other than
15 knowing that they were going to do a lick and you getting
16 the coveralls for them?

17 A No, sir. That's it.

18 Q At some point, that changed, though, didn't it?

19 A Yes, sir.

20 Q Why did it change?

21 A After it got dark, Charlie needed to use the truck
22 again. And I went back to ask Phil if he could use it
23 again. And he said the only way he could use it was if I
24 rode with him, so I rode with him. I -- if I drove, that
25 was the stipulation, so I did. I rode with them.

1 Q Let me show you another photograph, which is State's
2 No. 7 for ID at this time. Do you recognize that?

3 A Yes, sir. That's Phil's truck.

4 MR. GRAHAM: Your Honor, the State would move
5 No. 7 into evidence.

6 MS. ZMROCZEK: Without objection.

7 THE COURT: All right. State's 7 without
8 objection.

9 Go ahead.

10 (WHEREUPON, STATE'S Exhibit No. 7 was admitted
11 into evidence.)

12 BY MR. GRAHAM:

13 Q As you can also plainly see, there is a truck on the
14 screen now. That's Phil Helms' truck that you borrowed?

15 A Yes, sir.

16 Q And why did you have to drive?

17 A Previously, Charlie had borrowed his truck before. I
18 wasn't aware of it at the time he borrowed it, but he told
19 me later something happened in the -- in the course of
20 that, and he claimed he ran out gas or something, and he
21 didn't get back with the truck for like another day.

22 Q So to get the truck, you had to drive?

23 A Yes, sir.

24 Q And you got the keys?

25 A Yes, sir.

1 Q Was there any more conversation between you and
2 Charlie and Shawn about what was getting ready to happen?

3 A No, sir. At that point, we -- we talked about going
4 to our house first. That's where we were going.

5 Q Why were you going to -- you say your house, you're
6 talking about --

7 A Charlie's.

8 Q Charlie's mom and dad --

9 A Yes, sir.

10 Q -- over on Highway 6?

11 A Uh-huh.

12 Q Why were you going back there?

13 A I needed something to wear, some different clothes.
14 The clothes that he brought me, they didn't fit. That's
15 why I didn't wear them.

16 Q So where did you all go, then? You left Phil Helms'
17 house in that truck and where did you go?

18 A We went straight to Charlie's parents' house.

19 Q And what did you all do there?

20 A I went straight to my bedroom and found something to
21 wear. I changed clothes and Charlie and Shawn were in the
22 living room -- in the kitchen talking to his parents.

23 Q How long did you stay at Charlie's parents' house?

24 A Maybe 15 minutes.

25 Q When you left Charlie's parents' house, where did you

1 all go?

2 A We went to Victor Road.

3 Q That's where this crime occurred, isn't it?

4 A Yes, sir.

5 Q Let me show you a map and ask if you recognize it. I
6 will show you two maps, actually, and ask if you recognize
7 these maps. Do they fairly and accurately represent the
8 roads that they are shown to portray in Lexington County
9 over in the Gaston area?

10 A Yes, sir.

11 Q Did you assist in labeling certain locations on here?

12 A Yes, sir.

13 Q Let me show you -- that was 59, this is 58. Let me
14 show you 58 and ask if you recognize that and did you also
15 assist and is it accurate?

16 A I did. It is.

17 MR. GRAHAM: Your Honor, the State would move 58
18 and 59 into evidence.

19 MS. ZMROCZEK: Without objection.

20 THE COURT: Without objection, 58 and 59 in
21 evidence.

22 (WHEREUPON, STATE'S Exhibits Nos. 58-59 were
23 admitted into evidence.)

24 BY MR. GRAHAM:

25 Q Looking at State's No. 59, and I know you can't see

1 it right now, Angela, but you have seen it before, you
2 have assisted in it. There are certain labels that appear
3 on here. On the map on 59 on Highway 6, which is labeled
4 as Highway 6, there is a box with an arrow that shows it's
5 the Plumleys' house. Is that where Charlie's parents
6 lived?

7 A Yes, sir.

8 Q And that is where you were staying and where you also
9 went to get clothes that night right before the robbery?

10 A Yes, sir.

11 Q Victor Road, really just around the corner, isn't
12 it?

13 A Yes, sir.

14 Q That is the incident location where the three of you
15 were driving prior to this happening?

16 A It is.

17 Q Phil Helms' house is labeled on there over on
18 Blackville Court. Is that accurate as to where --

19 A It is.

20 Q -- his house is and where the photographs that we
21 earlier discussed were?

22 A Yes, sir.

23 Q When you got to Victor Road, who was driving?

24 A I drove from Charlie's parents' house to Victor Road.
25 And then we passed the house that it happened at and

1 pulled over. And at that point, they got out and changed,
2 and then when we -- they got back in the car and Charlie
3 was driving.

4 Q Which way did you come, do you remember? Did you
5 come -- how did you come from Charlie's house?

6 A Down number 6. We took a right out of Charlie's
7 driveway and went down number 6 towards Swansea so that
8 Victor Road would have been on my left.

9 Q So you took a left on Victor Road?

10 A Yes, sir.

11 Q Which side of the road, as you're driving down Victor
12 Road from Highway 6, which side of the road is Rose Lucas'
13 house?

14 A It's on the left.

15 Q On the left?

16 A Uh-huh.

17 Q You drove past the house, you said?

18 A Yes, sir.

19 Q And then what did you do after you drove past the
20 house?

21 A The first road on the left, we pulled in. And at
22 this point, I put the truck in park and they got out and
23 they put their coveralls on, both of them, Charlie and
24 Shawn.

25 Q Had you heard either Charlie or Shawn talk about a

1 gun prior to this time?

2 A When -- when Charlie was trying get in touch with
3 Shawn, one of the reasons was because he could get a gun.
4 Charlie wanted -- Charlie needed to get a pistol to use.

5 Q Did you see a gun -- had you seen a gun yet at this
6 time when you drove past Victor Road and you took a left
7 so they could put on their coveralls, did you see the gun
8 at that time?

9 A When they got -- when Shawn got out of the truck, he
10 took the gun out of his pants and put it on the seat.

11 Q That was there on like past Victor Road when they
12 were changing?

13 A Yes, sir.

14 Q And who had the gun?

15 A Shawn.

16 Q Who was wearing which coverall, if you remember?

17 A Charlie was wearing the camouflage ones, and Shawn
18 was wearing the dark blue ones.

19 Q After they put the coveralls back on, did you see
20 what happened to the gun that Shawn Sharpe had pulled out
21 of his waistband and put on the car seat?

22 A He just had it with him.

23 Q Who had it with him?

24 A Shawn.

25 Q Do you know whether -- or did you see any kind of

1 mask or stocking caps or anything that could be used as
2 face covers?

3 A There was a Scream mask, like from the movie,
4 "Scream." It's black with a white front. And there was,
5 like, a toboggan top. I think -- I think he cut the holes
6 and ends up -- you know, it didn't already have the holes
7 when he pulled it over. And there was a dark bandanna.

8 Q Who had the Scream mask?

9 A Charlie.

10 Q And you talked about a stocking cap with the eyes cut
11 out. Who had that?

12 A Shawn.

13 Q And you talked about a dark bandanna. Who had that?

14 A Shawn.

15 Q Was it a solid color bandanna or did it have other
16 colors on it?

17 A It was dark colored with, like, the white paisley
18 print on it.

19 Q After Shawn and Charlie put on the coveralls, did
20 they get back in the truck?

21 A They did.

22 Q And who was driving now?

23 A Charlie.

24 Q Where did you all go?

25 A We turned around, went back -- came to the stop sign,

1 took a right back towards the victims' house. As we were
2 driving by, Charlie seen a scooter in front of the house,
3 like a moped. And so that was Rose's son, so he didn't
4 want to go right then. So we pulled right past the house,
5 turned on another side road right past Rose's house and
6 waited until the scooter left.

7 Q So everybody put their coveralls on, you go past the
8 house, a scooter there and you pull in, park and wait?

9 A Yes, sir.

10 Q Is it light or dark out now?

11 A It's dark.

12 Q What happens next?

13 A As soon as the scooter, whoever was on the scooter
14 left, Charlie took a right on Victor Road. We went
15 right -- like, right past the house. Pulled on the
16 right-hand shoulder of the road right past it, and that's
17 when they got ready to get out. Shawn cocked that gun.
18 He had it in his lap. Cocked the gun and they went --
19 went in.

20 Q Which side of the street is the truck on, the same
21 side as the house or across the street?

22 A Across the street.

23 Q So across and just past it?

24 A Yes, sir.

25 Q Which way is the front of the truck facing?

1 A It's facing Sharpe's Hill, which is the other road.

2 Q Is that toward Highway 6 or the other way?

3 A The other way.

4 Q What happens next? You said Shawn cocked the gun and
5 they're getting out of the car.

6 A Yes, sir. They kind of like crunched run, you know,
7 like -- they were scooped down, ran across the road, down
8 the driveway. And at that point, a light came on in the
9 driveway, I guess it was a motion detector light, when
10 they walked up. I was looking back at them. I seen one
11 of them knock on the door. I seen the door open up --
12 open to the outside, and about a couple of seconds later,
13 I seen the gun go off. You could see the fire come out of
14 it, and then I seen them run in the house.

15 Q Do you know from what you saw who actually pulled the
16 trigger?

17 A From what I saw, I know -- I know Charlie was wearing
18 the mask with the white on the front, and that person was
19 standing to the -- behind the other person.

20 Q What happened after you saw the light and heard the
21 gun go off?

22 A They ran in the house. About, I'm not really sure
23 how long, maybe -- maybe 30 seconds later I heard a woman
24 scream really loud, and then maybe -- maybe two minutes
25 later, I seen two figures come out of the house. I don't

1 know where they were going. They didn't come towards me.
2 And then right after that, I seen Charlie and Shawn coming
3 back towards the truck. Charlie kind of tripped and fell
4 in middle of the street, so Shawn made it back to the
5 truck first.

6 Q Did both of them eventually get in the truck?

7 A Yes, sir.

8 Q Who was driving?

9 A Charlie.

10 Q And what was said when Charlie and Shawn were getting
11 in the truck?

12 A When Shawn got in the truck, he was real upset, like,
13 kind of just -- kind of freaking out a little bit. He
14 kind of had his hand -- his head in his hands a little
15 bit. He was leaning over. Charlie -- Charlie got in, and
16 he was cussing at something, cranked the truck up and
17 started going real fast. And then Shawn was saying that,
18 he was like, man, I think -- I think I shot him. I think
19 I shot him. And Charlie was, like, it's going to be all
20 right, just chill out. Then Shawn said, "I think she
21 pulled my mask off. I think she might have seen my face,"
22 and that was pretty much all that was said.

23 Q Who was driving now?

24 A Charlie.

25 Q Where did you all go?

1 A We went towards Sharpe Hill. We were going to Phil's
2 house, so we took a right on Sharpe Hill and then a left
3 on Blackville and then we're at Phil's house.

4 Q When you got back to Phil's house, what happened?

5 A Right when we got back, they put some stuff in the
6 back of the truck. But at that point, I was already
7 walking inside the house. I walked in the house first.
8 When we got in there, Charlie and Shawn went back to
9 Phil's bedroom, and about couple of minutes later, maybe a
10 minute or two, they called me back there, and when I
11 walked back there, they were splitting up money and drugs.

12 Q What did you see?

13 A I seen like a -- they had this, like, little black
14 thing had money and drugs in it. I didn't -- I don't know
15 how much. It wasn't very much money. I don't -- I don't
16 know how much the drugs were, but it was crack.

17 Q You said they were dividing it up. How they were
18 dividing it up?

19 A Between two of them.

20 Q Did you get any of that?

21 A No, sir.

22 Q After you saw them dividing up the money and the
23 drugs, you're talking about your husband, Charlie, and the
24 defendant, Shawn Sharpe, right?

25 A Yes, sir.

1 Q What happened next?

2 A I went back into the living room. A couple minutes
3 later, Charlie came and said, you know, get ready to
4 leave, my brother's coming to get me. So I got ready to
5 leave.

6 Q And we're talking about Danny now, right?

7 A Yes, sir.

8 Q His brother?

9 A Yes, sir.

10 Q Did Danny come and get you all?

11 A Yes, sir.

12 Q How long do you think that you'd been there back at
13 Phil's house on Blackville Court?

14 A Maybe ten or fifteen minutes. Not long.

15 Q What kind of car was Phil driving -- I'm going to
16 repeat it.

17 What kind of car or truck was Danny driving?

18 A He was driving a blue PT Cruiser.

19 Q When Danny got there, what happened?

20 A Danny just walked in. He didn't knock or nothing.
21 We were all in there. He went and talked to Charlie for a
22 second, and then they were all ready to go. We started
23 walking out, Charlie and Shawn walked out first, then
24 Danny and then me. And I asked Danny, you know, what was
25 going on because I didn't really understand why he was

1 there. And he said, pretty much I didn't -- I didn't need
2 to know, I didn't -- he was, like, you don't want to know.
3 And that's when -- by the time we had got out there, I had
4 stuff, like my -- my purse and stuff in the truck, and
5 they had already moved everything from the truck into the
6 car.

7 Q So who left Phil's house in that PT Cruiser?

8 A Little Danny, Shawn, Charlie and myself.

9 Q Where did you all go?

10 A We left there and went to the Pit Stop on 321 to get
11 gas and stuff.

12 Q And this is labeled the Pit Stop on that map that
13 we're looking at right now?

14 A Yes, sir.

15 Q State's 59.

16 On the way to the Pit Stop, were there any --
17 did you hear Shawn Sharpe have any phone conversation with
18 anyone?

19 A He called his brother, "Chuc" D.

20 Q "Chuc" D. Do you know what "Chuc" D's name is?

21 A Michael Sharpe.

22 Q And do you see him in the courtroom today?

23 A I do.

24 Q Where is he?

25 A Behind Shawn in the white shirt.

1 Q In that white shirt sitting in the first row on the
2 defense side?

3 A Yes, sir.

4 Q What was Shawn Sharpe saying to his brother?

5 A He was asking him what to do with the gun.

6 Q Were you able to hear "Chuc" D's response?

7 A No, sir.

8 Q After Shawn Sharpe got off the phone with his
9 brother, did he say anything?

10 A He said his brother told him to get rid of it.

11 Q Once your husband, Charlie, and Shawn Sharpe came
12 back into the truck at the robbery scene on Victor Road,
13 did you see the gun again?

14 A I didn't.

15 Q You had an opportunity to look at a surveillance tape
16 from the Pit Stop convenience store, haven't you?

17 A Yes, sir.

18 Q And does that fairly and accurately represent what
19 happened when you and Danny and Shawn and Charlie went to
20 the Pit Stop?

21 A Yes, sir.

22 MR. GRAHAM: Your Honor, by consent, the defense
23 has already agreed that will go into evidence.

24 MS. ZMROCZEK: I do, Your Honor.

25 THE COURT: All right.

1 MR. GRAHAM: That is State's 57.

2 MR. HUBBARD: Can you see the screen, Angela?

3 THE WITNESS: I can.

4 (WHEREUPON, STATE'S Exhibit No. 57 was admitted
5 into evidence.)

6 BY MR. GRAHAM:

7 Q While she is getting that ready, Angela, what was the
8 purpose of going to the Pit Stop?

9 A To get gas and beer and cigarettes.

10 Q Whose idea was it to go there?

11 A Little Danny wanted some gas for his car and needed
12 to go there.

13 Q Who went to the store?

14 A I went in to pay for everything and Shawn and Little
15 Danny went, too. I don't know why they went in.

16 MS. ZMROCZEK: I'm sorry?

17 THE WITNESS: I went in -- I went into the
18 store, Shawn and Little Danny.

19 BY MR. GRAHAM:

20 Q What about Charlie?

21 A Yes, sir.

22 Q Angela, let me show you that photograph, State's 11.
23 Do you recognize that?

24 A I do. That's the Pit Stop we went to.

25 MR. GRAHAM: Your Honor, the State would move

1 State's 11 into evidence at this time.

2 MS. ZMROCZEK: With no objection.

3 THE COURT: Without objection, State's 11.

4 (WHEREUPON, STATE'S Exhibit No. 11 was admitted
5 into evidence.)

6 BY MR. GRAHAM:

7 Q Looking at the screen, if you would, Angela.

8 MR. GRAHAM: If you'd take the lights down for
9 me, please.

10 (Audiotape played but not transcribed.)

11 BY MR. GRAHAM:

12 Q There was a person who came in just prior. Do you
13 know who that person was in the black shirt?

14 A I do not.

15 Q What date and time do you see in the upper right-hand
16 corner? Can you read it?

17 A I cannot see that.

18 Q After the individual with the black shirt appeared,
19 what do you see?

20 A I see Shawn coming in with a gray hat and Little
21 Danny behind him.

22 Q The individual in the front is, who?

23 A That's Shawn Sharpe.

24 Q That's the defendant?

25 A Yes, sir.

- 1 Q What is he wearing?
- 2 A He was wearing a white shirt with a print on it,
3 white shorts and a gray Atlanta Braves hat.
- 4 Q Coming in behind him, who is that?
- 5 A That's Little Danny.
- 6 Q Now, does he have facial hair?
- 7 A He does.
- 8 Q Did Shawn Sharpe have facial hair?
- 9 A No, sir.
- 10 Q And where is Charlie during this time?
- 11 A He's in the car.
- 12 Q Had you come in the store yet?
- 13 A I'm right there.
- 14 Q That's you in the rose-colored shirt?
- 15 A Yes, sir.
- 16 Q And then in the middle right there --
- 17 A Shawn.
- 18 Q -- with the --
- 19 A That's Shawn.
- 20 Q Angela, the individual in the black, the guy who came
21 in earlier, you don't know who he is?
- 22 A No, sir.
- 23 Q He didn't have anything to do with that robbery, did
24 he?
- 25 A No, sir.

1 Q And what are you doing right now on the video,
2 Angela?

3 A I'm about to pay for gas, beer, and cigarettes.

4 Q Angela, after you all left the Pit Stop, where did
5 you go?

6 A We went down 321 to the McDonald's.

7 Q So you left the Pit Stop and you continued on 321?

8 A Yes, sir.

9 Q Looking at State's 58, which is in evidence and which
10 you have already looked at, there's a label showing
11 McDonald's on there. Is that the McDonald's you all went
12 to?

13 A Yes, sir.

14 Q What was the purpose of going to the McDonald's?

15 A To get rid of the jumpsuits they were wearing.

16 Q Whose idea was that?

17 A Charlie's.

18 Q Did the jumpsuits or coveralls get thrown away?

19 A Yes, sir, in a dumpster behind McDonald's.

20 Q After you left McDonald's, where did you go?

21 A Charlie wanted to go get a hotel room, so we headed
22 toward to the Carolina Lodge on Airport Boulevard. When
23 we got there, there was no vacancy. So we went to the
24 hotel right next door to it, the Travelers Inn.

25 Q And the Travelers Inn is located on that map, too; is

1 that correct?

2 A Yes, sir.

3 Q Then let me show you a photograph and ask if you
4 recognize it, State's No. 10?

5 A Yes.

6 MR. GRAHAM: Your Honor, the State would move
7 that into evidence.

8 MS. ZMROCZEK: Without objection.

9 (WHEREUPON, STATE'S Exhibit No. 10 was admitted
10 into evidence.)

11 BY MR. GRAHAM:

12 Q What was the purpose of going to a hotel that night?

13 A To get rid of the dope they got.

14 Q What do you mean "get rid" of it?

15 A To sell some drugs.

16 Q So the crack that they had stolen from Rose after
17 Leon was killed, the purpose of going to the hotel was to
18 sell it?

19 A Yes, sir.

20 Q And what happened when you were at the Travelers Inn?

21 A I went in and got a room. I -- I used a different
22 ID. And he rented me the room and whatnot. I walked in
23 by myself, and I walked out. Little Danny was outside the
24 car. Charlie and Shawn were inside the car. When I got
25 to the car, Charlie had just gotten off the phone with

1 "Chuc" D, and "Chuc" D was pretty upset with him, telling
2 him was going to beat him within an inch of his life and
3 whatnot and...

4 So then we pulled around to the back of the
5 hotel, went up to the room. At that time, as soon as we
6 got there, Danny started to get high. About a couple of
7 minutes after that, the -- the guy that worked at the
8 hotel came upstairs and knocked on the door. When he
9 knocked on the door, I went outside. And at that point,
10 he recognized me because I had used that hotel before, and
11 he recognized one of my tattoos and knew that that wasn't
12 me that -- with the ID I used, so he told me that we
13 needed to leave. So I went back in and told them. I went
14 downstairs to get the money back, and the guy came out to
15 talk to me, or whatever. I kind -- I made up a story
16 about why I used a fake ID and asked him if I could get
17 the money back. He said that if -- if he called the cops,
18 I could get the money back. So I was, like, no, I'm good.

19 Q Did you all leave the Travelers Inn?

20 A We did.

21 Q All four of you?

22 A Yes.

23 Q Where did you go?

24 A We went to take Shawn to his girlfriend at the time,
25 Taco's house.

- 1 Q Did you know what his girlfriend's name was?
- 2 A I know her as Taco, yes.
- 3 Q Taco?
- 4 A Uh-huh, yes, sir.
- 5 Q You never met her before?
- 6 A No, sir.
- 7 Q Did you know where she lived?
- 8 A I knew she lived somewhere off of Mimosa, in that
- 9 area.
- 10 Q Somewhere off of Mimosa?
- 11 A Yes, sir.
- 12 Q So when you left the Travelers Inn, do you remember
- 13 which way you traveled back to go to Mimosa?
- 14 A I don't.
- 15 Q Do you remember what time it was?
- 16 A It was before 12:00, so I want to say between
- 17 11:30 and 12:00.
- 18 Q When you got over to Shawn's girlfriend's house
- 19 somewhere near Mimosa, what happened?
- 20 A When we pulled up, there was somebody there in the
- 21 driveway. I'm not sure who it was. Charlie, Shawn and
- 22 Little Danny got out the car. Before they got out the
- 23 car, there was -- there was talk about -- Little Danny
- 24 made the comment, you know, you don't have to worry about
- 25 anybody saying nothing. They were telling Shawn to get

1 rid of the gun, to make sure he got rid of it, and not to
2 tell his girlfriend anything.

3 Q Did Charlie have any nicknames that Shawn called him?

4 A He just called him his little bro.

5 Q After you dropped off Shawn Sharpe over at his
6 girlfriend's, where did you all go?

7 A We went back to Phil's house and Little Danny dropped
8 Charlie and myself off.

9 Q And how long did you stay at Phil's house?

10 A Probably about 30 minutes or so, maybe 30 minutes --
11 30 minutes to an hour. Little Danny and my -- and our
12 next-door neighbor at the time, Patsy Anz came -- they
13 came by back there, and we rode with them again.

14 Q Then after -- do you remember what car Danny was
15 driving at that time?

16 A He was in the PT Cruiser.

17 Q When he and Patsy picked you and Charlie up, where
18 did you all go?

19 A We went back towards Charlie's house and -- but we
20 parked in front of Patsy's and went into Patsy's house.

21 Q And what happened after you got back from Patsy's
22 house?

23 A We were in there. They were -- they were getting
24 high. I walked outside. I don't know, it was -- it was
25 pretty late, I want to say somewhere between 12:00 or

1 1:00, and I seen a crime scene truck go by. I think
2 Charlie must have seen it, too, out the door, and that's
3 when he texted me and told me to come back inside. We --
4 we walked back to our house for a little while, and then
5 we went back to Patsy's, and then we went back to our
6 house. And we were just -- I went -- I initially went to
7 sleep. I think Charlie stayed up.

8 Q So Charlie texted you while you were outside?

9 A Yes, sir.

10 Q Where was he?

11 A He was inside Patsy's house.

12 Q Did you recognize that number?

13 A I recognized it because earlier that day when I was
14 at Phil's, the last time that he got back, he had a new
15 cell phone, and I asked where he got it from. He just
16 said he had just got it from somebody. He didn't say who.
17 But that's when I programmed it in my...

18 Q After you got the text, you said you went, where?

19 A Back into Patsy's house. And then we left there.
20 And Charlie -- just Charlie and me walked back to our
21 house.

22 Q Once you got to Charlie's parents' house next door,
23 what did you all do?

24 A We went into Little Danny's room and were listening
25 to music. Charlie was getting high. His dad got home at

1 that time. I remember him telling us we needed to get in
2 the bed. And I got something to eat. And I really -- I
3 fell asleep sometime. I went and got in the bed and
4 passed out. I still had my clothes on.

5 Q Angela, at this time, did you know whether Leon
6 Justice was dead?

7 A I did not.

8 Q Did you know that he had been shot?

9 A I had an idea that some -- I didn't know who got
10 shot, but, I mean, there was a comment made that somebody
11 had been shot. But the -- that's when Charlie said, no,
12 you're all right, everything's all right.

13 Q Your testimony here today, has it been the truth?

14 A Yes, sir.

15 Q You are charged with armed robbery, correct?

16 A Yes, sir.

17 Q Are you guilty of armed robbery?

18 A Yes, sir.

19 Q The charge of burglary 1st, are you guilty of
20 burglary 1st?

21 A Yes, sir.

22 Q You're charged with murder. Angela, are you guilty
23 of murder?

24 A I'm -- I would say I'm guilty of it. I don't think
25 none of us intended on this to happen, on someone to die,

1 you know, but that's what happened. And so by law, yeah,
2 you know, guilty of murder.

3 Q Have you been promised by the police or myself or
4 anyone with the Solicitor's office anything about
5 reduction of charges, about the charges being dismissed,
6 about what your sentence is going to be?

7 A No, sir. In fact, I got more charges by doing this.

8 Q In fact, originally you were charged with, what?

9 A Accessory after the fact of murder.

10 Q And when you came in and talked to me and told me
11 this story, what charges did you get?

12 A Armed robbery, 1st degree burglary and murder.

13 Q And you haven't been promised anything, have you?

14 A No, sir.

15 MR. GRAHAM: Thank you.

16 THE COURT: Cross.

17 MS. ZMROCZEK: Your Honor, this is going to be
18 pretty lengthy. I didn't know if anybody needed a break
19 because it's definitely going to be lengthy.

20 THE COURT: You ready to keep on going? Keep
21 going or break? Keep going? All right.

22 CROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 Q Okay. You raised your hand, swore to tell the truth
25 today?

1 A Yes, ma'am.

2 Q Is that the first time you have been asked by the
3 police or the Solicitor's office to tell the truth?

4 A No, ma'am.

5 Q How many times have you met with the Solicitor's
6 office in preparation for this trial?

7 A Three times.

8 Q Three times you have gone over your testimony?

9 A Yes, ma'am.

10 Q In fact, you met with them just recently and you told
11 them a different story about the first time you heard
12 about a robbery occurring at Victor Road; isn't that true?

13 A Maybe...

14 Q Did you not understand the question?

15 A I understood it. I mean, it's possible.

16 Q Okay. So it's possible that you told the Solicitor's
17 office that Larry Grubbs and Charlie Plumley went to rob
18 the house on Victor Road the night before Leon Justice's
19 murder, but Larry Grubbs refused to do it?

20 A I didn't say he refused, but, yeah, I know what
21 you're saying.

22 Q So you did tell the police and the Solicitor's office
23 that?

24 A Yes, ma'am.

25 Q So the first time we've heard about a robbery at

1 Victor Road, was it supposed to happen the night before?

2 A I didn't know where they were going to do it at when
3 the idea was -- was talked about.

4 Q Okay. Let's just clear up for today, 8/27.

5 So your testimony today, just so I can hear
6 correctly --

7 A Okay.

8 Q And if I'm wrong, you tell me.

9 What I heard you say is that you were staying at
10 Phil's?

11 A Right.

12 Q How long were you at Phil's?

13 A Maybe three or four days. I don't know exactly. It
14 was a few days, though.

15 Q And you left because -- you left Charlie because?

16 A Him and his brother had been out getting high and --
17 and doing all kinds of crazy stuff. So I opted to stay at
18 the house one time. And while I stayed there, they left
19 while I was, like, in the room laying down.

20 Q You do drugs, don't you?

21 A I do.

22 Q But you don't do crack?

23 A No, ma'am. It's not my drug of choice.

24 Q Meth, I think, is your drug of choice?

25 A Yes, ma'am.

1 Q Phil did a lot of meth at his house?

2 A Yes, ma'am.

3 Q Phil have a lot of people that make a lot of meth at
4 Phil's house?

5 A I've never seen anybody make any meth there, but he
6 knows a lot of people that make it.

7 Q Did you do any meth while you were at Phil's house
8 for those four days?

9 A Yes, ma'am.

10 Q But your memory is clear?

11 A Yes, ma'am.

12 Q So you were staying at Phil's, then you said that
13 Shawn came over. He said, and you tell me if I'm wrong,
14 you said you went over to an ex-boyfriend's house, and
15 Charlie came over to talk to Phil and he left with Todd?

16 A Uh-huh.

17 Q Right?

18 A Yes, ma'am.

19 Q And was Shawn there with them at this time, or no?

20 A No, ma'am. Charlie had been calling him the night
21 before trying to get in touch with him.

22 Q Charlie had been calling, who, the night before?

23 A Shawn.

24 Q Why would Charlie be calling Shawn the night before
25 to get in touch with you?

1 A No. To get in touch with him. He was trying to get
2 in touch with him.

3 Q Okay. And what's Charlie phone number?

4 A I -- I don't know.

5 Q What is your phone number?

6 A 5 -- it was --2250.

7 Q 2250?

8 A I -- I believe so.

9 Q That's your phone number?

10 A Yes, ma'am. I had changed it a lot. Charlie wanted
11 me to change my phone number a lot, so that was recently.

12 Q But at this stage, it was, you believe, the correct
13 number?

14 A Yes, ma'am.

15 Q And it hadn't changed for that week?

16 A I don't think so.

17 Q Okay. So you said that Phil and Todd -- or Charlie
18 and Todd left in Phil's truck?

19 A Yes, ma'am.

20 Q And who was driving at that time?

21 A I didn't see them pull out, but I seen Todd because
22 at that time we were under the impression that Todd had a
23 license so that's why he drove them.

24 Q And you said that was about 3 o'clock?

25 A Around about.

1 Q And then they came back?

2 A Yes, ma'am.

3 Q And Shawn was with them when they came back?

4 A Yes, ma'am.

5 Q And --

6 A I mean, my understanding, that's where they went
7 to -- what -- what they left to go do was to pick up
8 Shawn. That was...

9 Q They went to go get Shawn --

10 A Yes, ma'am.

11 Q -- around 3 o'clock. And stop and get your clothes?

12 A They weren't getting my clothes at that point.

13 Q So just to help clear it up.

14 A Okay.

15 Q They go to pick up Shawn around 3 o'clock. What time
16 did they get back?

17 A I want to say around 5:00.

18 Q So they were together for two hours, approximately?

19 A Yes, ma'am.

20 Q So at 5 o'clock, they get back. And that's when they
21 have this secretive discussion in the kitchen?

22 A Yes, ma'am.

23 Q But you didn't hear what it was.

24 And then what time did you leave to go to your
25 house to get clothes?

1 A That wasn't until about 9:00 -- 9:00 or 10 o'clock.

2 Q About 9:00 or 10:00?

3 A Is when me, Shawn and Charlie left. They have left
4 before that.

5 Q And they left before to go, where?

6 A To get Sudafed for Phil.

7 Q What time was that?

8 A I believe it was around 6:00, or so. I'm not real
9 sure exactly what time it was. They were gone for a
10 little while.

11 Q And they were gone. Did they come back and they
12 leave again?

13 A Yes, ma'am.

14 Q And then that's when you go get clothes?

15 A Yes, ma'am.

16 Q But somewhere in between then, you had gotten some
17 robbery clothes together?

18 A That was the second time that I'd seen Shawn that
19 day.

20 Q Okay. So what happens next?

21 A I want -- it was -- it was before dark, it was during
22 the day, so 4:30, 5:00, around there, sometime.

23 Q And these clothes you described as coveralls?

24 A Yes, ma'am.

25 Q And they could put them on over their clothes?

1 A Yes, ma'am. They're in one piece.

2 Q And Charlie had on the camouflage ones?

3 A Yes, ma'am.

4 Q And you all went to your house and then you drove
5 past Victor Road?

6 A No, ma'am.

7 Q Okay. Clear it up for me.

8 A We pulled into Victor Road, we drove past the
9 victim's house and pulled -- took a left on the road right
10 past the victim's house.

11 Q And then the prosecutor --

12 A Go ahead. Sorry.

13 Q Did you know the people that lived at Victor Road?

14 A I had met them one time, but I did not know them, no.

15 Q When was that one time that you met them?

16 A I had went there with Charlie and Danny once.

17 Didn't -- I didn't -- I seen one person there, that was
18 it. We were probably there three minutes. It didn't
19 smell real good in that house, so I was ready to leave.

20 Q But you went with Charlie and Danny?

21 A Yes, ma'am.

22 Q And what was the purpose? What were Charlie and
23 Danny doing?

24 A They were buying drugs.

25 Q Buying drugs?

1 A Yes, ma'am.

2 Q So they were familiar with the house?

3 A Yes, ma'am.

4 Q So they were familiar that it was a drug selling
5 house?

6 A Yes, ma'am.

7 Q You understand why I'm confused in going through this
8 statement today, correct?

9 A Yes, ma'am, uh-huh.

10 Q Because this is the fourth sworn statement you have
11 made, correct?

12 A (No response.)

13 Q You remember giving the first one, right?

14 A I do.

15 Q And that was September 22nd, 2011?

16 A Yes, ma'am.

17 Q Do you remember the circumstances surrounding giving
18 that statement?

19 A Um --

20 Q What had happened right before that?

21 A That's when we got busted.

22 Q By "got busted," that's when --

23 A That's when Charlie woke me up and said the police
24 were outside and they had the house surrounded and we had
25 to go out.

1 Q And you didn't go right out, though, did you?

2 A Well, I -- I didn't wake up, initially. I don't know
3 how long they were out there. Charlie eventually woke me
4 up. He had been trying to wake me up all night. And he
5 woke me up. He said, Angela get up, you know, the police
6 are outside, they're calling for us to come outside. I
7 didn't think he was serious. I knew he had been doing a
8 lot of drugs. I thought maybe he was -- I didn't know
9 what it -- I didn't know. So I laid back down, then I
10 heard -- I heard the police say, Charles and Danny Plumley
11 come out, you know, we have you surrounded. And that's
12 when I got up.

13 Q Okay. Then you get up and you walk outside?

14 A Uh-huh.

15 Q And you surrender. And then you gave a statement to
16 Detective Etheridge, correct?

17 A We -- we talked, yeah.

18 Q And you wrote a statement for her?

19 A I wrote a statement when we got back to the sheriff's
20 department.

21 Q With Detective Etheridge?

22 A Uh-huh.

23 Q And in that statement, you said that on
24 September 21st around 1:00 p.m., "I woke up because I had
25 spent the night at Phil Helms' house, and that time

1 Charlie Plumley was with his friend, Shawn, and they had
2 been running errands all day," right?

3 A Right.

4 Q So was that a lie?

5 A It was too evasive. But they were back and forth,
6 you know. What can I say, it's been two years, so maybe
7 the time frame of day might be a little hazy, but I don't
8 know.

9 Q But today, you remember clearly what the truth is?

10 A I remember what the truth is. The time, whether it
11 was 1 o'clock or 3 o'clock in the afternoon may be a
12 little questionable.

13 Q Or 5 o'clock?

14 A Well, I can -- I remember when it started getting
15 dark, you know, I can place it in there.

16 Q And then you told her that you went back -- or this
17 was around 8 o'clock. "I asked Charlie to stop by our
18 house and grab me some jeans, too. Got back to Phil's
19 around 9:15. The clothes were too small, so I asked Phil
20 if I could go back home to get some clothes that fit,"
21 right?

22 A Right.

23 Q You go back to your house, this is what you tell the
24 police officers, and that, "Went back to Phil's, and Phil
25 was in bed and Charlie and Shawn left, or something. They

1 were gone for about 40 minutes. Charlie called his
2 brother to come pick me up. Shawn was talking about
3 firing the gun off at the house, pulling a lick."

4 MR. GRAHAM: I am going to object at this point.
5 I don't -- she's not asking questions, she's just reading
6 the statement. I mean, if she has a question, she needs
7 to --

8 THE COURT: Sustained.

9 BY MS. ZMROCZEK:

10 Q All right. Did you tell the cops that you drove the
11 first time?

12 A I did not.

13 Q Did you tell the cops you had any involvement the
14 first time?

15 A I did not.

16 Q But you told the cops that Shawn fired a gun and
17 Shawn pulled a lick?

18 THE COURT: You have to answer.

19 THE WITNESS: Yes, ma'am, that's what I said.

20 BY MS. ZMROCZEK:

21 Q And you never said anything about going to the Pit
22 Stop, and you never said anything about you or Charlie
23 being involved?

24 A No, ma'am.

25 Q Then you gave a second statement. Do you remember

1 the differences in the first and second statements?

2 A I do. On both those statements, I -- I tried to say
3 as much of the truth as I could, but I did leave myself
4 out of a lot of it.

5 Q Just yourself out?

6 A Well, I put Charlie and Shawn together.

7 Q The truth of the matter is, you had been talking to
8 Charlie before you all were arrested while you were in the
9 house for an hour and the entire time you have been in
10 jail?

11 A We have permission to, yes, ma'am.

12 Q You have had permission the entire time you were in
13 jail to talk to Charlie?

14 A Not the -- not the entire time.

15 Q You got permission once Charlie gave a statement,
16 didn't you?

17 A No, ma'am. We had permission before that. We had
18 permission -- we didn't have permission for about the
19 first four months or so. Then we got permission, then
20 they took it back.

21 Q Why did they take it back?

22 A I guess they realized we were co-defendants. I'm not
23 sure.

24 Q They also realized that you were calling in to his
25 house and having him calling his house at the same time so

1 you all could have phone conversations?

2 A We were talking over the phone, yes.

3 Q And you're telling me that's permitted?

4 A No, ma'am. Not to my understanding, it's not
5 permitted.

6 Q But you continued to do that throughout the entire
7 time, including up until last Friday?

8 A Yes, I talked to him Friday.

9 Q And last Friday when he was saying what'd you tell
10 the cops, you told him, I told them what you told me -- I
11 mean, I told them everything?

12 A I don't remember what I said. That's what I told --
13 I told the truth.

14 Q If you heard the tape again, would it hear you -- if
15 you heard the phone conversation again, would it help you
16 remember?

17 A I remember.

18 Q You remember saying that, "I told them what you told
19 me to say"?

20 A I don't remember that, but...

21 But the truth of the matter is, he's upset of
22 what I said -- by what I said. So that wouldn't make any
23 sense for me to say -- for him to say that I -- that I
24 said I told him what he told me to when he's not happy
25 with what I'm saying.

1 Q Not happy with what you're saying today?

2 A Since the -- since I met with the Solicitor.

3 Q Since you met with the Solicitor on which day?

4 A Last year.

5 Q September 15, 2012?

6 A Yes, ma'am.

7 Q On or about. And he has been upset with you ever
8 since then?

9 A Well, yeah. He just...

10 Q What in that statement makes him upset?

11 A I think the gang affiliation. He was upset by the
12 statement I made about the crime scene truck.

13 Q Some of the things that you have said have been
14 different than what he told the truth about, right?

15 A I've never seen his statement or anything.

16 Q He doesn't write you letters and tell you?

17 A Tell me, what?

18 Q Tell you what he talked about?

19 A No, ma'am. He's wrote me letters not saying --
20 telling me what to say. I -- I've received a letter one
21 time that said, you know this was all Shawn's -- like --
22 kind of like leading me on what to say, but that's not the
23 story that I told, though. I know it was not Shawn's
24 idea.

25 Q You're going to benefit -- you're hoping for a

1 benefit by your testimony?

2 A Everybody would hope, but the fact is, I caught more
3 charges, so...

4 Q You feel like you have done enough time for the crime
5 you have committed?

6 A I don't -- I don't know. I don't know if I have or
7 not.

8 Q You don't recall saying that to Charlie, Friday?

9 A Well, yeah, I'm sure I told Charlie that. I was very
10 upset when we were on the phone together.

11 Q And, again, you're telling me that you're not allowed
12 to be on the phone but you all are still talking?

13 A Yes, ma'am.

14 Q Okay. In fact, he sent you letters with inmate's
15 charges and gang symbols and other things that he sent you
16 in the jail that have been taken away from you, correct?

17 A No. Well, there was an envelope where he had a file
18 with a slash through it, and they said if he wrote that on
19 the envelope again, that our writing privileges would be
20 revoked.

21 Q And you knew Phil, you said, I think he was your
22 ex-boyfriend?

23 A Yes, ma'am.

24 Q And Phil's been to visit you after you were arrested,
25 hasn't he?

- 1 A One time.
- 2 Q So you all had an opportunity to talk?
- 3 A I think he just wanted to know what happened to the
- 4 coveralls. That was the only question. I guess he wanted
- 5 them back, I don't know. The police got them.
- 6 Q And those were Phil's coveralls?
- 7 A Yes, ma'am.
- 8 Q Angela, you said that your phone number at the time
- 9 was 803- -2550?
- 10 A Yes, ma'am.
- 11 Q And that you had a lot of text conversations with
- 12 Charlie?
- 13 A Charlie had my phone some, too. Before that day, he
- 14 didn't have a phone, so he would use mine when he needed
- 15 to.
- 16 Q He would use your phone. Who else's phone would he
- 17 use?
- 18 A His mom's, his dad's, whoever's.
- 19 Q So it's common for people to use other people's
- 20 phones?
- 21 A Yes, ma'am.
- 22 Q You turned your phone over to the police?
- 23 A I left it at the house. They came and got it.
- 24 Q What else did they come and get that day?
- 25 A I wasn't there.

1 Q You weren't there when they --

2 A When they came and got the phone, I wasn't there.

3 Q But you knew that they took your phone?

4 A Yes, ma'am.

5 Q Okay. So you have been interviewed by the detectives
6 and you have told four different stories?

7 A Yes, ma'am.

8 Q And you are hoping to receive a benefit because you
9 know that by testifying and that by helping somebody get
10 convicted, that you have the possibility to get lower
11 charges?

12 A No one's ever told me that. No one's ever even
13 insinuated that to me.

14 Q No one's ever said, we can't promise you anything?

15 A They said that they can't promise me anything and
16 that was it. That nothing can...

17 Q But, of course, it's your expectation to receive a
18 benefit?

19 A It was my expectation and -- but I'm -- I'm guilty of
20 three pretty big charges, so, you know.

21 Q Because you drove --

22 A I did.

23 Q -- your husband to go rob Victor Road for drugs?

24 A My husband and his friend.

25 Q Your husband and his friend?

- 1 A Yes, ma'am.
- 2 Q And then you met up with his brother?
- 3 A Yes, ma'am.
- 4 Q And then you all did drugs or they did drugs?
- 5 A Yes.
- 6 Q You said that Shawn was wearing a toboggan?
- 7 A It's like a knit, like a ski hat, you know.
- 8 Q And they pull it over?
- 9 A Yes, sir.
- 10 Q Then he had a bandanna?
- 11 A Yes, ma'am. Go ahead.
- 12 Q Describe it to me.
- 13 A It was dark in color.
- 14 Q Could it be blue?
- 15 A Possibly. It was -- it was just dark. And it had,
- 16 like, a white, you know, the bandanna print on it, like
- 17 the white paisley.
- 18 Q White paisley?
- 19 A Uh-huh.
- 20 Q And where was he, and how was he wearing this
- 21 bandanna?
- 22 A When he got out of his truck, I didn't see him have
- 23 the bandanna on, he just had it with him. He had it
- 24 before.
- 25 Q He had it before?

1 A Uh-huh.

2 Q He got out of the truck and he was holding it in his
3 hand?

4 A I don't remember, exactly.

5 Q I'm just trying to understand where the bandanna was.

6 A It was on his person somewhere. I don't -- I don't
7 remember him tying it on there. I just don't remember
8 that clearly.

9 Q But you remember him having it when he came back?

10 A No. When we were sitting in the truck and they were
11 getting ready, he had it with him. Like, when he got out
12 the truck to put the coveralls on, he had the bandanna
13 on -- Charlie was on one side of the truck and Shawn was
14 on the other. That was part of Shawn's -- what he was
15 going to wear. And then Charlie had his mask and his
16 outfit.

17 Q But you didn't see how he wore it or where he put it
18 on?

19 A I just don't remember. I remember the -- the ski
20 hat, the toboggan hat.

21 Q And that covered his whole face?

22 A He pulled it down, and he -- they had cut holes in
23 it.

24 Q So it covered his whole face?

25 A Uh-huh.

1 Q You said that Charlie had been calling Shawn earlier
2 that day. From where was he calling?

3 A He was at Phil's.

4 Q So he was using Phil's phone?

5 A I couldn't -- don't know whose phone he was using. I
6 can't remember.

7 Q But he was at Phil's with you when he was calling
8 Shawn to get a gun?

9 A Yes, ma'am. Or -- that was -- yeah, yes. That
10 was -- that was the main reason he wanted Shawn to go with
11 him because he knew he had access to a gun.

12 Q Well, he knew "Chuc" D had a gun, right?

13 A Right.

14 Q Mike Sharpe, Shawn's brother --

15 A Yes, ma'am.

16 Q -- had guns?

17 A And I guess he assumed that his little brother could
18 get one from him. I couldn't hear both sides of the
19 conversation when they talked.

20 Q I think you stated, though, when you got to the
21 hotel, that you heard "Chuc" D's angry at Charlie?

22 A I didn't hear that. I know I heard Charlie's side of
23 the conversation, and I -- when he got off the phone, he
24 expressed how angry "Chuc" D was at him, I guess. I
25 don't -- I don't -- I don't know what they were talking

1 about. I got in on the very end of the conversation.

2 Q Charlie was looking for drugs that day?

3 A I don't where all he went, but that's probably what
4 he was doing, I'm sure.

5 Q Charlie's a crack addict?

6 A Yes, ma'am.

7 MS. ZMROCZEK: Beg the Court's indulgence.

8 (Pause.)

9 BY MS. ZMROCZEK:

10 Q Angela, you said that after this happened, you went
11 back to Phil's, you all were there for 15 minutes or so?

12 A Yes, ma'am.

13 Q And that Danny came to pick you all up?

14 A I don't know if Danny was called or he just came
15 over. I don't know.

16 Q Okay. Not important.

17 But he picked you all up?

18 A Yes, ma'am.

19 Q And at that point, Charlie and Danny -- or excuse me,
20 Charlie and Shawn had changed clothes?

21 A You talking about the first time when Danny came to
22 pick us up, initially?

23 Q Right. After this incident --

24 A Yes, ma'am.

25 Q -- at Victor Road?

1 A Yes, ma'am. That's when Charlie had called his
2 brother to come get him.

3 Q Charlie called his brother to come get him and they
4 changed clothes?

5 A They changed clothes before they -- they got out,
6 before we walked into Phil's. They were -- as I was
7 walking into Phil's, they were taking their coveralls off.

8 Q So you saw where they put them?

9 A I did not see exactly where they put them.

10 Q Okay. Who was at Phil's when you came back?

11 A From the robbery?

12 Q Yes.

13 A Phil, his girlfriend, Oliva, Todd, I don't know his
14 last name, Larry and then two other guys that I have no
15 idea who they were.

16 Q Were all these people there when you all left as well
17 or right before the robbery?

18 A All of them, I'm not sure that the two guys were
19 there, but -- I can't remember if they were there.

20 Q Okay. So you drive to -- or Danny, I guess, drives
21 you off to the Pit Stop?

22 A Yeah, Danny drove.

23 Q Then you all decided, or somebody, I think you said
24 Charlie decided to throw away the clothes in the dumpster?

25 A Yes, ma'am.

1 Q Where was the gun during all that?

2 A I don't know.

3 Q You didn't see it?

4 A No, ma'am.

5 Q I think you said that you used a different ID?

6 A Yes, ma'am.

7 Q You had several fake IDs in your possession, correct?

8 A Yes, ma'am.

9 Q Do you have a problem lying to the police?

10 A (No response.)

11 Q You don't have a problem lying to the police at all,
12 do you?

13 A Right.

14 Q You have no problems telling lies?

15 A I mean, I -- it depends on the situation, you know.

16 Q If you can benefit from it, you have no problem
17 telling lies?

18 A (No response.)

19 Q I'm sorry?

20 A I guess. I mean, it just depends on the situation.

21 MS. ZMROCZEK: I have no further questions.

22 THE COURT: Anything on redirect?

23 MR. GRAHAM: Just a few questions, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. GRAHAM:

1 Q Angela, in the past, you lied to protect yourself;
2 isn't that true?

3 A I have.

4 Q The first time you talked to the police, you lied to
5 protect yourself, didn't you?

6 A I did.

7 Q I am going to show you a statement and ask if you
8 recognize it.

9 A I do.

10 Q Is that the first statement that you gave to the
11 police?

12 A Yes, sir.

13 Q To Detective Etheridge?

14 A Yes, sir.

15 MR. GRAHAM: Your Honor, the State would offer
16 this into evidence.

17 THE COURT: That would be State's 81 without
18 objection.

19 (WHEREUPON, STATE'S Exhibit No. 81 was marked
20 for identification and received into evidence.)

21 BY MR. GRAHAM:

22 Q Angela, looking at State's 81, what was the date and
23 time that that statement was given?

24 A It was September 22nd at 4:34 p.m.

25 Q So that would have been the next day?

1 A Yes.

2 Q After Leon Justice was killed?

3 A Uh-huh.

4 Q In this statement that you gave to the police, did
5 you tell them that you were the driver?

6 A I did not.

7 Q Did you tell them that you knew that there was going
8 to be a robbery?

9 A I did not.

10 Q Did you tell them that you were going to get
11 coveralls for them?

12 A I did not.

13 Q Why?

14 A Because I knew they would hit me with more charges.

15 Q You were hoping to lie your way out of it, weren't
16 you?

17 A Yes, sir.

18 Q But in this statement, you did tell the police at
19 4:30 p.m., less than 18 hours after Leon Justice was
20 killed, who did you tell the police that did a lick over
21 on Victor Road?

22 A Charlie and Shawn.

23 Q Charlie and Shawn.

24 Did you lie about that?

25 A No, sir.

1 Q Did you lie about Shawn talking about firing the gun
2 at the house?

3 A No, sir.

4 Q Did you lie about a woman trying to pull a mask off?

5 A No, sir.

6 Q Did you lie about Shawn Sharpe calling his brother,
7 "Chuc" D, and asking him what he should do with the gun?

8 A No, sir.

9 Q Did you lie about dropping Shawn off at his
10 girlfriend's house?

11 A No, sir.

12 Q So you lied to protect yourself and hoped that you
13 could get out of this, didn't you?

14 A Yes, sir.

15 Q Are you lying today about what you testified to?

16 A No, sir.

17 MR. GRAHAM: Thank you. Nothing further.

18 RECROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 Q You just went through that statement, and you said
21 that you lied about certain things to protect yourself?

22 A Yes, ma'am.

23 Q Do you know an inmate named Kristen Spencer?

24 A I do.

25 MR. GRAHAM: Objection, Your Honor. Beyond the

1 scope of redirect.

2 THE COURT: Does it have to do with that
3 statement?

4 MS. ZMROCZEK: Yes, it has to do with that
5 statement, precisely.

6 THE COURT: All right. Overruled.

7 BY MS. ZMROCZEK:

8 Q Do you remember telling Kristen Spencer who shot --

9 A No, I've never -- I never talked to Kristen Spencer.

10 Q You never talked with Kristen Spencer?

11 A Maybe in passing. We -- we never got along from the
12 time she got here.

13 Q So you never gave her a statement, you never told her
14 Charlie shot this guy?

15 A No, ma'am.

16 THE COURT: Thank you very much, ma'am. You may
17 step down.

18 We are going to take just a short break before
19 we go to the next witness.

20 Ladies and gentlemen, if you need anything while
21 you're back there, just let the bailiffs know, and we will
22 get you whatever you need.

23 Please have no conversation about the case. We
24 are just going to take a little short recess, let you take
25 a little bit of a break, and then we'll start back. Okay?

1 (The jury left open court at approximately 11:17
2 a.m.)

3 (A break was taken.)

4 THE COURT: All right. Is the State ready to
5 proceed?

6 MR. HUBBARD: Yes, sir.

7 THE COURT: Is the defense ready?

8 MS. ZMROCZEK: Yes, sir.

9 THE COURT: All right. Let's bring the jury
10 back. please.

11 (The jury came into open court at approximately
12 11:39 a.m.)

13 THE COURT: Thank you, everybody. Please have a
14 seat.

15 All right. The State may call your next
16 witness.

17 MR. HUBBARD: Thank you, Your Honor.

18 The State calls Deputy Matt McCaw.

19 THE COURT: All right. Deputy McCaw, if you
20 would please come around and be sworn, sir.

21 MATTHEW MCCAW, after being duly sworn, testified
22 as follows:

23 THE CLERK: Once you're seated, sir, please
24 state your full name on the record, spelling your last.

25 THE WITNESS: Matthew Lee McCaw. Last name is

1 spelled M-C-C-A-W.

2 DIRECT EXAMINATION

3 BY MR. HUBBARD:

4 Q Deputy McCaw, where do you work?

5 A Lexington County Sheriff's Department.

6 Q How long have you been there?

7 A Since 2009.

8 Q What are your duties at the sheriff's department?

9 A I'm assistant patrol supervisor in the south region
10 patrol division.

11 Q When you say "the south region," how many regions are
12 there in Lexington County?

13 A It's comprised of three regions.

14 Q North, south, west?

15 A Yes, sir, that's correct.

16 Q The south region, does that comprise also the Gaston
17 area?

18 A It does.

19 Q Were you in law enforcement before you came to
20 Lexington County?

21 A I was.

22 Q Where did you work?

23 A In Georgia from 1997 through 2009.

24 Q Back in September, September of 2011, what was your
25 rank and what were your responsibilities?

1 A I'd just recently been promoted to an assistant shift
2 supervisor, which is the corporal stripes for master
3 deputy stripes.

4 Q The night of September 21st, 2011, were you called
5 out to an incident in the Gaston area?

6 A Yes, I was.

7 Q What time did that call go out?

8 A The call came out at 10:37 in the p.m.

9 Q Where did you go in response to that call?

10 A I was dispatched to Victor Road, which is the
11 incident location I responded to.

12 Q And Victor Road, is that in the Gaston area?

13 A It's in the Gaston area of Lexington County, South
14 Carolina.

15 Q When you got there, what, if anything, did you see?

16 A Upon my initial arrival, it was dark, it was raining.
17 I was the first on scene. I observed the front door to
18 the residence was open. I made entry to the residence. I
19 saw the victim lying on the floor with a towel wrapped
20 around his head. I saw Rose Lucas in there with the
21 victim, along with Barbara Bailey. My initial concern was
22 to go ahead and clear the residence, as we had EMS
23 stationed down the road. By clearing the residence, we
24 had to make sure there's nobody else lying in wait inside
25 the house that may want to take responding emergency

1 personnel out or law enforcement out. So that was -- my
2 initial duties, was go in there and secure, make sure
3 nobody else was in the house.

4 Q When you clear a house, is that a guns drawn?

5 A I did have my gun out, yes, sir.

6 Q Once you determined no one else was in the house,
7 what did you do?

8 A At that point, then we decided we needed to go ahead
9 and set up a crime scene. By doing that, we actually tape
10 it off, just like they show on TV. We have one person
11 designated to make up a log showing who's actually on
12 scene, who comes in, what their purpose for coming in on
13 scene is and when they actually leave the scene.

14 We also took that time to go ahead and remove
15 all witnesses from that residence, and it was decided to
16 take them next door to Victor Road due to the fact it
17 was raining, it was nighttime. It wasn't conducive to
18 leave them inside the residence of .

19 Q The crime scene tape, what is the purpose for
20 rounding off a crime scene or tape around an area, and
21 then having a crime scene log?

22 A The crime scene tape is a physical -- is a visual
23 symbol to say, hey, you know, I know I'm not supposed to
24 cross that line. It's kind of like drawing a line in the
25 sand. You don't cross it unless you're told to. The

1 person who maintains the crime scene log, they're just
2 keeping an accurate count of who's actually there. Their
3 roles were not going to allow just spectators to show up.
4 If you're there, you have to have a -- a purpose for being
5 there, and it just outlines who and all's there. It's an
6 accountability.

7 Q The crime scene log, together with that, did that
8 preserved, the crime scene? Is that basically what you're
9 doing?

10 A Yes, sir, it does.

11 Q You mentioned you got everybody out and you went to,
12 was it right next door?

13 A Yes, sir.

14 Q Was that Barbara Bailey's mobile home right next
15 door?

16 A Yes, sir, it is.

17 Q What is the purpose of getting all the people who
18 might be out there and putting them in one place?

19 A The reason why we did that was so that I could
20 actually go over there with them. We wanted to go ahead
21 and get them started on initial statements. At that
22 point, I didn't care who was physically there in the house
23 or where they were at, I just wanted them to write it down
24 on the piece of paper. It wasn't for me -- necessarily my
25 knowledge at the time. I wanted them to start writing on

1 a piece of paper what their role was, where they were at,
2 what they were doing. If you told me you didn't know
3 anything about it and you just landed from the moon, then
4 I wanted you to put that on your piece of paper. It's
5 kind of so we can get a running tally of who was where
6 prior to the incident.

7 Q Is this on a sheriff's department statement form?

8 A Yes, sir, it is.

9 Q Now, do you fill out the top portion or one of your
10 fellow deputies fill out the top portion when you're
11 handing these out?

12 A Typically, yes, sir.

13 Q And, again, you are not looking for a long synopsis,
14 just a blurb of the As, Bs and Cs?

15 A That's correct.

16 Q What do you do with those statements once you get
17 them?

18 A Once we collect the statements, we'll have one person
19 hang onto them until in a case like this, one of our
20 investigators show up, and then we can present them with
21 the statements so they have an idea of who's the people --
22 or who they need to talk to. It gives them a list of
23 who's potential witnesses and who just happens to be in
24 the area.

25 Q These statements -- when you brought up

1 investigators, who else do you call to the scene?

2 A Lexington County canine service was requested due to
3 the possibility of being able to track someone who may
4 have fled on foot. We also had crime scene investigators
5 respond out there. And we had what's called our major
6 crimes. Our investigators are broken down into property
7 crimes and major crimes. In situations such as this, we
8 have major crimes respond out there.

9 Q The statements that you get, did you give them to the
10 major crime investigators?

11 A That's correct.

12 Q And that kind of gets the ball rolling so they can
13 follow up and get new statements if they need to?

14 A That's correct.

15 Q Did you or any of your fellow officers, when you
16 first got there, started getting an initial what's what,
17 issue anything like a BOLO?

18 A I did.

19 Q What is a BOLO?

20 A It is a "be on the lookout." It's a -- it's whenever
21 I ask our dispatchers to put a BOLO out, it's so that they
22 can notify surrounding agencies, then send it out via
23 teletype as well as over the radio to other agencies for a
24 description of vehicles or whatever the case may be,
25 whatever we need them to look out for.

1 Q And what did that BOLO contain that you issued?

2 A The BOLO I put out contained information on the
3 vehicle, which was described as a dark in color pickup
4 truck, possibly green, possibly black, with loud exhaust,
5 and two individuals.

6 Q Now, going back to the residence that you saw the man
7 lying on the ground with the towel wrapped around his
8 head, were you able to identify who he was?

9 A Later on, I was able to identify that was
10 Mr. James -- I'm sorry, Leon Justice.

11 Q Did EMS arrive as well?

12 A They did.

13 Q Now, was he transported from the scene or had he
14 already passed away and became a part of the crime scene?

15 A He was transported to the hospital.

16 Q So he was removed?

17 A Yes, sir.

18 MR. HUBBARD: Thank you, Deputy McCaw. Please
19 answer any other questions the defense might have.

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q Good morning. How are you?

23 A I'm fine, thanks.

24 Q You have been a deputy for a long time?

25 A In law enforcement for several years.

1 Q In law enforcement.

2 You took the statement -- I mean, you said,
3 right away, I put them in that house and had them write
4 statements?

5 A That's correct.

6 Q And tell the jury why you do that right away.

7 A We do that right away because it's still fresh in
8 their memory. It's -- it's fresh on their mind. Plus, I
9 don't want potential witnesses sitting there talking, and
10 one party talks to another one, then they recall something
11 or they didn't necessarily see it that way; however, due
12 to outside influences, they obtain more information.

13 Q So the most accurate statements are generally when
14 people are required to do it right as close to the time
15 that it happens and when they haven't been influenced?

16 A That's correct.

17 Q And you took statements. Do you remember all the
18 witnesses from whom you took statements?

19 A Yes, ma'am.

20 Q And who were they?

21 A I took a written statement from Ms. Rose Lucas, James
22 Luther Davis, Daniel Cecil Lucas, Barbara Elizabeth Bailey
23 and Rondel. Davis.

24 Q And from that information, I think you said you put
25 out the BOLO for the truck?

1 A That's correct.

2 Q And called for canine or called for the investigative
3 backup?

4 A That's correct.

5 Q At that point when you kind of processed the initial
6 part, at that point, are you kind of finished with your
7 job?

8 A No, ma'am.

9 Q What did you do next?

10 A I remained with the witnesses, kept them in one
11 location. I didn't want them talking back and forth as
12 far as the incident itself. And I just made sure that
13 they were safe and the scene was preserved as best I
14 could.

15 Q Do you respond to a lot of drug activity in the south
16 region?

17 A Yes, ma'am.

18 Q Tell the jury what kind of behavior typical crack
19 addicts exhibit.

20 A I've seen crack addicts exhibit behavior of
21 excitedness, nervousness.

22 Q Are they known to carry weapons? Any drugs, not just
23 crack addicts, but people who deal and use drugs, are they
24 known to carry guns?

25 A I have experienced several people who have used,

1 consumed, sold, transported drugs with weapons, yes,
2 ma'am.

3 Q Cell phone's a common tool in the drug-use industry?

4 A Yes, ma'am.

5 Q As far as any knowledge of the information after
6 this, you're limited to what happened that night, correct?

7 A That's correct.

8 Q And the statements that you took, you told the
9 witnesses to give you the most accurate and correct
10 information?

11 A That's correct.

12 MS. ZMROCZEK: I have no further questions.

13 MR. HUBBARD: Nothing further.

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

15 MR. HUBBARD: The State calls Rose Lucas.

16 ROSE LUCAS, after being duly sworn, testified as
17 follows:

18 THE CLERK: Have a seat up there, please, ma'am.

19 Once you're seated, speak up loud and clear,
20 stating your full name and spelling your last on the
21 record, please.

22 THE WITNESS: Rose Lucas, L-U-C-A-S.

23 DIRECT EXAMINATION

24 BY MR. HUBBARD:

25 Q Ms. Lucas, where do you live?

1 A Victor Road.

2 Q How long have you lived at Victor Road?

3 A I moved out there in 1991.

4 Q What part of Lexington County is that?

5 A Gaston.

6 Q Who is Leon Justice?

7 A He's a friend of mine -- was a friend of mine and my
8 roommate.

9 Q How did he go about -- or about how long had you been
10 with him?

11 A He had been at my house for right at a year or a
12 little over a year.

13 Q How did it come about that he stayed with you?

14 A Well, he was actually, when I met -- I mean, I knew
15 his family, his brother I used to date when I was, like,
16 17. And when I run into Leon, he was sleeping in the
17 woods. He's -- was a 64-year-old -- 64-year-old man
18 sleeping in the woods. I told him, I said, instead of
19 doing that, you come stay with me and help me with my
20 bills.

21 Q So, Rose, he was homeless?

22 A Yes.

23 Q And, Rose, I want to ask you something about the
24 activities that took place at your residence. What type
25 of activities were you involved in, illegal activity?

- 1 A I was selling crack cocaine for my habit.
- 2 Q Do you have a habit?
- 3 A Yes, ma'am -- yes, sir.
- 4 Q What drug are you addicted to?
- 5 A Crack.
- 6 Q You are a crack addict?
- 7 A Yes. I'm a recovering, though. I'm not -- it was a
8 wake up whenever they shot Leon.
- 9 Q Did Leon have a crack problem?
- 10 A Yes, he did.
- 11 Q Now, to talk about selling, who did the selling out
12 of that residence?
- 13 A I did.
- 14 Q Leon didn't?
- 15 A No.
- 16 Q I want to go back to September 21st, 2011. That
17 incident, about what time did this shooting and everything
18 else that transpired that night, what time did that take
19 place?
- 20 A It was around 10:30, something, 11:00.
- 21 Q So it was late?
- 22 A Yes, it was rainy and cloudy and everything that
23 night, too.
- 24 Q Who all was in your residence at that time?
- 25 A It was me and Leon, my friend -- what is her name --

1 Lilly and my sister's boyfriend's cousin, Jim Bob, which
2 his name's James.

3 Q Did Jim Bob and Lilly -- that would also be Lillian
4 Yon?

5 A Yeah.

6 Q So it's all of you all in your residence --

7 A Yes.

8 Q -- that night?

9 A Yeah.

10 Q What is going on in that residence?

11 A Nothing. I was in my room most of the day and most
12 of the evening. Like 10 o'clock, I come out of my room to
13 cook dinner for me and Leon. And they were just sitting
14 in the living room watching TV.

15 Q When you walked in the living room -- and this is a
16 mobile home?

17 A Yes.

18 Q A single wide, double wide?

19 A Single.

20 Q When you walked in to cook, where did you go?

21 A I went in the kitchen.

22 Q How close is that to the living room?

23 A Well, it's just like a divider between the two.

24 Q So you can still see everybody in the living room?

25 A Yeah.

1 Q As you're going in that kitchen, are you having a
2 conversation with Leon?

3 A Yeah. I was fussing at him about opening a can of
4 stewed tomatoes I was going to cook with our chicken. So
5 he followed me in the kitchen.

6 Q As you all went into the kitchen, what happened?

7 A He put whatever he had in his hand down, and somebody
8 knocked on the door, and he went and opened the door. As
9 soon as he opened the door, all I remember is seeing a
10 white flash and somebody hollered, he shot -- you shot
11 him.

12 Q Now, the white flash, is that from inside or outside
13 the mobile home?

14 A It was outside. It was right at my front door.

15 Q Okay. And the words "you shot him," was that coming
16 from someone inside your residence or outside?

17 A Outside.

18 Q What happened after that?

19 A All I know is the next thing I know I had a gun --
20 the guy in a Scream mask was there and had a gun to my
21 head and told me to give them the shit, excuse my
22 language. And I said, okay, okay. And so we proceeded
23 down the hallway to my bedroom, and I gave it to him.

24 Q All right. Well, let's back up a little bit.

25 You had two other people in your residence

1 besides Leon?

2 A Yes.

3 Q Is it Jim Bob, is that what you said?

4 A Yeah, that's what his nickname is, Jim Bob.

5 Q Jim Bob and Lillian. What happen to them? Where did
6 they go?

7 A Well, as far as I know, I didn't see them, but as far
8 as I know, as soon as the shot went off, Jim Bob and Lilly
9 went out my back door. I mean, jumped over a TV and a
10 pile of stuff that blocked my back door. But they were
11 out my back door.

12 Q So your back door wasn't something you usually use?

13 A No. I was stuck in the kitchen.

14 Q And that shot fired off, the two guests in your house
15 went through that back door?

16 A They bolted, yes. I don't know how they made it out
17 of there or down -- I mean, because the backyard -- I
18 mean, the back door, we didn't use.

19 Q So at this point, you, Leon and how many people come
20 into your house at that point?

21 A Two.

22 Q Could you tell if they're male or female?

23 A That -- you could tell they were males.

24 Q Could you tell if they were young or old by the way
25 they moved?

- 1 A Well, they -- I mean, they appeared to be young guys.
- 2 Q You say they pointed a gun at you?
- 3 A Yeah.
- 4 Q How many guns did you see that night?
- 5 A I only seen one, but I, you know, I can't say for
6 sure if they both had one or not. I know the one -- there
7 was one at my head.
- 8 Q Were you afraid they both had guns?
- 9 A Yes.
- 10 Q Can you describe what they were wearing?
- 11 A The first one to come in had a Scream mask, the white
12 Scream mask that scared the -- I mean, and then the other
13 had a mask. I don't know exactly what kind or nothing. I
14 couldn't describe it.
- 15 Q Their faces were covered?
- 16 A Yes.
- 17 Q And the Scream mask, is that that movie "Scream" with
18 the white face on a black background?
- 19 A Yes. And very scary. I mean, I still have
20 nightmares about that. I can't -- don't like Halloween
21 for that -- that mask.
- 22 Q When they come in and point a gun to you, where is
23 Leon? At this point could you see Leon?
- 24 A I didn't even see Leon fall down. All I know is when
25 they put the gun to my head and told me to get the stuff,

1 I walked around from where -- my living -- my kitchen and
2 walked around there and to the living room, and he was
3 crumpled right there in front of my front door.

4 Q So he's right in the doorway?

5 A Well, actually away from the doorway, like from me to
6 that thing. But he was crumpled on the ground on the
7 floor.

8 Q Where were you directed -- what were you directed to
9 get?

10 A I was directed to get the crack and the meth money I
11 had.

12 Q And where was that kept?

13 A I had it in my bedroom.

14 Q Did you go back there alone or did these guys
15 follow --

16 A No. They followed me down the hall.

17 Q Where did you keep the crack and the money?

18 A I had it on my bed at that time.

19 Q What was it kept in?

20 A Like a change purse, makeup bag or -- more like a
21 makeup bag.

22 Q Okay. So you kept it all together?

23 A Yes.

24 Q Now, Rose, you have had people coming by and buying
25 crack before, right?

1 A Yes.

2 Q It was your practice to keep the money and crack
3 together?

4 A Yes. Unfortunately, I shouldn't have done it that
5 way. But that was just -- I knew what I had and what I,
6 you know, to keep up with what I -- the person I was
7 getting it from.

8 Q Let me ask you. I know you're recovering, but having
9 been in that business of selling crack cocaine, making
10 money, even if it's used to buy you crack cocaine, is that
11 a good practice?

12 A No, it's not a good practice.

13 Q Why?

14 A Because you get -- just you get -- I mean, it's a
15 very addictive drug, and it's not just not worth it.

16 Q And why is that?

17 A You have crazy people come do stupid stuff.

18 Q Yes, ma'am, you did.

19 Let me ask you about keeping stuff together. If
20 you're pulling out a piece of crack cocaine and someone
21 sees the money, is that a bad practice in your field?

22 A Yes, very bad. I mean, because Leon had just told me
23 a few weeks before that, you need to separate it, not keep
24 them together because of something like that.

25 Q Have you ever heard of a fellow by the name of Danny?

1 A Yes.

2 Q Did you know Danny's last name was Danny Plumley?

3 A No, I didn't. I was just introduced as Danny.

4 Q How long prior to this had you been introduced to
5 Danny?

6 A Probably two to three months, if that -- if that
7 long.

8 Q Were you introduced to anybody else related to Danny?

9 A He come in, brought his -- he said Shawn and Charlie,
10 they were his brothers, and he come in and brought them
11 because I was very upset about him bringing somebody I
12 didn't know to the house. He's, like, these are my
13 brothers, Shawn and Charlie.

14 Q How many times had they been over there?

15 A Probably four or five. I mean, I didn't -- I really
16 didn't like their -- I didn't really like none of them. I
17 mean, their attitudes and just the feel I got from them.
18 They actually, you know, scared me, like.

19 Q And the day of this incident, September 21st, that
20 night is when this happened, correct?

21 A Yeah.

22 Q That day, earlier in the day, had you had an
23 opportunity to see any of these fellows?

24 A Yeah. Charlie and Shawn come over. I think Danny
25 came the night before or the day before.

1 Q It was your understanding that these guys were all
2 brothers?

3 A Yeah.

4 Q And you got that from Danny?

5 A Yeah.

6 Q And when you say Danny came by the night before,
7 about what time, if you remember, did Charlie and Shawn
8 come by; was it daytime?

9 A Yeah. It was still daytime, probably about 5:00 or
10 6:00.

11 Q What were they there for?

12 A They just come by to see what was going on. And I
13 think one of them had \$10, and they wanted to buy a \$20
14 piece from me, and I told them, I said -- or wanted me to
15 front them the 20 for the ten, and I said, I can't do it.
16 So I took a 20 piece and cut it in half and gave them a
17 dime piece.

18 Q Rose, let me ask you something. Again, as a
19 prosecutor, I might know this: As someone who's gotten in
20 trouble doing this business before -- because it's true,
21 you have been convicted of this, have you not?

22 A Yes, I have.

23 Q Just last year, when you actually -- from an incident
24 a while back that you pled guilty to distribution of
25 crack, 1st offense, on May 8th of last year?

1 A Yes, sir.

2 Q The typical way of selling crack, what's the dollar
3 amount you sell?

4 A \$20.

5 Q When somebody is asking you for a ten, is that a very
6 small piece?

7 A Yes. It's a half of a 20 piece, and, I mean, it's
8 not very big at all because you're not -- normally you
9 don't do that.

10 Q People who are typically asking you for that, are
11 they people who also use?

12 A Yeah.

13 Q Okay. The day, daytime on the 21st, you say that
14 you see Charlie and this guy named Shawn comes over?

15 A Yeah.

16 Q Do you see Shawn in the courtroom?

17 A Over there.

18 Q Is he the guy in the middle at the table --

19 A Yes, sir.

20 Q -- wearing no coat?

21 A Yes, sir.

22 MR. HUBBARD: Your Honor, please let the record
23 reflect that she has described the defendant, pointed out
24 the defendant.

25 BY MR. HUBBARD:

1 Q They come by to buy crack cocaine?

2 A Yeah.

3 Q They don't have any money, basically?

4 A No, not -- not when they should -- I mean, no.

5 Because I give -- I mean, I sold it to them even though I
6 shouldn't have.

7 Q Did they come by one time or more than one time or do
8 you remember? If you don't remember, that's fine.

9 A They came back -- back by later because they wanted
10 me to front them another \$20, but they only still only had
11 \$10. I said, well, I can give you another half of the ten
12 I cut you earlier. And then the -- I mean, they took it,
13 but they didn't like it.

14 Q When you talk about fronting crack, is that you give
15 somebody crack and they're going to pay you later?

16 A Yes.

17 Q And you weren't willing to do that?

18 A No. I did it with Danny a couple of days before
19 that, and that's why they were -- thought I should do it
20 for them. But Danny didn't come pay me like he was
21 supposed to. So, no, I wasn't going to do it.

22 Q When Charlie and Shawn are over at your residence,
23 were they over there when Lillian Yon was over there at
24 some point?

25 A Yes.

1 Q Was there any interaction between Charlie, Shawn or
2 Lillian Yon?

3 A Yeah. They -- she gave them -- sold them a cell
4 phone.

5 Q Sold it to, who, Charlie?

6 A It was Charlie or Shawn. I really didn't -- I -- at
7 the time, I couldn't tell you who picked -- tell you which
8 one she sold it to.

9 Q Okay. Now, do you remember after this incident,
10 immediately after, cops show up, Leon is still on the
11 ground and EMS is there, do you remember at some point
12 being pulled out of the house and going to Barbara
13 Bailey's?

14 A Well, after -- after they took the stuff, they run --
15 they run out the front door. I went straight out the door
16 and straight over to my sister's. And my son -- I run
17 into my son out there, and I told him what happened. My
18 sister came in and put -- put -- took care of Leon because
19 he was still alive at that time. She took something and
20 wrapped his head up because they blew his brains out.

21 Q And officers and EMS showed up after that?

22 A Yeah. And then that's when, you know, they took over
23 Leon, and we went to my sister's and stayed there.

24 Q Barbara Bailey is your sister?

25 A Yeah. She was on the phone with 911 and, you know,

1 telling them what she was doing. She wrapped a towel
2 around his head and kept him alive until he -- until
3 everybody got there, even though I think he was already --
4 actually dead because he had a pacemaker.

5 Q Is it fair to say you were pretty upset at that
6 point?

7 A Very.

8 Q Law enforcement, the first officer, a man in uniform,
9 does he try to get a statement from you that night?

10 A Yeah, I think so.

11 Q Have you had a chance to talk to law enforcement
12 after that as well?

13 A Yeah.

14 Q Now, Rose, at some point, did you mention Danny,
15 Charlie or any of these guys to law enforcement?

16 A Yeah. I think I -- I said Danny and Charlie, to
17 check them out because Danny had called me like 10:00 --
18 about 10 o'clock that night, wanted to know if I was
19 straight, if I had anything.

20 Q When Danny called you, had that shooting taken place
21 yet?

22 A No. I think that's why it stuck in my head that, you
23 know, Danny, he called and then...

24 Q So you passed that name on to law enforcement?

25 A Yeah.

1 Q And you passed on the name Charlie?

2 A Yeah.

3 Q Do you remember if you passed on Shawn's name?

4 A Not that night. I think it came -- I mean, I
5 realized that, you know, Danny called, but Danny was much
6 bigger than the other two that showed up at my house.

7 Q Do you recall the next day, talking to them about
8 Shawn as well?

9 A Yeah.

10 Q But, Rose, is it fair to say, these guys wearing
11 masks, you didn't know who came in your house?

12 A No, I don't.

13 Q You were just giving them leads on who they needed to
14 look at?

15 A Yeah.

16 Q And you're not here today to say who actually came in
17 your house, are you?

18 A No, I can't -- I couldn't say.

19 Q But there is no question, Leon was shot and killed in
20 your house; is that correct?

21 A Well, he was shot; he died at the hospital.

22 Q Yes, ma'am. But from that shooting at your house?

23 A Yes.

24 Q There is no question that two guys come into your
25 house without your permission; is that correct?

1 A Yes.

2 Q At night, correct?

3 A Yeah.

4 Q And they're bent on committing a crime, shot a man
5 and had stolen stuff; is that correct?

6 A Yes, sir.

7 Q Is it also fair to say, these guys when they came in,
8 they were armed; is that correct?

9 A Yes.

10 Q And they took something from you, whether you should
11 have had it or not, they took something?

12 A Yes. It was like 3 or \$400 in cash and 3 or \$400 in
13 crack. That wasn't worth a man's life. I mean, I'd of
14 given it to them; they didn't have to shoot him.

15 MR. HUBBARD: Rose, I want you to answer any
16 questions the defense may have. Thank you.

17 CROSS-EXAMINATION

18 BY MS. ZMROCZEK:

19 Q Ms. Lucas, we have never met, correct?

20 A Correct.

21 Q Oftentimes, this gets lost in a trial, and I want you
22 to know that I am sorry because I can tell that you're
23 upset about the passing of your friend. And I'm not here
24 to beat you up about that. And I am very proud of you for
25 getting off crack because it's a dangerous drug, isn't it?

1 A Yes. It's very addictive.

2 Q And it made you do things that you wouldn't normally
3 do?

4 A Yeah.

5 Q And you said you have seen some bad people on crack?

6 A Yeah.

7 Q As Mr. Hubbard was going through the elements of the
8 armed robbery and the burglary 1st with you, and
9 absolutely those people in your house committed those
10 crimes. But you can't sit here, and you're not sitting
11 here on the stand and saying that you knew that was Shawn,
12 are you?

13 A No. I can't say for sure. I mean, it's just the
14 way, the demeanor and everything because I couldn't see
15 them, their face because there were masks.

16 Q And I know this is something you will probably never
17 forget. You said the guy in the Scream mask put a gun to
18 your head?

19 A Yes.

20 Q And the guy in the Scream mask was first in the door?

21 A Yes.

22 Q Nobody ran around him, burst in?

23 A If -- if he did, I didn't -- I mean, like I said, I
24 was still blinded by the white flash. I mean, because it
25 was just -- that's -- that's basically all I seen. And

1 then I was, you know, they were in my face. I couldn't
2 tell you.

3 Q But you wrote a brief statement for the detective
4 when he brought you over there, correct?

5 A Yeah.

6 Q And I know that that did not have a lot of detail in
7 it at that time, but you did have that opportunity to
8 speak with investigators as well, didn't you?

9 A Yes.

10 Q And at that time, didn't you tell them that -- you
11 gave them the names of Charlie and Danny, and you told
12 them why, Charlie and Danny, you suspected them, didn't
13 you?

14 A I think so.

15 Q Do you remember what you said?

16 A I think because Danny called and they had been over
17 there earlier that day.

18 Q Danny and Charlie had been over there that day?

19 A I don't think Danny was. I know Charlie was and
20 Shawn. But I just -- it didn't dawn on me Shawn -- I
21 mean, because I think I had problems with it --
22 remembering his name. I knew Danny and Charlie.

23 Q You said that Danny had called you at 10:00?

24 A Yes.

25 Q What is your phone number, Rose?

1 A I have no idea what phone number I was using at that
2 time.

3 Q Were you using a lot of different --

4 A I had three different phones.

5 Q Were you using all three of them at that time?

6 A Yes, ma'am.

7 Q Okay. But Danny called you on one of those phones?

8 A Yes.

9 Q Just once that day or more than once that day?

10 A He just called the once, as far as I can remember. I
11 mean, it was at -- that night.

12 Q And let me ask you this since I don't know the
13 answer, which they say you should never ask. But my
14 question is this: Now that you're clean, are there things
15 that you can and can't remember when you were high on
16 crack?

17 A Well, yeah, I have problems with memory, yeah. But
18 I'll never forget that night, I mean, because somebody
19 busted -- busted through my front door. I've never had a
20 gun put to my head before.

21 Q Hopefully never again and certainly not by someone in
22 a Scream mask?

23 A No. I don't want to ever see a Scream mask.

24 Q Rose, so it's possible that Danny called you and got
25 some crack earlier that day, you can't remember?

1 A I think he got -- I mean, he called me and paid me
2 for the day before because -- where he owed me. But as
3 far as I remember, he didn't show up that same day.

4 Q How is it that you came to know Danny and Charlie?

5 A A friend of -- a friend of mine introduced me to
6 Danny, and then Danny brought those -- Shawn and Charlie
7 over.

8 Q So who is the friend that introduced you, was that
9 Billy?

10 A Yes.

11 Q And Billy introduced you to Danny and then you are
12 saying that Danny brought Charlie and Shawn over?

13 A Yes.

14 Q And how many times did Charlie and Shawn come over
15 your house?

16 A Probably four or five times. I mean, because I only
17 like -- I knew them about two or three months.

18 Q And you said that day they came over several times?

19 A Yeah, they'd been over a couple of times that day.

20 Q When they came over earlier, who else was at your
21 house?

22 A I'm sure it was me and Leon. I'm not sure if anybody
23 else was there or not. I think Lillian might have been
24 there.

25 Q Oh, yes, because you said that Charlie got the phone

1 from Lillian?

2 A Yeah.

3 Q He traded it for crack or how did that work, do you
4 know?

5 A I think she traded it for money to get -- for her to
6 get crack, or something. I'm not really sure. I mean,
7 they -- she didn't go into details about it.

8 Q Right before this happened, was there anybody else at
9 your house purchasing crack that had come and gone?

10 A Not that I remember. It was a slow day.

11 Q It was a slow day. And it was rainy?

12 A Yeah. It was -- it was nasty outside. I mean, dark,
13 cloudy, rainy.

14 Q And I know that you later -- the first statement that
15 you gave to the police, Danny, Charlie, Danny, Charlie
16 Danny, Charlie, correct?

17 A Yes.

18 MR. HUBBARD: Your Honor, I am not sure what
19 statement she is referring to. I have three witness
20 statements, and it would be helpful to me if I knew which
21 one she is talking about.

22 MS. ZMROCZEK: Thank you, I will clarify.

23 BY MS. ZMROCZEK:

24 Q The first oral statement that you gave after you --
25 you wrote a statement that night, and you said it was very

1 brief, you were very upset, but that you spoke with the
2 officers that night?

3 A Yeah.

4 Q And you told them Danny and Charlie?

5 A Yeah. Like I said, I think I put Danny because he's
6 the one who called me that night.

7 Q And then you gave a written statement, and you said
8 you came to learn the name of Shawn, correct?

9 A Well, I had trouble figuring it out -- I mean, when
10 they weren't introduced. They really wasn't introduced,
11 they were just brought over. And, you know, it's not
12 really this is this, this. And, I mean, when I'm high --
13 I was high on crack, you know, I really didn't remember
14 names that well. I could see faces.

15 Q What is it that you learned to remember Shawn's name?

16 A Well, after a few times he had been there, the
17 last -- like, the last time he'd came over because it's
18 hard to distinguish, standing out. I mean, both of them
19 was supposed to be meth heads and all because they were
20 asking me about meth and stuff, and I'm, like, no, I don't
21 know you.

22 Q Did you make or sell meth?

23 A No. They wanted to know -- they said they had it.

24 Q And the police searched your house afterwards, right?

25 A Yes, ma'am.

1 Q And maybe they found a recipe for meth?

2 A No.

3 Q They didn't find one in your house?

4 A If they did, I didn't know about it.

5 Q It wasn't yours.

6 So in your second statement that you wrote for
7 the police, you said, "I came to learn the name of Shawn."

8 You're just saying that you remember it or
9 nobody told you that or --

10 A Nobody told me that, no. It's just -- I just
11 remembered who he was, you know.

12 Q When you were arrested for a different matter, I know
13 that it was dealing with drugs?

14 A Yeah. That was -- I had been charged in August. And
15 then Leon was killed in September. They could have kept
16 me -- if they went ahead and arrested me in August, they
17 could have kept Leon from getting killed in September.
18 But they didn't come and arrest me until December.

19 Q And they arrested you in December --

20 A Yeah.

21 Q -- a few months after this happened. And then they
22 put you in -- did they take you to jail?

23 A I was in Lexington County Detention Center.

24 Q In Lexington County Detention Center, do they house
25 the females together?

1 A Well, I was in a locked-down pod, and Angela Griffin
2 was upstairs. I was downstairs. And we were keep-aways,
3 but we still -- I still had to graduate from drug class
4 with her.

5 Q So you still had some interaction with her?

6 A No. I never spoke to her. She never spoke to me.

7 Q And it was Angela Griffin and that's Angela Griffin
8 Plumley. Do you recall?

9 A Whatever her name is, though, I -- I never met her.
10 I don't know the girl. Even though she said she was at my
11 house, I never met her.

12 Q And that was my question. You clearly remember who
13 you sold crack to and who you didn't and who was in your
14 house and who wasn't. So your testimony is that she
15 wasn't at your house?

16 A Not -- if she was, she was in my yard, maybe, because
17 she never came in my house.

18 Q Never came in your house.

19 Do you remember -- do you recall in the oral
20 statement that you gave right that night, do you recall
21 what you told the officers about the demeanor?

22 A It was like they were -- I mean, that -- I didn't,
23 like -- I mean, they were aggressive, and, you know, it
24 was scary, like they were upset.

25 Q And I just want to make sure I am not putting words

1 in your mouth.

2 Sometime after 10:00, you got a call from Danny.

3 Shortly thereafter, two people busted in your house?

4 A They knocked at the door and Leon opened the door and
5 they shot him. They then said "You shot him," and then
6 they rushed in and put the gun to my head.

7 Q Gun to your head, Leon's on the ground?

8 A Yeah.

9 Q Man with the gun, the Scream mask, no doubt in your
10 mind?

11 A Well, I don't know which one shot him or anything
12 like -- I mean, it was just --

13 Q No doubt in your mind you had the gun to your head
14 and who came through the door?

15 A Well, I know I had the Scream mask person with a gun
16 at my head.

17 MS. ZMROCZEK: No further questions.

18 MR. GRAHAM: No follow up.

19 THE COURT: Thank you very much, ma'am. You may
20 step down.

21 THE WITNESS: Thank you.

22 MR. GRAHAM: The State calls Glenn Ross.

23 GLENN ROSS, after being duly sworn, testified as
24 follows:

25 THE CLERK: Have a seat, please. Once you're

1 seated, state your full name, spelling your last for the
2 record, sir.

3 THE WITNESS: Glenn Ross, R-O-S-S.

4 DIRECT EXAMINATION

5 BY MR. GRAHAM:

6 Q Where are you employed, Mr. Ross?

7 A Lexington County Sheriff's Department.

8 Q And what do you do for the Lexington County Sheriff's
9 Department?

10 A A crime scene investigator.

11 Q How long have you been involved with them?

12 A Over 23 years.

13 Q And how long have you been a crime scene
14 investigator?

15 A Ten years. Previous at the city of Columbia.

16 Q What is a crime scene investigator?

17 A We respond to any type of crime scene that we may be
18 needed in order to document, photograph and collect
19 evidence needed to clarify and prosecute the crime that's
20 taken place.

21 Q In general terms, what do you do when you respond to
22 a crime scene; for instance, a homicide?

23 A Initially, I do a walk-through, kind of see initially
24 what we have from statements that we have on the scene.
25 And then a search warrant is usually obtained, and then

1 photographs are taken right after that, initial overall
2 photographs.

3 Q On September 21st of 2011, were you called to a
4 homicide or a shooting at Victor Road in Lexington
5 County?

6 A I was.

7 Q What time did you arrive on scene?

8 A 2258.

9 Q And when you arrived, what did you do? I'm sorry,
10 you said that was -- what time did you arrive on scene?

11 A I'm sorry. 2325. I got the call at 2258.

12 Q And we're doing military time. For us not in the
13 military, what time is that?

14 A Right at 11 o'clock's when I got the call.

15 Q And you arrived on scene?

16 A At 11:25.

17 Q 11:25 p.m. When you got on the scene at Victor
18 Road, what did you do?

19 A I got with Detective Derrenbacher and tried to get
20 initial information exactly of what we had, and also tried
21 to get under a big tree there to keep from getting so wet.
22 It was raining very heavy.

23 Q After you had an idea of what was going on, did you
24 do a walk-through of the property and residence?

25 A I did.

1 Q And what were you looking for?

2 A Just looking for general information of some of the
3 things we were told, see where things might have been in
4 disarray. There had been some type of altercation, where
5 the victim may have been laying, things such as that.

6 Q Let me show you two photographs and ask if you
7 recognize these. I'm showing you State's 12 and 13 for
8 identification.

9 A Okay. Yes, sir.

10 Q And do they fairly -- did you take these pictures?

11 A Yes, sir.

12 Q And do they fairly and accurately depict what you
13 took pictures of that night?

14 A Yes, sir.

15 Q And it's the residence at Victor Road?

16 A Yes, sir.

17 MR. GRAHAM: Your Honor, the State would offer
18 12 and 13 in evidence.

19 MS. ZMROCZEK: Without objection.

20 THE COURT: State's 12 and 13.

21 (WHEREUPON, STATE'S Exhibits Nos. 12-13 were
22 admitted into evidence.)

23 BY MR. GRAHAM:

24 Q State's No. 13, up there on the projector, what are
25 we looking at there?

1 A The front of the residence from -- I believe that is
2 that ditch out towards the road. It's a good bit of
3 distance is why the light didn't travel as far in the
4 rain.

5 Q And I know these are dark. Looking at State's 12?

6 A That's the front door, front door area, outside the
7 trailer.

8 Q Looking at the photo itself, State's No. 12, that is
9 the front door?

10 A Yes, sir.

11 Q Are there steps?

12 A Yes, sir.

13 Q What kind of building is this? Is it a brick home, a
14 wood-built home, a trailer?

15 A Single-wide trailer.

16 Q Single-wide trailer.

17 Did you find -- well, you knew there had been a
18 shooting; is that correct?

19 A Yes, sir.

20 Q What was your understanding regarding that?

21 A That a gentleman had been shot at the front door, and
22 the subjects had fled the scene. At the time, we were not
23 told that they had gone into the residence. We were told
24 an altercation was there at the front door, they shot him
25 and fled the scene. And he had fallen to the side of the

1 door. He was not on scene when I arrived; he had already
2 been transported to the hospital. But you could see blood
3 and pillows and towels that had been used to try and help
4 him while he was laying there.

5 Q And what part of the house was that in when you said
6 you saw blood?

7 A Just inside the door to the right as you enter is
8 where he apparently was at.

9 Q Did you see any other signs of struggle or anything
10 like that inside the residence?

11 A Not that I could tell, no, sir.

12 Q You knew there had been a shooting, correct?

13 A Yes, sir.

14 Q In either the outside or the inside of the house,
15 were you able to locate any bullets or shell casings or
16 anything of that matter?

17 A Yes, sir. Right outside the front door by the --
18 just outside of the step, I made reference in my report,
19 item number one was one Winchester 45 auto solid cartridge
20 on the ground in front of the steps.

21 Q Let me show you two photographs and ask if you
22 recognize these.

23 A Yes, sir. Yes, sir.

24 Q And you took these pictures?

25 A I did.

1 Q And they represent the cartridge that you are
2 testifying to?

3 A Yes, sir.

4 MR. GRAHAM: Your Honor, the State moves 17 and
5 18 into evidence.

6 MS. ZMROCZEK: Without objection.

7 THE COURT: What numbers again?

8 MR. GRAHAM: 17 and 18, Your Honor.

9 (WHEREUPON, STATE'S Exhibits Nos. 17-18 were
10 admitted into evidence.)

11 BY MR. GRAHAM:

12 Q Number 18, there is some kind of a one. What is
13 that?

14 A That is an assigned number, a placard, that once you
15 take photographs, I assign that number for my records to
16 keep track as far as my report. When I turn things into
17 evidence, it stays with that number as far as all my
18 paperwork goes as for documentation.

19 Q State's No. 17 is a closeup of that area. What are
20 we actually seeing in that picture?

21 A That's the mat, apparently, that was on the ground
22 and the cartridge laying on top of it. That's before I
23 put the placard. I always photograph a piece of evidence
24 before I put a placard down to show it in its original
25 state.

1 Q So this is where it was you found it. Then the
2 placard goes up and shows that you're photographing it and
3 then you collect it?

4 A Yes, sir.

5 Q You said it's on a mat. Where was that mat?

6 A Just outside the steps there to the front door.

7 Q Looking at State's No. 12, the front of the
8 residence, are you able to say the general area of where
9 that was?

10 A Yes, sir. It's right here. And if you look, I
11 believe that looks like the cartridge right there.

12 Q The mat that's right in front of the front door.

13 In addition to that, did you find a fired
14 cartridge case?

15 A Yes, sir, we did.

16 Q What is the difference, for those of us who don't
17 know anything about guns, between a cartridge case that
18 you show here in 17 and a cartridge -- what is this
19 called?

20 A That is a cartridge.

21 Q A cartridge.

22 What is a cartridge?

23 A It is a shell casing with primer gun powder in it and
24 also a lead projectile that's put together in order for
25 firing. It's called a bullet.

1 Q So this is what a bullet is before it's fired?

2 A Yes, sir.

3 Q When you talk about a cartridge case, you say you
4 have a cartridge case, what is that?

5 A Cartridge casing, we also call it a shell casing, is
6 after the gun has been fired, all the primer has been used
7 and the projectile fired out of a gun, that is what is
8 left, and ejected if it's an automatic or stays in the gun
9 if it's a revolver.

10 Q Let me show you what's been marked as State's 19 for
11 identification and ask if you recognize that.

12 A Yes, I do.

13 Q And what is that a picture of?

14 A That is item number 3, the shell casing that we
15 found, the cartridge shell casing.

16 Q And you took this photograph?

17 A Yes, sir, I did.

18 MR. GRAHAM: Your Honor, the State would move
19 State's 19 for ID into evidence.

20 MS. ZMROCZEK: Without objection.

21 THE COURT: State's 19.

22 (WHEREUPON, STATE'S Exhibit No. 19 was admitted
23 into evidence.)

24 BY MR. GRAHAM:

25 Q Now, Investigator Ross, what is this photograph, if

1 you know?

2 A It's the shell casing we found in the lumber in the
3 front yard. It was just outside of where the front door
4 was at. There was a piece of paneling that was laying on
5 top of this pile that had a squarish hole in it on the
6 top. We were looking everywhere. We knew we had a
7 discharged shell casing because we already had found a
8 bullet cartridge that was there. So we were constantly
9 looking and having a bit of a hard time finding the shell
10 casing. We were a bit frustrated because we couldn't find
11 it. And it was raining, it was extremely dark, not well
12 lit. And then Detective Chris Stout lifted the paneling,
13 and when he did, the shell casing was laying up under that
14 paneling.

15 Q Referring back to State's No. 12, and I know it's
16 very dark, but in general terms, where was the shell
17 casing found? I'm going to hand you a laser pointer.

18 A It's going to be right in this area here, towards the
19 front of the air conditioner.

20 Q So over to -- on the right-hand side if you're facing
21 the trailer?

22 A Yes, sir.

23 Q Looking at State's 12, can you actually see it in
24 this photograph of where it was?

25 A No, I cannot.

1 Q But it's over in that area?

2 A It's just -- just outside the picture here is where
3 the wood pile was at.

4 Q Once you photographed the items, did you find any
5 other fired cartridge casings or unfired bullets?

6 A No, we did not.

7 Q What type of bullets were they -- cartridge was it?

8 A It was also a Winchester 45 auto cartridge. The same
9 type as item number one.

10 Q So both of them are Winchester, and that is a brand,
11 right?

12 A Yes, sir. It's head stamped by the company that
13 manufacturers it.

14 Q When you say a .45, what is a .45?

15 A A .45 caliber. It's in reference to the size of the
16 bullet itself.

17 Q You then you made a comment about an auto, I think.
18 What did you mean when you said that?

19 A The weapon, the revolver has a turning cylinder. It
20 will fire, the shell casing will stay in the weapon. With
21 an automatic or semi-auto, you fire the weapon, and the
22 weapon ejects and throws the cartridge out, cartridge
23 shell casing out.

24 Q So what you found were two; one was fired and one was
25 unfired?

1 A Yes, sir.

2 Q .45 caliber?

3 A Yes, sir.

4 Q Winchester brand?

5 A Yes, sir.

6 Q Both of them were involved with a semi-automatic or
7 automatic firearm?

8 A Yes, sir.

9 Q I'm going to show you an item or two and ask if you
10 recognize it.

11 MR. GRAHAM: Your Honor, Ms. Zmroczek has stated
12 that -- and she can correct me if I'm wrong -- but as far
13 as chain of custody, that she will stipulate to the chain,
14 then we just have to have the officers who collected them
15 and anybody who actually processed or did any work on
16 them.

17 MS. ZMROCZEK: That's correct, Your Honor.

18 THE COURT: All right, sir.

19 BY MR. GRAHAM:

20 Q And we're probably going to have to go into these.

21 Looking externally on -- there were two bags
22 inside the envelope I opened. Looking at the larger
23 plastic bag, do you recognize any of those?

24 A It's item number one, it's my writing here. And item
25 number three is my writing here. I always use film

1 canisters, now that we've gone digital, to put small items
2 of evidence in.

3 Q So do you recognize -- there's item one, you're
4 saying that's your handwriting?

5 A This is my handwriting.

6 Q And there is a film canister case?

7 A Yeah. That's mine.

8 Q And there is an unfired bullet.

9 A Cartridge.

10 Q Is that the .45 that you collected that we have
11 discussed in the photograph?

12 A Yes, sir.

13 Q There's also an item three that you say is your
14 handwriting with a film cannister case and a .45
15 cartridge?

16 A Yes.

17 Q Is that the .45 cartridge that you collected?

18 A Yes, sir.

19 Q So we have both the unfired .45 Winchester and we
20 have the .45 casing that is left. And those are the two
21 items in the photograph that you recovered at Victor
22 Road?

23 A Yes, sir.

24 MR. GRAHAM: Your Honor, the State would move
25 both of these items into evidence.

1 MS. ZMROCZEK: Without objection.

2 THE COURT: Without objection.

3 (WHEREUPON, STATE'S Exhibit No. 79 was admitted
4 into evidence.)

5 BY MR. GRAHAM:

6 Q How do you go about --

7 THE COURT: That's going to be 80?

8 MR. GRAHAM: I believe it will go with 79.

9 THE COURT: 79?

10 MR. GRAHAM: Yes, Your Honor.

11 THE COURT: All right, sir.

12 BY MR. GRAHAM:

13 Q Once you take the photographs, what do you do to
14 actually collect it?

15 A Of course, you -- you wear gloves so you don't
16 transfer any of your DNA or anything over to the evidence.
17 I get a film canister, the old 35-millimeter film
18 canisters, and place the item in there, and seal it, and
19 usually put it in a manila envelope or plastic bag, also.
20 So it's double sealed at the time I turn it in.

21 Q So you have gloves on --

22 A Yes, sir.

23 Q -- when you're doing that?

24 Why do you wear gloves?

25 A To keep from transferring any of my DNA or

1 contaminating any of the crime scene with me.

2 Q So when you actually physically pick up the
3 cartridges, you are wearing gloves. You pick them up, and
4 what you do with the cartridge?

5 A Put them in an evidence collection device, a film
6 canister, in that case.

7 Q Would it be the small plastic bags and the film
8 canisters that you have that have your handwriting on it?

9 A The canisters are mine, the plastic canisters, yes,
10 sir.

11 Q Once you collect the fired round or unfired round,
12 and you put them in one of these canisters, what do you
13 with them?

14 A Once I was done with the scene that evening, I
15 went -- and we have a crime lab -- and I secured all items
16 in that crime lab for that evening and...

17 Q What is the purpose of your securing them in a crime
18 lab?

19 A In order for there to be a better inventory and a
20 possibility for future forensics procedures to be done as
21 far as processing. Sometimes the department may want to
22 outsource a piece of evidence and not do it with us, then
23 it may go to SLED or Richland County. So items are taken,
24 secured in a crime lab. And we usually -- the next day
25 we're standing by to see what -- what direction we're

1 headed in because you don't have all the pieces to the
2 puzzle, necessarily, the evening of crime.

3 Q Eventually, what did you do with those two items?

4 A Those items were inventoried with my paperwork from
5 that evening. They were secured and turned into the
6 evidence room.

7 Q And those are people who work for the sheriff's
8 department whose sole job is to keep track of evidence and
9 make sure it doesn't get contaminated?

10 A Yes, sir.

11 Q Did you prepare any diagrams regarding the incident
12 at Victor Road?

13 A Yes, sir, I did.

14 Q Let me show you two, which is State's 15 and 16 for
15 ID and ask if you recognize those.

16 A Yes, sir.

17 Q And those are the ones that you prepared for this
18 case?

19 A Yes, sir.

20 MR. GRAHAM: Your Honor, the State would move 15
21 and 16 into evidence.

22 MS. ZMROCZEK: Without objection.

23 THE COURT: Without objection, 15 and 16.

24 (WHEREUPON, STATE'S Exhibits Nos. 15-16 were
25 admitted into evidence.)

1 BY MR. GRAHAM:

2 Q Looking at State 16 on the overhead,
3 Investigator Ross, what are we looking at?

4 A That is the single-wide trailer at Victor Road
5 from the above view.

6 Q What is this?

7 A That is the trailer itself.

8 Q So what is this right here?

9 A The steps entering the front door.

10 Q Over on the right side of trailer, what is that area?

11 A The kitchen.

12 Q In the middle?

13 A The den.

14 Q By the door?

15 A It's the den.

16 Q What is back in that part of the trailer?

17 A The master bedroom, another small bedroom and the
18 bathroom.

19 Q There is a one, two, three down below the steps; what
20 is that?

21 A Item number one is my item number one, the bullet.

22 And item number three is the shell casing, the cartridge
23 casing that was under the wood.

24 Q Those are the items that are now into evidence and
25 the photos that depict them, correct?

1 A Yes, sir.

2 Q State's No. 15, what is that?

3 A That is also a drawing of the mobile home, just
4 showing the distance from the front door to the other side
5 of Victor Road where information that we had at the time
6 said the suspects may have parked their vehicle.

7 Q So this is Victor Road here?

8 A Yes, sir.

9 Q From the far side of Victor Road to the front door,
10 there is a measurement. What is that measurement?

11 A It's approximately 97 feet..

12 Q Over on the right-hand side of State's 15, what am I
13 looking at here? I'm just pointing up by the laser
14 pointer.

15 A Those are measurements that CSI Mike Phipps took just
16 to show the general dimensions of the steps and of the
17 doorway itself.

18 Q What is the height from the ground to the bottom of
19 the door in this particular diagram?

20 A It's approximately 28 inches.

21 MR. GRAHAM: Your Honor, as far as -- at this
22 time, that is all the questions the State has. It's our
23 intent to recall him at another time chronologically on
24 another matter.

25 THE COURT: All right. Cross.

1 CROSS-EXAMINATION

2 BY MS. ZMROCZEK:

3 Q Good morning.

4 A Good morning.

5 Q Afternoon now.

6 You took several photos --

7 A Yes, ma'am.

8 Q -- that evening, correct?

9 A Yes, ma'am.

10 Q I'm going to hand you what's been marked as Defense
11 Exhibits No. 7, 8 and 9. Can you identify those?

12 A Yes, ma'am. That's item number one outside the front
13 door. This is the den to the left of the front door here.
14 And this is also the den going back to the back area.

15 Q And then I'm going to try to keep these in
16 chronological order. And I'm having no luck.

17 I am going to hand you what's been marked for ID
18 as Defense Exhibits 1, 2, 4, 11, 6 and 14.

19 A Okay.

20 Q Can you identify those?

21 A Outside the front -- outside the front door, this is
22 the paneling. Well, the paneling's here. This is the
23 wood that was underneath of the shell casing laying here.
24 This is also the door mat here, outside the front door.
25 Here's the wood pile at a distance, right outside where I

1 said it was a little bit more distance there, outside the
2 air-conditioning. Another angle outside the front door,
3 the wood pile in the corner. The light's not very good.
4 And I believe that's another angle I took of the bullet
5 from this direction here.

6 MS. ZMROCZEK: Your Honor, at this time, I would
7 like to move these into evidence.

8 THE COURT: Any objection?

9 MR. GRAHAM: No objection.

10 THE COURT: I'm sorry?

11 MR. GRAHAM: No objection.

12 THE COURT: Now, Aimee, let me get you, if you
13 would, to give me those numbers again.

14 MS. ZMROCZEK: Try to get you the numbers again.
15 I'm sorry. 8, 9, 7, 14, 6, 11, 4, 2, and 1.

16 (WHEREUPON, DEFENDANT'S Exhibits Nos. 1, 2, 4,
17 6, 7, 8, 9, 11, 14 were admitted into evidence.)

18 BY MS. ZMROCZEK:

19 Q At what point were you advised that someone -- or
20 someone had been inside the residence?

21 A That was not until a few days later. I was not
22 advised that evening that any -- we were advised, and it's
23 in my crime scene report, the subjects arrived on the
24 scene, the victim was shot on the scene at the front door
25 and they never entered the residence. And that's what I

1 was told at the time, and that's how I proceeded with that
2 information.

3 Q And I believe you identified -- you did take pictures
4 inside the residence?

5 A Yes, ma'am.

6 Q And this would be the den as you walk in?

7 A Yes, ma'am.

8 Q To the right.

9 And another picture of the inside of the den?

10 A Yes, ma'am.

11 Q And were these taken that same evening?

12 A It was taken before I did anything else. I take
13 overall pictures before I do anything.

14 Q I'm going to show what's been identified as -- I
15 will bring that to you since you can't see it on there.

16 You said that this was the wood pile and where
17 it was located, correct?

18 A Yes, ma'am.

19 Q And you said that it was outside of the window to the
20 right?

21 A Uh-huh.

22 Q And that is where the ejected casing was found?

23 A Yes, ma'am.

24 Q I believe this is a picture you said you took of the
25 overall crime scene?

1 A Of the front -- outside in the front area, yes,
2 ma'am.

3 Q But that wood piling cannot be seen in this picture,
4 can it?

5 A No, ma'am.

6 Q And it was raining?

7 A Yes, ma'am.

8 Q So you all had several investigators looking?

9 A Yes, ma'am.

10 Q And then I think you said you took another picture
11 where you step back to get a better angle?

12 A Yes, ma'am.

13 Q And are more items in that view at the time?

14 A Yes, ma'am.

15 Q Okay. And at that point, that is where you
16 identified the wood pile?

17 A Yes, ma'am.

18 Q Did you take any measurements from how far the front
19 door to the wood pile was?

20 A No, ma'am.

21 Q You identified this, and I believe that you can see
22 it. Maybe you can't. Just outside the front door. And I
23 understand it was nighttime and raining, but just outside
24 the front door is where you found the bullet?

25 A Yes, ma'am.

1 Q Were there any other items collected?

2 A Outside? No, ma'am.

3 Q Okay. You don't know whose beer that was or who was
4 drinking that beer?

5 A No, ma'am.

6 Q Okay.. The information that you are provided at a
7 crime scene helps direct y'all's investigation.

8 Or the information that you're provided at the
9 crime scene helps direct y'all's investigation, correct?

10 A It helps give you some direction as far as which way
11 we're going.

12 A crime scene is like a jigsaw puzzle you buy in
13 a store. And the pieces start to come together from the
14 time you get there, trying to place the pieces together.
15 And that's what you receive, and you try to work from
16 there. And a little bit of instruction, like with a
17 jigsaw puzzle, doesn't hurt at all.

18 Q And the evidence, the actual pictures that you took,
19 they are what they are, and they can't be changed,
20 correct?

21 A Yes, ma'am.

22 Q And you took a picture of the front door. And I
23 noticed that there's -- the door swings in, and then there
24 is a black door?

25 A Yes, ma'am.

1 Q Does the black door swing in or out?

2 A I believe it swung out. And the interior door swung
3 inward to the trailer.

4 MS. ZMROCZEK: Beg the Court's indulgence.

5 (Pause.)

6 BY MS. ZMROCZEK:

7 Q And you collected the casing and the bullet shells
8 and preserved them for any DNA?

9 A Yes, ma'am.

10 MS. ZMROCZEK: No further questions.

11 REDIRECT EXAMINATION

12 BY MR. GRAHAM:

13 Q Looking at State's 16 again, just to make sure that I
14 understand. This is the door that's in the picture?

15 A Yes, sir.

16 Q The bullet was found in front of the --

17 A Yes, sir.

18 Q -- casing that's over to the right?

19 A Yes, sir.

20 Q You have the kitchen on the right. When you come in,
21 is the kitchen on the right?

22 A Yes, sir.

23 Q And what is on the left?

24 A The den.

25 Q The door that you have depicted there, is that just

1 showing there is a door or does that show which way it
2 opens?

3 A It's just showing there's a door.. That would be of
4 the outside glass door. I did not --

5 Q So there's a screen door and then there's a glass --
6 I mean, there's a screen glass door and there's a wooden
7 door as/well?

8 A Yes, sir. I didn't put both doors in the diagram.

9 Q The glass door, which way does it open?

10 A Outward.

11 Q To the right or to the left?

12 A To my left, if I'm standing out, it would pull it
13 out.

14 Q So facing here, the glass door is how it's depicted
15 on there, that is the way the glass door would swing?

16 A Yes, sir.

17 Q The interior door, do you know which way that swings?

18 A By the photographs, it shows that the door swings
19 inward towards the den.

20 Q Towards the den?

21 A Yes, sir.

22 Q So let's say the inside door was partly open. The
23 outside door swings out, the glass door swings out, the
24 interior door swings open and to the left, correct?

25 A Yes, sir.

1 Q The people in the den, would they have a clear view
2 if the door was only partially opened? If they were
3 seated in the couches or the chairs that you depicted it,
4 would they have a clear view of the front steps?

5 A If the inside door was partially open?

6 Q Yes.

7 A No, sir.

8 Q It would be blocked by the door, wouldn't it?

9 A Yes, sir.

10 MR. GRAHAM: Thank you, Investigator Ross.

11 MS. ZMROCZEK: No questions.

12 THE COURT: Thank you very much, sir. You may
13 step down.

14 All right. We're going to break for lunch at
15 this time. Ladies and gentlemen, I'm going to ask you if
16 you would be back in the jury room at 2:30. Okay? That
17 gives you just a hair over an hour and a half for lunch.

18 Please, don't have any conversation with anyone
19 about the case. Do not allow anyone to talk to you about
20 the case. When you came back in, make sure you have your
21 juror pins on, and that will let them know that you belong
22 up here.

23 And we'll see you back here at 2:30. Okay?

24 Everyone else remain seated while the jury is
25 excused.

1 (The jury left open court at approximately 12:54
2 p.m.)

3 THE COURT: All right. Anything we need to take
4 up before we adjourn for lunch?

5 MR. HUBBARD: No, sir, Your Honor.

6 THE COURT: We'll start back at 2:30.

7 MS. ZMROCZEK: Thank you.

8 (Proceedings recessed for lunch.)

9 THE COURT: Ready to proceed?

10 MR. HUBBARD: Yes, sir.

11 THE COURT: Aimee, ready to proceed?

12 MS. ZMROCZEK: Yes, sir.

13 THE COURT: All right.

14 MR. HUBBARD: Your Honor, I do have, I'm sorry,
15 one thing, scheduling while the jury is out.

16 THE COURT: Okay.

17 (A discussion was held off the record.)

18 THE COURT: All right.

19 (The jury came into open court at approximately
20 2:44 p.m.)

21 THE COURT: Please have a seat. Ladies and
22 gentlemen, if you recall, before we broke for lunch, the
23 State was presenting their case, and so we'll continue at
24 this time with the State's case and recognize Mr. Hubbard
25 for your next witness.

1 MR. HUBBARD: Thank you, Your Honor.

2 The State calls Troy Crump.

3 THE COURT: Would you please come around and be
4 sworn.

5 TROY CRUMP, after being duly sworn, testified as
6 follows:

7 THE CLERK: Have a seat, sir.

8 Once you're seated, state your full name,
9 spelling your last on the record, please.

10 THE WITNESS: My name is Troy Crump. It's
11 C-R-U-M-P.

12 DIRECT EXAMINATION

13 BY MR. HUBBARD:

14 Q Chief Crump, where do you work?

15 A Chapin Police Department.

16 Q How long have you been chief up there?

17 A About a year and a half.

18 Q Where did you work before you worked in Chapin?

19 A Lexington County Sheriff's Department.

20 Q What did you do for Lexington?

21 A The last seven -- the last six years, I was a crime
22 scene investigator.

23 Q As a crime scene investigator, you go to homicide
24 scenes?

25 A Correct.

1 Q Did you also at times go to autopsies?

2 A Yes.

3 Q I want to direct your attention to the case that
4 we're trying today, Shawn Sharpe. Do you remember going
5 to the autopsy in Newberry involving Leon Justice?

6 A Yes.

7 Q And that was in Newberry?

8 A Correct.

9 Q Do you remember the date?

10 A 9/22 or the 22nd.

11 Q Okay. And who was performing that autopsy?

12 A Dr. Ross.

13 Q Dr. Janice Ross?

14 A Yes.

15 Q Is she one that we contract with, she does a lot of
16 our autopsies?

17 A Correct.

18 Q What is your purpose or a CSI agent going to the
19 autopsy?

20 A Of course, to document any wounds to the body,
21 collect any evidence that might be removed by the
22 pathologist during the autopsy.

23 Q In this case, did you take photographs?

24 A Yes.

25 Q And was an object removed from the victim in this

1 case?

2 A Yes.

3 Q What was removed?

4 A It was a fired projectile and the casing that goes
5 around that projectile.

6 Q That's what came from Leon Justice?

7 A Yes.

8 Q I would like to show what's been marked
9 State's ID 21, see if you can identify this.

10 A Yes.

11 Q And you took this photograph?

12 A I did.

13 MR. HUBBARD: Your Honor, I offer State's 21
14 into evidence.

15 THE COURT: Any objection?

16 MS. ZMROCZEK: Without objection.

17 THE COURT: State's 21.

18 (WHEREUPON, STATE'S Exhibit No. 21 was admitted
19 into evidence.)

20 BY MR. HUBBARD:

21 Q So, Chief, this is what you got directly from the
22 doctor at the autopsy?

23 A Correct.

24 Q And when you got this projectile, I see two pieces
25 here. Can you explain to the jury what we're looking at?

1 A The silver part is the -- I don't know necessarily
2 what it's made out of, but that's the projectile that sits
3 inside the brass casing. And whenever it expands like
4 that, sometimes the silver part will come out of the -- of
5 the brass part.

6 Q The silver part, is that often call the lead?

7 A Yes, correct.

8 Q I want you to look at State's ID 80. Put some gloves
9 on.

10 While you're doing that, let me ask you, what
11 did you do with this projectile?

12 A After the autopsy?

13 Q Yes.

14 A It would have been placed into the property room.

15 Q At Lexington County?

16 A Correct.

17 Q Looking at State's ID 80, what is this?

18 A It's the projectile that was removed at the autopsy.

19 Q The physical projectile itself?

20 A Correct.

21 MR. HUBBARD: Your Honor, I offer this into
22 evidence, State's 80.

23 MS. ZMROCZEK: Without objection.

24 THE COURT: State's 80 without objection.

25

1 (WHEREUPON, STATE'S Exhibit No. 80 was admitted
2 into evidence.)

3 BY MR. HUBBARD:

4 Q When an item like this is placed in evidence, is it
5 eventually taken to SLED?

6 A Correct.

7 MR. HUBBARD: Chief, thank you. I believe
8 that's all I have for you. Please answer any questions
9 the defense has.

10 CROSS-EXAMINATION

11 BY MS. ZMROCZEK:

12 Q Chief Crump, you were at CSI, you were the CSI, crime
13 scene investigator at that time?

14 A Correct.

15 Q So you went to the scene of the crime?

16 A No, I did not. I was asked to go to the autopsy.

17 Q Just the autopsy?

18 A Correct.

19 Q Had you -- how long had you been a CSI?

20 A When this occurred? About six years.

21 Q Okay. So you're familiar with crime scene and crime
22 scene investigation?

23 A Yes.

24 Q Will you just tell the jury what kind of things that
25 you look for when you go to a crime scene, especially when

1 there is a murder.

2 A Well, yeah. I mean, you're looking to document and
3 collect any evidence to help put the pieces together to
4 help prove or disprove that a crime has occurred.

5 Q And you're going based off the information that
6 you're told by the witnesses and by what is seen at the
7 crime?

8 A Yes.

9 MS. ZMROCZEK: I have no further questions.

10 THE COURT: Thank you very much, sir. You may
11 step down.

12 MR., HUBBARD: The State calls Ashley Jeffcoat.

13 ASHLEY JEFFCOAT, after being duly sworn,
14 testified as follows:

15 THE CLERK: Have a seat. Once you're seated,
16 speak up loud and clear, state your full name, spelling
17 your last on the record.

18 THE WITNESS: My name is Ashley Jeffcoat,
19 J-E-F-F-C-O-A-T.

20 DIRECT EXAMINATION

21 BY MR. HUBBARD:

22 Q Ashley, where do you work?

23 A I work at Junior's Drive Thru in Pelion.

24 Q Ashley, did you know Ashley Vasquez?

25 A Yes.

1 Q Did she also go by another name?

2 A Taco.

3 Q How did you know her?

4 A We dated.

5 Q How long?

6 A Two-plus years.

7 Q Did there come a point where you all broke up?

8 A Uh-huh.. Yes.

9 Q Did she start seeing someone else?

10 A Yes. Shawn.

11 Q You say "Shawn"?

12 A Uh-huh.

13 Q Is that Shawn Sharpe?

14 A Yes, sir.

15 Q Do you see him in the courtroom?

16 A Yes, sir.

17 Q Would you please point him out?

18 A Okay. (Indicating.).

19 Q Would he be the man without a jacket sitting at the
20 defense table?

21 A Yeah, with the striped shirt on.

22 Q Thank you.

23 MR. HUBBARD: Let the record reflect that she
24 pointed out Shawn Sharpe.

25 BY MR. HUBBARD:

1 Q How long was she seeing Shawn?

2 A Maybe a couple of weeks.

3 Q Before this incident?

4 A Uh-huh.

5 Q What happened to Ashley Vasquez?

6 A She committed suicide.

7 Q Do you remember when that happened?

8 A January 9th, 2012.

9 Q Had you all gotten back together? Were you friends
10 again?

11 A Yes.

12 Q Do you remember September 22nd, 2011?

13 A Yes.

14 Q Had you and Taco broken up at that point?

15 A Yes.

16 Q And it was around that time that she was still seeing
17 Shawn?

18 A Yes.

19 Q Did you have any contact with Taco on September 22nd?

20 A Yes.

21 Q Can you tell us about that?

22 A I had helped her family out that day. My dad lives
23 right next to her. I had went to my dad's house, I seen
24 her come home, she was upset, I went over to try to talk
25 to her.

1 Q Then what happened?

2 A She wouldn't really talk to me. She just went into
3 the house. You know, she stormed off into house. I went
4 to follow her. When I went inside, I went back to her
5 room, and she had a gun in her hand. She was loading it,
6 and she said she was going to kill herself.

7 Q Had you ever known her to have a gun before?

8 A No.

9 Q Never, in all the time you had known her, you had
10 never seen her with a gun?

11 A We had dated two solid years prior to that, no.

12 Q Had you ever known her to be suicidal?

13 A Yes.

14 Q Did she have mental health issues?

15 A Yes.

16 Q So when she said she was going to kill herself, when
17 you saw a pistol, did you take that seriously?

18 A She was very serious.

19 Q What did you do?

20 A When I went to the room, she was loading the clip and
21 she popped it into the gun and cocked it. As she went to
22 put it to her head, I jumped on her, and I think I had hit
23 her in the face just because I seen the gun going off and
24 I thought if I hit her, you know, it would take the gun
25 away from her.

1 Q Were you able to get the gun from her?

2 A Yes.

3 Q What did you do with the gun?

4 A I put the gun in the trunk of my car and left.

5 Q Later that day -- and let me ask you, this time that
6 you were talking about with Taco, she is running in the
7 house, she is upset, you see this gun, is it daylight or
8 dark?

9 A It's daylight, still.

10 Q Later that day, did you have an opportunity to come
11 back over to her house?

12 A I never returned back over until -- it was already
13 dark that night when the cops called me, a detective
14 called me and asked about the gun.

15 Q Did he ask you to come to the residence?

16 A Uh-huh.

17 Q Taco's residence?

18 A Yes, sir.

19 Q Did you go?

20 A Yes, sir.

21 Q When you got there, what did you do?

22 A As soon as I got out of the car, the detective met me
23 at my car and took the gun.

24 Q Was the gun still in your trunk?

25 A Yes.

1 Q Let me show you what has been marked State's ID 68.

2 MR. HUBBARD: Your Honor, this is the weapon,
3 but it does have a safety on it.

4 THE COURT: All right.

5 MR. HUBBARD: A lock.

6 BY MR. HUBBARD:

7 Q Looking at 68, does that look familiar?

8 A Yes, sir.

9 Q Where have you seen this gun before?

10 A That's the gun I took from Taco.

11 Q You mentioned the clip, the magazine that goes in the
12 bottom?

13 A Yes, sir.

14 Q What happened after you gave this pistol over to law
15 enforcement?

16 A As soon as I handed the gun to the detectives, Shawn
17 come walking into the yard. The cops grabbed him
18 immediately.

19 Q So while you're handing this pistol over, law
20 enforcement is there with you and Shawn Sharpe, the
21 defendant, shows up walking down the road?

22 A Uh-huh, yeah.

23 Q Did they take him at that time?

24 A That's correct.

25 Q What, if anything, did you do when you saw him?

1 A Once they cuffed him, I think I cussed him.

2 Q What, if anything, did he do?

3 A He put his head down. He didn't say anything.

4 Q Ashley, I've got one more thing I'd like you to do.

5 I've got a little sticky. I'd like you to be able to show
6 the jury where Taco lived.

7 Now this marker says Shawn Sharpe's girlfriend,
8 but can you do that for us?

9 A Uh-huh.

10 Q If you would, step down.

11 MS. ZMROCZEK: Your Honor, may we approach?

12 (A bench conference was held with the judge and
13 attorneys in the presence of the jury but out of the
14 hearing of the jury.)

15 BY MR. HUBBARD:

16 Q If you would, can you step down for me. I'm going to
17 hand you a little peel-off-the-back here. It's got a
18 sticky back. And just to -- this is State's 59, and just
19 to let you know, you've got 302, right here is Fish
20 Hatchery Road.

21 A She lived on the part of Mimosa that runs between
22 Fish Hatchery and Meadowfield Road, about halfway down
23 maybe, about right here.

24 Q All right. The actual address is on Mimosa Drive?

25 A .

1 Q ?

2 A Yes, sir.

3 MR. HUBBARD: Thank you.

4 Ashley, I appreciate you answering my questions.

5 Please answer any questions the defense has.

6 THE WITNESS: Yes, sir.

7 CROSS-EXAMINATION

8 BY MS. ZMROCZEK:

9 Q You all dated for two years?

10 A It may have been longer.

11 Q It may have been longer. You never saw her with a
12 gun?

13 A No.

14 Q But yet when you walked in the room, your testimony's
15 that she was loading the clip and cocked it back, correct?

16 A Uh-huh.

17 Q She knew how to do that?

18 A Yeah. Where we're from, guns are popular, so yeah.

19 Q Lots of people have guns in the area?

20 A That's correct.

21 Q Taco have a drug problem?

22 A Yeah.

23 Q Let me rephrase the question. Did Taco do drugs?

24 A Yes.

25 Q Did you see how many bullets she put into the clip?

1 A No, ma'am.

2 Q But you saw her put them in, load it up and cock it?

3 A Uh-huh.

4 Q And then you got it from her?

5 A That's correct.

6 MS. ZMROCZEK: I have no further questions.

7 Thank you.

8 MR. HUBBARD: No questions.

9 THE COURT: Thank you very much, ma'am. You may
10 step down.

11 MR. GRAHAM: The State calls Joe Chappell.

12 JOSEPH CHAPPELL, after being duly sworn,
13 testified as follows:

14 THE CLERK: Have a seat, please.

15 Once you're seated, state your full name,
16 spelling your last on the record.

17 THE WITNESS: My name is Joseph Chappell. Last
18 name is C-H-A-P-P-E-L-L. Lexington County Sheriff's
19 Department.

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q Where are you employed, Detective Chappell?

23 A Lexington County Sheriff's Department.

24 Q What do you do there?

25 A Currently I work in the crime scene investigations

1 unit.

2 Q How long have you been in law enforcement?

3 A Going on five years.

4 Q Back at this time, in 2011, what were your job
5 responsibilities?

6 A In 2011, I was assigned as an investigator in the
7 major crimes unit.

8 Q And were you involved in the investigation of this
9 case?

10 A I was one of the investigators assigned to this case
11 or that assisted with this case.

12 Q On September 22 of 2011, were you directed to try to
13 locate and talk to the defendant, Shawn Sharpe?

14 A I was. I was with Detective Grant and we were given
15 information that Shawn Sharpe may have been involved, and
16 we went to talk to him to see his level of involvement or
17 what knowledge he had.

18 Q What time of the day was this?

19 A Give me just one second.

20 I would say it would be close to 5 p.m. when we
21 stepped out with him -- or went to his residence.

22 Q That would have been?

23 A At Fields Lane.

24 Q And when you went to Fields Lane, who did you
25 first speak to?

1 A I spoke to Julia Sharpe, who said she was Shawn
2 Sharpe's mother.

3 Q And in her conversation or in your conversation with
4 her, what, if anything, did she do?

5 A She -- she said -- she told me that Shawn Sharpe was
6 not at home. I asked her for Shawn's phone number, which
7 she gave me his number. And I wanted to talk to -- I
8 asked Ms. Sharpe that I would like to talk to Shawn in
9 reference to a death investigation and asked her if she
10 could call him for me, which she did.

11 Q Did you overhear her conversation?

12 A I did not. We were -- I was in the street, she was
13 on the other side of the fence in her yard, and when she
14 got on the phone with Shawn, she stepped away from the
15 fence.

16 Q When she came back, did you subsequently call the
17 number that she gave you that she identified belonged to
18 Shawn Sharpe?

19 A She came back said that Shawn wanted to talk to me as
20 well, so I used the number she had given me before and
21 called him.

22 Q What number did you call?

23 A I called (803) -5429.

24 Q And did anybody answer?

25 A Shawn Sharpe did.

1 Q You did not know Shawn Sharpe at that time, correct?

2 A No. Normally when I call somebody -- and I didn't
3 write it down -- normally when I call somebody I will
4 introduce myself and ask to make sure I'm speaking to the
5 person that I called.

6 Q So you asked to speak with Shawn Sharpe and I guess
7 he said?

8 A He would have identified himself as Shawn Sharpe.

9 Q What, if anything -- on the phone, what was your
10 conversation with Shawn Sharpe?

11 A I asked -- I told Shawn that I would like to speak to
12 him involving an incident with Charlie Plumley. I used
13 the words "last night" in my report, but it would have
14 been the night prior. And so I asked him, I would like to
15 speak to him about an incident involving Charlie Plumley
16 the night prior.

17 Q And what was his response?

18 A Shawn replied that he was not with Charlie that last
19 night.

20 Q After he said that, what, if anything, did you say?

21 A I asked him -- I don't really like to do interviews
22 on the phone, so I asked him if he would like to meet with
23 me so we could talk in person. He agreed and he said he
24 would come meet me at his mother's house. So we waited
25 outside of Fields Lane in our vehicle until Shawn arrived.

1 Q Approximately how much later was it when Shawn Sharpe
2 arrived?

3 A It was approximately 20 minutes.

4 Q How did he arrive?

5 A He arrived in a vehicle, a gray Ford Taurus, and
6 someone else was driving, but I didn't -- the other person
7 didn't get out. I didn't identify the other person.
8 Shawn stepped out and approached us where we introduced
9 ourselves again.

10 Q Did you have an arrest warrant for him at this time?

11 A I did not.

12 Q When he came up to you, was he in custody?

13 A No, he was not.

14 Q He was at his mom's house?

15 A Correct, it was in the street in front of his
16 mother's house.

17 Q What, if anything, did you say to him when he
18 arrived?

19 A I asked him -- I asked Shawn if he would like to ride
20 with us to the sheriff's department since it was right up
21 the road and sit down and speak about the investigation
22 we're doing about the death.

23 Q What did he say?

24 A He asked if he would be coming back.

25 Q What did you tell him?

1 A I said that he was not under arrest. And he told me
2 that he did not want to be railroaded by us and admit to
3 something that he didn't do. Then I told him -- told him
4 that him coming with us for the interview was totally
5 voluntarily, and then he ultimately agreed to come with
6 me.

7 Q Was he under arrest or detention at that time?

8 A No, sir, he was not under arrest or detained.

9 Q Was he in handcuffs?

10 A He was not in handcuffs.

11 Q How did you get to the sheriff's department?

12 A We -- Detective Grant and I and Shawn Sharpe drove in
13 my unmarked patrol car. I drove. I had Shawn Sharpe
14 sitting in the front passenger's seat and Detective Grant
15 was in the seat in the back.

16 Q When you arrived at the sheriff's department, what
17 did you do?

18 A We walked with Shawn back to our interview rooms and
19 sat down where we began our interview.

20 Q What are Miranda rights?

21 A They're rights, Fifth Amendment constitutional rights
22 that we advise people when they're in custody or just
23 mainly it's before any custodial interrogation or before
24 any interview to make sure that we -- that everybody we
25 speak to understand their rights in accordance with the

1 Fifth Amendment of the U.S. Constitution.

2 Q Let me show you what's been marked State's Exhibit
3 No. 1 for identification and ask if you recognize that.

4 A I do.

5 Q Is that the form that you use to advise Mr. Sharpe of
6 his Miranda rights?

7 A It is the form, yes.

8 MR. GRAHAM: Your Honor, the State would move
9 this into evidence at this time.

10 MS. ZMROCZEK: Without objection.

11 THE COURT: What number is that?

12 MR. GRAHAM: It's State's No. 1, Your Honor.

13 THE COURT: All right. Thank you.

14 (WHEREUPON, STATE'S Exhibit No. 1 was admitted
15 into evidence.)

16 BY MR. GRAHAM:

17 Q Can you see that on the overhead, Detective?

18 A I can.

19 Q That's the form that you used to advise Mr. Sharpe of
20 his rights?

21 A It is.

22 Q The top half of the form above there, there are blank
23 letters and there are what appears to be darker
24 handwriting. The dark black handwriting, whose is that?

25 A That's my handwriting.

- 1 Q Do you have a copy of this with you?
- 2 A I do, yes, sir.
- 3 Q Read along with me and explain what we're doing here.
- 4 A Well, again, it was Detective Grant, Shawn Sharpe and
- 5 I in an interview room and I'm just getting preliminary
- 6 information about name, date of birth and where he was
- 7 born and address up at the top.
- 8 Q The date of the interview was what time?
- 9 A It was -- the date was September 22 of 2011.
- 10 Q And where does the interview take place?
- 11 A At Lexington County Sheriff's Department, 521 Gibson
- 12 Road in Lexington.
- 13 Q What time did the interview start?
- 14 A It's marked 1734. That would be 5:34 p.m.
- 15 Q And then who are you interviewing?
- 16 A Shawn William Sharpe, 20 years of age. My date and
- 17 place of birth being the , 1991, at
- 18 Lexington. Present address is Fields Lane.
- 19 Q What's the next line say?
- 20 A I completed seven grades in school. And we have
- 21 him -- I asked him if he can read and write. And if he
- 22 responses that he can read and write, then I have him
- 23 initial in the blank after "I can read and write."
- 24 Q So did he initial?
- 25 A He did.

1 Q Is that where the laser pointer's at, saying he can
2 read and write?

3 A It is.

4 Q Below that there's a C with a bracket around it and a
5 number. What is that?

6 A We ask for any contact numbers they may give. H is
7 for home, W is for work, C is for cell phone. He gave a
8 cell phone of (803) -5429.

9 Q And that's the same number that you called him on,
10 isn't it?

11 A Yes.

12 Q All right. Below that it has alternate contact and
13 then blank and a phone number and blank. What's the next
14 line after that?

15 A It's where I identify or whoever's doing the
16 questioning will identify themselves. That was my name,
17 J. Chappell, and I identified myself as investigator with
18 Lexington County Sheriff's Department.

19 Q Down below there, explain how you advised Mr. Sharpe
20 of his rights.

21 A I try to do it consistently every time. That way
22 it's easy for me to walk through an individual when I'm
23 reading and advising of their rights and they follow along
24 with me. So I will sit near the person I'm going to
25 question. We'll follow on the same form. So I'll read

1 and they'll read along with me. As I finish -- as I start
2 each right I'll circle it, which you'll see the circles
3 over the numbers. I will read the right as in I have the
4 right to remain silent. Then I will ask the question, Do
5 you understand that right? If they have any questions
6 we'll discuss that and I'll try to answer. If they
7 understand it, then I'll ask them to place their initials
8 at the end where the line is. And after they initial,
9 I'll place my initials at the front end, which would be
10 the initials before the number one.

11 Q Was Mr. Sharpe under arrest when you began this
12 interview?

13 A He was not.

14 Q Did you tell him he was under arrest?

15 A I did not tell him he was under arrest, no. He
16 was -- I told him that he was not under arrest.

17 Q Specifically, then, how did -- what did you advise
18 how and how did you advise him of his rights?

19 A I'm sorry, say it again.

20 Q Specifically using the form if you can explain the
21 general process. Specifically, what advice did you advise
22 him of and what conversations did you have of his rights?

23 A Okay. Well, first I told him that -- before I
24 started and we were filling out the beginning part,
25 general information, I told him he was not under arrest,

1 but since we had escorted him to the sheriff's department,
2 he was in the interview rooms, I said, I'm going to advise
3 you of your rights to make sure that you understand them,
4 but you're not under arrest, but I will advise you of
5 these rights. So we went through it. I read the first
6 one, I have the right to remain silent. After I said, you
7 know, I have the right to remain silent, and I asked him
8 do you understand this right, he said that he did not have
9 this right. So I stopped and asked him what he meant.
10 And then he responded that we would make him talk. And he
11 said he did not want to admit to anything -- he did not
12 want to admit to something he did not do. So I advised
13 him that he didn't have to talk to us. And after that, I
14 said would you like to continue. After I said, you know,
15 you don't have to be here and you don't have to talk to
16 us, I asked him if he wanted to continue and he indicated
17 that he did.

18 Q Did he appear to understand that he didn't have to be
19 there and he didn't have to talk to you?

20 A Yes, sir.

21 Q So after you did that, did you go back to advising
22 him of his rights using this form?

23 A Yes, sir. I would have started over. We would have
24 started over again saying, I have the right to remain
25 silent.

1 Q What, if anything, did he do to indicate that he
2 understood that right?

3 A Once he said he understood, he placed his initials.

4 Q And then there are also initials to the left of
5 there. Whose initials are those?

6 A The left of the numbers are my initials. Once I read
7 them and they sign their initials, then I'll put my
8 initials on the other end.

9 Q Was there any more conversation about his right to
10 remain silent?

11 A After that, no, sir.

12 Q Next, what did you do?

13 A I read the second right, anything I say can and will
14 be used against me in a court of law. I asked him if he
15 understood that right. He indicated he did and he
16 initialed in the space provided.

17 Q He initialed and you initialed?

18 A Correct.

19 Q The third right that you advised him of?

20 A I advised him that I have a right to talk to a lawyer
21 for advice before I ask any questions and to have him or
22 her present with me during questioning. Then I asked him
23 if he understood that right, and he said he did and placed
24 his initials, and then I would place my initials before
25 the three.

1 Q The fourth right?

2 A For the fourth one, you'll see it's a little
3 different. The initials, my initials are before the four
4 and after the SS at the very end. That's a right that I
5 have people I'm questioning read to me. It kind of
6 satisfies that question of I can read and write up at the
7 top, so I have the person read that right to me. So he
8 read to me if I have no money for lawyer fees, the court
9 will appoint one to represent me without cost to me if I
10 wish. Once he read it, I asked him if he understood it.
11 He said he did and he indicated that by placing his
12 initials. I put my initials again because he answered the
13 question and I initialed on the right side just to notify
14 that that's the one I have people read.

15 Q The fifth line on there, what is that one?

16 A I read to him that if I decide to answer questions
17 now without a lawyer present, I will still have the right
18 to stop answering questions at any time. I also have the
19 right to stop answering questions at any time until I talk
20 with a lawyer. And he indicated he understood that right
21 by placing his initials and, again, placed my initials
22 before, on the front end.

23 Q The final line on that form, what does it say?

24 A At the very end once we discussed all the rights I'll
25 have him read the last statement which is I have read this

1 statement of my rights and understand what my rights are.
2 And once it says I understand everything and I don't have
3 any questions of what we've just discussed, I will have
4 them place their initials on that line.

5 Q Those are the initials that I'm following right now?

6 A Correct. And then we'll discuss further -- then I'll
7 put the statement form aside and we'll proceed into the
8 interview.

9 Q Did Mr. Sharpe appear to be under the influence of
10 alcohol or drugs when you talked to him?

11 A He did not.

12 Q Did he appear to understand the rights that you read
13 to him and that he read himself?

14 A He did.

15 Q Did he decide to speak with you?

16 A He said he would speak with us, yes, sir.

17 Q Did you make him any promises that if he spoke with
18 you, something good would happen for him?

19 A I did not.

20 Q Any hope of reward if he spoke to you?

21 A No, sir.

22 Q Did you threaten him?

23 A No, sir.

24 Q Did you coerce him in any way to get him to speak
25 with you?

1 A No, sir.

2 Q Did he speak with you voluntarily and of his own
3 freewill?

4 A Yes, sir.

5 Q After you went over his rights and you all began to
6 speak, tell me about the conversation you had with him.

7 A Well, I began asking him what happened the last
8 night, and when I say "last night," it meant the night
9 prior.

10 Q That would have been the night of the 21st?

11 A Correct. He began by telling me that he was with
12 Charlie from 7 p.m. until 9 p.m., 1900 until 2100 hours.

13 Q Was that the same or different than the conversation
14 you had with him on the phone?

15 A I stopped him because I wanted to make sure I
16 understood and clarified what he was telling me. I asked
17 him on the phone and he said he wasn't with Charlie the
18 night prior. Why was he telling me now that he was with
19 Charlie between the 7 p.m. and 9 p.m.

20 Q Did he make any acknowledgment to you that he did
21 tell you on the phone that he wasn't with Charlie?

22 A Well, he indicated that he didn't know why he told me
23 that on the phone versus...

24 Q After he told you he didn't know why he had told you
25 he wasn't with Charlie on the phone, what did you all talk

1 about next?

2 A We continued. He said he was over at Charlie's house
3 and they had dropped him off at his girlfriend's house
4 after 2100, which is 9 p.m., and then he had stayed --
5 Shawn had stayed with his girlfriend until today or until
6 that same day when we spoke to him.

7 Q What else did you all discuss?

8 A I had asked him if he went with Charlie to Victor
9 Lane and he said he did not go with Charlie to Victor
10 Lane.

11 Q What else did you ask him?

12 A I asked him if he and Charlie borrowed a truck from
13 the Blackville Road area, and he said that the only
14 vehicle he had ridden in was a PT Cruiser. And then Shawn
15 denied -- when we asked him about being with Charlie after
16 9 p.m., he said he was not with Charlie after 9 p.m. and
17 he had no involvement at the incident at Victor Lane.

18 Q Who, if anyone, did he tell you to talk to?

19 A He said that -- he advised me that I should talk to
20 his girlfriend about his location last night and his
21 whereabouts. So I asked him for that information so I
22 could follow up with her.

23 Q And what information did he give you identifying his
24 girlfriend?

25 A He said that her name was Ashley but she went by Taco

1 and that she lived off of Mimosa Drive and gave me her
2 phone number.

3 Q After that point, what, if any, other conversations
4 did you have with Shawn Sharpe?

5 A Once I had that, I passed the phone number off to
6 another investigator so they could follow up with her
7 while I finished my interview with Shawn. Kind of just
8 wanted to clarify some issues with -- of what information
9 I was given, so he -- Shawn asked me why I kept asking him
10 the same questions and then he said he was not involved
11 with any murder and then he told me that he was done
12 talking to me.

13 Q After -- he was not in custody during that time, he
14 was not in handcuffs, he wasn't being detained, correct?

15 A Correct.

16 Q So after he told you that he didn't want to talk,
17 what did you do?

18 A Actually, I stepped out of the room shortly to talk
19 to another detective to verify that she had contacted
20 Taco. Once I'd done that, we transported Shawn the same
21 way we brought him, we took him right back to Fields Lane,
22 took him to his house.

23 Q So you and the other detective dropped him back off
24 at his mom's house at Fields Lane?

25 A That's correct.

1 Q After dropping Mr. Sharpe off back at his mom's
2 residence, what, if anything, did you do?

3 A We went to Taco's house after we dropped Shawn Sharpe
4 off.

5 Q Do you know the address of that house?

6 A It was Mimosa Lane.

7 Q When you got there, who did you speak with?

8 A We spoke to Taco, Ashley Vasquez.

9 Q Based on your conversation with her, did you soon
10 come in contact with Ashley Jeffcoat?

11 A Yes, sir.

12 Q Did you speak with Ashley Jeffcoat over the phone or
13 just in person?

14 A I spoke to her over the phone initially, and when she
15 arrived on scene I spoke to her in person.

16 Q In your conversation on the phone, what, if anything,
17 did you ask her regarding a gun?

18 A I had asked her -- hold on a second.

19 Q Did you ask her if she had a gun?

20 A Correct.

21 Q Did you ask her to bring the gun to you?

22 A Yes, sir.

23 Q And did she, in fact, bring you a gun?

24 A She did.

25 Q You were in the courtroom when she testified earlier.

1 Did you recognize her earlier?

2 A Yes, I did.

3 Q Let me show you State's No. 22 and ask if you
4 recognize that photo.

5 A It looks like Taco's house.

6 Q If you recognize it. If you don't, it's okay.

7 A It looks like Taco's house to me.

8 MR. GRAHAM: Your Honor, the State offer this
9 into evidence.

10 MS. ZMROCZEK: Without objection.

11 THE COURT: What's the number?

12 MR. GRAHAM: That's 22.

13 (WHEREUPON, STATE'S Exhibit No. 22 was admitted
14 into evidence.)

15 BY MR. GRAHAM:

16 Q So this is the house you were at when you met Ashley
17 Jeffcoat for the first time, Mimosa?

18 A Yes, sir. We were there. We were also -- I think
19 Ashley Jeffcoat pulled up next door. Because there's a
20 mobile home that's pretty close that may have the same
21 driveway. There's a long driveway between the two.

22 Q Approximately what time is it now?

23 A When I'm talking to --

24 Q When you're talking to Ms. Jeffcoat, yes.

25 A Okay. And I didn't have the time down of when I --

1 it was closer to 10 o'clock in the evening, 10 p.m., but
2 it could have been a little sooner. I didn't keep track
3 of the time.

4 Q Did you recover a weapon from Ms. Jeffcoat?

5 A I did. She opened the trunk, said that she had a gun
6 in the trunk, opened it and said, Go ahead and grab it, I
7 don't want it.

8 Q Did you, in fact, grab it out of the car?

9 A I did. I placed gloves on and got a bag, a brown
10 paper bag, and placed the gun in the brown paper bag.

11 Q Let me show you State's No. 68 that's been marked for
12 identification and ask if the recognize it.

13 A Yes, it matches the serial number. It looks like the
14 gun I tagged.

15 Q I think there's also a magazine in there. Do you
16 recognize that as being the magazine for the gun?

17 A Yes, sir.

18 Q And that's the gun and the magazine that you got from
19 Ms. Jeffcoat's car. And you said you put it in a brown
20 paper bag, correct?

21 A Yes, sir. When I pulled it from the back of the
22 trunk it was wrapped in a bandanna, a black bandanna, so
23 when I grabbed it, put gloves on and put it in a brown
24 paper bag.

25 Q The purpose of wearing gloves at that time was for

1 what reason?

2 A So I wouldn't transfer, one, my DNA or fingerprints
3 to evidence.

4 MR. GRAHAM: Your Honor, the State would move
5 the gun and the magazine contained in the box marked
6 State's 68 for ID into evidence.

7 MS. ZMROCZEK: Subject to my previous objection.

8 THE COURT: Overruled. It's in evidence. And
9 the number?

10 MR. GRAHAM: Sixty-eight.

11 (WHEREUPON, STATE'S Exhibit No. 68 was admitted
12 into evidence.)

13 BY MR. GRAHAM:

14 Q Detective, what kind of a firearm is that?

15 A You mean versus a revolver or semi-automatic?

16 Q We can start with that. Is it a revolver or
17 semi-automatic?

18 A Semi-automatic pistol.

19 Q And what is a semi-automatic compared to a revolver?

20 A The weapon cycles to cycle bullets in and out. And
21 it will cycle the bullet from the magazine into the
22 chamber. Once it fires, it has an extractor to extract
23 and eject spent casings, which means after it fires, that
24 shell casing would be kicked out.

25 Q You were looking at it very close to make sure that

1 it was a gun that you recognized.

2 A I just wanted to make sure that I had the same serial
3 number. I wrote down the model or the type caliber and
4 the serial number when I took it. I wanted to make sure
5 it was the same one.

6 Q What brand of a firearm is it?

7 A Taurus, .45 caliber, ACP.

8 Q You said a .45 caliber semi-automatic Taurus?

9 A Correct.

10 Q Prior to -- well, you collected it with gloves on and
11 you put in in a paper bag, you didn't want to contaminate
12 it at the time.

13 A Yes.

14 Q What else did you do with that gun later?

15 A Well, once I grabbed it, put it in the box or put it
16 in the bag, we were out -- it was very dark at that time,
17 there wasn't much street light, so I took it inside Taco's
18 house still with gloves on and opened the bag up with
19 gloves to clear the weapon. And I made sure it had the
20 magazine in the gun. I wanted to make sure -- render it
21 safe, which was just to take the handle out -- take the
22 magazine and take the handle out, make sure it wasn't
23 loaded.

24 Q When you say "clear the gun," what does that mean?

25 A To get the ammo out of the gun.

1 Q So that it wouldn't be able to fire?

2 A Correct.

3 Q Let me show you another item and ask if you recognize
4 that.

5 A Those are two bullets, two rounds that were inside
6 the gun when I cleared it.

7 Q So when you cleared the gun, they were in the
8 magazine or one of them was actually in the weapon, or do
9 you remember?

10 A I don't recall whether -- I know at least one was in
11 the magazine. I don't recall if one was actually in the
12 chamber.

13 Q But these are -- there were two bullets that were
14 inside this gun and these are the two bullets?

15 A Correct.

16 MR. GRAHAM: Your Honor, the State would offer
17 these into evidence. And I will need a number for these.

18 MS. ZMROCZEK: Subject to my previous
19 objections.

20 THE COURT: All right. Overruled.

21 MR. GRAHAM: State's 82, Your Honor.

22 THE COURT: All right.

23 (WHEREUPON, STATE'S Exhibit No. 82 was marked
24 for identification and received into evidence.)

25 BY MR. GRAHAM:

1 Q Looking at the bullets contained or the cartridges in
2 State's 82, are you able to tell the head stamp or the
3 manufacturer and the caliber type that's on there?

4 A They're marked -- that's what I was looking for.
5 They're marked with Winchester on both heads and both of
6 them have .45 as well.

7 Q Once you collected and cleared this -- cleared the
8 magazine and removed the bullets, you were still doing
9 this wearing gloves?

10 A Correct.

11 Q What did you do with those items?

12 A I placed them back in the brown bag along with the
13 bandanna and went to go place that brown bag with the gun
14 in the trunk of our vehicle.

15 Q Ultimately, did those leave your possession and make
16 their way into the evidence locker at the sheriff's
17 department?

18 A Yes, I submitted them into evidence.

19 Q Did you handle them without gloves or tamper with
20 them in any way or -- compared to how you collected them?

21 A Every time I handled them I had gloves on.

22 Q And they left your possession and went straight into
23 the sheriff's department evidence control?

24 A There was a temporary period that night that Evidence
25 was not opened, so we secured them in the crime scene lab

1 in lockers in there. And then the next day I packaged
2 them, packaged the gun with the ammunition and then turned
3 it into evidence.

4 Q Detective Chappell, at the same time that you were
5 getting this gun out the back of Ashley Jeffcoat's vehicle
6 while you were at Ashley Vasquez's house at Mimosa
7 Drive, who walked up?

8 A As I'm walking out of Taco's house with the bag to
9 place it into our trunk, I hear a vehicle. And it's pitch
10 black, I can't hardly see anything, but as I'm walking
11 towards the driveway where our vehicles are parked, I see
12 Shawn Sharpe had just walked up and we had just heard a
13 vehicle possibly drop him off.

14 Q And we're talking about Shawn Sharpe, there is no
15 question, is he in the courtroom?

16 A Yes, sir.

17 Q Where is he?

18 A He's at the defense table in the middle.

19 Q When he walked up now that you have a gun in your
20 possession, what, if anything, do you do?

21 A I actually called for my partner, Detective Grant.
22 Since I had the gun, I wanted to secure it. So Detective
23 Grant came over and placed handcuffs on Shawn Sharpe.

24 Q Mr. Sharpe was placed under arrest at that time?

25 A That's correct.

1 Q Let me show you a photograph which has been marked as
2 State's No. 6, it's in evidence, and ask if you recognize
3 that.

4 A Yes, that's Shawn Sharpe.

5 Q Is that the way that he appeared to you when you
6 spoke to him the night of September 22nd?

7 A Yes.

8 Q When he was placed under arrest what, if anything,
9 did you do regarding searching his person?

10 A We did a pat-down, searched his person to make sure
11 what he had in his pockets. We didn't want to transport
12 him with any weapons or anything to hurt us while we
13 transported him.

14 Q Ultimately, did you transport him and book him in at
15 the sheriff's department?

16 A That's correct, we did.

17 Q Prior to booking him in, did you remove a cell phone
18 from his person?

19 A I did. I removed a cell phone, yes.

20 Q Let me show you what's been pre-marked as State's 78
21 for identification and ask if you recognize this.

22 A Yes, that's the cell phone.

23 Q You're look at forms and comparing numbers. What
24 kind of forms are you looking at?

25 A It's a copy of the evidence voucher that I entered

1 the description of the phone with the serial number.

2 Q So that's how you're able to confirm that this is a
3 phone that you took off Shawn Sharpe's person at the time
4 of his arrest?

5 A Correct.

6 MR. GRAHAM: Your Honor, the State would move
7 No. 78, the phone that's been identified as belonging to
8 Shawn Sharpe and taken off his person, into evidence.

9 MS. ZMROCZEK: Without objection.

10 THE COURT: That's 78?

11 MR. GRAHAM: Yes, sir.

12 THE COURT: All right, sir.

13 (WHEREUPON, STATE'S Exhibit No. 78 was admitted
14 into evidence.)

15 BY MR. GRAHAM:

16 Q Detective, in addition to securing that, did you also
17 collect from some suspects in this case what's know as
18 buccal swabs?

19 A Yes, I did.

20 Q What are buccal swabs?

21 A Basically they are Q-tips on long sticks that we'll
22 get saliva from inside a person's mouth which will be
23 tested for DNA.

24 Q How do you collect -- how do you collect the DNA
25 you're talking about?

1 A Well, I'll advise the person of what we do and I'll
2 walk them through the process.

3 It's a sealed envelope packet, and inside the
4 packet's a small envelope. We have to fill out who we're
5 getting the sample from. And so I'll kind of walk through
6 it with them and describe what we're going to be doing.
7 But there's two long cotton swab sticks that are sealed up
8 and I will fill out the person's name, date of birth and
9 Social. After we do that, I'll put gloves on and then
10 we'll put it right in their mouth. I'll ask them to open
11 their mouth and I'll take a little bit of -- just swab on
12 the right side and then swab on the left side for a short
13 period of time. And then once it comes out there, I'll
14 place it in the envelope and I will seal the sample in
15 front of them and they'll watch me as I seal it. And
16 there's at least two evidence tapes, pieces of red
17 evidence seal that we'll have to seal and initial while
18 I'm there in front of them.

19 Q So the Q-tips, for lack of a better word, the swabs
20 that you use to collect these samples, how do they come
21 packaged for use?

22 A The whole kit is in a sealed envelope and I'll unseal
23 it in front of them. It's that tamper-proof tape on the
24 back of a white envelope. So I will open it in front of
25 the person I'm going to take the sample from. And the two

1 Q-tips, the two cotton swab sticks are in a -- one of
2 those medical bags that you may see, something like
3 Band-Aids will come in, a bag like that. So it's also
4 sealed.

5 Q I'm going to show you three items and probably a pair
6 of scissors as well because I don't know that you're going
7 to be able to identify them otherwise.

8 This is State's No. 71 for identification. Is
9 there anything about the outside of that or looking
10 through that you can tell what it is?

11 A No. It looks like the SLED bag's pretty much
12 covering everything that I can see here.

13 Q If you would go ahead and open it up on one of the
14 sides that doesn't have initials on it.

15 Inside there is another sealed bag, isn't there?

16 A Yes. This is a sealed bag and this is the outer
17 envelope that a buccal swab kit will come in.

18 Q Do you know whose kit it was?

19 A That's my handwriting and it says S. Sharpe, so it
20 will be Shawn Sharpe.

21 Q So that would be -- when you were talking earlier
22 about swabs and envelope tapes and envelopes and evidence
23 tape, that's what we're talking about? So at one time did
24 that contain the buccal swabs that were collected from
25 Shawn Sharpe that you collected?

1 A Yes. When I took the swab, I placed it in there and
2 before putting it in and submitting it into evidence I
3 affixed one last piece of evidence tape. In this kit
4 there's actually another envelope that's sealed, that was
5 sealed when I submitted it.

6 Q So after you swabbed Mr. Sharpe's mouth and collected
7 DNA from him, you put it inside that envelope and sealed
8 with envelope up with tamper-proof tape?

9 A Correct.

10 Q Once it left your presence, where did it go? Where
11 did you take it?

12 A It was submitted to our evidence room.

13 Q And it was sealed up in a tamper-proof manner when it
14 left your presence?

15 A Correct.

16 Q And do you recognize that as being the packet that
17 once contained the swab that you took from Mr. Sharpe?

18 A Yes.

19 MR. GRAHAM: Your Honor, the State would offer
20 that into evidence at this time.

21 MS. ZMROCZEK: Without objection.

22 THE COURT: What number?

23 MR. GRAHAM: I believe it will be 71, Your
24 Honor. Yes, 71.

25

1 (WHEREUPON, STATE'S Exhibit No. 71 was admitted
2 into evidence.)

3 BY MR. GRAHAM:

4 Q State's No. 70, is there anything that you're able to
5 recognize on that without going into the bag?

6 A Yes, I can recognize the writing on the front that I
7 put on there for -- it'd be C. Plumley with the case
8 number, so that would have been Charlie Plumley's.

9 Q So did you also take buccal swab samples from Charlie
10 Plumley?

11 A I did.

12 Q And did you do that in the same manner that you
13 described for taking it from Mr. Sharpe?

14 A Yes.

15 Q And once you collected those, you would have put it
16 in that envelope, sealed it up with tamper-proof tape and
17 labeled the outside and turned it into evidence at the
18 sheriff's department?

19 A Correct.

20 MR. GRAHAM: Your Honor, the State would move
21 70, the buccal swab or the packaging that once contained
22 the buccal swab for Charlie Plumley into evidence.

23 MS. ZMROCZEK: Without objection.

24 THE COURT: Without objection, State's 70.

25

1 (WHEREUPON, STATE'S Exhibit No. 70 was admitted
2 into evidence.)

3 BY MR. GRAHAM:

4 Q Detective, looking at State's 76 for identification,
5 do you recognize that package?

6 A Yes. It would be the envelope for Angela Griffin,
7 with A. Griffin written on the front.

8 Q Did you also collect buccal swabs from Angela
9 Griffin?

10 A I did.

11 Q And is that the envelope that contained the swabs
12 that you collected from her?

13 A It is.

14 Q And again like the rest, you collected it in the same
15 manner and you put it in that envelope and you sealed it
16 up so it couldn't be tampered with and you turned into it
17 the sheriff's department evidence locker?

18 A That's correct.

19 Q Or the custodian?

20 A That's correct, the custodian.

21 Q And you recognize that as being the envelope that
22 you -- that contained the swabs at one time?

23 A Yes, sir.

24 MR. GRAHAM: Your Honor, the State would move
25 that into evidence at this time.

1 MS. ZMROCZEK: Without objection.

2 THE COURT: Without objection, 76.

3 (WHEREUPON, STATE'S Exhibit No. 76 was admitted
4 into evidence.)

5 MR. GRAHAM: Your Honor, I believe that's all
6 the questions I have at this moment. Detective Chappell
7 may be recalled on another matter, however.

8 THE COURT: All right. Cross-examination.

9 CROSS-EXAMINATION

10 BY MS. ZMROCZEK:

11 Q Detective Chappell, this is not the first involvement
12 you had in this case, was it?

13 A Can you be more specific?

14 Q Yes. When were you first called to the scene in this
15 case?

16 A At 8:30 in the morning, 8:30 a.m. on the 22nd.

17 Q Tell the jury at 8:30 in the morning of
18 September 22nd, what your role was in this case.

19 A Initially at 8:30 I was with Detective Novak. Novak
20 and I responded to what's called The Store, which is on
21 Highway 6. It's near a place called Nicole's Pub. We met
22 with Detective Derrenbacher and Detective Stout in
23 reference to a murder that occurred the night prior.

24 Q And you were meeting at The Store for what reason?

25 A We were told that an informant or somehow the

1 information had got that Charlie and Danny Plumley may
2 have information regarding the murder. And we had -- I
3 was advised that Charlie and Danny may have been at the
4 victim's house during that night and we would need to
5 investigate their involvement.

6 Q So you're at the home -- or so do you leave The Store
7 at some point?

8 A Yes. We -- once we coordinate and we're given that
9 information, we then proceed down to 2439 Highway 6, the
10 2400 block which was -- we were told was the residence
11 Danny and Charlie Plumley.

12 Q I believe that you previously -- looking at this map,
13 if you'll point out to the jury where you were.

14 A At what time?

15 Q When --

16 A When I went to the Plumley's house?

17 Q Yes.

18 A Okay.

19 Q You said it was on Highway 6?

20 A Yes. I mean it would have been --

21 Q It would have been --

22 A The Plumleys' house, correct.

23 Q And you get there and you're there to investigate
24 because you have information that Danny and Charlie
25 committed a murder or may be involved in a murder and so

1 you knock on the door, right?

2 A Correct.

3 Q And who answers?

4 A No one answers.

5 Q Tell the jury what happens after that.

6 A Well, I knocked on the side of the front door. I was
7 standing off the porch. I guess there's a small little
8 porch and knocked on the door and saw a window covering
9 next to the front door move, which I relayed to every
10 other deputy that was there, and we also heard movement
11 inside that room that was nearest to the front door where
12 I was standing. I was kind of standing off the porch
13 knocking on the door there.

14 Q And no one answered, did they?

15 A And no one answered.

16 Q So then what do you do?

17 A Well, the window covering was moving, so I would hope
18 that somebody was in that room, so I knocked on that
19 window. And the covering stopped moving.

20 Q So that tells you that there was somebody in the
21 house, it wasn't just the wind or something making that
22 window move?

23 A Well, it suggested that somebody was in that house,
24 correct.

25 Q And you heard people in the house?

1 A I heard movement, yes.

2 Q You heard movement in the house?

3 A Uh-huh.

4 Q And then what did you do?

5 A Knocked again on the window, but there was no
6 response.

7 Q How long did you wait before hearing from anybody in
8 the house?

9 A Ultimately -- I mean, I didn't time -- I mean, I
10 would say -- it seemed like it was a while. It could have
11 been 30 minutes, it could have been less. It seemed like
12 a while when you're waiting outside someone's house.

13 Q And on your report you wrote that you waited an hour.

14 A Okay.

15 Q I mean, I'm not trying to put words in your mouth.

16 A Yes, approximately one hour later.

17 Q Approximately one hour later. And who exited the
18 house at that time?

19 A I wrote down two white males and a white female
20 exited the house.

21 Q And, Detective Chappell, at that point you put
22 handcuffs on Danny Plumley, didn't you?

23 A Yes.

24 Q You also interviewed Danny Plumley, didn't you?

25 A I did.

1 Q Danny Plumley gave you the name of Shawn Sharpe,
2 correct?

3 A Just give me one second. I want to make sure I
4 review this.

5 I don't remember him giving me Shawn's name. I
6 don't see it in my report here.

7 Q Okay. So you interviewed him but he didn't give --
8 you don't recall him giving you the name?

9 A He said he was with Patsy for most of the day.

10 Q And did you interview Patsy as well? Don't tell me
11 what she said, but did you interview Patsy as well?

12 A I didn't actually speak to Patsy until a couple days
13 later.

14 Q Okay. But you did eventually interview Patsy?

15 A Yes, a couple of days later.

16 Q You interviewed Danny and you interviewed Patsy
17 eventually, not that day?

18 A Right, that morning.

19 Q That day, September 22nd, you did interview Danny?

20 A Yes, briefly.

21 Q Okay. Did you conduct any other interviews that day?

22 A Yes, we spoke with Lilly Harmon off of Belle Drive.

23 Q And you took a statement from Ms. Harmon?

24 A We did, Detective Grant and I.

25 Q Did you speak to anybody else that day?

1 A We attempted to make contact with a James Davis and
2 we speak to Barbara Bailey on Victor Lane.

3 Q And the need to speak with James Davis was to clear
4 up some information or to clarify his account of the
5 incident?

6 A If I recall correctly, what we had were the initial
7 statements written on scene and we wanted to get a little
8 bit expanded information from them so that's why we made
9 contact with Ms. Harmon and then Mr. Davis. Or attempted
10 to contact Mr. Davis.

11 Q And that's part of what major crimes investigators
12 do, go around and talk to everybody who possibly could be
13 involved and gather information, correct?

14 A Correct.

15 Q Because with that information you can solve the
16 crimes, find out who committed these crimes?

17 A Yes.

18 Q People ever lie to you?

19 A Yes.

20 Q People lie to you to cover up their involvement in
21 the investigation?

22 A Yes.

23 Q Or the incident?

24 A Yes.

25 Q They lie to you to protect themselves or their family

1 members?

2 A Yes.

3 Q Prior to working with major crimes, have you had the
4 opportunity to be exposed to any drug crimes or
5 investigate any drug crimes?

6 A No. Mainly my -- when I was a major crimes
7 investigator, my section was robberies.

8 Q Robberies.

9 A Or domestic violence. Sorry.

10 Q That's all right.

11 When you investigate robberies, do you typically
12 find that drugs are involved or can be involved?

13 A They can be, but they can be involved in anything. I
14 think that's kind of a general statement.

15 Q Okay. You attempt to interview one more person. Who
16 was that?

17 A After?

18 Q After Mr. Davis.

19 A Mr. Davis? Casey Lynn Sharpe.

20 Q Why were you investigating -- why were you trying to
21 interview Ms. Sharpe?

22 A During the search warrant for I believe it was the
23 Plumley's residence they found an identification card for
24 a Casey Lynn Sharpe off of Parr Court. We wanted to make
25 sure that since the ID found was a driver's license ID

1 card, we wanted to make sure if she had any involvement,
2 so that's why we went over there to contact her.

3 Q So you found somebody else's ID, a female ID in the
4 Plumley's house?

5 A Correct.

6 Q You said -- you then went through the long testimony
7 of interviewing Shawn, Shawn's name came up, you were told
8 he was involved or may be involved?

9 A Yes.

10 Q You go to his mom's house and she calls him and he
11 says I'll be there in 20 minutes and he's there in 20
12 minutes, right?

13 A Yes.

14 Q When you called him, when you told his mom that you
15 wanted to speak to him, you told her you were
16 investigating either a homicide or a suspicious death, I
17 think's the words you used, and Charlie Plumley, correct?

18 A I can't quite recall what exact words. I said it was
19 a death investigation.

20 Q It was a death investigation?

21 A Correct.

22 Q And death investigation and Charlie Plumley to Shawn
23 Sharpe?

24 A Yes, Shawn Sharpe, yes.

25 Q And at that point he said, I wasn't with Charlie,

1 correct?

2 A Yes. When I asked him I would like to speak to him
3 about an incident involving Charlie Plumley last night, he
4 said that he was not with Charlie last night on the phone.

5 Q Okay. And he also knew that you were talking about
6 this death investigation? You'd told his mom?

7 A Right. I told his mom that I was investigating a
8 death investigation.

9 Q Okay. And then she called him and then he showed up.
10 And then he asked -- you asked him to go to the police
11 station and he said yes?

12 A Yes.

13 Q Didn't try to run away, he didn't say I want to speak
14 to a lawyer, he was cooperative, correct?

15 A Yes.

16 Q And he told you again that he wasn't with Charlie at
17 Victor Road?

18 A Right, he said he was not with Charlie at Victor
19 Road, but he did say he was with Charlie.

20 Q And I believe you said the hours were -- that were 17
21 to 1900, right?

22 A No, he said 1900 to 2100, so 7 p.m. to 9 p.m.

23 Q 7 p.m. to 9 p.m. I cannot do military time. So 7
24 p.m. to 9 p.m. And you know that Charlie was at Victor
25 Road at what time? When this incident happened it was

1 10:37, approximately 10:30?

2 A Approximately. And I don't have that information. I
3 was -- when I was doing this I had the information that
4 was passed on.

5 Q And I'm not trying to trick you up on it.

6 A And that's the nature of investigation. When we have
7 multiple investigators out, everybody's gathering, as
8 Investigator Ross put it, a piece of the puzzle.

9 Q And you let him go?

10 A We took him home, yes.

11 Q You took him home. Didn't drop him on the side of
12 the road, you took him home and you went back to Taco's
13 house?

14 A Well, we never went there, so we --

15 Q You went to Taco's house?

16 A We went to Taco's house, yes.

17 Q And Ashley Jeffcoat drives up and you get the gun out
18 of her car. But before you do, you put gloves on?

19 A Correct.

20 Q Because you don't want your DNA to transfer to that
21 gun?

22 A Right.

23 Q Because when you touch a gun and you load bullets
24 into a gun and you put them in a magazine, your DNA will
25 be on that gun, correct?

1 A It possible.

2 Q It's possible to get your prints on there?

3 A It's possible.

4 Q You said you didn't recall if there was one in the
5 chamber or both bullets were in the magazine, correct?

6 A Right. I don't recall.

7 Q And it's protected so I can't hurt myself or anybody
8 else. But the magazine, does that go in the bottom?

9 A Yes.

10 Q And to get the bullets in that magazine, what do you
11 have to do?

12 A Insert the bullets one at a time in there.

13 Q And press them down with your finger?

14 A Correct.

15 Q So you have to press the lever so that the bullets
16 get in there?

17 A Yes. It's spring tension in the magazine that keeps
18 the rounds up top.

19 Q And then to cock the gun, typically do you put your
20 hand on the top and pull it back?

21 A Yes.

22 Q Is that how this gun would be cocked?

23 A Yes. It could be a dual action where you push
24 forward and pull back, yes.

25 Q Okay. But either way it has to be done by --

1 A Right, the slide has to be...

2 Q When you took the gun out of Ashley Jeffcoat's car it
3 was wrapped in a black bandanna in a bag?

4 A It was wrapped in a black bandanna.

5 Q That's all? You put it in a paper bag?

6 A I put it in a paper bag, yes.

7 Q That's what I mean. So you put in in the paper bag,
8 and it was just sitting in her car wrapped in a black
9 bandanna?

10 A Yes.

11 Q Okay. Shawn drives up, he's arrested at that point,
12 September 22. Is Ashley Jeffcoat still there?

13 A Yes, I believe she was still there.

14 When I took possession of the gun, like I said,
15 I went inside of Taco's house. Detective Grant spoke with
16 Ashley.

17 Q Did you hear or observe anything being yelled at
18 Shawn when he was arrested?

19 A I can't recall.

20 Q And then you turned the gun into evidence. But
21 that's not the last thing you did in this case, is it?

22 A No. No, ma'am.

23 Q Tell the jury your next involvement in this case.

24 A On the 23rd of September at about 9:15 a.m., Sergeant
25 Lint and I met with Patsy Anz in the interview room at the

1 sheriff's department.

2 Q And took a statement?

3 A Yes.

4 Q And then just when you thought you were done with
5 this case, what's the next thing you do?

6 A Referring to the cell phones?

7 Q Yes, sir.

8 A On February 27 of 2013, I signed out two cell phones
9 and two videos from evidence and I had search warrants for
10 the cell phones.

11 Q What kind of information did you get from those cell
12 phones?

13 I will make it easy for you. Is there a program
14 that you use to get information off of phones?

15 A Well, there's a computer tool called Cellebrite.

16 Q And what does Cellebrite do?

17 A It accesses the phone's phone calls, phone log, phone
18 book, call history, text messages, any kind of multimedia
19 messages, photos, videos, basically the phone's history,
20 at least the usage history.

21 Q And then is that then recorded and stored?

22 A It is. It's transferred a thumb drive or whatever
23 storage device you use, which we transfer -- it's a
24 temporary storage media like a thumb drive and we'll
25 transfer that data to a CD and we'll put that on CD.

1 Q I'm going to show you what's marked as ID as Defense
2 Exhibits 60, 61, and 62. Tell me if you can identify
3 those.

4 A You want all three?

5 Q Please, yes.

6 A These are reports generated from Cellebrite is what
7 it appears to be where it will give a phone's history,
8 phone breakdown of what it is, phone model, CR number.
9 And what -- each phone -- Cellebrite has different
10 capabilities for whatever type of phone it is. There are
11 some phones that are a little older or more inexpensive
12 that the Cellebrite isn't -- you know, that phone isn't
13 supported, so it may not get text messages or it may not
14 do phone calls. So depending on the phone type, it
15 generates different type of reports or what's included in
16 those reports. And it says that on the examination report
17 of what's supported. So what it appears to be is reports
18 from Cellebrite.

19 MS. ZMROCZEK: Thank you.

20 At this time, Your Honor, I'd like to offer
21 these into evidence.

22 THE COURT: Any objection?

23 MR. GRAHAM: When you said that they were
24 examination reports from Cellebrite, I have no idea what
25 phones they belong to or whose phones they were. I don't

1 know whether he said that he did them.

2 THE COURT: Did you do those reports? Did you
3 generate those reports, sir?

4 THE WITNESS: I'd have to look at the search
5 warrants to verify the phone numbers and all. That's what
6 I was getting ready to do. Again, they look like phone
7 reports. That's what they appear to be, so...

8 BY MS. ZMROCZEK:

9 Q Do you need to look at the search warrant?

10 A Yes. I just want to make sure that those are the
11 reports that I did up.

12 You'll have to forgive me. I have a few search
13 warrants to look through.

14 Q Sure. And it may be that those phones -- I'm not
15 trying to trick you to get something in through you if
16 it's not yours.

17 A No, no. Again, like I searched with the phone or the
18 gun. I'm sure it was my gun. I just -- if I'm going to
19 be up here, I want to make sure it's my work.

20 Okay. I apologize. Those are three of the
21 reports I completed.

22 MS. ZMROCZEK: At this time I'd like to offer
23 them into evidence.

24 MR. GRAHAM: Whose phones are they?

25 MS. ZMROCZEK: May we approach, Your Honor?

1 THE COURT: Sure.

2 (A bench conference was held with the judge and
3 attorneys in the presence of the jury but out of the
4 hearing of the jury.)

5 BY MS. ZMROCZEK:

6 Q Detective, I'm going to hand you back the reports.

7 A All right.

8 Q Can you tell me about the MVN number that's
9 highlighted?

10 A That's something we probably -- I don't know what the
11 MVN means. That looks like it's the phone number that
12 belongs to that account.

13 Q And that was consistent on every report?

14 A Yes.

15 Q So it would be consistent on those two as well?

16 A Yes.

17 MS. ZMROCZEK: Your Honor, at this time I would
18 like to move them into evidence.

19 MR. GRAHAM: No objection, Your Honor.

20 THE COURT: Without objection. What numbers
21 were those?

22 MS. ZMROCZEK: They are Defense Exhibits 60, 61,
23 62.

24 THE COURT: All right. Without objection.

25

1 (WHEREUPON, DEFENDANT'S Exhibits Nos. 60, 61, 62
2 were admitted into evidence.)

3 BY MS. ZMROCZEK:

4 Q You have taken a lot of interviews and you have
5 collected a lot of evidence in this case, correct, or a
6 good portion?

7 A I guess that's subjective. I don't -- I don't know.

8 Q I'll rephrase the question.

9 You said you were going through a lot of search
10 warrants, so you served more than three search warrants?

11 A Yes, I have served a few search warrants, six or
12 seven, I believe.

13 Q And when you talked to Shawn Sharpe, he was
14 cooperative and spoke with you at the police station,
15 correct?

16 A Well, he was cooperative with coming with us and
17 agreeing to speak with us, yes.

18 MS. ZMROCZEK: No further questions.

19 REDIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q Detective Chappell, Ms. Zmroczek had asked you about
22 being over at the Plumley residence on Highway 6 in the
23 very early morning on the 22nd. Do you remember being
24 there?

25 A Yes, sir.

1 Q She asked you about the information that you had
2 about Charlie and Danny Plumley. And I may have misheard
3 her, but did you have any information that they were
4 responsible for the murder at that time?

5 A The only thing I was told, and it's in my report, is
6 that Charlie and Danny may have information regarding the
7 murder and which is why we went to make contact with them,
8 and to my knowledge why we went to go talk to them.

9 Q You interviewed Danny Plumley I believe Ms. Zmroczek
10 asked you about?

11 A Yes.

12 Q Let me show you State Exhibit No. 5 in evidence and
13 ask if you recognize that.

14 A Yes, that's Danny Plumley.

15 Q And is that how Danny Plumley looked the morning that
16 you interviewed him?

17 A Yes, it is.

18 MR. GRAHAM: Thank you, Detective.

19 MS. ZMROCZEK: No further questions.

20 THE COURT: Thank you very much, sir. You may
21 step down.

22 MR. HUBBARD: State calls Scott Ellis.

23 THE COURT: Mr. Ellis, come around, please, sir.

24 SCOTT ELLIS, after being duly sworn, testified
25 as follows:

1 THE WITNESS: My name is Michael Scott Ellis.
2 My last name is spelled E-L-L-I-S.

3 DIRECT EXAMINATION

4 BY MR. HUBBARD:

5 Q Detective Ellis, where do you work?

6 A I work for the Lexington County Sheriff's Department.

7 Q How long have you been there?

8 A I've been there since 2004.

9 Q What are your duties?

10 A Currently I'm a sergeant over special operations. I
11 worked on the road for approximately five years and I also
12 spent several years in the major crimes unit.

13 Q Back in September of 2011, what were your duties?

14 A I was an investigator in the major crimes unit.

15 Q Do you recall being brought into this case
16 September 22, 2011?

17 A Yes, sir, I do.

18 Q And do you recall having to go to a residence on
19 Blackville Court?

20 A Yes, sir, I do.

21 Q You actually have the street address of that
22 residence?

23 A I'm pretty sure it was Blackville Court.

24 Q And do you know whose residence that was?

25 A I do. That's Mr. Phillip Helms' residence.

1 Q About what time of day was this?

2 A I believe the first time was approximately 5:45 or
3 so. The second time was around 7:15 p.m.

4 Q Let's talk about that second time. What -- was there
5 anything of particular interest that you were there for
6 that day?

7 A Yes, we were there at about 7:15 p.m. looking for his
8 Dodge Dakota truck, I believe, older model truck.

9 Q When you got to the residence, did you find the
10 truck?

11 A Yes, it was parked in the driveway.

12 Q When you had been there earlier, is that what you had
13 been looking for as well?

14 A Yes, it was.

15 Q And did you determine who had use of the truck that
16 day, September 22nd?

17 A On September 22nd, a friend of Mr. Helms was using
18 the truck, according to Mr. Helms, the vehicle owner.

19 Q Is that Todd Thomas?

20 A Yes, sir, it was.

21 Q Phil Helms roommate?

22 A Correct.

23 Q So when you showed back up around 7:15 and the truck
24 was there, that Dodge Dakota truck was there, was Todd
25 Thomas there?

1 A Yes, sir, he was.

2 Q Did you have an opportunity to talk to him?

3 A I did.

4 Q Based on your conversation with Mr. Thomas, what did
5 you do?

6 A Based on my conversation with him, we observed some
7 blankets that were laid out by the shed in the backyard
8 just beyond the fence. There were also some clothing
9 items that we were looking for in the back of a second
10 truck that was parked right beside the first one, the
11 Dodge that we were looking for.

12 Q I want to show you what's marked as State's ID 23 and
13 see if you recognize that photograph.

14 A Yes, sir, I do.

15 Q Do you see the Dodge truck you were looking for?

16 A Yes, sir, I do.

17 Q And you mentioned another truck.

18 A Yes, sir.) The Dodge truck is the third one from the
19 left. The fourth vehicle is the other truck that was
20 parked beside it.

21 Q Another blue truck?

22 A Yes, sir.

23 MR. HUBBARD: Your Honor, I move these into
24 evidence.

25 MS. ZMROCZEK: Without objection.

1 THE COURT: What's the number?

2 MR. HUBBARD: Twenty-three.

3 (WHEREUPON, STATE'S Exhibit No. 23 was admitted
4 into evidence.)

5 BY MR. HUBBARD:

6 Q So this Dodge pickup truck, is this the truck that
7 was suspected of being used during this incident?

8 A Yes, sir, it is.

9 Q Having talked to Todd Thomas, you focused on the
10 truck next to it?

11 A Yes, sir, I did. Mr. Thomas advised that there were
12 items in the Dodge Dakota truck that he took out.

13 MS. ZMROCZEK: Objection, Your Honor, hearsay.

14 THE COURT: Sustained.

15 BY MR. HUBBARD:

16 Q Having talked to him, did you go to that bright blue
17 truck and find some items?

18 A Yes, sir, I did.

19 Q Let me show you what's been marked as State 24, 25,
20 and 26. Do these photographs show what you found in that
21 blue truck, that metallic blue truck?

22 A Yes, sir, the brighter of the two blue trucks, yes.

23 MR. HUBBARD: Your Honor, I offer 24, 25, 26
24 into evidence.

25 MS. ZMROCZEK: Without objection.

1 THE COURT: All right. Without objection that
2 is 24, 25, and 26.

3 (WHEREUPON, STATE'S Exhibits Nos. 24, 25, 26
4 were admitted into evidence.)

5 BY MR. HUBBARD:

6 Q Looking at State's 24, it's a very dark photo, this
7 was nighttime, was it not?

8 A Yes, sir, it was.

9 Q You were holding something up. What are you holding
10 up in your hand?

11 A The item I was holding up there is a knit ski cap.
12 It's very dark, basically black in color and has a thin
13 gray or silver line around the bottom of it.

14 Q Okay. Anything unique about that cap?

15 A Yes, there appeared to be two holes either cut or
16 torn out in that cap.

17 Q Like eye holes?

18 A They appear to be eye holes, yes, sir.

19 Q This is State's 24. Again, it's very hard to see the
20 mask you're holding. But if you take a hard look, you can
21 see just the outline of the mask; is that correct?

22 A Yes, sir, it is.

23 Q State's 25 and 26, beginning with State's 26, was
24 this also in that bright blue truck?

25 A That's in the bed of the truck.

1 Q Okay. And what do you see?

2 A A dark in color bandanna and what appeared to be some
3 other clothing items laying up under it.

4 Q In State's 25, is that the bandanna being held up by
5 you?

6 A Yes, it is. The first picture is before it was
7 touched or anything, and the second one's me holding it
8 up.

9 Q Again, both the stocking cap with the eye holes cut
10 out and this bandanna were found in that truck?

11 A Yes, sir, they were.

12 Q I'll bring you some gloves and have you look at some
13 evidence if you don't mind.

14 All right. I'm going to have you look at what's
15 marked State's ID 69 and see if you can take a look at
16 that and if you can identify what you've got there. Do
17 you recognize what you see in State's 69?

18 A Yes, sir, I do. This is the knit ski cap, black in
19 color, with the gray line on the bottom and two holes cut
20 out here.

21 Q Is that the same ski cap we see in State's 24?

22 A Yes, it is.

23 Q Would you please stand and hold it up for the jury
24 and stick your hand inside that cap so they can see those
25 eye holes.

1 A (Witness complying.)

2 Q Thank you, sir.

3 MR. HUBBARD: Your Honor, I don't know if I've
4 offered this into evidence, but I'm offering it into
5 evidence now.

6 THE COURT: What number is it?

7 MR. HUBBARD: This is 69, Your Honor.

8 MS. ZMROCZEK: Without objection.

9 THE COURT: It has not been offered. It is now
10 without objection.

11 (WHEREUPON, STATE'S Exhibit No. 69 was admitted
12 into evidence.)

13 BY MR. HUBBARD:

14 Q All right. If you'd look at State's ID 77 and see if
15 you recognize that.

16 A Yes, sir, I do.

17 Q Is the item you see there the same item that's in
18 State's 25?

19 A Yes, sir, it is.

20 Q Blue bandanna?

21 A Yes, sir.

22 MR. HUBBARD: And that is State's 77. Your
23 Honor, I offer that into evidence.

24 MS. ZMROCZEK: Without objection, Your Honor.

25 THE COURT: Without objection.

1 (WHEREUPON, STATE'S Exhibit No. 77 was admitted
2 into evidence.)

3 BY MR. HUBBARD:

4 Q If you would for the jury, please stand and show it
5 to the jury.

6 A Yes, sir.

7 MR. HUBBARD: Thank you, sir.

8 Detective Ellis, I believe that's all I have for
9 you. Please answer any questions the defense has.

10 THE WITNESS: Yes, sir.

11 MS. ZMROCZEK: Your Honor, may I approach?

12 (A bench conference was held with the judge and
13 attorneys in the presence of the jury but out of the
14 hearing of the jury.)

15 CROSS-EXAMINATION

16 BY MS. ZMROCZEK:

17 Q Detective Ellis, the pictures that you were looking
18 at and the bandanna that you held up and all that
19 evidence, that was collected from where?

20 A Blackville Court.

21 Q Whose residence is that?

22 A Mr. Phillip Helms.

23 Q Did you find any coveralls?

24 A No, ma'am, there were no coveralls or overalls, I
25 guess, located.

1 Q And to be clear, those items were not in the gray
2 Dodge but in the green/blue truck?

3 A That's correct.

4 Q Did you also have an occasion to be part of the major
5 crimes unit when you all met at that store that Detective
6 Chappell previously described?

7 A I apologize. I wasn't here for most of his.

8 I responded initially for a call for service, I
9 guess, in that area and offered assistance when I was
10 done.

11 Q Do you recall with whom you spoke?

12 A When I initially arrived?

13 Q Correct.

14 A I offered assistance to the investigators on scene.

15 Q Did you meet and speak with any witnesses at that
16 time?

17 A I did meet with a Mr. and Mrs. Plumley.

18 Q Are they the parents of Charlie and Danny Plumley and
19 the parents-in-law of Angela Plumley?

20 A I believe that's correct.

21 Q Did you take a statement from them?

22 A Yes, ma'am.

23 Q And that was written by them?

24 A Yes, ma'am.

25 Q After that is when you went to Phillip Helms' house?

- 1 A Correct. I went to Mr. Helms' house after speaking
2 with Mr. and Mrs. Plumley later in the day.
- 3 Q Who was at Mr. Helms' house when you went that night?
- 4 A The first or the second occasion?
- 5 Q Both.
- 6 A Both? The first time I spoke to Mr. Helms, and I
7 believe another gentleman by the name of Larry was there.
8 The second time I arrived I spoke to Mr. Helms as well as
9 Mr. Todd Davis, I believe.
- 10 Q Did you take statements from them?
- 11 A Yes, ma'am.
- 12 Q They wrote those statements out for you?
- 13 A Yes, ma'am.
- 14 Q And then after your spoke with them I guess the
15 second time is when you collected items?
- 16 A That's correct. The Dodge truck was not there the
17 first time and it was there the second time.
- 18 Q And these items came out of not the Dodge but the
19 other truck?
- 20 A Yes, ma'am.
- 21 Q And this was on the 22nd of September?
- 22 A I believe that's correct, yes, ma'am.
- 23 Q And it was in the evening?
- 24 A Yes, it was.
- 25 Q When you spoke with the Plumleys earlier that day,

1 Mr. and Mrs. Plumley, was that after SWAT had surrounded
2 the house?

3 A The SWAT team was never deployed at the residence
4 itself.

5 Q Was it after there were several attempts to get them
6 to come out?

7 A I believe so. When I initially responded as an
8 operator, I believe I was the second or third at our rally
9 point, which was down the road, and they advised that we
10 had been called off, so there was no actual deployment, no
11 perimeter put up by those operators.

12 Q So by the time they had called -- they had called to
13 assemble, but they then decided that that wasn't needed?

14 A Correct.

15 Q Approximately how long does it take for the team to
16 all be notified and assembled?

17 A The system is set up so that there's a command page,
18 a text message that goes out to all the operators on the
19 team. A phone call is made to the commander and then we
20 also have a phone tree system, so the commander will call
21 the next in line. So it's two systems to make sure we
22 don't miss anything.

23 Q Were you involved with the execution of the search
24 warrant on the Plumleys house?

25 A The search warrant was executed or being executed

1 while I was speaking with Mr. and Mrs. Plumley, that is
2 correct.

3 Q And when you arrived at the house to speak with Mr.
4 and Mrs. Plumley, were they on the phone or were they
5 detained, or do you recall?

6 A To the best of my knowledge, they were both sitting
7 in their living room area.

8 Q And the search was going on around them?

9 A Yes, ma'am, I believe so.

10 Q Aside from the items identified here, did you collect
11 any other items from Mr. Helms' house that day?

12 A Yes, ma'am, I did.

13 Q What were those items?

14 A There were several blankets that were collected. I
15 believe one was a blue and white in color blanket, a green
16 blanket, a black blanket, and another white blanket, I
17 believe.

18 Q And you collected all this evidence and turned it
19 over to the property room?

20 A It was turned into the evidence room, yes.

21 Q And all the statements that you took from the
22 witnesses in this case were provided to the case
23 investigator?

24 A The lead investigator, yes, ma'am.

25 MS. ZMROCZEK: I have no further questions.

1 MR. HUBBARD: No follow-up.

2 THE COURT: All right. Thank you very much,
3 sir. You may step down.

4 Ladies and gentlemen, let's take a short break.
5 If you'll step back into your jury room. If you need
6 something, let us know. And please have no conversation
7 about the case. We'll bring you right back out.

8 (The jury left open court at approximately 4:31
9 p.m.)

10 (A break was taken.)

11 THE COURT: Anything before we bring the jury
12 out?

13 MS. ZMROCZEK: No, sir.

14 MR. HUBBARD: No, sir.

15 THE COURT: Go ahead and bring them out.

16 (The jury came into open court at approximately
17 4:50 p.m.)

18 THE COURT: All right. Recognize the State for
19 your next witness.

20 MR. HUBBARD: Thank you, Your Honor.

21 The State calls Suzanne Cromer.

22 THE COURT: Bring Ms. Cromer in, please.

23 SUZANNE CROMER, after being duly sworn,
24 testified as follows:

25 THE CLERK: Have a seat, please, ma'am.

1 Once you're seated, state your name for the
2 record, spelling your last, please.

3 THE WITNESS: My name is Suzanne Cromer,
4 C-R-O-M-E-R.

5 DIRECT EXAMINATION

6 BY MR. HUBBARD:

7 Q Ms. Cromer, where do you work?

8 A I'm employed by the South Carolina Law Enforcement
9 Division, commonly referred to as SLED.

10 Q What do you do at SLED?

11 A I am a firearm and tool mark examiner.

12 MS. ZMROCZEK: Your Honor, I'll stipulate to her
13 expertise as a firearm and tool mark examiner.

14 THE COURT: All right. Ladies and gentlemen,
15 Agent Cromer has been -- it's agreed by the defense that
16 she is in fact an expert in the field of firearm and --
17 what is it?

18 THE WITNESS: Firearm and tool mark
19 identification.

20 THE COURT: Firearm and tool mark
21 identification. And what that simply means is this: An
22 expert is given -- because of their education, their
23 experience in a particular field, they are allowed not
24 only to testify as to facts that they investigated, but
25 they're also allowed to testify as to their opinions based

1 on their testing. Whereas most of the time lay witnesses
2 are not allowed to testify to opinions, experts are
3 allowed to do that. You're to give an expert's testimony
4 no greater weight simply because a witness is an expert.
5 You simply give it whatever weight you feel is
6 appropriate, okay?

7 MR. HUBBARD: Thank you, Your Honor.

8 BY MR. HUBBARD:

9 Q Ms. Cromer, were you asked to review and look at a
10 firearm and other items in the case of State versus Shawn
11 Sharpe?

12 A Yes, I was.

13 Q I want to show some items, specifically State's 68,
14 if you could identify that.

15 A State's 68 was my item two that I identified. And I
16 know that because I scribed my lab number, my item number
17 and my initials in several locations on the firearm.

18 Q Ms. Cromer, before that pistol came to you at SLED --

19 MR. HUBBARD: And I understand there's a
20 stipulation as to chain as well on all these items?

21 MS. ZMROCZEK: That's correct, Your Honor.

22 THE COURT: All right.

23 BY MR. HUBBARD:

24 Q Before this particular item came to you at SLED, did
25 it go to another department first?

1 A Yes, sir, it went to our evidence processing
2 department to be swabbed.

3 Q Swabbed typically for DNA?

4 A Yes, sir.

5 Q Then it came to you?

6 A Yes, sir.

7 Q I would like you to also look at State's 80, and we
8 have opened it on the bottom there.

9 A State's 80 is my item one, and you can tell, it's
10 still in a sealed contained with my initials and my seal
11 date.

12 Q Let me ask you this, Ms. Chrome: What do you do when
13 you have a firearm and a fired projectile and you're being
14 asked potentially to see if one fired the other?

15 A That's correct.

16 Q How do you go about that?

17 A First what I'll do is I'll look at the firearm to
18 determine whether it's safe to fire and then I'll look at
19 my fired evidence that I'm being asked to look at to see
20 if it was fired by that particular firearm. I will
21 determine what type of ammunition I have and then I will
22 test fire that firearm into our bullet recovery tank. Our
23 bullet recovery tank starts on the second floor of our lab
24 and goes down all the way down to the first floor and it's
25 full of water. I pull those bullets out of the water

1 after I shoot them and I microscopically compare them to
2 each other so that way I can compare to my unknown on my
3 fired bullet.

4 Q So the test fires give you a good working knowledge
5 of what marking that pistol makes?

6 A Yes. It's kind of like a road map for me. I see
7 first off how the gun marks, is it consistent in its
8 markings. If I can't match the two that I know were fired
9 from the firearm to each other, then I may never be able
10 to match anything to that gun. So first I match the ones
11 that I knowingly fired from that firearm to each other and
12 I kind of get a road map. I see how it marks, if there's
13 any major defects and then I start comparing it to my
14 evidence.

15 Q And did you follow that process in this case?

16 A Yes, sir, I did.

17 Q And in looking at what you refer to as State's --
18 your item number two, which is State's 68, the pistol,
19 when you test fired that and compared those test rounds to
20 State's 80, which is the fired projectile, your SLED item
21 one, what, if anything, did you conclude?

22 A I concluded that the fired copper jacket fragment
23 from State's 80, my item one, was indeed fired by the
24 firearm that I received in this case, State's Exhibit 68.

25 Q Hang on to the firearm there. I'm going to show you

1 State's 79. See if you can identify that.

2 A Again, State's 79 was my item ten and 11 -- 14,
3 excuse me -- State's Exhibit 79 was my item ten and item
4 14, and again they are in sealed containers, heat sealed
5 with my initials and seal date.

6 Q Looking at your item 10, what is that item?

7 A That is a fired .45 auto caliber cartridge case.

8 Q Now, the pistol, what caliber is that pistol?

9 A It's .45 auto.

10 Q Okay. Now, again, SLED item ten which is part of
11 State's 79, you said it's a fired .45 case?

12 A Fired .45 auto caliber cartridge case.

13 Q It's what we often call a casing, the brass that's
14 left after a pistol is fired?

15 A Yes.

16 Q That ejected from the gun?

17 A Yes, sir.

18 Q Okay. Did you do an analysis on that case?

19 A Yes, I did.

20 Q And what did you conclude?

21 A I concluded that this cartridge case was also fired
22 by State's Exhibit 68, the pistol I received in this case.

23 Q Looking at your SLED item 14 which is also part of
24 State's 79, what is that?

25 A That is an unfired .45 auto caliber cartridge.

1 Q So it's what a lay person would call a bullet?

2 A Incorrect, but a lay person would call it a bullet.

3 A Cartridge is an unfired piece of ammunition
4 that has the cartridge case and the bullet still in it.
5 It also has the gun powder. Once it's fired, you'll have
6 two parts, the cartridge case and the bullet.

7 Q Can you compare or did you compare the case and
8 bullet to see if the stamps on those similar?

9 A That's not something we do. It's very difficult to
10 try to compare a bullet back to a cartridge case because
11 you could be messing with the potential markings.

12 Q I misstated my question. I'm looking for not
13 markings but actual printing, the words on the casing, on
14 the bottom of the bullet. Can you tell if it's, say,
15 Winchester or something of that nature?

16 A There's nothing on the bottom of the bullet.

17 Q All right. Very good. I want you to look at State's
18 82.

19 A State's 82 was my item nine. Again, it's in a sealed
20 container with my initials and seal date.

21 Q What I was looking for is State's -- well, this is
22 part of 79. The words, that's what I'm looking at.

23 A On the cartridge?

24 Q Correct. I'm just using the wrong terminology. I
25 knew I'd get there eventually.

1 A Yes. Both my unfired cartridge and my fired
2 cartridge case both displayed the same head stamp as
3 Winchester .45 auto.

4 Q And your SLED item 9, which is State's 82, the very
5 last thing I handed you?

6 A Yes, sir.

7 Q There's two unfired cartridges?

8 A Yes, sir.

9 Q What do they say on the bottom?

10 A Also Winchester .45 auto.

11 MR. HUBBARD: Okay. Thank you. I appreciate
12 it.

13 No further questions.

14 MS. ZMROCZEK: I have nothing for this witness.

15 THE COURT: Thank you very much, ma'am.

16 Appreciate you being here. You're free to go.

17 All right. Is that a good stopping point for
18 today?

19 MR. HUBBARD: That would be fine, Your Honor.

20 THE COURT: Ladies and gentlemen, we're going to
21 recess for the afternoon. Please, as you return to your
22 homes, anyone that is curious or interested, tell them to
23 hang in there. We're not done. You're to tell them
24 you're still under orders from the Court to have no
25 conversation about the case. You'll let them know when

1 you can, but we're not there yet, okay?

2 So I'm going to ask if you would, please be back
3 here in the jury room at 9 o'clock and we will get started
4 once we have everyone reconvened.

5 Now, we should -- I probably shouldn't put
6 myself out on this limb, but we should be ready to go at
7 9 o'clock because we've got everything pre-marked. So if
8 I don't have you out here at 9:00 or shortly thereafter,
9 knowing me, I'll come up with some other reason that it's
10 not my fault. But the truth is, it probably will be my
11 fault. So I'm going to do everything I can to keep my
12 word to you. So if you'll be here at 9:00, we'll be here
13 at 9:00 and we'll get started as soon as everyone has
14 reconvened.

15 Everyone remain seated while the members of the
16 jury are excused for the afternoon.

17 (The jury left open court at approximately 5:02
18 p.m. and were excused for the day.)

19 THE COURT: Now, let me just get an idea --
20 well, I don't know that need an idea.

21 MS. ZMROCZEK: Your Honor, I can just tell you
22 what would be helpful to me and they may or may not want
23 to be helpful to me, but here's the thing. I know because
24 with tomorrow -- I know a few of the witnesses that
25 they're going to be calling, in order to prepare my items

1 for evidence so we don't have stop, it would be helpful if
2 I could have a list of ten or maybe -- I don't know if
3 they want to tell me who's testifying.

4 THE COURT: I don't know what you've got left.

5 MR. HUBBARD: It's roughly 11, but it's kind of
6 fluid. I know the topics are the Plumleys, the DNA, those
7 will be the big things. We'll probably finish off with
8 the autopsy. Judge, I do have very short testimony from a
9 police officer and it's fluid with a couple of the lay
10 witnesses.

11 THE COURT: Let me ask you this -- okay.

12 MR. HUBBARD: And of course the co-defendant. I
13 left him out.

14 THE COURT: I think we all assumed that that
15 would be one of your witnesses tomorrow.

16 MR. HUBBARD: Yes, sir.

17 THE COURT: Okay. Well, some of those must be
18 brief.

19 MR. HUBBARD: Some of them are, Judge.

20 THE COURT: And I'm not holding you to it, but
21 for you to feel like you possibly can get through your
22 case tomorrow, they must be brief.

23 MR. HUBBARD: I do, Judge. I think if we start
24 like we did today and muscle through it. We've gone
25 through that many witnesses today, including some we

1 thought would be fairly lengthy, and they were relatively
2 lengthy.

3 THE COURT: We'll start at 9:00. If you all
4 will please be here and ready to go, I promise we'll do
5 that. So we'll do that.

6 Is there anything we need to take up before
7 tomorrow?

8 MR. HUBBARD: No, sir, not from the State.

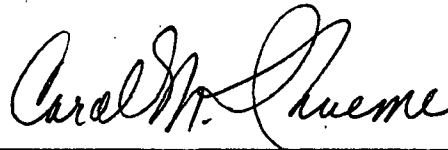
9 MS. ZMROCZEK: No, sir.

10 THE COURT: Well, we will then reconvene at
11 9 o'clock and start back at that point.

12 (The proceedings were concluded for the day, to
13 be reconvened on August 29, 2013.)

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

15 VOLUME 2 OF 4
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1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF LEXINGTON)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 27th day of
15 August, 2013.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819 March 21, 2014
2021 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	—)	2011-GS-32-02448
		2011-GS-32-02449
		2011-GS-32-02450

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	VOLUME 3
SHAWN WILLIAM SHARPE	)	
DEFENDANT	—)	

August 28, 2013
Lexington, South Carolina

B E F O R E:

HON. THOMAS A. RUSSO, Judge and a jury.

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

SAMUEL R. HUBBARD, III, DEPUTY SOLICITOR
DAVID SHAWN GRAHAM, DEPUTY SOLICITOR
Attorneys for the STATE

AIMEE J. ZMROCZEK, ESQ.
Attorney for the DEFENDANT

CAROL M. THUEME, RPR
Official Court Reporter

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1 THE COURT: Good morning, folks.

2 MR. HUBBARD: Good morning, Your Honor.

3 MS. ZMROCZEK: Good morning.

4 THE COURT: Anything we need to take up before
5 we bring the jury out?

6 MR. HUBBARD: Yes, sir. Late yesterday, after
7 we broke, defense counsel informed us there were a number
8 of audio phone recordings from the jail involving Charlie
9 Plumley, and they want to impeach him with these audio
10 recordings. We have never listened to these. I've got
11 Mr. Plumley's attorney here, too. He's never listened to
12 these, nor has Mr. Plumley.

13 THE COURT: Well, isn't there reciprocal --

14 MS. ZMROCZEK: Your Honor, they were provided by
15 me -- they were provided by the State to me.

16 MR. HUBBARD: Judge, she -- there is probably a
17 thousand-plus hours of phone recordings. She's the one
18 that asked for phone recordings. We said you can be
19 specific, we'll give you what you want. And we gave her a
20 bunch.

21 Most importantly, Charlie Plumley never listened
22 to these. I'm not so sure how she intends to authenticate
23 these audios with someone who's never heard them before,
24 not even prior to this, you know, testimony.

25 THE COURT: You need to stop shaking your head

1 because you have an ethical obligation to give over to
2 them any things that you intend, just like if they sprung
3 this on you, you would be standing here in Mr. Hubbard's
4 situation; am I not correct?

5 MS. ZMROCZEK: Yes, Your Honor, if that's what
6 the case were.

7 I was provided these calls by the State. They
8 gave them to me --

9 THE COURT: Okay.

10 MS. ZMROCZEK: -- in discovery. And last night
11 I gave them an exact list of the 18 calls that I plan on
12 using, the number and the second.

13 THE COURT: All right. And when did you know
14 you were going to be doing that?

15 MS. ZMROCZEK: When they told me they were going
16 to put Charlie up.

17 THE COURT: And how long have you known that?
18 Let's not be evasive. You know where I'm going. You
19 waited until last night to give them 18 messages and times
20 and all of that?

21 MR. HUBBARD: Actually, 3 a.m. in the morning we
22 got that.

23 MS. ZMROCZEK: But, Your Honor, this is what I
24 don't understand. They had the CD, they listened to them
25 and then they gave them to me.

1 THE COURT: How do you intend to use them and
2 impeach someone who's never heard them?

3 MS. ZMROCZEK: Well, it's a recorded phone call.

4 THE COURT: I understand what it is. But how do
5 you -- he's never heard them, how are you going to impeach
6 him with those?

7 MS. ZMROCZEK: Ask him: Did you say? Is this
8 you?

9 Every jail phone call says these calls are and
10 will be recorded. I'm not trying to play tricks on them.
11 You know, I told them that. That's why I asked for the
12 jail calls.

13 In fact, Saturday, Shawn called me -- or
14 Saturday or Sunday he said we have jail calls this past
15 Friday. And he said come pick it up. And that was on
16 Sunday.

17 MR. HUBBARD: That was one phone call we learned
18 about Friday. So in our continuing duty, under Brady, we
19 turned that one phone call over, because we learned about
20 it over the weekend. When we brought in Angela Plumley
21 she had been talking to her husband as late as Friday, we
22 turned that over immediately. That was one phone call.

23 But, Judge, as far as all the others, like I
24 said, voluminous phone calls, we weren't planning to use
25 them, we haven't listened to them. I know Mr. Plumley's

1 attorney's here, he's never played these for his client.

2 THE COURT: How long are we talking? How long
3 are these recordings?

4 MS. ZMROCZEK: About 40 minutes.

5 MR. HUBBARD: Judge, my question's still out
6 there about how this is going to happen.

7 I think, to make it easy, if she wants to ask a
8 question about a phone call -- did you talk to so-and-so
9 at this time -- that is just the beginning. But what we
10 would have to do if we put these in is establish who the
11 keeper of the record is, who maintains these; and there is
12 a person in Lexington that does that, for the jail, with a
13 company called Securus.

14 Judge, there is just a way to put these things
15 in. And I feel like at 3 o'clock in the morning, this
16 morning, we get hit with multiple discs here; we have no
17 idea what is on them.

18 Judge, as you know, we're scrambling to figure
19 out how we are going today. You know, once you're in the
20 middle of a trial it's just -- there is no way we have
21 time to listen to them to even prepare ourselves.

22 THE COURT: How do you intend to authenticate
23 those?

24 MS. ZMROCZEK: Your Honor, I was advised by
25 defendant counsel last night that the State was going to

1 agree to authenticate. And if that is not the case any
2 more, then I will --

3 THE COURT: I'm not saying we're not -- here's
4 the thing: I'm not saying you can't use them. Here's
5 what I'm saying, you know: This is -- you know, I --
6 Maybe I'm completely wrong, maybe you waited until last
7 night to listen to them, which is why you sent an email at
8 3 a.m. But it's an ambush situation. Not that you
9 intended to ambush them, I'm saying, they have been
10 ambushed, whether it was intentional or not. And just
11 like if the defense was ambushed I'd give you ample time
12 to be able to review and prepare for that stuff.

13 So we're not going to go forward this morning
14 until the State has had ample time to listen to these
15 things and do what you need to do to prepare for them.

16 It would have been nice for me and for those 14
17 people over there if we had known this yesterday.

18 MS. ZMROCZEK: And, Your Honor, I do apologize,
19 but that's why I have been asking for the witness list.

20 THE COURT: Whoa, whoa. Don't go down that
21 road. You knew before we left here yesterday that Charlie
22 Plumley was going to be on the stand this morning.

23 MS. ZMROCZEK: Exactly. That is why I went and
24 pulled the jail calls.

25 THE COURT: You're going to sit here and tell

1 me -- you're not under oath but you have an ethical
2 obligation -- you are going to sit here and tell me you
3 didn't listen to these things until last night?

4 MS. ZMROCZEK: I did not listen to the calls
5 until last night.

6 THE COURT: So you knew nothing about this type
7 of testimony or anything until sometime last night?

8 MS. ZMROCZEK: All I knew, there were jail
9 calls.

10 THE COURT: These are all the calls from Friday?

11 MR. HUBBARD: No, sir. There was just one phone
12 call from Friday. I don't know what these are, I have no
13 idea if that's included. I have no idea, Judge.

14 THE COURT: Here's the thing: Do you have any
15 idea how long it's going to take? I mean the calls
16 themselves are 40 minutes, so I know we got at least that.

17 MR. HUBBARD: Maybe, to be safe, Your Honor,
18 because also know that defense counsel for Mr. Plumley may
19 want to have an opportunity to talk to his client --

20 THE COURT: I would imagine.

21 MR. HUBBARD: -- outside of us. So, Judge, I
22 hate to say this but it could be a couple hours.

23 THE COURT: Oh, I think it will be.

24 MS. ZMROCZEK: And, Your Honor, I was speaking
25 with defense -- defendant's counsel last night as well.

1 He advised me he had talked with the State, so the fact
2 that this is a complete surprise --

3 THE COURT: He's talked to the State about these
4 phone calls?

5 MS. ZMROCZEK: Yes, sir. That was my
6 understanding.

7 MR. HUBBARD: Here's what happened, Judge: Late
8 evening yesterday we were put on notice that she had the
9 jail phone calls that she wanted to impeach with. This is
10 before 3 o'clock. We responded: What do you have?

11 Mr. Kirkland, who represents Charlie Plumley,
12 also got in a conversation, a texting conversation, saying
13 he didn't have these either, did not know what they were
14 going to be. So we responded to defense counsel and said
15 if you can tell us what you got, maybe if it's not a lot
16 we'll have time to listen to them.

17 Well, Judge, we didn't get any of this until
18 3 a.m. in the morning.

19 THE COURT: Mr. Kirkland, have you had an
20 opportunity to address those issues with your client?

21 MR. KIRKLAND: I have not, in a sense, Your
22 Honor. I have not spoken to him about the phone calls. I
23 arrived here at 8 o'clock this morning.

24 I was under the impression that, first of all,
25 Charlie would be here at 8 a.m. this morning. I think

1 there was a mixup, they didn't have him upstairs until
2 around 8:40. And we had intended on listening to the
3 calls, receiving the list and sitting with Charlie
4 listening to the calls. However, there were 40 minutes of
5 calls, and they didn't get him upstairs until 8:40. So I
6 wasn't able go through the calls with him.

7 However, I will say this in the defense of Ms.
8 Zmroczek. I did speak to the prosecution last night, they
9 did indicate they probably wouldn't have a problem with
10 the authentication of the calls if Charlie recognized the
11 caller as being himself.

12 THE COURT: I don't think that is going to be an
13 issue. I'm just -- I will be honest with you, I don't
14 mean to say I'm not listening to what you all are telling
15 me, my mind is kind of racing ahead, what am I going to do
16 with these folks? I'm not going to leave them sitting
17 back here for two hours.

18 You've got several witnesses today. Could we
19 work this morning, let them go for lunch -- I'm throwing
20 this out and you might need to talk before you answer, you
21 might need to get together and talk about look at your
22 witness list. I'm not going to require you to do anything
23 that is going to in any way hinder your case. It may be
24 that you need him to testify before you put these others
25 up, I don't know.

1 MR. HUBBARD: I'll tell you what our plan was,
2 Judge, and how it affects the schedule.

3 We were going put up a short CSI agent -- short
4 testimony from the CSI agent on the phones. He was going
5 to have the defense phone and we were going to have
6 certain things IDd for Charlie Plumley. Then I was going
7 to put Charlie Plumley -- we were expecting to run with
8 him quite a while. Then I had two other lay witnesses
9 that naturally would come right after Charlie. They would
10 be relatively short, but they would pick up on the
11 story -- the version of facts that he gives.

12 THE COURT: In other words, it wouldn't flow --
13 it would be confusing to put them ahead of Charlie?

14 MR. HUBBARD: It could be, Judge. I know we
15 have done stuff before and I know, you know, at least this
16 is not a month long trial, but what we have got later in
17 the day, what we were planning on, is more of a technical
18 side, the SLED DNA and the phones, the actual -- what we
19 had motions on prior to trial. So those -- we do have one
20 person here for that, but don't have the SLED agent. For
21 instance, their notice, that is probably after lunch.

22 Judge, we can make phone calls. I don't know if
23 we're ready right now to really -- it would be disjointed
24 if we went forward. We'll do whatever Your Honor wants us
25 to do.

1 THE COURT: What if you -- and I'm going to
2 assume that you can reach the agent and the agent can be
3 here some time this morning. Would it be confused if you
4 just took that bulk of testimony and put it before the
5 other?

6 MS. ZMROCZEK: Your Honor, I just want to
7 clarify for the record that someone in the solicitor's
8 office has heard these calls, it's just not the lawyers.

9 MR. HUBBARD: No, sir. That is absolutely not
10 true. And while we're -- if this keeps being pushed I
11 will say this, in speaking to Mr. Kirkland last night he
12 said he had a conversation with defense counsel weeks ago
13 about how to authenticate it and get these things in.
14 That comes from -- and I don't think Mr. Kirkland will
15 deny it. We are all friends, Judge, we really are, but
16 this is just -- I'm not going to be put in a position by
17 defense counsel where it looks like we sat on something,
18 that we knew something and we're, in effect, sandbagging
19 here. That is absolutely not the case.

20 THE COURT: Here's the thing, it doesn't -- my
21 experience is that pointing fingers at each other is not
22 very productive. What's productive is let's figure out
23 how to fix it and how we move forward.

24 MR. HUBBARD: Yes, sir.

25 THE COURT: Let me -- I'm going give you all

1 some time to talk. And, again, if I have to send the jury
2 home or out for a couple of hours and bring them back I
3 can do that. I would rather not do that, but I can. But
4 if we have to we will. But, you know, maybe it's
5 possible -- it sounds to me like you have got the part of
6 your case that involves Mr. Plumley and the phone calls
7 and all this surrounding that, and then you got another
8 part that involves DNA and scientific-type evidence and
9 stuff. Maybe that can be shifted to the morning and other
10 one shifted to later. Maybe it doesn't work that way.
11 You can let me know.

12 MR. HUBBARD: We can check, Your Honor. We'll
13 have to make some phone calls, obviously.

14 THE COURT: Sure.

15 MR. HUBBARD: I do have a couple of lay
16 witnesses here and, obviously, you know how it is, Judge,
17 you don't want people to slip away because you never see
18 them again. But we'll make phone calls.

19 THE COURT: Do you have a couple of lay
20 witnesses that you're prepared to put up?

21 MR. HUBBARD: These are the ones that I'd prefer
22 to be right after Charlie, if given a preference.

23 THE COURT: I got you.

24 MR. HUBBARD: Obviously, I'll do whatever the
25 Court needs, because I do understand we have people

1 sitting back there.

2 THE COURT: Well, I hope everybody is
3 sensitive -- the most important folks in this trial aren't
4 sitting up here, they're sitting back there.

5 MR. HUBBARD: Yes, sir. We will talk, Judge --

6 THE COURT: You all can take a few minutes and
7 talk and let me know if you need to step out and talk.

8 MR. HUBBARD: Yes, sir. Thank you, Judge.

9 (A break was taken.)

10 MR. HUBBARD: Judge, we're looking at
11 scheduling. We have two SLED people, that probably puts
12 us -- I mean, it generously, I'd say, probably gives us 15
13 minutes once they get here. That's an hour, if we take a
14 break. Judge, we're looking at three witnesses if we do
15 that, we're still putting up the CSI guy, who should be
16 fairly quick. We're putting up a SLED person who
17 basically does the processing before something goes to
18 DNA. Then we put up DNA. That is probably roughly an
19 hour, Judge, of down time before they get here. That
20 testimony, DNA, I don't know how long that will be.
21 Shouldn't be horribly long. But we'd still be probably in
22 the morning time. And then we're at Charlie and those
23 issues at that point.

24 THE COURT: All right. There is no one that you
25 can put up for an hour?

1 MR. HUBBARD: Correct. Yes, sir. Because we're
2 waiting on them to get here. They are en-route. But
3 that's what we've been informed.

4 THE COURT: It's about 10:30. If that
5 testimony, all total, goes an hour we're at 11:30. Send
6 them to an early lunch and that gives you the opportunity
7 during that time to review those tapes.

8 MR. HUBBARD: Maybe take a long break, Judge, if
9 you don't mind, because we haven't heard them either and,
10 like I said, I know that defense counsel is going to need
11 time. Brad Kirkland's going to need time.

12 THE COURT: And here's the thing, again, I'm
13 not -- staying away from the point.

14 MR. HUBBARD: Yes, sir.

15 THE COURT: But, you know, it's kind of like
16 they're in y'all's possession, you didn't listen to them;
17 that's kind of your bad.

18 MR. HUBBARD: Yes, sir.

19 THE COURT: So I'm going to give you time and
20 I'm going to give you whatever time you need.

21 I'm kind of mainly concerned that Mr. Kirkland
22 has the time he needs so that, you know, Mr. Plumley is
23 aware of what's going on.

24 MR. HUBBARD: Yes, sir.

25 THE COURT: All right. What I'm going to do

1 then is I'm going to bring the jury out. I'm not going to
2 give them any details, but I'm just going to explain to
3 them that there are some matters that need to be addressed
4 that we were not aware of when we let them go yesterday,
5 but they've surfaced, that need to be addressed before we
6 proceed and I don't want them -- I'm going to tell them
7 they're welcome to sit back there, but it's probably going
8 to be about an hour so if you want to leave and go up the
9 street and get a cup of coffee or whatever you want to do;
10 and then I'll just have them be back here at 10:30.

11 MR. HUBBARD: Yes, sir.

12 THE COURT: You have one we can start with at
13 10:30, right, even if the SLED guys haven't arrived yet?

14 We'll do that. We'll let that testimony go,
15 however it goes. And whenever that does stop we'll take
16 that extended break and then give you all the opportunity
17 to review whatever you need to review.

18 MR. HUBBARD: Thank you, Your Honor. I
19 appreciate it.

20 THE COURT: All right? And I will make sure
21 that I -- in other words, when I speak to them they're not
22 going to be aware that we're having to stop things. I'm
23 not going to get into any kind of information that they
24 don't need to have.

25 MR. HUBBARD: Thank you, Your Honor.

1 THE COURT: Let's bring them out, Tommy.

2 (The jury came into open court at approximately
3 9:31 a.m.)

4 THE COURT: Thank you. You all please have a
5 seat.

6 I told you, so much for my credibility, right?
7 And it's about to get even worse.

8 Now, ladies and gentlemen, let me say this: The
9 lawyers for both sides were sitting here at 9 o'clock.
10 Believe it or not I was here at 9 o'clock, and I came out
11 and I said "Anything we need to take up before we bring
12 the jury out?" Expecting "No, Judge. We're ready to go."
13 And have you out here and start.

14 But there were some issues that have come up
15 that we were not aware of yesterday when we adjourned, so
16 it's going to be necessary -- and here's the problem, and
17 I will tell you -- I told the lawyers I wasn't going to go
18 into any details about what we're dealing with. I'm going
19 to go into it a little bit, but it's just kind of an
20 explanation.

21 When you have cases in criminal court oftentimes
22 agencies are involved, as you have heard, you got agencies
23 from the police department, agencies from the sheriff's
24 department, you have SLED agents; you have different
25 things. Well, this is not the only court going on in

1 South Carolina. We have some agents that are involved in
2 a case in another jurisdiction and the bottom line is they
3 need to get here. And we have been in contact with them
4 and they're en-route now. They had to do what they were
5 doing and, unfortunately, it's going to take them about an
6 hour to get here, and it's a situation that we can't
7 proceed without them, so we're going to have to delay
8 until they arrive.

9 Now, I don't want you all to think, man, he's
10 about to stick us back in that room for an hour. I'm not
11 going to do that unless you want to be back there, okay?
12 But I am going to excuse you to leave, if you want to
13 leave, and we're going to start back at 10:30. So if you
14 want to go across the street and get a cup of coffee or if
15 you want to stay here and drink free coffee, it's whatever
16 you want to do. But I would ask you to do this, if you
17 want to remain, and we'll do everything in the world to
18 make you comfortable, you're welcome to do that. If you
19 want to go, I would ask you to go and not just mill around
20 the courthouse, because you'll be approached by any number
21 of people if they see you're a juror. "Oh, yeah, what
22 kind of case you on?" It's just better to leave the
23 courthouse, to actually leave the grounds and then come
24 back or if you want to remain, remain. Okay?

25 And I want to apologize. It's nothing any of us

1 had control over. It's just, you know, when you have a
2 lot of courts going on you have to juggle schedules, so
3 I'm going to ask you if you would now -- of course, the
4 same admonition you had from day one is to not discuss the
5 case with anybody. So, if you do leave the courthouse,
6 just continue not to talk about the case with anyone.

7 And I ask you to, if you would, we have been
8 told that they can be here by 10:30. We have one witness
9 that is here, so even if the fellows and gals that are
10 traveling are delayed a little bit, we can at least start
11 at 10:30 with that next witness. So we'll start at 10:30.

12 If you do decide to remain let them know if you
13 want coffee, soft drinks, crackers, whatever you want let
14 them know and we'll get that for you. But if you want to
15 step out feel free to do that as well. Okay?

16 So, ladies and gentlemen of the jury, everybody
17 else remain seated while the jury is excused and we'll see
18 you back at 10:30.

19 (The jury left open court at approximately 9:36
20 a.m.)

21 THE COURT: Now, while we're waiting for them,
22 you all can be productive there, like Mr. Kirkland. I
23 think he stepped out. But hopefully he stepped out to go
24 listen to things or talk to Mr. Plumley, whatever. In
25 other words, during this hour you all go ahead and be

1 productive with what you can be productive with and we'll
2 wait for those folks to get here.

3 MR. HUBBARD: Yes, sir.

4 MR. GRAHAM: Your Honor, if I can suggest
5 something? If Ms. Zmroczek will tell us what questions
6 she wants to ask Mr. Plumley, the questions --

7 THE COURT: No, she's not going to do that.

8 MR. GRAHAM: -- she wouldn't have to worry about
9 the case.

10 THE COURT: I would never ask her to do that.
11 Unless she wants to, that's up to her. If you think
12 that -- I mean -- I hear what you're --

13 MR. GRAHAM: That's what she's going to have to
14 do on the --

15 THE COURT: I hear what you're saying, and what
16 you're saying is that if you know the questions that maybe
17 you can short-cut and not --

18 MR. GRAHAM: It's real, it's either on the paper
19 or it's not.

20 THE COURT: I got it and I guess what I'm saying
21 is this, you all feel free to talk. I certainly wouldn't
22 require her to do that, but if she wants to, that's fine.
23 I would encourage you all to talk and see if you can come
24 to some resolutions on things.

25 But I'm going to be -- go back here and just

1 sign orders that have stacked up on some civil stuff. If
2 you all need me, I will be back here.

3 MR. HUBBARD: Thank you, Your Honor.

4 (A break was taken.)

5 THE COURT: Is the State ready to proceed?

6 MR. GRAHAM: State's ready.

7 THE COURT: Defense?

8 MS. ZMROCZEK: Yes, Your Honor.

9 THE COURT: Bring them out, Tommy.

10 (The jury came into open court at approximately
11 11:14 a.m.)

12 THE COURT: Please have a seat. Thank you.

13 Ladies and gentlemen, we're ready to proceed.

14 State, call your next witness.

15 MR. GRAHAM: The State calls Crime Scene

16 Investigator Glenn Ross.

17 THE CLERK: Still under oath, Your Honor?

18 THE COURT: Yes.

19 Mr. Ross, come up and take the stand. You're
20 still under oath, sir.

21 GLENN ROSS, having been previously sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. GRAHAM:

25 Q Investigator Ross, you testified earlier you were the

1 lead crime scene investigator on the homicide we were
2 talking about of Leon Justice on Victor Road, on 9/21/11,
3 correct?

4 A Yes, sir.

5 Q As part of that, did you have the opportunity to
6 perform search warrants on two cell phones?

7 A Yes.

8 Q And the purpose of those search warrants was to take
9 photographs of the contents, some of the contents of the
10 phones?

11 A Yes, sir.

12 Q Let me show you a document or a set of photographs
13 which is going to be State's 27, 32, 31, 30, 29, and 28
14 that are marked for ID and ask if you recognize those.

15 A Yes, sir.

16 Q And what phone numbers do those photographs relate
17 to?

18 A It says 1-803- -8598.

19 Q That was the phone number that belonged to the phone
20 that you took these photographs of?

21 A Yes.

22 MR. GRAHAM: Your Honor, this will be moved into
23 evidence at a later time with a different witness.

24 THE COURT: All right.

25 BY MR. GRAHAM:

1 Q The next set of photographs, Investigator Ross, 33,
2 34, 35, 36, 37, 38, 39, 40, 41, 42, 3, 4, 5, 6, and 7, did
3 you also -- look at those and see if you recognize those.

4 A Yes, sir.

5 Q And those are photographs that you took?

6 A Yes, sir.

7 Q And that was pursuant to a search warrant?

8 Let me show you State's 78 that's currently in
9 evidence, and ask if you recognize that phone.

10 A Yes, sir.

11 Q And that's been identified as the phone that was
12 taken off of Shawn Sharpe. The photographs that you took,
13 are those off that phone?

14 A Yes, sir.

15 MR. GRAHAM: Your Honor, the State would move 33
16 through 47 into evidence.

17 MS. ZMROCZEK: Without objection.

18 THE COURT: Without objection. 33 through 47.

19 (WHEREUPON, STATE'S Exhibits Nos. 33-47 were
20 admitted into evidence.)

21 BY MR. GRAHAM:

22 Q Investigator Ross, could you explain when you got the
23 search warrant and you looked at this phone, what did you
24 do?

25 A We were not able to do an extraction from the phone.

1 Q Let me stop you for a second. What is an extraction?

2 A Extraction is what we use the Cellebrite system for.

3 It's a universal forensic extraction device.

4 Q What does that mean? You get a cell phone, what does
5 that do?

6 A It extracts data from the phone as far as video,
7 photos, text messages, contact numbers and things such as
8 that. But we were unable to use it --

9 Q Is it fair to say a Cellebrite is a computer and you
10 plug it in there and try to turn it on and it will try to
11 pull all the information off the phone?

12 A That's, very simply, what it is.

13 Q And that didn't work?

14 A No, sir.

15 Q Were you able to actually power it on and take
16 photographs?

17 A Yes, sir.

18 Q And that's what these are that we are getting ready
19 to look at, correct?

20 A Yes, sir.

21 Q When you powered the phone on, looking at State's
22 Number 33, what did you find?

23 A That's the initial number, the general information of
24 the phone itself.

25 Q What was the phone number that was identified with

1 that phone?

2 A On the back of the phone?

3 Q No. With the phone. It's hard to read. I was going
4 to actually ask you to read it. I don't know if you have
5 it.

6 A I do have it. I want to make sure it's the same one.
7 -5429, 1-803- -5429.

8 Q That is the number right there?

9 A Yes, sir.

10 Q Were you asked to look for specific numbers in a
11 contact, in a phone book as well that was relevant to this
12 case?

13 A Yes.

14 Q Looking at State's 34, what contact does this
15 photograph represent?

16 A It says Charie mom.

17 Q Can you spell it for me?

18 A C-H-A-R-I-E.

19 Q And the phone number associated with that?

20 A (803) -9547.

21 Q How many letters off from Charlie is that?

22 A Just one, the L.

23 Q State's 35. Contact on that one?

24 A Bruh-bruh.

25 Q What number do you associate with that?

1 A (803) -0723.

2 Q Let me show you State's 35 and ask you to take look
3 at that number.

4 A 22 --

5 Q So what is the number?

6 A -- 8-0722.

7 Q 0722?

8 State's 36.

9 A Taco (803) -01 -- I believe that's dark -- 97.

10 Q 0197?

11 A Yes, sir.

12 Q Looking at State's Number 37, what is the contact
13 that's identified there?

14 A Charlie (803) -8598.

15 Q In addition to that, did you also check the text
16 messaging?

17 A Yes, sir, we did.

18 Q Looking at State's Number 38, what does that show us?

19 A The inbox, it has nothing in the inbox.

20 Q 39, what does that show?

21 A That it's empty. Messaging is empty.

22 Q What does that mean when the inbox is empty? What
23 does that tell me about the texts that were received?

24 A They were deleted, as best I would understand it.

25 Q State's 40, what does that show you?

- 1 A The outbox.
- 2 Q And 41?
- 3 A Empty.
- 4 Q So the inbox was empty and the outbox was empty?
- 5 A Yes.
- 6 Q So what is contained in the outbox?
- 7 A Messages sent.
- 8 Q State's 42?
- 9 A Sent.
- 10 Q State's 43?
- 11 A It's also empty.
- 12 Q Nothing in the inbox, nothing in the outbox and
- 13 nothing in the sent folders?
- 14 A No.
- 15 Q State's 44?
- 16 A Drafts.
- 17 Q State's 45?
- 18 A Empty.
- 19 Q So there were no draft messages, either?
- 20 A No.
- 21 Q State's 46?
- 22 A Saved messages, empty.
- 23 Q Looking at State's 46 and 47, there were no saved
- 24 messages, either?
- 25 A No. Outbox was also -- it wasn't messages, it was

1 outgoing calls.

2 Q I'm sorry?

3 A Outbox is outgoing calls, sent is sent messages.

4 Q So there are no -- was there any -- there were no
5 texts either sent or received that were left on this
6 phone?

7 A No text messaging whatsoever on the phone.

8 Q What about call history, were you able to determine
9 anything about call history?

10 A We weren't able to gather anything but contact
11 information.

12 MR. GRAHAM: I believe that's all the questions
13 that I have for Investigator Ross.

14 Thank you, Your Honor.

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 Q Investigator Ross, I'm going to show you what's been
19 marked for ID purposes as Defendant's Exhibit 34, 35, 36,
20 37, 59, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50,
21 51, 52, 53, 55, 56, 57 and 58.

22 Do those look like the remaining pictures that
23 you took of the previous ones that you looked at from --

24 A Is this from the same search warrant, the same phone?

25 Q Yes, sir.

1 A Yes, we had taken more pictures.

2 Q You had taken more pictures?

3 A Yes.

4 MS. ZMROCZEK: And, Your Honor, it's the same,
5 for ID purposes.

6 BY MS. ZMROCZEK:

7 Q When you -- you said the first thing you did with the
8 second cell phone that had no information besides contacts
9 in it, the first thing you did was plug it up to your
10 Cellebrite program.

11 A SLED was present and we attempted with them -- the
12 phone did not have -- we were not able to power it up, so
13 we had to find a battery in order to power it up, which
14 actually turned into an all day affair, to find a battery,
15 since it's an older phone. Once we were able to power it
16 up we tried, and SLED's Cellebrite, which is a bit more
17 current a program than ours, still did not support the
18 software, so we still could not do an extraction.

19 Q Because the phone was so -- so the phone was older?

20 A The Cellebrite did not support the software.

21 Q Did you do any protection -- was there any freeze or
22 protection when Cellebrite connected to the phone?

23 Although it couldn't find anything, it's possible that
24 data could have been harmed when it hooked up to a program
25 that doesn't fit, correct?

1 A I'm not aware of that. You would have to contact
2 somebody with Cellebrite themselves to tell you about the
3 individual working order of that particular program to
4 that effect.

5 Q So, let me ask the question this way: When you're
6 provided evidence to preserve for further review, aren't
7 there protections that can be taken to make sure that the
8 data isn't destroyed when it's hooked up to a program?

9 A As far as this program goes, it's very specific, the
10 way that you do it. We didn't do anything outside of what
11 Cellebrite suggests. It preserves the data, it does not
12 damage the data. That is not what Cellebrite does.

13 Q And then you were able to power it on and take
14 pictures?

15 A After we were able to get a battery we powered on it
16 and we took photographs. We went old school. When a
17 program doesn't work, you take pictures.

18 MS. ZMROCZEK: No further questions.

19 MR. GRAHAM: No questions, Your Honor.

20 THE COURT: Thank you very much, sir. You may
21 step down.

22 MR. GRAHAM: State calls Catherine Leisy.

23 CATHERINE LEISY, after being duly sworn,
24 testified as follows:

25 THE CLERK: Have a seat right here.

1 Once you're seated, state your full name,
2 spelling your last on the record, please.

3 THE WITNESS: Catherine Leisy, L-E-I-S-Y.

4 DIRECT EXAMINATION

5 BY MR. GRAHAM:

6 Q Where are you employed, ma'am?

7 A I work for the South Carolina Law Enforcement
8 Division, more commonly known as SLED.

9 Q How long have you worked there?

10 A A little over seven years.

11 Q And what do you do there?

12 A I am a forensic scientist assigned to the DNA and
13 serology unit. My responsibilities include processing
14 forensic cases, generating reports based on the results
15 and conclusions and testifying to those results, if
16 necessary. I'm also required to assist in quality
17 control, maintenance and training of newly hired analysts.

18 Q Your educational background?

19 A I have a Bachelor's of Science degree in genetic
20 engineering from Cedarcrest College in Allentown,
21 Pennsylvania.

22 Q How many times have you testified as an expert in DNA
23 serology in the state courts of South Carolina?

24 A Approximately 30 occasions in South Carolina.

25 MS. ZMROCZEK: Your Honor, I will stipulate to

1 her being an expert DNA serologist.

2 THE COURT: All right. So this witness is
3 agreed by the defense that she is an expert in that field
4 of DNA and serology, so she -- as I told you yesterday,
5 she will be able to testify as to her opinions and her
6 findings.

7 MR. GRAHAM: Thank you, Your Honor.

8 BY MR. GRAHAM:

9 Q Ms. Leisy, did you have an opportunity to perform
10 some DNA analysis on this case?

11 A Yes, sir, I did. Yes, sir.

12 Q Specifically, there was a SLED item 2, which is a
13 0.45 Taurus handgun. Were you able to process and swab --
14 well, what is a swab? When -- if a piece of evidence like
15 this .45 caliber handgun came to SLED, what happened to it
16 before it comes to you?

17 A When you receive an item such as a handgun, we
18 collect DNA from that item by using sterile cotton swabs
19 that are basically just like the Q-Tips you use at home,
20 on a slightly longer, wooden handle. We would typically
21 wet that swab, rub it against the item and try to draw any
22 cells that contain DNA from the item. And we then go
23 ahead and test what is collected on the swab for DNA
24 profiles.

25 MR. GRAHAM: And, Your Honor, defense counsel,

1 it is my understanding that she'll stipulate to this and
2 that we can go without a chain of custody or the swabs
3 being created and go straight to the testimony.

4 THE COURT: Is that correct?

5 MS. ZMROCZEK: That's correct.

6 THE COURT: Thank you.

7 BY MR. GRAHAM:

8 Q Do your records reflect item 2 being the handgun and
9 that the swab was created from that?

10 A That's correct.

11 Q And what was it labeled when the swab came to you for
12 testing?

13 A I received items 2.1, swab from handgun; and item
14 2.2, swab from magazine.

15 Q So just for the jury, when they're looking later,
16 when they're looking at the magazine on there they'll
17 actually see where the 2.2 is; correct?

18 A That's correct. That item, 2.2, was designated by an
19 evidence processing technician who created that subitem as
20 she tested the particular weapon.

21 Q At the same time that you were working on those items
22 did you also have an item 9 -- 9.1?

23 A I did. I received an item 9.1, which was identified
24 as swabs from a .45 Winchester auto unfired rounds.

25 Q Let me show you State's 82 and ask if you recognize

1 that by the SLED marking as being item 9, two unfired
2 Winchester rounds?

3 A I do recognize the SLED case number and item number.
4 I did not make those particular markings, but they are
5 consistent with the evidence that I tested.

6 Q So 9.1 were swabs -- what you analyzed were swabs
7 taken from two unfired cartridges, correct?

8 A That's correct.

9 Q In addition, you looked at 10.1. What was 10.1?

10 A Item 10.1 was identified as swabs taken from a .45
11 Winchester cartridge case.

12 Q And what was 14.1?

13 A 14.1 was identified to me as swabs from a .45
14 Winchester auto unfired round.

15 Q Looking at State's No. 79, do you see an unfired .45
16 cartridge that is labeled item 14, and as well as a fired
17 cartridge case labeled item 10?

18 A I do. And, again, I did not make those particular
19 markings but they are consistent with the case numbers and
20 items numbers that are associated with what was sent to
21 me.

22 Q Once you received the swab from the handgun, the
23 magazine, the unfired rounds and the cartridge case, what
24 did you do?

25 A I develop DNA profiles from those items. Once I can

1 develop a profile from an item of evidence, I compare it
2 to the DNA profile of a known individual, in an attempt to
3 determine whether or not that individual could have
4 contributed to the DNA that was found on the item of
5 evidence.

6 Q The first time you touched those items you didn't
7 have any suspects to compare them to, did you?

8 A No, I did not.

9 Q How do you go about developing the DNA profile?

10 A We use a technique called PCR STR DNA analysis. PCR
11 stands for Preliminary Chain Reaction. It allows us to
12 make copies of the specific locations in DNA that we need
13 to test. Those locations are known as STRs, or Short
14 Tandem Repeats. And an STR is simply a location in our
15 DNA where a short core unit of DNA repeats a certain
16 number of times. And the number of times that unit
17 repeats is what varies from person to person. So by
18 removing DNA from these particular items I can then make
19 copies using the PCR process of these locations and then
20 count the number of repeats at each location.

21 We assign what we call a DNA type, so say I
22 inherited a copy of DNA from my mom that had 14 repeat
23 units and a copy from my dad that had 16, my DNA types are
24 simply 14 and 16. The number corresponds with the number
25 of repeats. We test 15 STR locations and it's the DNA

1 types at all those locations collectively that give us a
2 DNA profile. Once I'm able to develop that from the
3 evidence, that is what I compare to a known individual.

4 Q When I think of DNA I'm thinking of ladder spirals.
5 Can you explain -- when we're talking about DNA, what is
6 it?

7 A DNA stands for Deoxyribonucleic acid. It's the
8 genetic material found in all of our body's cells with the
9 exception of our red blood cells. DNA cells is packaged
10 into the structures called chromosomes, which are similar
11 to the DNA helix or the ladder that you see in textbooks.
12 Chromosomes contain strands of DNA called genes. Genes
13 are code for our physical characteristics, such as our
14 height or eye color. Approximately 99.9 percent of an
15 individual's DNA is identical to that of everyone else's,
16 and these STR locations are the regions that allow us to
17 tell different people apart.

18 Q So, specifically, for what you've done for SLED, how
19 many different spots on the DNA chain do you look at?

20 A We attempt to test 15 STR locations, in addition to a
21 gender marker called amelogenin, which helps indicate
22 whether the DNA present is male or female.

23 Q And the places that you're picking to test are the
24 ones where they're different. You said 99 percent of
25 them, I think that's the number you used, are the same on

1 every DNA marker and you're picking some of the areas that
2 are different; is that correct?

3 A That's correct. These particular areas show a high
4 degree of variation between different people.

5 Q Looking specifically on item 2.1, which is a swab
6 from the handgun, what were you able to determine?

7 A Initially, all I determined is that I had a partial
8 DNA profile that was a mixture of at least two
9 individuals.

10 Q What does a partial profile mean?

11 A When we indicate partial profile, it just means that
12 we have attempted to test these 15 STR locations, but
13 either there wasn't enough DNA present or the DNA had been
14 damaged to some extent and some of the locations didn't
15 work. So a partial just means that I had information at
16 less than 15 STR locations.

17 Q And it's a mixture of at least two individuals. What
18 does that mean?

19 A That just means that I have DNA from at least two
20 people contributed on the weapon. It might actually be
21 more, but I can tell you that at a minimum there are two
22 people.

23 Q Now, was the profile that you developed off that
24 suitable for comparison?

25 A Yes, it was.

1 Q What does that mean when we say it's suitable for
2 comparison?

3 A It means that potentially in comparing it to known
4 individuals, I may be able to make a determination as to
5 whether or not that particular individual contributed the
6 DNA on that item.

7 Q Now, was it suitable for entry into CODIS?

8 A No, it was not.

9 Q What is CODIS?

10 A CODIS stands for Combined DNA Index System. It's an
11 electronic database that is maintained by the FBI. It
12 consists of DNA profiles that have been found at crime
13 scenes or on items of evidence, as well as the DNA
14 profiles of convicted individuals.

15 We can take a DNA profile, an unknown profile,
16 and compare it to the profiles in that database in an
17 attempt to identify a potential contributor.

18 Q Item 2.2 was a swab taken from the magazine of the
19 firearm. What were you able to determine from that?

20 A The partial DNA profile developed from the swab from
21 the magazine is a mixture of at least three individuals,
22 and is also suitable for comparison.

23 Q How about 9.1, which was the swab from the unfired
24 .45 round?

25 A There was no human DNA obtained from that particular

1 item. I was not able to develop a profile.

2 Q 10.1, which is the swab from the fired cartridge
3 case.

4 A There was also no human DNA from that particular
5 item.

6 Q And item 14.1, which is a swab from the unfired
7 Winchester on the ground.

8 A Again, there was no DNA obtained from that particular
9 item.

10 Q So no DNA was found on the cartridges, the bullets,
11 the casings. Some DNA was found on the gun and some on
12 the magazine?

13 A That's correct.

14 Q And that's your analysis of April 9th?

15 A Correct. That's when the report was dated for those
16 particular items.

17 Q Later on, on June 27th, did you receive some buccal
18 swabs?

19 A I did.

20 Q Let me show you three different items and ask if you
21 recognize them.

22 State's No. 76, State's No. 70, and State's 71.

23 A Based on the SLED item number, case number and my
24 initials, I do recognize these items.

25 Q What are those three?

1 A These are buccal swabs or oral swabs that are
2 collected from the inside of the cheek from Charles
3 Plumley, Shawn Sharpe and Angela Griffin.

4 Q What did you need those items for?

5 A These are what we call DNA standards or known
6 standards. We use these particular swabs to develop a DNA
7 profile from a known individual, and then use that profile
8 to compare that individual to DNA from an item of
9 evidence.

10 Q Looking at item 2.1, which was a partial profile that
11 you developed from the handgun, when you compare the known
12 standards for Charles Plumley, Shawn Sharpe and Angela
13 Griffin on that swab, what did you find?

14 A Charles Plumley, Shawn Sharpe and Angela Griffin are
15 excluded as possible contributors to this mixture.

16 Q What does that mean?

17 A It just means in comparing their DNA types to the
18 types obtained from the evidence, I did not see enough
19 consistency to include them as possible contributors.
20 It's my opinion, based on the profile I developed, that
21 they did not contribute the DNA to this item.

22 Q In other words, in the partial DNA profiles that you
23 found was a mixture, and what you found doesn't match any
24 of those three; is that correct?

25 A Correct. There is some consistency but not enough

1 for me to include them as possible contributors to this
2 mixtures.

3 Q Item 2.2, swab from the magazine, which was a mixture
4 of at least two people, when you compare the profile that
5 you developed from the magazine against Shawn Sharpe,
6 Angela Griffin and Charles Plumley, what did you find?

7 A In comparing those items, I found that Shawn Sharpe
8 cannot be excluded as a possible contributor to the DNA
9 developed from the swab taken from the magazine. And the
10 probably of randomly selecting an unrelated individual who
11 could have contributed to this mixture is approximately 1
12 in 4,000.

13 Charles Plumley and Angela Griffin are excluded
14 as possible contributors to this mixture.

15 Q So the DNA profile that you developed off the
16 magazine does not belong to Charles Plumley?

17 A It's my opinion that he did not contribute to the
18 profile that I developed, that's correct.

19 Q The DNA profile developed off the magazine does not
20 belong to Angela Griffin?

21 A I excluded Ms. Griffin as a possible contributor to
22 this particular profile, yes.

23 Q Mr. Sharpe cannot be excluded; is that correct?

24 A That's correct.

25 Q What does the 1 in 4,000, what does that mean?

1 A That means that if you randomly selected
2 approximately 4,000 individuals, you would expect roughly
3 one of those people to be included as a possible
4 contributor based on their DNA types in comparison to the
5 evidence.

6 Q Were there other items submitted to you that you
7 looked at on August 7th of this year?

8 A Yes, there were.

9 Q Specifically referring to item 20.1 -- well, the
10 items that came off of item 20, which is the black knit
11 hat, there is a 20.1 and 20.2, which were both swabs, then
12 there were three head hairs that were recovered from that
13 as well; is that correct?

14 A Three possible hairs, yes, sir.

15 Q When you looked at those swabs and the hair, what did
16 you find?

17 A For both of the swabs taken from the knit cap, I
18 developed partial DNA profiles that were mixtures of at
19 least three individuals. And I determined that Charles
20 Plumley, Shawn Sharpe and Angela Griffin were all excluded
21 as possible contributors to those mixtures.

22 And I was not able to develop DNA profiles from
23 the hairs, or possible hairs, that were collected.

24 Q So the DNA that you found on the swabs that were
25 taken from the cap, your opinion, they were not put

1 there -- the DNA was not put there by Shawn Sharp, Angela
2 Griffin or Charles Plumley, it was somebody else?

3 A Correct. In my opinion, they can be excluded as
4 contributors to those profiles.

5 Q The hairs that were found, you were not able to
6 develop any DNA from?

7 A That's correct.

8 Q On August 20th did you also look at swabs from the
9 bandanna and the hair that was collected from the
10 bandanna?

11 A Yes, I did.

12 Q The SLED number that belonged to the bandanna, what
13 was that?

14 A That was identified as SLED item 21.

15 Q Let me show you State's 77 and ask if you recognize
16 the handwriting and the initials on that item.

17 A I recognize the initials as BWB, those of Ms. B.
18 Butler, who was our evidence processing technician.

19 Q She is the one that would have actually collected the
20 swabs from these items; is that correct?

21 A That's correct.

22 Q When you looked at the two -- the swab was created,
23 21.1, that was created from the bandanna, were you able to
24 develop a DNA profile?

25 A I was.

1 Q When you looked at the hair from the bandanna,
2 21.2.1, were you able to develop anything?

3 A No, I was not able to develop a DNA profile from the
4 possible hair.

5 Q So the only item of interest in the swab -- the swab
6 from the bandanna?

7 A That's correct.

8 Q Comparing that to Shawn Sharpe and Charles Plumley,
9 what were you able to find?

10 A The DNA profile developed from the swab from the
11 bandanna is a mixture of at least three individuals.

12 Shawn Sharpe cannot be excluded as a possible
13 contributor to this mixture. And the probability of
14 randomly selecting an unrelated individual who could have
15 contributed to this mixture is approximately 1 in 1,300.

16 Charles Plumley is excluded as a possible
17 contributor to this mixture.

18 Q So the DNA that you found on the bandanna, in your
19 opinion, does not belong to Charlie Plumley?

20 A It's my opinion he can be excluded as a possible
21 contributor, yes.

22 Q Shawn Sharpe, however, cannot be excluded from the
23 that you developed off the swabs from the bandanna?

24 A That's correct.

25 Q The statistic that you found this time is what?

1 A It's approximately 1 in 1,300 unrelated individuals.

2 Q In addition to -- and that was on the PCR DNA that
3 you had talked about earlier, correct?

4 A That's correct.

5 Q Is there also another test that's called the Y-STR
6 test?

7 A There is.

8 Q What is that?

9 A The DNA test that I spoke of before tests DNA of both
10 male and female. It's not restricted to our X or Y
11 chromosomes which determine our gender.

12 We also have a test that just looks at specific
13 STR locations on the Y chromosome. That means that it
14 targets only male DNA and will develop a profile only from
15 male individuals.

16 Q Did you perform -- why did you choose to do that test
17 here as well?

18 A I'm looking at the mixture that I developed using the
19 15 STR location test. Based on the results I received for
20 the X and Y markers, I determined that there was most
21 likely both male and female DNA present, and I used the
22 Y-STR testing to try and get a better look at just the
23 male contributor or contributors that may have been on the
24 item.

25 Q So when you did the PCR test, Shawn Sharpe couldn't

1 be excluded and you gave the number as 1 in 1,300?

2 A That's correct.

3 Q Looking at the mixture that you developed from
4 swabbing the bandanna, you thought that you might be able
5 to do further testing by isolating the male DNA?

6 A That's correct.

7 Q Once you did that, were you able to develop a male
8 profile under the Y-STR test from the swab?

9 A I was. I was able to actually develop a mixture of
10 at least three individuals from the Y profile.

11 Q Three male individuals?

12 A Correct.

13 Q When you compare those to Shawn Sharpe and Charlie
14 Plumley, what do you find?

15 A I found that the partial Y-STR profile developed from
16 the major contributor to this mixture matches the Y-STR
17 profile of Shawn Sharpe. Because Y profile is passed
18 directly from father to son and will be included in all
19 paternal relatives, paternal male relatives of Shawn
20 Sharpe may not be excluded as the major contributor to
21 this mixture. And this particular profile is found 15
22 times in a population database of 22,371 male individuals,
23 and I could not make a conclusive statement regarding
24 inclusion or exclusion of Charles Plumley as a possible
25 minor contributor.

1 Q You have done two different tests, one was a PCR and
2 one was the Y-STR test. How do you put those results
3 together when you're comparing, for instance, Shawn
4 Sharpe; what does it mean?

5 A Actually, when we do the comparison we have to keep
6 the two separate. We do two different types of statistics
7 based on what type of test is run.

8 For the Y-STR testing, we're comparing that Y
9 profile to the entire Y profile of individuals whose
10 profiles have been collected and put into a database. So
11 it comes up with a different statistic than I saw with
12 just the PCR testing of 1 in 1,300. It means when the
13 partial profile that matched Mr. Sharpe was compared to
14 the Y-STR database profiles, it matched 15 of the
15 individuals in that database of approximately 22,000
16 people.

17 Q And how about Charles Plumley, the fact that he had
18 two tests, what does that tell us?

19 A Again, Mr. Plumley was excluded as a possible
20 contributor just based on the PCR testing. As he would
21 have been a possible minor contributor, at best, I can't
22 do a statistic on him in the Y-STR profile, so I can't
23 make a conclusive statement regarding his inclusion or
24 exclusion.

25 Q But under the PCR test itself, he was included as

1 being a contributor; isn't that correct?

2 A That's correct.

3 MR. GRAHAM: Thank you, Ms. Leisy. Please
4 answer any questions Ms. Zmroczek has.

5 CROSS-EXAMINATION

6 BY MS. ZMROCZEK:

7 Q Ms. Leisy, you were also provided a fourth buccal
8 swab to run in these comparison tests, correct?

9 A I was provided a fourth standard. It was actually a
10 blood standard.

11 Q A blood standard. And from whom was that blood
12 standard?

13 A I received a blood standard from an Ashley Vasquez.

14 Q And you ran -- you included or excluded her in your
15 tests as well?

16 A That's correct.

17 Q You explained what DNA was. Can you explain how it
18 gets on items?

19 A There are numerous ways that we can transfer our DNA
20 from our body to a particular item. It can be caused through
21 transfer of bodily fluids, such as blood, saliva or semen.
22 It can be transferred by sweat. And what we see commonly
23 is transfer through what we call touch DNA. So any item
24 that comes in contact with our body, some of our cells
25 will rub off on that item, potentially leaving enough

1 genetic material for DNA testing.

2 Q For example, if I'm loading bullets into a magazine,
3 and I'm pressing down and I'm putting the bullets in
4 there, it's possible that my DNA would be on the bullets
5 or the magazine?

6 A There will be some level of transfer. It's just a
7 matter of how much transfer, which will determine whether
8 or not we can detect it with our testing.

9 Q And then if I'm touching the gun and hopefully
10 transferring DNA, if that is true, then if I'm touching
11 it, it's possible, highly possible, that I'm transferring
12 it?

13 A Again, any type of contact like that would provide
14 some level of transfer. It just depends on how much
15 transfer and it could depend on how many other sources of
16 DNA are present. There are numerous factors that go into
17 whether or not we can detect that type of transfer.

18 Q Going back to your results on the magazine, what were
19 your conclusions as far as Ashley Vasquez?

20 A For SLED item 2.2, swabs from the magazine, Ms.
21 Vasquez is excluded as a possible contributor to that
22 mixture.

23 Q And what were your findings for item 2.1, which was
24 the gun?

25 A For swabs from the handgun, I determined that no

1 conclusive statement could be made regarding the inclusion
2 or exclusion of Ms. Vasquez as a possible contributor.

3 Q And you were not able to develop a profile from the
4 bullets, correct?

5 A That's correct.

6 Q Okay. The bandanna, did you -- somebody else took
7 the swab and gave it to you?

8 A Correct.

9 Q You wouldn't know what color it was or anything?

10 A I believe it indicated dark blue or black on the
11 paperwork.

12 Q Okay. And you've describe the PCR process and how
13 you separate DNA. Doesn't that wear the sample down,
14 repeating it over and over?

15 A No. It's more like making photocopies of a piece of
16 paper. As you Xerox it, you just end up with more copies.
17 The original sample that you use cannot be reused at that
18 point, but the process itself is providing copies of what
19 you started with.

20 Q You said that you used the Y-STR and that a male,
21 paternal male relative could not be excluded.

22 A That's correct. All men who are paternally related,
23 such as father to son, brothers who share the same father,
24 they will all have the same Y-STR profile.

25 Q The very same one?

1 A Barring some rare mutation, it would be the same
2 profile, yes.

3 Q Were you provided a DNA sample from Michael Sharpe?

4 A No, I was not.

5 Q You tested several other items, correct?

6 A Yes.

7 Q One of those items, and I'm looking at 15.2, 15.3,
8 15.4, can you tell the jury what those items were and what
9 your results were?

10 A SLED 15.2, 15.3 and 15.4 were cuttings taken from a
11 pair of gray sweatpants. I developed a DNA profile from
12 those cuttings and determined that it matched the DNA
13 profile of Charles Plumley, and that the probability of
14 randomly selecting an unrelated individual having that
15 same DNA profile is approximately 1 in 19 quadrillion.

16 Q 1 in 19 quadrillion?

17 A Yes, ma'am.

18 Q And the other statistical analysis that you gave -- I
19 believe one was 1 in 1,400 and one in 3,000?

20 A One in 4,000 and one in approximately 1,300.

21 Q Can you explain to the jury, and hopefully with me, 1
22 in 19 quadrillion, you're probably never going to get a
23 100 percent perfect match, but that's excluding -- can you
24 explain to the jury how many people that excludes?

25 A What that number means is -- well, the number itself

1 is significantly larger than the current population of the
2 earth, and a match like this on a single-source profile,
3 as was developed from these items, matching a particular
4 individual is what we consider to be an identification.

5 And it would be my opinion that Mr. Plumley is the
6 contributor of the DNA obtained from this particular item.

7 Q Would you be able to make the same conclusive
8 statement regarding the possible inclusion or exclusion of
9 Shawn Sharpe, with the findings of the 1 in 4,000 and the
10 1 in 1,300?

11 A No. Those particular statistics refer to the mixture
12 profiles. That 1 in 19 quadrillion applies to, again, a
13 single source or DNA from one person being a complete
14 match to the DNA profile of Mr. Plumley.

15 The mixture statistics on the comparisons from
16 Mr. Sharpe to these mixtures, it's not an identification,
17 I can't make as strong a statement. It's my opinion that
18 he cannot be excluded as a possible contributor, and those
19 statistics give some weight to that inclusion of his
20 profile.

21 MS. ZMROCZEK: Thank you. I have no further
22 questions.

23 MR. GRAHAM: No other questions, Your Honor.

24 THE COURT: Thank you very much, ma'am.

25 THE WITNESS: Thank you.

1 MR. GRAHAM: Your Honor, that's all the
2 witnesses we have at this time.

3 THE COURT: All right. I need you all to step
4 up real quick.

5 (A bench conference was held with the judge and
6 attorneys in the presence of the jury but out of the
7 hearing of the jury.)

8 THE COURT: All right, ladies and gentlemen,
9 we're not done. That is the witnesses that they had
10 scheduled for this morning. We will continue the case
11 after lunch.

12 If you would, please be back at 1:30 and we'll
13 resume at that time. Continue to protect your ability to
14 be fair and impartial by having no conversation with
15 anybody about the case. Don't discuss it amongst
16 yourselves. When we get back at 1:30, we'll start back,
17 okay?

18 Everyone else remain seated.

19 Ladies and gentlemen, we'll see you back at
20 1:30.

21 (The jury left open court at approximately 12:01
22 p.m.)

23 THE COURT: We'll reconvene and then we'll start
24 back at 1:30.

25 MR. HUBBARD: Thank you, Your Honor.

1 (Proceedings recessed for a lunch break.)

2 MR. HUBBARD: Judge, they're bringing Charlie
3 Plumley in if it's all right so he can hear this.

4 THE COURT: Sure.

5 Can we hear it wherever we're sitting? As long
6 as Mr. Plumley can hear it sitting over there and I can
7 hear it up here, we'll be all right.

8 (Audio recording played but not transcribed.)

9 THE COURT: Let's stop it right there and let's
10 talk about -- let's deal with relevance. What's the
11 relevance of that?

12 MS. ZMROCZEK: Your Honor, the relevance deals
13 with his bias to make up a story or testify in a certain
14 way so that he can --

15 THE COURT: How does it go to that? I heard him
16 basically saying the Solicitor can't do anything
17 without -- I mean --

18 MS. ZMROCZEK: He said: I don't care if I blow
19 the case, I just want to go home.

20 MR. HUBBARD: Judge, they're talking about a
21 bond hearing and the whole premise behind it is you have a
22 bond hearing, the trial judge is going to say here's your
23 trial date. So you go to trial, it will blow his case.
24 It will blow his case if he goes to trial. There is no
25 context in what she's playing.

1 THE COURT: You know, this is the problem with
2 cherry-picking things out of a conversation.

3 First of all, there's nothing in that recording
4 that would indicate that they're talking about a bond
5 hearing.

6 MS. ZMROCZEK: Your Honor, we'll withdraw that
7 issue. I just want to move to the next thing.

8 THE COURT: Sure. I'm going to hear whatever
9 you've got. I'm going to hear whatever you've got.

10 Let me ask you, before you play this, it would
11 probably be helpful to me in understanding -- can you give
12 me a little preface of who we're hearing now, because I
13 don't even know who -- I'm assuming one of those folks on
14 the last conversation was Mr. Plumley and one was some
15 other fellow.

16 MS. ZMROCZEK: The co-defendant and his brother.
17 The co-defendant, who is his brother.

18 THE COURT: Mr. Plumley and his brother on that
19 last one, but who's going to be on this one?

20 MS. ZMROCZEK: Same call.

21 THE COURT: I got you. Go ahead.

22 (Audio recording played but not transcribed.)

23 MS. ZMROCZEK: Your Honor, we would offer that
24 for several reasons. As I told you, the theory in this
25 case is that it's our position that he's trying to make

1 this charge stick on our client, and he's using physical
2 threats -- using physical force and threatening. We will
3 have witnesses when we put up our case that talk about the
4 Plumley family involved in witness harassment. And
5 there's this session with his brother about taking out --

6 THE COURT: Taking out who?

7 MS. ZMROCZEK: His brother.

8 THE COURT: That's not clear in that
9 conversation.

10 This is the problem when you cherry-pick
11 sections of a conversation. Now, here's the thing --

12 MS. ZMROCZEK: I can play the whole 15 minutes.

13 THE COURT: No, you can't. I don't know that
14 you're going to play any of it.

15 You can -- you can ask him, because this is --
16 I'm assuming your use for this is going to be for
17 impeachment purposes. You can ask him if he had a
18 conversation. And let me just say, because I have not had
19 the benefit of the whole conversation, but I understood
20 that there was -- I'm angry at the guy across in D pod or
21 whatever pod it was and, you know, if I get an
22 opportunity, you know, I'm gonna whip his tail; things of
23 that nature. And I'm sitting here as a jury would sit
24 here. I'm sitting here thinking whip whose tail? Who's
25 he talking about?

1 See, you know because you have heard the whole
2 thing and you have got the benefit of a lot of other
3 information.

4 But that's the danger when you give a jury that
5 snippet, so that -- that's an issue I've got with that
6 coming in as it's been played here. I mean, help me out
7 if you can help me out.

8 MS. ZMROCZEK: At this point, Your Honor --

9 THE COURT: I don't think -- and, Ms. Zmroczek,
10 I --

11 MS. ZMROCZEK: At this point I'll withdraw it.

12 THE COURT: I'm certainly going to give you all
13 the leeway you need in your cross-examination to establish
14 that relationship and then through any other witnesses. I
15 just have a real issue with taking a portion of the
16 conversation that is, at best, confusing and leaves it
17 open to who are we talking about there.

18 MS. ZMROCZEK: Thank you, Your Honor.

19 THE COURT: Anything further before we get
20 started?

21 MR. HUBBARD: No, sir, Your Honor.

22 MS. ZMROCZEK: No, sir.

23 THE COURT: All right. Is Mr. Plumley going to
24 be the next witness?

25 MR. HUBBARD: No, sir. We can take him back out

1 until we do this other witness and then we'll be right in
2 for him.

3 THE COURT: Thank you.

4 (The jury came into open court at approximately
5 1:49 p.m.)

6 THE COURT: Please have a seat. All right,
7 ladies and gentlemen, we're going to continue now with the
8 State's case.

9 You may call your next witness.

10 MR. GRAHAM: Thank you, Your Honor. The State
11 calls Mike Phipps.

12 THE COURT: Please come around, sir.

13 MICHAEL PHIPPS, after being duly sworn,
14 testified as follows:

15 THE CLERK: Have a seat, sir.

16 Once you're seated, state your full name,
17 spelling your last name on the record, please.

18 THE WITNESS: My name is Michael Phipps,
19 P-H-I-P-P-S.

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q Investigator Phipps, where are you employed, sir?

23 A With the Lexington County Sheriff's Department.

24 Q How long have you been employed with the sheriff's
25 department?

1 A Next month will be 16 years.

2 Q In the course of your 16 years, what kind of jobs
3 have you held?

4 A Started out on the road as a road deputy, then as a
5 master deputy, supervisor of shift, and then I went into
6 crime scene.

7 Q As part of the crime scene investigation, have you
8 had an opportunity to focus on electronic forensics?

9 A I have. That's always been an interest, so I got
10 started with that side of it fairly early on.

11 Q What is electronic forensics?

12 A It's taking any type of evidence that's in a digital
13 form, whether it's on a computer, on media, on a cell
14 phone, and then looking at that in a forensic manner,
15 trying to extract information that may be pertinent to a
16 case.

17 Q Computers, cell phones and other electronic devices?

18 A Yes, sir.

19 Q Specifically on cell phones, have you been to
20 training on the Cellebrite system?

21 A One specific class I had -- I need to refer to some
22 notes here -- back in 2007 put on by an organization named
23 Search, put on a core skills for cellular telephone
24 investigations. And during that course we did cover the
25 forensic extraction of information from cell phones using

1 the Cellebrite, as well as third party software tools.

2 Q And you stay current on articles related to the
3 Cellebrite system?

4 A I am.

5 Q And how many times have you used it yourself?

6 A Hundreds.

7 Q And would you tell the jury how -- if you were going
8 to use Cellebrite to try to examine a phone what you do,
9 how does it work?

10 A First off, Cellebrite's the company's name. Their
11 device is called a UFED or a Universal Forensic Extraction
12 Device. It's a little box about the size of a shoe box,
13 and it's simply hooking the phone up to this device and it
14 pulls information off the cell phone depending on what we
15 request. We can request that it just grabs the
16 information that you would see on the screen, if you
17 were scrolling through the screen yourself. We can ask it
18 to do what's called a file system extraction, which is
19 kind of like when you're on your own home computer and
20 you're going into the file browser and you're seeing the
21 individual file folders. And it will grab those folders
22 and pull that information off. And then there's also a
23 physical extraction, which would be pretty much what we
24 would do on a computer, a full forensic extraction where
25 it's literally capturing every zero and one of data on the

1 device.

2 Q Are all cell phones supported under that device?

3 A No, they're not.

4 Q Which ones are mostly supported?

5 A The most current cell phones that are on the market.

6 The company started by developing their product
7 for when the end user would go into a cell phone company,
8 a vendor, such as Verizon, and they'd trade in their old
9 phone for a new phone and they'd ask you if you wanted
10 your information transferred from your old phone to the
11 new phone. That's where the company got their start. And
12 they developed this product and then they saw a need on
13 the forensic side when law enforcement started asking
14 about how to get information off of a phone. So they took
15 that device and modified it to be used in a forensic
16 environment. So their concentration is looking at the
17 newest phones on the market. They're not really
18 interested in going back and looking at information that
19 would be on a phone that would be ten years old.

20 Q If a phone isn't supported, what happens when the
21 Cellebrite device tries to make a connection?

22 A Well, it's not even that it tries to make a
23 connection. When we turn on the Cellebrite device we go
24 into a menu and the menu is driven by the manufacturer,
25 such as say we tell it it's going to be a Samsung phone,

1 then we tell it that it's model XYZ of the Samsung
2 telephone. If we don't even see that model number in the
3 list of devices, we pretty much know that it's probably
4 not going to be able to communicate with that cell phone.
5 We can attempt to try similar cell phones in that line and
6 just happen, luckily, we may get lucky and have it work
7 with that device. But it returns a screen that says
8 unable to communicate with the cell phone or the device.
9 So it's not that it fails to get information, it fails to
10 even talk to the phone on the front end.

11 Q So does the Cellebrite device itself, does it modify,
12 change or delete evidence off of a phone?

13 A It does not.

14 Q Any question in your mind?

15 A No question.

16 MR. GRAHAM: Thank you.

17 MS. ZMROCZEK: May we approach, Your Honor?

18 THE COURT: Yes, ma'am.

19 (A bench conference was held with the judge and
20 attorneys in the presence of the jury but out of the
21 hearing of the jury.)

22 MS. ZMROCZEK: No questions.

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

25 MR. HUBBARD: The State calls Charles Plumley.

1 CHARLIE PLUMLEY, after being duly sworn,
2 testified as follows:

3 THE CLERK: Once you're seated, state your full
4 name, spelling your last on the record, please.

5 THE WITNESS: My name is Charles Carlyle
6 Plumley, P-L-U-M-L-E-Y.

7 DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 Q You go by Charlie?

10 A Yeah, that's my nickname, Charlie.

11 Q You don't mind if I call you that?

12 A No, sir.

13 Q Do you know why you're here today?

14 A Yes, sir.

15 Q You know it's about what happened September 21st,
16 2011?

17 A Yes, sir.

18 Q Did you know Mr. Leon Justice?

19 A Not really. I knew Rose, the lady that lived in the
20 house, she used to sell crack. I didn't know him.

21 Q Do you know Shawn Sharpe?

22 A Yes, sir.

23 Q How long have you been knowing him?

24 A A few months before it happened.

25 Q How did you meet him?

- 1 A Through his brother.
- 2 Q Who's his brother?
- 3 A "Chuc" D.
- 4 Q How long have you known "Chuc" D?
- 5 A I known "Chuc" D for about -- until right now?
- 6 Q Yeah.
- 7 A Five years.
- 8 Q Angela, Angela Plumley, is that your wife?
- 9 A Yes, sir.
- 10 Q How long have you all been married?
- 11 A Little over two years now.
- 12 Q How long were you all married when this happened?
- 13 A Not even a month.
- 14 Q Charlie, before we start, we'll talk about some prior
- 15 convictions. You got three prior shopliftings; is that
- 16 correct?
- 17 A Yes, sir.
- 18 Q 2001, 2003, 2008.
- 19 A Yes, sir.
- 20 Q And grand larceny from 2008?
- 21 A Yes, sir.
- 22 Q You're charged with murder; is that right?
- 23 A Yes, sir.
- 24 Q Armed robbery?
- 25 A Yes, sir.

- 1 Q Burglary 1st?
- 2 A Yes, sir.
- 3 Q What deals do we have?
- 4 A Sir?
- 5 Q What deals do we have?
- 6 A No deals.
- 7 Q Nothing between you, me, anyone in my office?
- 8 A No.
- 9 Q No deals with law enforcement?
- 10 A No, sir.
- 11 Q No deals with your attorney?
- 12 A No, sir.
- 13 Q You're willing to talk about the events of that
- 14 night -- that day?
- 15 A Yes, sir.
- 16 Q September 21st, 2011. Start early in the morning.
- 17 How did you end up at Rose's? How did that day begin?
- 18 A You mean how did it end up that night; led up to that
- 19 night?
- 20 Q Let's talk about earlier in the day. Let's back up
- 21 in the day.
- 22 Do you know a guy by the name of Phil Helms?
- 23 A Yes, sir.
- 24 Q Who is he?
- 25 A He's my wife's ex-boyfriend, yeah, ex-boyfriend.

1 Q September 21st, where was your wife staying?

2 A From when?

3 Q September 21st, 2011. That day, where had she been
4 staying?

5 A With me at my house, my mom and dad's.

6 Q That's where you all were living?

7 A Yes, sir.

8 Q Did there come a time when you all had an argument?

9 A Yes, sir.

10 Q Where did she go?

11 A She went to Phil's house to stay with him and his
12 girlfriend, Olivia.

13 Q Okay. At some point did you go over to Phil's house?

14 A Yeah. She called me and told me to come over and
15 that she loved me and everything and she was sorry and
16 told me to come wherever she's at.

17 Q Was it daylight?

18 A Yes, sir.

19 Q Do you remember about what time?

20 A You talking about the day I got there?

21 Q Yeah.

22 A No. It was that night before I got there.

23 Q Okay. So the 20th?

24 A Yes, sir.

25 Q This was a complete day before all this other stuff

1 happened?

2 A Yes, sir.

3 Q At some point on the 21st, the day of all this, did
4 Shawn come over to the house?

5 A Yes, sir, that morning.

6 Q How did he get over there?

7 A A guy named Todd.

8 Q Who is Todd?

9 A He was staying with Phil.

10 Q Were there a lot of people in and out of Phil's
11 house?

12 A Yes, sir.

13 Q Let me ask you, what physical condition is Phil in?

14 A He's in bad shape. He's in a wheelchair.

15 Q Does he have a wheelchair ramp?

16 A Yes, sir.

17 Q Is that how he got around?

18 A Yes, sir.

19 Q Did other people come stay at his house?

20 A Yes, sir.

21 Q So his door's just kind of open?

22 A Yes, sir.

23 Q So Angela is there and then you all ask Shawn to come
24 over there and you said a fellow named Todd was staying at
25 the house?

1 A Yes, sir.

2 Q Do you know what Todd used to go get Shawn?

3 A Phil's truck.

4 Q What kind of truck was that?

5 A Like a black Dodge, I'm not sure, but it's a little
6 black truck.

7 Q Okay. When Shawn gets there, you know about what
8 time that is?

9 A I'm wanting to say probably about 11:30,
10 12:00 o'clock, lunch time.

11 Q When you all all are at Phil's house around lunch
12 time, was there any conversation about going to Rose's or
13 robbing Rose?

14 A Yes, sir.

15 Q Tell us about that.

16 A We basically -- plan was to go over there -- take
17 her -- take the drugs and the money. And we got masks, my
18 wife provided the suits and everything that we used.

19 Q Well, let's back up. Around that lunch time, or some
20 time during the day, did you and Shawn, Shawn Sharpe, go
21 over to Rose's house; not for the robbery, not for the
22 burglary, not for the murder, but did you all go over
23 there earlier that day?

24 A Yes.

25 MS. ZMROCZEK: Your Honor, I'm going to object

1 to the leading.

2 MR. HUBBARD: I'm putting it in context of time,
3 Judge.

4 THE COURT: All right. That's fine.

5 THE WITNESS: Yes, sir.

6 BY MR. HUBBARD:

7 Q You know about what time that was?

8 A It was probably about 12:30, 1:00 o'clock.

9 Q Daylight?

10 A Yes, sir, it was daylight.

11 Q What did you do when you got over to her house?

12 A Went inside, bought some drugs from her, gave her a
13 piece of dope, gave her a -- broke her off a piece of
14 dope. And I bought a cell phone from a woman that was
15 inside the house.

16 Q Can you describe what she looked like?

17 A She was a black lady.

18 Q She was just there at Rose's?

19 A She was there smoking crack.

20 Q You ever seen her before?

21 A Never seen her before in my life.

22 Q What did you pay her with?

23 A Crack.

24 Q So you basically swapped crack for a phone?

25 A Yes, sir.

1 Q Why did you need a phone?

2 A I didn't have one.

3 Q Had you not had one in the past?

4 A I did, maybe a few weeks before. But without -- I
5 can't really remember what happened to it.

6 Q When you go over there, who do you go with on that
7 occasion that you go and buy this phone?

8 A Me, Shawn and Todd, we was on the way back from
9 Walgreens on Number 6.

10 Q What were you doing at Walgreens?

11 A Getting a box of Sudafed.

12 Q What's that for?

13 A To pay Phil to use the truck.

14 Q What would Phil want Sudafed for?

15 A Because he uses meth, he's a meth user.

16 Q You all go to Rose's, you get some crack and you get
17 a phone?

18 A Yes, sir.

19 Q What do you do with that phone?

20 A I delete all the numbers that was in it and I added
21 numbers, people I knew.

22 Q Okay. Now, when you did that, how would anybody know
23 your new number? How did you figure out your number?

24 A I had to call -- me and Shawn was in the truck
25 together -- me and Todd, and I called -- I used -- I told

1 him to give me his number and I dialed his number and I
2 got my new number off his caller ID.

3 Q And you put him in your phone?

4 A Yes, sir.

5 Q Now, at some point did you make it back to Phil's
6 house?

7 A Yes, sir.

8 Q Angela's still there?

9 A Yes, sir.

10 Q At some point did you have to go to your house?

11 A Yes, sir.

12 Q What was that about?

13 A I had to go get clothes for her, because the ones I
14 got her didn't fit.

15 Q Now, how many runs to the house did you have to make?

16 A It was a few runs, sir.

17 As soon as we got back from getting the dope
18 from Rose's house I had the box of Sudafed, I gave it to
19 Phil. As soon as me, Shawn and Todd got back to Phil's,
20 Todd and Phil took the box of Sudafed to one -- somebody
21 he knows and traded it for meth, and then they came back.

22 Q Now what, if anything, happened while Phil and Todd
23 were out of the house?

24 A Sir?

25 Q What, if anything, happened while Phil and Todd were

1 gone?

2 A We just waited there. There was a bunch of people
3 there.

4 Q At what point -- you had mentioned earlier that
5 Angela at some point got you some clothes.

6 A Yes, sir. She went in a side room and got hunting
7 suits and jumpsuits and boots.

8 Q Was Phil home when she did that?

9 A No, sir.

10 Q What do these jumpsuits look like?

11 A One of them was a camouflage jumpsuit, the other one
12 was an all navy blue jumpsuit, like an auto mechanic
13 wears.

14 Q Which one of those suits did you end up using?

15 A The camouflage jumpsuit.

16 Q How about Shawn?

17 A The navy blue jumpsuit.

18 Q Now while you all were there, was there any more
19 discussion about what you all were planning on doing,
20 about robbing Rose?

21 A Yes, sir.

22 Q More conversation?

23 A We was getting jumpsuits at that point in time.

24 Q Who all was involved in that conversation?

25 A Me, Angela and Shawn.

1 Q The three of you all knew what was going on?

2 A Yes, sir.

3 Q Whose plan was it, or was it all three of yours?

4 A Basically, all three of ours.

5 Q You all were in it together?

6 A Yes, sir.

7 Q When Phil gets home, is it light or dark?

8 A Still light. It was still light. I believe it was
9 getting dark at that time.

10 Q Now before you all go to Rose's house, do you all go
11 anywhere else?

12 A You talking about before we went and actually did the
13 robbery?

14 Q Correct.

15 A Yeah, me and Shawn went over to his brother's house.
16 Shawn had to get some clothes and I was outside, I was
17 arguing with Angela on his cell phone. That was before I
18 had got my cell phone, though, that was before then.

19 Q So that was earlier?

20 A That was earlier in that day.

21 Q So that was before you went to Rose's?

22 A Yes, sir. I didn't have a cell phone at that time.
23 I remember I was using -- Angela called his cell phone
24 from Phil's phone and he gave me the phone. I went
25 outside to the truck and was arguing with her while he was

1 in the house talking to his brother.

2 Q Who is Shawn Sharpe's brother?

3 A "Chuc" D.

4 Q Okay. Why did you all go over there?

5 A To get clothes and to get a gun.

6 Q This is even before you go to Rose's for the first
7 time?

8 A Yes, sir.

9 Q And you all go to --

10 A No. I take that back. It was after -- it was after
11 I took -- it was after we went to Rose's the first time
12 because I hid a piece of crack out there in the yard, and
13 I had to get the crack from her.

14 Q So at some point in the day you go to "Chuc" D's,
15 that where you get a gun?

16 A Yes, sir.

17 Q And you get a phone from Rose's?

18 A Yes, sir.

19 Q And by the time you all get ready to leave Phil's to
20 do this robbery -- now what -- if I call something a lick,
21 what is that?

22 A A robbery.

23 Q You all got ready to do that, was it still daylight
24 or was it dark?

25 A It was already dark, because we made one last trip to

1 my mom and daddy's house.

2 Q Why did you all do that?

3 A I went in there, I think it was to get cigarettes or
4 something, my dad might have picked up cigarettes, and I
5 seen the Scream mask in the house and I grabbed the Scream
6 mask.

7 Q What about -- did you grab a bandanna or any other
8 masks?

9 A No. He already had the bandanna.

10 Q Who is "he"?

11 A No, matter of fact, I did get the bandanna from my
12 house, the bandanna and the Scream mask, because the
13 stocking cap that we was going to use, that it cut holes
14 in, supposedly somebody had found, were too little.

15 Q Who cut holes in that mask?

16 A Shawn did.

17 Q And at what point did he decide it was too little?

18 A Because when we was still at Phil's, when Angela was
19 getting her clothes out the back room.

20 Q I got you. So you all leave Phil's to go to your mom
21 and dad's. Is Angela with you?

22 A Yes, sir.

23 Q Is Shawn Sharpe with you?

24 A Yes, sir.

25 Q Anybody else with you?

- 1 A No, sir.
- 2 Q You have a brother named Danny, was he with you?
- 3 A He was next door at this lady named Patsy's house.
- 4 Q Is that Patsy Anz?
- 5 A Yes, sir. If I'm not mistaken, I think they was
- 6 trying to go to Wal-Mart to cash one of Patsy's checks.
- 7 Q What vehicle are you all driving coming from Phil's
- 8 to your house?
- 9 A Phil's truck.
- 10 Q That's this dark truck you're telling me about?
- 11 A Yes, sir.
- 12 Q You know about how long you stayed at your mom and
- 13 dad's?
- 14 A We stayed there about 30 minutes, maybe. Because I
- 15 remember we got something to eat, we ate, and then we sat
- 16 down and talked a little while, talked to my mom and dad.
- 17 It wasn't no in and out rushing type thing. My dad was
- 18 still at work, my mom was there by herself, my brother was
- 19 next door.
- 20 Q Did your mother know what was going on?
- 21 A No, sir.
- 22 Q Did you brother know what was going on?
- 23 A He knew we was going to go rob somebody.
- 24 Q He wasn't going with you?
- 25 A No, sir.

- 1 Q You all head out, who's driving?
- 2 A Angela.
- 3 Q And do you know what road Rose lived on?
- 4 A Victor Road.
- 5 Q Is that very far from your place?
- 6 A Maybe a mile and a half, two miles at the most.
- 7 Q When you all get there, is it dark, light?
- 8 A It's dark.
- 9 Q You know about what time all this takes place?
- 10 A When we first pulled up.
- 11 Q When you actually go in?
- 12 A Actually -- because of what happened, we had to sit
- 13 and wait on somebody to leave the driveway that was inside
- 14 buying dope.
- 15 Q Tell me about that. What happens when you all get
- 16 there?
- 17 A We pull up and Angela pulls on a dirt road across
- 18 from there waiting on somebody that was driving on a moped
- 19 to leave. We sat there and we waited. Then we pulled
- 20 down on this road, me and Shawn put on jumpsuits.
- 21 Q Did you all park the truck and get out to do that or
- 22 did you put them on in the truck?
- 23 A We parked the truck on the side road, got out, put on
- 24 the jumpsuits that was in the back of the truck, pulled on
- 25 the boots. After the person was already gone Angela

1 pulled exactly across the street from the house, the other
2 side of the road. We got and put on the masks.

3 Q All right. Let me ask you, was it raining that night
4 or was it dry, or do you remember?

5 A I can't remember. If I was to say, I don't believe
6 it was.

7 Q Okay. When you all get out, what do you do?

8 A What do you mean?

9 Q When you get out of the truck what do you do?

10 A To actually go on the robbery?

11 We got out of the truck, I was putting on the
12 Scream mask. Shawn ran ahead of me. I caught up with
13 him. By the time I caught up with him --

14 You want me to tell everything?

15 Q Go right ahead, tell them what happened.

16 A By the time I caught up with him he knocked on the
17 door, the old man opened the door, we kick -- he kicked at
18 the door, the old man -- he told the old man to get down.
19 The old man didn't, the old man grabbed a gun. Shawn got
20 the gun loose and went to shoot, and the gun went off.
21 The old man got shot. And then we went in and got the
22 dope and the money.

23 And then we left and went back to Phil's. I
24 called my brother to come get us.

25 Q All right. Let's back up and walk through this. J

1 This doorway to the mobile home, are there any
2 steps or is it just right --

3 MS. ZMROCZEK: Objection, Your Honor, leading.

4 MR. HUBBARD: I didn't finish the question, I
5 was going to either/or.

6 THE COURT: All right.

7 THE WITNESS: Yes.

8 BY MR. HUBBARD:

9 Q -- or was it flat with no rise?

10 A There's steps.

11 Q Do you remember how many?

12 A Maybe two or three.

13 Q The man that comes to the door, is this the man that
14 you -- did you see him over there earlier that day?

15 A Yes.

16 Q You didn't know who he was?

17 A He lives there. I just don't know him. He always
18 sits on the couch. I've never even spoken one word to the
19 man.

20 Q When you say Shawn's in front of you --

21 A Yes, sir.

22 Q -- who knocks on the door?

23 A He does. Shawn Sharpe.

24 Q And you say Shawn has the gun or you have the gun?

25 A Shawn has the gun.

1 Q When this old man opens the door, what happens?

2 A He grabs the gun. Shawn tells the man to get down,
3 the man wouldn't get down. The man grabbed the gun, got
4 ahold of the gun. And I believe, in the process, Shawn's
5 bandanna came off his face. And Shawn --

6 Shawn was trying to aim -- what he basically was
7 trying to do, sir, was fire a warning shot and it went off
8 and hit the man's head. The man grabbed the gun.

9 Q Do you remember anything -- do you know if that gun
10 was already loaded? Was there one in the chamber or do
11 you know?

12 A If I'm not mistaken I believe Shawn had to cock it
13 back.

14 Q When did he do that?

15 A After the man -- after he got loose of the gun.

16 Q All right. You say the old man grabs the gun?

17 A Yes, sir.

18 Q But Shawn gets loose?

19 A Yes, sir.

20 Q When does the cocking occur?

21 A Right after.

22 Q What, if anything, do you say or what, if anything,
23 does anybody say?

24 A Yes, sir. After the shot I said "Oh, shit, man, you
25 just shot him. I think you just shot him."

1 Q I want you to stop right there. You understand it
2 doesn't matter who has the gun for your charge, you
3 understand that?

4 A Yes, sir.

5 Q It doesn't help you or hurt you, you do understand
6 that?

7 A Yes, sir.

8 Q All right. So what happens next after that shot goes
9 off?

10 A I said "Oh, man, I think he's shot."

11 We go in the house, get the dope, get the money
12 and leave.

13 Q Who do you get the dope and the money from?

14 A Rose Lucas.

15 Q Anybody else in that house while you all are --

16 A I didn't see nobody in the house. I heard afterward
17 that there was people there that ran out the back, but I
18 didn't see nobody, sir. I didn't even see -- to be honest
19 with you, I didn't even see no blood coming from the man.
20 I didn't know the man was shot, to be honest. I had on a
21 Scream mask, it was black around the eyes, I couldn't see
22 that much. It was dark.

23 Q What, if anything, did you all say to Rose?

24 A Where's the shit at?

25 Q And did you all follow her around in the house?

1 A She went straight to the back room, handed it to me
2 and we left.

3 Q She handed it to you?

4 A Yes, sir.

5 Q Do you remember what it was in?

6 A It was in like a black leather zip case, like a
7 portable case.

8 Q Do you remember about how much? Was it drugs and
9 money? Drugs?

10 A Drugs and money. I believe it was \$80 cash and maybe
11 \$800 or \$900 worth of crack.

12 Q What did you all do once you all got that back?

13 A We got back in the truck and we left.

14 Q Who was driving?

15 A Angela was in the driver's seat, I told her to scoot
16 over. I got in, we left, went to Phil's.

17 Q So when she scoots over is she in the middle?

18 A Yes, sir.

19 Q Shawn Sharpe get in the truck?

20 A Yes, sir. He was in the truck before I got there. I
21 fell, I tripped.

22 Q Where'd you all go?

23 A To Phil's.

24 Q Go back to Phil's?

25 A Yes, sir.

1 Q What do you do at Phil's?

2 A We go straight in the back room. Soon as we walk in
3 Phil's I call my brother on Patsy's phone, I tell him to
4 come get us. We go in the back room, me, Shawn and
5 Angela, locked the door, split the dope up and the money.

6 Q Let me back you up.

7 You say you called your brother. Who's your
8 brother?

9 A Danny Plumley.

10 Q Do you have any other brothers?

11 A No, sir.

12 Q You say you called him on whose phone?

13 A I used -- I called him, he had Patsy Anz's cell
14 phone, because he didn't have a phone at the time.

15 Q So at that time he was using Patsy Anz's phone?

16 A Yes, sir.

17 Q About what time -- let's back up.

18 About what time did this armed
19 robbery/burglary/murder occur?

20 A 10:30, I might say.

21 Q So it was some time right after that?

22 A It was right after that when I called him.

23 Q Did you call anybody else first? Who was your first
24 call to?

25 A My brother.

- 1 Q Did your brother come get you?
- 2 A Yes, sir.
- 3 Q What does he drive?
- 4 A PT Cruiser.
- 5 Q Now, your brother, is he older or younger?
- 6 A He's older.
- 7 Q What color is his PT Cruiser?
- 8 A Blue.
- 9 Q Who all gets in that PT Cruiser?
- 10 A Me, Shawn, Angela and him.
- 11 Q Who is driving?
- 12 A My brother.
- 13 Q Where do you all go?
- 14 A We left. We went to -- stopped at Burger King,
- 15 there's a Burger King gas station at 321. Got gas.
- 16 Q What else is at that Burger King? Is it a
- 17 stand-alone store?
- 18 A It's a Pit Stop.
- 19 Q And on the way to that Pit Stop is there any
- 20 conversation in the car?
- 21 A Yes, sir. My brother asked -- the only way my
- 22 brother got us to pick us up, he seen a bunch of police
- 23 cars he passed. He asked us what the hell was going on.
- 24 Q What did you tell him?
- 25 A Told him we just went on a robbery and Shawn told him

1 he thinks he just shot a man.

2 And, if I'm not mistaken, Shawn was talking to
3 his brother.

4 Q His brother, "Chuc" D?

5 A Yes, sir.

6 Q Did you hear "Chuc" D on the other side?

7 A I knew he was talking to "Chuc" D. I could hear some
8 screaming on the phone, but I couldn't make out what.

9 Q Screaming from the other side?

10 A Yes, sir.

11 Q What, if anything, did Shawn say in that phone
12 conversation?

13 A He said I think I just -- he said I think I just shot
14 a man, what you want me to do with this gun? "Chuc" D
15 told him -- from what Shawn told me, "Chuc" D told him to
16 make it disappear.

17 Q Once you all left the Pit Stop, where did you go?

18 A We went and stopped by McDonald's. On the way to the
19 motel I threw the suits and the jumpsuit in a dumpster in
20 the back of the McDonald's on 321, right by the
21 interstate. Got on the interstate. Went to the Carolina
22 Lodge motel. They didn't have no motel rooms vacant that
23 night. Then my wife, Angela Plumley, went over to the
24 Traveler's Lodge, she used a fake ID, we went up to the
25 room, we wasn't even in the room five, ten minutes before

1 the clerk came knocking on the door, called her down and
2 we had to leave.

3 Q While you're at the Travelers Inn, anybody using
4 drugs or flashing money?

5 A We -- at the table, we sitting at the little table by
6 the door breaking out the drugs and stuff. If I'm not
7 mistaken I think me, Angela and my brother were using
8 drugs, and that was it.

9 Q Let me ask you about that. The drugs you had, what
10 type of drug is it?

11 A Crack cocaine.

12 Q Do you use crack cocaine?

13 A Yes, sir.

14 Q Do you have a crack problem?

15 A Yes, sir.

16 Q After you all leave Traveler's Inn, where do you go?

17 A We drop Shawn off at Taco's.

18 Q Who is Taco?

19 A That was his girlfriend at the time.

20 Q Did you all meet her somewhere or did you go to her
21 house?

22 A No, I never seen her before in my life. She lives on
23 Mimosa. She was living on Mimosa Drive.

24 We dropped Shawn off. My brother dropped me --
25 me and Angela went back over to Phil's and my brother went

1 back to Patsy's.

2 Q Who has the gun when you drop Shawn Sharpe off?

3 A Shawn has the gun. He had the gun the whole time.

4 Q So once he gets out of the car, who is in that car?

5 A Once he gets out of the car and goes in Taco's?

6 Q Yes.

7 A It's me, Danny and Angela left in the car.

8 Q Danny's still driving his blue PT Cruiser?

9 A Yes, sir.

10 Q Where do you say you go after that?

11 A He drops me and Angela back off at Phil's.

12 Q How long do you all stay at Phil's?

13 A Maybe an hour at the most.

14 Q Where do you go after that?

15 A My brother comes back to pick us up. This time when
16 he picks us up he has Patsy with him.

17 Q Let me ask you about Patsy. Who is Patsy?

18 A She's some old lady that lives next door to my mother
19 and father. She's a real bad alcoholic. She got on
20 drugs.

21 Q And Danny hung out with her?

22 A Yes, sir.

23 Q When your brother came and picked you up, did he call
24 you or did you call him?

25 A I called him.

1 Q And again, what phone were you calling?

2 A Patsy's.

3 Q That's the phone your brother was using?

4 A Yes, sir.

5 MR. HUBBARD: I might ask counsel at this time,
6 is there a stipulation on the Verizon records?

7 Your Honor, at this time I'd offer State's 53
8 and 56 into evidence, the phone records from Verizon.

9 THE COURT: All right. Without objection. Is
10 that correct?

11 MS. ZMROCZEK: Without objection.

12 THE COURT: All right.

13 (WHEREUPON, STATE'S Exhibits Nos. 53 and 56 were
14 admitted into evidence.)

15 BY MR. HUBBARD:

16 Q When Danny picks you up, how late is it at this
17 point?

18 A It's pretty late. I want to say probably about
19 11:30. No, maybe 12:00.

20 Q Where do you all go from there?

21 A We go back to Patsy's house. My brother drops me and
22 Angela off. Me and Angela go -- we walk next door to our
23 house, my mother and father's. My brother drives back
24 over to Taco's house and gets crack from Shawn and then he
25 comes back. And then he goes back over to Patsy's. And

1 then, later on, me and Angela walk over there to Patsy's.

2 Q You stay over there all night?

3 A No, sir. We was over there for a few hours doing
4 drugs and drinking.

5 Q By this point is it still September 21st or is it now
6 early morning, September 22nd?

7 A It's early morning, September 22nd.

8 Q What happens next?

9 A Me and Angela we go back to our home -- house. Later
10 on my brother comes back over there. Me and Angela, we go
11 to bed, and I wake up and the police is outside my house.

12 Q You say the police were outside your house. How long
13 were you all in that house with the police outside your
14 house?

15 A Maybe ten minutes.

16 Q Were there a bunch of police officers?

17 A Yes, sir. It woke me. I thought I heard them on
18 intercoms, microphones, hollering my name. That's what
19 woke me up. And I told Angela and she told me I was
20 crazy. And I went and looked out the door and it was a
21 lot of police out there. And then I was trying to wake my
22 mom and my dad up, let them know what was going on, but my
23 mom and my dad wouldn't get up that time because they got
24 a big, loud metal fan in their room. And we just went on
25 outside; me, Angela and my brother.

1 Q What happened to you at that point?

2 A They told us to get down on the ground.

3 Q You got arrested?

4 A Yes, sir. They put us in -- they put us in the
5 police cars.

6 Q Okay. Let me ask you this: You talk about the
7 clothes you were wearing, throwing stuff away at
8 McDonald's. What happened to that Scream mask?

9 A I put it in my house. I forgot and left it in the
10 car.

11 Q What did you do with it?

12 A I cut it up and put it in the trash can in my mom and
13 them's kitchen.

14 Q The crack cocaine, did you still have any left?

15 A Yes, sir.

16 Q What did you do with that?

17 A Put it in a dresser drawer.

18 Q Did you put it in anything?

19 A Pill bottle.

20 Q That bandanna, what did you do with it?

21 A To be honest, sir, I don't remember.

22 Q You ever remember seeing it after that night?

23 A No, sir.

24 Q Okay.

25 A There's a bunch -- the one specifically he used was a

1 blue bandanna. There's other bandannas around my house
2 that's black. None of them was used.

3 Q I'm going to show you something, State's ID 73. See
4 if you recognize this. It's falling apart here, but do
5 you recognize this?

6 A Yes, sir.

7 Q What is this?

8 A It's my phone, the one I bought off the lady in
9 Rose's house.

10 Q Have you had an opportunity to look at this earlier
11 today?

12 A Yes, sir.

13 MR. HUBBARD: Your Honor. I offer this into
14 evidence?

15 MS. ZMROCZEK: Without objection.

16 THE COURT: State 73. All right. Without
17 objection, in evidence.

18 (WHEREUPON, STATE'S Exhibit No. 73 was admitted
19 into evidence.)

20 BY MR. HUBBARD:

21 Q I'll show you some photographs as well. Look --
22 State's ID 27, 28, 29, 31 -- actually, 30 and 31 and 32.
23 And beginning with State's ID 27. Is this that same
24 phone?

25 A Yes, sir.

1 Q Do you see the number that goes to that phone?

2 A Yes, sir.

3 Q State's 28, do you see contact information you put in
4 that phone?

5 A Yes, sir.

6 Q Same on State's 29?

7 A Yes, sir.

8 Q 30?

9 A Yes, sir.

10 Q 31?

11 A Yes, sir.

12 Q 32?

13 A Yes, sir.

14 MR. HUBBARD: Your Honor, I offer all these into
15 evidence at this time.

16 MS. ZMROCZEK: Without objection.

17 THE COURT: 27 through 32?

18 MR. HUBBARD: Yes, sir.

19 (WHEREUPON, STATE'S Exhibits Nos. 27-32 were
20 admitted into evidence.)

21 BY MR. HUBBARD:

22 Q I'm looking at State's 27. It's kind of blurry, but
23 can you read the phone number?

24 A 803 -9 -- no, that's an 0. Is it? -8598.

25 Q Okay. All right. Looking at State's 28, what

- 1 contact do you see right there?
- 2 A Little Bruh.
- 3 Q Who is that?
- 4 A Shawn.
- 5 Q The phone number there, whose phone number is that?
- 6 A Shawn's.
- 7 Q So when did you put this information in this phone?
- 8 A After I got it.
- 9 Q On September 21st?
- 10 A Yes, sir.
- 11 Q Now, the phone number that was yours to this phone,
- 12 you say you made sure Shawn Sharpe had that as well?
- 13 A Yes, sir.
- 14 That's my mom's number.
- 15 Q Okay. State's 29, that is your mother?
- 16 A Yes, sir.
- 17 That's my father's.
- 18 Q State's 30 is your dad's phone number?
- 19 A Yes, sir.
- 20 Q State's 31?
- 21 A That's "Chuc" D's phone number.
- 22 Q "Chuc" D, the same brother that we've talked about of
- 23 Shawn Sharpe's?
- 24 A Yes, sir.
- 25 Q 32?

1 A My wife's number.

2 Q How did you put it in there?

3 A My baby.

4 Q My baby?

5 A Yes, sir.

6 Q That's referring to Angela?

7 A Yes, sir.

8 Q That is her number?

9 A Yes, sir.

10 Q There is one number that's not in here, Danny's.

11 A Patsy's.

12 Q Right. But you said -- did Danny have a phone other
13 than Patsy's at this point?

14 A No, sir.

15 Q He had no working phone?

16 A No, sir.

17 Q So he was using Patsy's number?

18 A Yes, sir.

19 Q And you knew Patsy's number?

20 A Angela had it in her cell phone and I knew it by
21 heart at the time.

22 Q Do you know it now?

23 A No, sir, it's done been two years.

24 Q Okay.

25 MR. HUBBARD: Beg the Court's indulgence.

1 THE COURT: Yes, sir.

2 (Pause.)

3 BY MR. HUBBARD:

4 Q When we talk about "Chuc" D, do you see this
5 photograph?

6 A Yes, sir.

7 Q Is that him?

8 A Yes, sir.

9 MR. HUBBARD: Your Honor, I offer this into
10 evidence.

11 MS. ZMROCZEK: Without objection, Judge.

12 THE COURT: State's 83, without objection.

13 (WHEREUPON, STATE'S Exhibit No. 83 was marked
14 for identification and received into evidence.)

15 BY MR. HUBBARD:

16 Q "Chuc" D, is he older or younger than Shawn Sharpe?

17 A You're asking me?

18 Q Yes.

19 A He's older.

20 Q Charlie, I've got video I'd like you to watch from
21 the Pit Stop, the Burger King Pit Stop.

22 A Yes, sir.

23 THE COURT: Ladies and gentlemen, we'll take a
24 short break while they get this all set up. If you need
25 anything back there, let us know. It's going to be a

1 short break. We'll bring you right back out.

2 (The jury left open court at approximately 2:37
3 p.m.)

4 (A break was taken.)

5 THE COURT: Bring the jury in, please.

6 (The jury came into open court at approximately
7 2:52 p.m.)

8 THE COURT: All right. Ladies and gentlemen,
9 thank you for your patience. We are ready to proceed now
10 with Mr. Hubbard's direct examination.

11 (Audiotape played but not transcribed.)

12 BY MR. HUBBARD:

13 Q Charlie, I'm going to show you the video. And when
14 people walk through, I want you to tell me if you
15 recognize anybody.

16 A Yes, sir.

17 Q This guy, do you recognize him?

18 A No, sir.

19 Q This guy?

20 A Yes, sir.

21 Q Who is that?

22 A Shawn.

23 Q Shawn who?

24 A Huh?

25 Q Shawn who?

1 A Sharpe.

2 Q Okay. Who is this guy?

3 A That's my brother.

4 Q Again, this is after he picked you all up?

5 A Yes, sir.

6 Q You mentioned something about getting gas. Is this
7 the facility you all got gas at?

8 A Yes, sir.

9 Q Do you recognize this person?

10 A Yes, sir.

11 Q Who is that?

12 A That's my wife, Angela Plumley.

13 MR. HUBBARD: That's all.

14 (Pause).

15 BY MR. HUBBARD:

16 Q Charlie, when we started off, we were talking about
17 your charges. Armed robbery. Even though you claim you
18 weren't the one with the gun, under the facts and under
19 the law, are you guilty of armed robbery?

20 A Yes, sir.

21 Q Burglary in the 1st degree. Even though you didn't
22 have a gun, are you guilty?

23 A Yes, sir.

24 Q Murder of Leon, Leon, that old man. Even though you
25 say you didn't have a gun, are you guilty of his murder?

1 A Yes, sir.

2 MR. HUBBARD: Charlie, answer any questions the
3 defense has.

4 CROSS-EXAMINATION

5 BY MS. ZMROCZEK:

6 Q You didn't recognize anybody else in that video,
7 Mr. Plumley?

8 A No, sir -- I mean no, ma'am.

9 Q Have you given a written statement in this case?

10 A Yes, ma'am.

11 Q In that statement didn't you say that Phil knew that
12 you all were going to commit a robbery that night?

13 A Yes, ma'am.

14 Q Phil knew you all was going to commit that robbery?

15 A Yes.

16 Q And Angela knew?

17 A Yes, ma'am.

18 Q And Danny, your brother, knew?

19 A Yes, ma'am.

20 Q Anybody else know?

21 A Shawn.

22 Q Did Larry know, Larry Bruh?

23 A Yes, ma'am.

24 Q You had asked him to rob that same house the night,
25 before, didn't you?

1 A I didn't ask him that, he asked me.

2 Q He asked you?

3 A Yeah. Everybody around that area was planning on
4 robbing that woman. It's a well known crack house in
5 Gaston. And they know she's the only woman in there
6 selling drugs with a lot of money and a lot of crack.

7 Q How many times had you been to her house that day?

8 A That day?

9 Q That day.

10 A Maybe three, four times.

11 Q Three or four times you went to Rose's. Do you
12 recall the times that you went?

13 A I really don't remember, except for the morning that
14 me and Shawn and all of us went with Todd after coming
15 back from the Walgreens.

16 Q It was light out?

17 A Yes, ma'am.

18 Q And Shawn went inside?

19 A No, ma'am. He never went inside then.

20 Q Did Shawn ever go inside with you?

21 A He went in and -- I think a few days before with my
22 brother.

23 Q With your brother?

24 A Uh-huh.

25 Q Just Shawn and your brother?

1 A Yes, ma'am.

2 Q How many times did you and your brother and Shawn go
3 to Rose's?

4 A None.

5 Q Never?

6 A Never.

7 Q What position was the glass door in when you ran up
8 the stairs to commit this robbery?

9 A What you mean, glass door? The storm door? Like
10 before -- I don't think there was one. I don't think they
11 had one.

12 Q They didn't have one?

13 A No, ma'am.

14 Q You had on the Scream mask?

15 A Yes, ma'am.

16 Q You go back to the bedroom with Rose?

17 A Yes, ma'am.

18 Q Shawn doesn't go back?

19 A He's in the living -- he's in between the kitchen and
20 the living room, maybe so won't nobody else come in.

21 Q He was armed with the gun?

22 A Yes, ma'am.

23 Q And are you saying that his bandanna -- he did not
24 have the ski cap on, he took that off and it was the
25 bandanna that was his mask?

- 1 A He used the bandanna with a hood over his head.
- 2 Q With a hood over his head?
- 3 A He had on a black hoodie with a blue jumpsuit with a
- 4 blue bandanna over his face with a hood over it.
- 5 Q So you get \$80 in cash and \$800 in crack?
- 6 A Yes, ma'am.
- 7 Q And you were using crack that day?
- 8 A Yes, ma'am.
- 9 Q How much crack do you think you had done that day?
- 10 A Maybe \$30, \$40 worth of crack, if that.
- 11 Q Is that a little or a lot?
- 12 A It's a little.
- 13 Q Just a little bit?
- 14 A I was sharing it with my wife.
- 15 Q Your wife does crack?
- 16 A Yes, ma'am.
- 17 Q Does your wife do meth?
- 18 A Yes, ma'am.
- 19 Q Do you do meth?
- 20 A No, ma'am.
- 21 Q Phil is the meth house, though, right?
- 22 A Yes, ma'am.
- 23 Q And Phil, her ex-boyfriend, that's where she was
- 24 staying while you all were fighting?
- 25 A She was only -- yeah, she went there that night and

1 then called me that same night to come over there. She
2 basically got mad because the night before she couldn't
3 ride with me and my brother.

4 Q You all were going out to clubs?

5 A Basically, ma'am, I don't remember. I don't
6 remember.

7 Q You didn't have a phone when she was not at the house
8 and she got mad. How would she get in touch with you?

9 A My mother's phone.

10 Q And you identified her phone number, her cell number
11 as what?

12 A -9547. It's a Straight Talk phone.

13 Q You could text on it?

14 A Yes, ma'am.

15 Q Were you texting Angela back and forth when she was
16 at Phil's?

17 A Might have been. I can't really remember.

18 Q I believe Mr. Hubbard showed you some pictures. I'm
19 going to show you what's marked as Defense Exhibit 58.

20 Sorry. 34, 35, 36. I will let you look closer. I'm just
21 reading out the numbers now. 37, 59, 38, 39, 40, 41, 42,
22 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57.

23 Can you recognize -- is this the phone, the same
24 phone?

25 A Yes, ma'am. The one I bought from the lady in Rose's

1 house.

2 MS. ZMROCZEK: Your Honor, at this time I'd like
3 to move these into evidence.

4 MR. HUBBARD: No objection.

5 THE COURT: Without objection, the numbers she
6 called out.

7 I'm going to try to put them in numerical order.
8 But you go ahead with your examination.

9 (WHEREUPON, Defendant's Exhibit Nos. 34, 35, 36,
10 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50,
11 51, 52, 53, 55, 56, 57, 58 were admitted into
12 evidence.)

13 BY MS. ZMROCZEK:

14 Q Charlie, what's a serve?

15 A Somebody you sell crack to.

16 Q Do you sell crack to anybody?

17 A No, ma'am. I use crack. I have sold crack before in
18 the past, but I'm not a constant crack dealer. I sold
19 crack to keep getting it, to use, to get high.

20 Q When you got -- when you bought that phone that
21 night, did you clear out all the other numbers that were
22 in there? So any numbers that appear on that phone are
23 because either somebody called you or you called them,
24 because you cleared out all the other numbers?

25 A I'm not sure if I cleared out all of them because

1 it's a lot of phone numbers. I remember trying to erase
2 all the contacts.

3 Q So you erased all the contacts.

4 A (Nodding).

5 Q Then I think you said you typed in your contacts.

6 A Yes. My wife put in the contacts of the people --
7 basically the people that I call, my mom, my dad, her,
8 Shawn and "Chuc". I mean, I don't know that many people
9 around that area.

10 Q How long have you known "Chuc"?

11 A Five years.

12 Q You talk to him that night?

13 A Talked to him that day.

14 Q That night, after you committed the murder and the
15 robbery and the burglary --

16 A Yeah.

17 Q -- did you call "Chuc" or talk to him?

18 A Shawn called him when we was in the motel room, and
19 Shawn put him -- gave me the phone. He was on the phone,
20 he was cussing me out.

21 Q And he was on Shawn's phone?

22 A Uh-huh.

23 Q So in the motel room I think you said you, Angela and
24 Danny were doing crack, and that's when "Chuc" got on
25 Shawn's phone and yelled at you?

1 A (Witness nodding.)

2 Q You said it's been two years since you've been in
3 Lexington County?

4 A Yes, ma'am.

5 Q You're still getting drugs, aren't you?

6 A No, ma'am.

7 Q Isn't it true that you got written up recently for
8 receiving a letter with a Fentanyl patch in it?

9 A This girl that I knew from middle school had wrote
10 me, sent me a card, but I didn't know anything about it.
11 I didn't even know she had wrote me.

12 The police seen it, checked and -- I didn't even
13 know what was in it. He just said something was in it.
14 He never came back and let me know nothing about it. I
15 never got wrote -- I never got a set of stripes or
16 anything.

17 Q How do you get stripes?

18 A How do you get stripes? For getting in trouble.

19 Q Have you been in stripes in the jail?

20 A Yes, ma'am.

21 Q In fact, you've been in there for jumping on Shawn
22 Sharpe?

23 A He sent somebody to the room to fight me, yes, ma'am.

24 Q He -- I'm sorry, he sent someone in the room to fight
25 you?

1 A Yes, ma'am. Somebody named Marty Shealy. He was
2 showing everybody my statement that I wrote under the door
3 to people on rec saying that I was a snitch, that I wrote
4 statements.

5 And, basically, yeah, I'm on protective custody
6 right now on account of it. I only get one hour rec a
7 day, because people stay trying to fight me because I'm
8 cooperating and I wrote statements.

9 Q You haven't started any other fights in the jail?

10 A I have been in a lot of fights. I don't never -- if
11 you can read my incident reports, I ain't never started a
12 fight. Last fight I got into I was getting out the shower
13 and the guy hit me. I'm going to defend myself.

14 Q And it's your testimony here today that Shawn sent
15 somebody at the jail to attack you --

16 A Yes, ma'am.

17 Q -- and you were just defending yourself?

18 A He sent somebody in the room to fight me. The person
19 left. Then he's calling me a pussy, he said I'm going to
20 punish you. So I said all right. I went downstairs and
21 all I do was hit him one time and, yeah, I went to lock up
22 for 21 days for hitting him.

23 Q That's all it took, just one hit and he went down;
24 isn't that true?

25 A One hit and he backed up. The police intervened.

1 Q Mr. Hubbard went through your records. You've
2 committed crimes with your brother before, haven't you?

3 A No. I've got caught with drugs before, riding
4 around. Might have got pulled over and had some drugs in
5 the car or something. Matter of fact, no, ma'am, for my
6 intention I ain't never been caught with no drugs with my
7 brother.

8 Q And you've never committed any other crimes with your
9 brother?

10 MR. HUBBARD: Your Honor, this is an improper
11 way to ask this question.

12 THE COURT: Well, you all step up here.

13 (A bench conference was held with the judge and
14 attorneys in the presence of the jury but out of the
15 hearing of the jury.)

16 THE COURT: Sustained.

17 BY MS. ZMROCZEK:

18 Q You said that you all went back to -- after the hotel
19 you dropped Shawn off and then you go back to Phil's --

20 A Yes, ma'am.

21 Q -- and then you go to Patsy Anz's?

22 A We drop Shawn off, my brother dropped me and Angela
23 off at Phil's and my brother went back to Patsy's. Then
24 later my brother come pick me and Angela back up from
25 Phil's, took me and Angela to my mom's, he dropped us off

1 and he went to Taco's house on Mimosa Drive to get crack
2 cocaine from Shawn. Got the crack, then he went back to
3 Patsy's and then, later on, me and Angela walked over to
4 Patsy's with my brother and Patsy to do drugs.

5 Q You dumped the coveralls at a dumpster at McDonald's?

6 A In a dumpster at McDonald's on 321. It was in a
7 black plastic bag.

8 Q But you took the Scream mask home?

9 A Yes, ma'am.

10 Q What happened to that Scream mask?

11 A I cut it up, put it in the trash can.

12 Q And then what happened to it?

13 A It got thrown away.

14 Q Why did it get thrown away?

15 A Because I called my mother and them and told them to
16 throw it away.

17 Q When you were in the jail?

18 A Yes, ma'am.

19 Q What else did you tell your --

20 A To get rid of the crack that was in a bottle in my
21 dresser.

22 Q So you called your parents from jail, told them to
23 get rid of the Scream mask and get rid of the crack?

24 A Yes, ma'am.

25 Q You told them also cut up that fake ID they found in

1 Angela's purse?

2 A I don't remember that.

3 Q Who is Billy Hinson?

4 A Friend of my brother's.

5 Q Do you know him?

6 A I know him from my brother.

7 Q Wasn't it Billy that introduced you and your brother
8 to Rose?

9 A My brother introduced me to Rose. I don't know -- I
10 don't know -- my brother -- he might have introduced my
11 brother to her, I'm not sure.

12 Q When you got arrested, on the phone with your mom,
13 you told her you were going for accessory.

14 A I'm not sure, ma'am. I know when I first came to the
15 jail they gave everybody accessory charges. I didn't get
16 served with murder, I don't think, until like a day or two
17 later. And then they served me with a violation of
18 probation warrant.

19 Q Are you aware of what you're facing with your murder
20 charge?

21 A Yes, ma'am.

22 Q And your burglary 1st?

23 A Yes, ma'am.

24 Q And your armed robbery?

25 A Yes.

1 Q Is that a lot of time?

2 A Yes, ma'am.

3 Q And you know that there are no deals on the table?

4 A Yes.

5 Q But you're hoping for one?

6 A I'm hoping I get a good sentence, because I wasn't
7 promised anything.

8 Q You talk to Angela a lot?

9 A Yes, ma'am.

10 Q And you all discuss this case a lot?

11 A We talk about like what's going to happen to us in
12 the future because, you know, I mean that is my wife and
13 we got to prepare what is going happen to us whenever she
14 goes to prison and I go to prison and what is going to
15 happen. She's got kids, you know.

16 Q And you write letters back and forth because you know
17 that they're listening to your jail phone calls?

18 A Yes, ma'am. We're married. They allow us to wrote.
19 And, plus, there's not too much else to do sitting in
20 jail.

21 Q Do you recall a conversation in which you told her to
22 burn the letters after she read them?

23 A No, ma'am, I don't remember that.

24 Q You stated that today you knew that because you were
25 there you're guilty of these crimes, but you didn't know

1 that before, did you?

2 A Know what?

3 Q You thought if you didn't pull the trigger then
4 you're not guilty of murder?

5 A The hand of one is the hand of all.

6 Q I know that you know that now, but when it happened
7 you didn't know that, did you?

8 A I didn't know that until after speaking with my
9 lawyer.

10 Q So after speaking with your lawyer that's when you
11 learned of this concept, the hand of one, the hand of all?

12 A I don't know too much about the law. I know a
13 little, not much.

14 Q You talk to your brother on the phone?

15 A Every once in awhile. He works a lot.

16 Q You all talk about this case?

17 A We talked about it a few times. Like I tell him I
18 know I'm getting ready to go to prison. I mean, there's
19 no way around it.

20 Q Are you aware that your brother IDd you in the video?

21 A Am I aware of what?

22 Q Are you aware that your brother identified you in the
23 video?

24 A No, ma'am. I was out in the car.

25 MS. ZMROCZEK: Beg the Court's indulgence.

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 MS. ZMROCZEK: I have no further questions.

4 MR. HUBBARD: Quick follow-up.

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q Charlie, you said you called your momma or you talked
9 to your mom?

10 A Yes, sir.

11 Q Your mom and dad got rid of the mask and the crack?

12 A Yes, sir.

13 Q What happened to them because of that, for helping
14 you?

15 A They got arrested.

16 Q Accessory after murder?

17 A No, sir. If I'm not mistaken, I think it was
18 obstruction of justice.

19 Q Okay. Your brother, Danny --

20 A Yes, sir.

21 Q -- for helping you, what happened to him?

22 A He's charged with accessory after the fact of murder.

23 Q So your family members are all charged out of events
24 coming out of this case?

25 A Yes, sir.

1 MR. HUBBARD: Thank you.

2 MS. ZMROCZEK: Just one follow-up question.

3 RECROSS-EXAMINATION

4 BY MS. ZMROCZEK:

5 Q You'd do anything to help your family, wouldn't you?

6 A Yes, ma'am.

7 MS. ZMROCZEK: Nothing further.

8 FURTHER REDIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q Any promises or discussion to you about deals with
11 your family for your testimony?

12 A No, sir. There's been no kind of deals about
13 anything.

14 MR. HUBBARD: Thank you.

15 THE COURT: All right. Thank you very much,
16 sir. You may step down.

17 MR. HUBBARD: The State calls Olivia Mason.

18 OLIVIA MASON, after being duly sworn, testified
19 as follows:

20 THE CLERK: Have a seat, please, ma'am.

21 Once you're seated, state your full name,
22 spelling your last on the record, please.

23 THE WITNESS: Yes, ma'am.

24 Olivia Weston Mason, M-A-S-O-N.

25 DIRECT EXAMINATION

1 BY MR. HUBBARD:

2 Q Ms. Mason --

3 A Yes, sir.

4 Q -- I notice you were hobbling up here. What happened
5 to you?

6 A I broke my foot. I haven't been to the doctor yet.
7 I have been waiting all day.

8 Q I appreciate you being here.

9 A No problem.

10 Q Where do you live?

11 A I live with Phil Helms, Blackville Court,
12 Gaston, South Carolina.

13 Q How long have you been living with him?

14 A About three years.

15 Q Ms. Mason, were you living with him back in
16 September, 2011?

17 A Yes, I was. That was my first night there.

18 Q Picked a good time to move in there, huh?

19 A No, I didn't.

20 Q Before we start, I'm going to ask you, you have
21 several prior convictions, giving false information to
22 police back in February of 2011?

23 A Yes, sir, I did.

24 Q Shoplifting, 2012?

25 A Yes, sir.

1 Q And possession of meth in June of this year?

2 A Yes, sir.

3 Q Did you know Angela Plumley?

4 A Angela who?

5 Q Griffin or --

6 A Yes, sir, I do.

7 Q How do you know her?

8 A Because she's Phil's prior girlfriend.

9 MR. HUBBARD: Your Honor, I was looking for some
10 photographs, but our little table -- I was looking for
11 some face shots. I'm sorry, these are all --

12 BY MR. HUBBARD:

13 Q Anyway, let me ask you this: September 21st, you're
14 there at that house.

15 A Yes, sir.

16 Q Do you remember who all comes over that day?

17 A Yes, sir. When I got there, Todd was there. Phil,
18 obviously, was there and Angela and Charlie were already
19 there.

20 Q Okay. And you mentioned Charlie. Did you know
21 Charlie?

22 A No, sir, I did not. I was introduced to him that
23 day.

24 Q Did they ever introduce you to another friend of
25 theirs?

- 1 A Yes, sir, later on that night.
- 2 Q Can you describe the person that they introduced you
- 3 to?
- 4 A He's sitting right there.
- 5 Q Here in the courtroom?
- 6 A Yes, sir.
- 7 Q Which person? Can you describe him?
- 8 A Dark hair. Tall, skinny guy.
- 9 Q There's two dark-haired skinny guys.
- 10 A The one in the middle, blue shirt.
- 11 Q Not to offend the clerk.
- 12 A No, the blue shirt.
- 13 Q The man in the middle?
- 14 A Yes, sir.
- 15 Q Shawn Sharpe?
- 16 A Yes, sir.
- 17 Q Did you recall his name or did they even tell you his
- 18 name?
- 19 A She just said Shawn.
- 20 Q Had you ever met him before?
- 21 A No, sir, I had not.
- 22 Q Let me ask you, have you ever heard or met Danny
- 23 Plumley?
- 24 A No, sir, I have not.
- 25 Q What about "Chuc" D?

1 A Yes, sir, I have.

2 Q You've met "Chuc" before?

3 A Yes, sir, I have.

4 Q How do you know him?

5 A I know him because his girlfriend, Cherish, my sister
6 is very good friends with her mother, so before she even
7 started seeing "Chuc" D, I knew her then.

8 Q While you're at Phil's on that day, September 21st,
9 2011, was anybody using any of the vehicles owned by Phil?

10 A Yes, sir, pretty much everybody.

11 Q Is that the way Phil was or is?

12 A Yes, sir. He's a very kind hearted man. I mean, if
13 he can help. If he can't, he's --

14 Q What vehicle was being used?

15 A The gray Dodge truck.

16 Q Kind of dark gray?

17 A Yes, sir.

18 Q Again, I might try to find a photograph, but I think
19 at this point if it takes me too long we're just going to
20 keep moving.

21 Here we go. I'll show you State's Number 7.

22 A That's it. Yes, sir.

23 Q This is the truck that -- it looks kind of blue in
24 this photo, but you say it's actually a grayish?

25 A Yes, sir, it was.

1 Q Did there come a time when Angela, Charlie and this
2 fellow over here in the courtroom left that house?

3 A Yes, sir, there was.

4 Q Do you remember about what time? Was it light, dark?

5 A It was dark.

6 Q Prior to that happening, do you recall anything
7 involving Mr. Sharpe in that house?

8 A Yes, sir. Everybody was in the back room but him.

9 Q Where was he?

10 A He was standing in our kitchen in front of a curio
11 cabinet that has a glass in it.

12 Q Where were you?

13 A I was sitting in a chair in the living room. And he
14 put a mask over his face and I said, What the hell is
15 this, Halloween? He took it off, walked back to the room
16 where Angela and them were at.

17 Q What did the mask look like?

18 A It was like a black mask, a black ski mask.

19 Q Now you said he put it on his face, covered his face?

20 A Yes, sir.

21 Q Could you see his eyes?

22 A Yes, sir.

23 Q So there were holes in it?

24 A Yes, sir.

25 Q And you said what to him?

1 A What the hell is this, Halloween? I was a smart butt
2 that night.

3 Q What was his response?

4 A Nothing. Just a "go to hell" look and he walked back
5 with Angela.

6 Q Did he take it off?

7 A Yes, sir.

8 Q Did he keep it with him?

9 A Yes, sir.

10 Q What was -- what was he wearing at that point?

11 A A dark T-shirt and blue jeans.

12 Q Do you recall seeing a -- meeting with us, a video as
13 well?

14 A Sir?

15 Q Do you recall when you met with us looking at a
16 video?

17 A Yes, sir.

18 Q Who all do you recall seeing in that?

19 A Angela and Shawn. I wasn't sure if the first guy
20 that walked in was "Chuc" because I couldn't really make
21 it out clearly. Not "Chuc", Charlie. Excuse me.

22 Q What, if anything, was different?

23 A He wasn't wearing the same clothes.

24 Q He had a change of clothes?

25 A Yes, sir.

1 Q So from the time you had seen him when he left Phil's
2 until later he changed clothes?

3 A Yes, sir, he had.

4 MR. HUBBARD: Ms. Mason, thank you for answering
5 my questions. Please answer any questions the defense
6 has.

7 THE WITNESS: Yes, sir.

8 CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q I just want to clarify that I heard your statement
11 correctly. You couldn't recognize the first guy but you
12 were able to pick out Shawn?

13 A Yes, ma'am.

14 MS. ZMROCZEK: No further questions.

15 THE COURT: Thank you very much, ma'am.

16 MR. HUBBARD: No follow-up.

17 MR. GRAHAM: The State calls Bob Wetherell.

18 BOB WETHERELL, after being duly sworn, testified
19 as follows:

20 THE CLERK: Have a seat, sir.

21 Once you're seated, state your full name,
22 spelling your last on the record, please.

23 THE WITNESS: My name is Bob Wetherell,
24 W-E-T-H-E-R-E-L-L.

25 DIRECT EXAMINATION

1 BY MR. GRAHAM:

2 Q Where are you employed, sir?

3 A I'm employed with AT&T.

4 Q How long have you been with AT&T?

5 A Thirteen years.

6 Q What do you do with AT&T?

7 A I'm currently the manager of optimization engineering
8 for the wireless network for South Carolina.

9 Q In addition to that, have you also been designated as
10 the custodian of records for two phone numbers that
11 records were subpoenaed on for this date?

12 A I have.

13 Q Let me show you those two items and ask if you
14 recognize those. This is State's 53 and 54.

15 A Yes, sir.

16 Q When a call is made, what kind of records do AT&T
17 keep?

18 A It keeps a billing record of the cell site the call
19 is initiated on, along with the phone number and dialed
20 number.

21 Q And those are recorded just as part of the regular
22 business of AT&T for billing purposes?

23 A Yes.

24 Q And those are the records that you have in front of
25 you?

1 A Yes, sir.

2 MR. GRAHAM: Your Honor, the State would offer
3 both of those in evidence at this time.

4 MS. ZMROCZEK: Without objection.

5 (WHEREUPON, STATE'S Exhibits Nos. 53-54 were
6 admitted into evidence.)

7 BY MR. GRAHAM:

8 Q In addition to being the records custodian in this
9 case, you said your job title was what, Mr. Wetherell?

10 A Manager of optimization engineering.

11 Q What is optimization engineering?

12 A We work on the wireless network as far as integrating
13 new technology and new cell sites and try to fix any
14 long-term holes in the wireless network.

15 Q Prior to being a manager what did you do?

16 A I was an engineer doing the optimization work.

17 Q So to all of us sitting over here, what does that
18 mean? When you're optimizing the AT&T network, what does
19 that mean?

20 A Our goal is to get the signal from the cell site in
21 the right place so that we have the best possible network
22 and your calls don't drop, and the capacity is there for
23 it, if needed.

24 Q What is your educational background?

25 A I have a Bachelor's in electrical engineering and an

1 MBA.

2 Q And how much experience do you have? How many years
3 with AT&T, you say?

4 A Thirteen.

5 Q Fourteen years?

6 A Thirteen.

7 Q Thirteen years as an engineer and as a supervisor of
8 engineers?

9 A Yes.

10 Q With radio signals and cell phones?

11 A All thirteen of those years have been in that field.

12 MR. GRAHAM: Your Honor, the State would offer
13 Mr. Wetherell as an expert in radio engineering.

14 THE COURT: Any objection?

15 MS. ZMROCZEK: Subject to my previous objection,
16 Your Honor.

17 THE COURT: Let me get to you step up.

18 (A bench conference was held with the judge and
19 attorneys in the presence of the jury but out of the
20 hearing of the jury.)

21 VOIR DIRE EXAMINATION

22 BY MS. ZMROCZEK:

23 Q Mr. Wetherell, what are the job titles of a radio
24 engineer?

25 A I guess -- what do you mean by that?

1 Q What are the qualifications to be a radio engineer?

2 A Generally you look for, at a minimum, a Bachelor's
3 degree in engineering. And then, depending on the level
4 of the position it can go up to a Master's or years of
5 experience towards that position.

6 Q And you may have said this, you have a Master's in
7 engineering?

8 A I have a Master's in business, an MBA.

9 Q How many -- can you tell me about the seminars that
10 you have attended for this kind of study?

11 A We -- our various network infrastructure providers
12 have various classes every year that I attend. As new
13 technology comes out we take refresher classes, we take
14 classes on the new technology every year. Generally ends
15 up being probably two to three weeks a year at least,
16 training.

17 Q Are there societies, professional societies?

18 A There are. I'm not a member of any.

19 Q You're not a member.

20 Have you ever been published?

21 A No.

22 Q Have you ever testified in court before?

23 A No, ma'am.

24 MS. ZMROCZEK: Your Honor, at this time I would
25 object to him being qualified as an expert.

1 THE COURT: All right. I'm going overrule the
2 objection.

3 He's had all the training necessary. He's had
4 over 15 years experience in the field.

5 I'm going to respectfully overrule your
6 objection. I'll allow him to testify.

7 MR. GRAHAM: Thank you, Your Honor.

8 BY MR. GRAHAM:

9 Q Mr. Wetherell, what is radio engineering?

10 A It is the engineering of the signal between the cell
11 phone and the cell tower and trying to optimize that.

12 Q In general terms, can you explain to us what happens
13 when I have a cell phone and I hit send and I'm calling
14 somebody?

15 A When you hit send, it makes a radio connection with
16 the strongest cell site in the area. At that point it
17 uses a wired connection to go through to a switch. And
18 the cell site that you're on when you make that call is
19 what is triggered in the call records.

20 Q So when I push send, it finds the strongest signal
21 and connects there?

22 A Yes.

23 Q Hits that tower and goes on a cable down in the
24 ground and goes to a telephone switching station like a
25 landline phone?