

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, Circuit Court Judge

VOLUME I OF II

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JARNELLE LADARIUS ERVIN,

APPELLANT

APPELLATE CASE NO. 2018-000973

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
2016-GS-46-04532, 04532A
04533, 04534, 04535, 04536,
04537, 04538

STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
(DAY 1)
JARNELLE LADARIUS ERVIN) (PAGES 1 - 198)

MAY 15, 2018
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE JOHN C. HAYES, III

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I-N-D-E-X

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1 (WHEREUPON, DOCUMENTS PRE-MARKED FOR
2 IDENTIFICATION BY SOLICITOR SHELTON)

3 THE COURT - All right, Mr. Shelton?

4 MR. SHELTON - Yes, sir, Your Honor, may it please
5 the Court.

6 THE COURT - Yes, sir.

7 MR. SHELTON - Your Honor, at this time the State
8 is calling for trial The State of South Carolina versus
9 Jarnelle Ladarius Ervin. There are seven indictments that
10 have been true billed by The York County Grand Jury on
11 December 8th, 2016. Those charges are as follows: 2016-
12 GS-46-04532 alleging burglary in the first degree, 2016-GS-
13 46-04532A a multi-count indictment alleging possession of a
14 weapon during the commission of a violent crime, 04533
15 armed robbery, 04534 criminal conspiracy, 04535, 4536, 37
16 and 38, four separate counts of kidnapping. Your Honor,
17 the State never tendered a plea offer in this case. The
18 defendant has not offered anything to the State. We're
19 prepared to go forward with the trial.

20 THE COURT - All right, Mr. Steltzner, anything
21 before we move into some -- I understand we have some
22 motions.

23 MR. STELTZNER - Yes, Your Honor.

24 THE COURT - I have your witness list.

25 MR. STELTZNER - Okay, you have my witness list?

1 THE COURT - I do.

2 All right, ready to proceed?

3 MR. SHELTON - Yes, sir, we are. Your Honor, if I
4 -- I can take the lead on some of the pre-trial matters I
5 think we need to put on the record. I do want to note for
6 the record that the State has complied with discovery and
7 the Brady rule, Rule 5 and Brady. Mr. Steltzner is the
8 fourth appointed attorney for Mr. Ervin. He had prior to
9 being on the case, Mr. Ervin had Melissa Inzerilla with the
10 public defender's office. He had Rebecca McNerny who was
11 court-appointed and Twana Burris who was court-appointed,
12 and now Mr. Steltzner was court-appointed, I believe, in
13 January of this year. When -- shortly after he was
14 appointed, Ms. Burris and I met with Mr. Steltzner in his
15 office to kind of get him up to speed as it were. I
16 confirmed -- I had previously confirmed with Ms. Burris
17 that she had all of the digital discovery and the paper
18 discoveries we like to call it. I confirmed that we had
19 complied through her, and she told me that she had given
20 Mr. Steltzner her file and her external hard drive that she
21 had all the digital evidence on, so there's a considerable
22 amount of information, so rather than kind of reinventing
23 the wheel, she passed that information on to Mr. Steltzner.
24 We confirmed that he had all of it, and in the weeks
25 leading up to trial I've communicated with Mr. Steltzner,

1 again, affirming that he has everything, actually,
2 supplemented something that we thought that he had that
3 hadn't been copied correctly, and I have provided him some
4 supplemental discovery, some photographs and things, maps,
5 that is, as the trial preparation has progressed, so I'm
6 standing here today confident that I've complied with Rule
7 5 and Brady as it relates to this case.

8 MR. STELTZNER - Your Honor, we have no
9 objection.

10 THE COURT - Okay.

11 MR. STELTZNER - We believe that the prosecutor
12 has done so.

13 MR. SHELTON - And, Your Honor, we do have a few
14 matters to address. This case was scheduled for trial at
15 that meeting back in, I believe it was in January or
16 February, so it's been scheduled for trial for several
17 months. I believe the defense, from our previous
18 communications, has been working on this for some time.
19 Mr. Steltzner and I have talked several times on the phone,
20 in person and through e-mail, so I think to that extent I
21 can say that I know Mr. Steltzner's been working on this
22 case. We are prepared to go forward with pre-trial issues.
23 As I see it, we need to have some Neil vs. Biggers
24 hearings.

25 THE COURT - All right.

1 MR. SHELTON - A couple -- Jackson vs. Denno
2 hearing and some hearings on search warrants related to
3 cell phones and cell tower data.

4 THE COURT - Okay.

5 MR. SHELTON - And if I may, Your Honor, I would
6 start with the Neil vs. Biggers hearings.

7 THE COURT - All right.

8 MR. SHELTON - And just for -- for the record, we
9 spoke about this in chambers, Your Honor, there are three
10 victim witnesses in this case. The first witness that
11 we'll hear from is Jessica Dawn Parker. Next is her
12 husband, Danny Parker, and finally is their son, Timothy
13 P. . They all were living on Birchwood in the house
14 that was the incident location crime scene in this
15 particular case, and each of them were presented a photo
16 lineup by Detective Branham during his investigation. And
17 I will start, Your Honor, by proffering Ms. Jessica Dawn
18 Parker as our first witness.

19 THE COURT - All right, please come up and be
20 sworn.

21 JESSICA DAWN PARKER, AFTER BEING FIRST DULY

22 SWORN, TESTIFIES AS FOLLOWS -

23 DIRECT EXAMINATION

24 BY MR. SHELTON -

25 Q Please state your full name.

1 A Jessica Dawn Glover Parker.

2 MR. SHELTON - And, Mrs. Parker, remember you need
3 to speak up. Okay?

4 MRS. PARKER - Okay.

5 MR. SHELTON - The court reporter needs to be able
6 to hear as do we across the room.

7 MS. PARKER - Yes, sir.

8 Q Mrs. Parker, where do you live?

9 A [REDACTED], Clover, South Carolina.

10 Q And is that in York County?

11 A Yes, sir.

12 Q Ma'am, what do you do for a job or occupation?

13 A I'm a medical biller. I work from home.

14 Q You work from your home?

15 A Yes.

16 Q Do you recall the events of July 11, 2016?

17 A Yes, sir.

18 Q And that's the reason we're here today.

19 A Yes, sir.

20 Q Please briefly describe to the Judge what you recall?

21 A Um, I -- my son had his wisdom teeth removed that
22 morning, came back home around 1:30 from getting his meds
23 and things like that. I got him tucked in on the couch to
24 watch a movie around 3:00 and then within a few minutes I
25 heard a loud bang, and I took off running down the hall. I

1 thought Timothy had got up from anesthesia and fell or
2 something, and I was -- three black men were coming through
3 the backdoor of our home, and I was going to double back to
4 try to get a phone. One of them got a hold of me, and I
5 just tried to just throw myself over my son to cover him at
6 that point to keep him from dieing, taking bullets. They
7 had big guns in their hands. One really tall one, one
8 around five nine, shorter, with dreadlocks that were --
9 they had things over their faces, shoving guns in our faces
10 and screaming us, asking where's Tim, where's Tim. They
11 ended up beating my son pretty badly and tying me up and
12 put me in a closet. Danny came in during this time and he
13 had an altercation with them. I could hear fumbling and
14 bumbling around. I don't know, I -- one point of heard one
15 of the guys saying, asking him if he'd ever seen anybody's
16 head be blown off, and I realized that they were fixing to
17 shoot my son, and so I came out of my closet in a panic and
18 was begging -- he had told me initially when he put me in
19 the closet that if I stayed there they wouldn't kill my
20 son, so I was face-to-face with this man and pleading with
21 him, did he not have a mother, and please don't kill my
22 son, just take what they wanted and leave and he told me to
23 get back in the closet, and Danny asked me to get back in
24 the closet, just stay there and I did, and then eventually
25 they left with what they wanted and I called 911 and ran

1 across the street to my neighbor's house, and the police
2 had came and arrived and we took Tim to the hospital. He
3 had been -- him and Danny both had been beaten really bad
4 with guns at that point and so on.

5 (WHEREUPON, WITNESS CRIES DURING TESTIMONY)

6 Q Let me get you a cup of water here. Take a second
7 here. I'm going to follow-up with some more questions.

8 A Okay.

9 Q Just take your time. Okay?

10 A Thank you.

11 Q You ready?

12 A Yeah.

13 Q How long were the three men in your house?

14 A About an hour and a half.

15 Q What time of day was it?

16 A Mid-afternoon. It was around 3:00. I had put Timothy
17 down to rest and then shortly thereafter is when the noise
18 -- I heard the noise.

19 Q And was the inside of your home well lit at that time?

20 A Yes.

21 Q Were the three men wearing anything on their faces
22 when they came in?

23 A Initially their faces were covered, yes, and then as
24 the time progressed, the rags fell off their faces. The
25 longer they were there, the more arrogant they became about

1 the whole situation, seemed like the more fun they were
2 having with it and taunting us and -- and they were really
3 having a good time, and they didn't even bother covering
4 their faces at that -- anymore at that point.

5 Q When you used the word rags, can you explain?

6 A Like a bandana. One was red. One was a darker-color
7 bandana and on -- on the shorter guy.

8 Q Looks like you're gesturing across the bottom half of
9 your face?

10 A It was -- yeah, it was across here right under the
11 eyes, maybe right across the bridge of the nose is where
12 the bandanas were and initially when they were -- came in.
13 When I came back out of the closet, the bandanas were off
14 their faces at that point. The one that stayed in the
15 window looking with the dreadlocks, the shorter one, he, um
16 -- he didn't have the bandana on his face most of -- I
17 would ease the closet door open occasionally to look, and I
18 would be able to see his profile there, and he wasn't
19 wearing a bandana at that point either.

20 Q And I believe a moment ago you said they entered your
21 home with guns?

22 A Yes.

23 Q And they got in by breaking in the back glass door ---

24 A Yes.

25 Q --- from the outside?

1 A Right. There's swinging double glass doors and, um,
2 they busted the one out completely.

3 Q And the moment you described when you came out of the
4 closet when they were threatening Timothy, did you get a
5 good look at their faces?

6 A Yes, sir.

7 Q Specifically, did you get a good look at the shorter
8 man with -- who had dreadlock hair at the time?

9 A Yes, sir.

10 Q For how long?

11 A I want to say forty-five seconds to a minute and a
12 half.

13 Q And were you paying particular attention to his face?

14 A Yes, sir. I was pleading with him to please not kill
15 my son.

16 Q Were you focused on anything else?

17 A No, sir.

18 Q Was he holding a weapon?

19 A Yes, he had a gun to my son's head.

20 Q And were you looking at his face during that time?

21 A Yes, sir.

22 Q How close were you to him?

23 A I was five to six feet probably.

24 Q And this was in the living room of your house?

25 A Yes, sir.

1 Q And it was a well-lit room in the middle of the day.

2 A Yes, sir.

3 Q And were you at that distance looking at his face that
4 whole forty-five seconds that you're estimating?

5 A Yes, sir.

6 Q So you got a good look at this face.

7 A Yes.

8 Q Prior to that day, had you ever seen that man or any
9 of the other two men before?

10 A No, sir.

11 Q On or about July 21st, 2016, did you and members of
12 your family meet with Detective Branham at Moss Justice
13 Center?

14 A Yes, sir.

15 Q And who all went with you?

16 A Timothy, Danny and I.

17 Q And Danny is your husband?

18 A Yes, sir.

19 Q Timothy is your son?

20 A Yes, sir.

21 Q How old was Timothy at the time?

22 A Seventeen.

23 Q Did Detective Branham show you a photo lineup?

24 A Yes.

1 Q To your knowledge, did he also show one to Danny and
2 Timothy?

3 A Yes.

4 Q Were you shown the lineup together or separately in --
5 together or separately and individually?

6 A Separately and individually.

7 Q So he would take you one at a time by yourself to show
8 each of you the lineup ---

9 A Yes, sir.

10 Q --- by yourself.

11 A Yes, sir.

12 Q I'm going to hand you the original of that lineup. Do
13 you recognize that?

14 A Yes.

15 Q Do you recognize that, Mrs. Parker?

16 A Yes, I do.

17 Q Is that the six-pack lineup you were shown by
18 Detective Branham on July 21st, 2016?

19 A Yes, sir.

20 Q And there are seven total pages?

21 A Yes, sir.

22 Q So the six pictures plus a sheet at the front that has
23 a disclaimer and affidavit section.

24 A Yes, sir.

1 Q Did Detective Branham or anyone else -- and by that I
2 mean your family members, anyone -- did anyone suggests to
3 you which of the photos to pick out of that lineup?

4 A No, sir.

5 Q So your selection, was that entirely from your memory?

6 A Yes, sir.

7 Q And prior to showing you the -- the grouping of
8 photos, did the detective read to you a disclaimer that's
9 listed on the front page there?

10 A Yes, sir.

11 Q And it says something to the effect that the group of
12 photos may or may not include a picture of the person you
13 recall?

14 A Yes, sir.

15 Q And among other things as well. Right?

16 A Yes.

17 Q Were you able to identify anyone from this group of
18 six photos?

19 A Yes, there was one that stuck out to me.

20 Q Which one of the photos stuck out to you?

21 A Um, show you which one or ---

22 Q Yeah, which -- what page is that in that packet?

23 A That's page one behind the disclaimer.

24 Q Okay, so the second page of that packet but the first
25 photograph.

1 A Yes.

2 Q Okay. And, um, why did he stick out to you?

3 A I recognized him from my home.

4 Q From the home invasion ---

5 A From the home invasion, yes, when he attacked us.

6 Q How certain were you at that time?

7 A Pretty certain, but I started to second guess myself.

8 The disclaimer that's read or written on there says that
9 it's, you know, their -- you know, doesn't necessarily mean
10 that the picture's recent or whatever, and it don't provide
11 the skin tone or things like that. You also can't see
12 height in the pictures or the build or hear their voice or
13 their mannerisms or anything like that, and I knew the guy
14 that is -- was in question was shorter and I -- I just -- I
15 couldn't put a -- be a hundred percent at that moment
16 because -- and I wouldn't dare point the finger or a
17 hundred percent someone without having more information
18 than what I -- just one picture like that.

19 Q And did you explain all this to Detective Branham ---

20 A Yes.

21 Q --- in so many words?

22 A Yes, sir. I asked how old the picture was, and he
23 told me it was an older picture, too, which kind of made me
24 concerned more, too, that I could be wrong possibly at that

1 moment, or not necessarily wrong but that a -- not a
2 hundred percent necessarily I should say.

3 Q I just want to be clear. Did you have anybody else in
4 that lineup that you thought it could've been?

5 A No.

6 Q So you were -- beginning you said you were pretty
7 certain, but you started second-guessing yourself.

8 A Right. Like I had talked to myself, wandering, you
9 know, what if this guy that I (sic) picking out is six
10 five, you know, obviously, that's not him and things like
11 that in my mind.

12 Q It appears underneath that picture that you've
13 indicated, the first one in the grouping, that there --
14 there's forty to fifty percent noted there.

15 A Right.

16 Q Is that your writing?

17 A No.

18 Q Do you recall if Detective Branham wrote that there?

19 A I don't think it's my writing. I don't recall
20 honestly.

21 Q Do you recall telling him that you were forty to fifty
22 percent certain at that point?

23 A Yes. I do remember telling him that.

24 Q And I would imagine, and correct me if I'm wrong,
25 those are probably hard percentages to ---

1 A Yes.

2 Q --- articulate?

3 A Very hard, yes.

4 Q But was that your best ---

5 A Right.

6 Q --- way of expressing yourself to the detective at

7 that time?

8 A Right, yes.

9 Q You can set that off to the side.

10 A (Witness complies)

11 Q Mrs. Parker, you and your husband are victims in this
12 case.

13 A Yes, sir.

14 Q As victims were you notified by state law of a
15 preliminary hearing?

16 A Yes.

17 Q And did you, in fact, attend that hearing?

18 A Yes.

19 Q Was that on November 22nd of 2016?

20 A Yes.

21 Q Was that at The Moss Justice Center?

22 A Yes.

23 Q And, in fact, in this exact courtroom?

24 A Yes, sir.

1 Q Was your husband, Danny Parker, in the courtroom with
2 you?

3 A Yes, he was.

4 Q And how had you been notified of the hearing?

5 A A phone call.

6 Q From whom?

7 A I believe it was a automated call that came through.
8 We had registered for some sort of victim's things. There
9 was a lot of phone calls at that time. I believe that was
10 the way we were notified of that hearing though.

11 Q And were you told at any point in time that you were
12 required to be present for that hearing?

13 A No, sir.

14 Q And had anybody contacted you asking you to be there
15 for a specific purpose?

16 A No, sir.

17 Q So it was simply to inform you of a hearing that you
18 had a right to attend if you so choose?

19 A Yes, sir.

20 Q And you chose to attend.

21 A Yes.

22 Q Did you at some point prior to that learn the names of
23 two of the men that had been -- allegedly been in your home
24 at that point?

25 A Yes.

1 Q And one of the men, had you been informed that his
2 name was Jarnelle Ervin?

3 A Yes, sir.

4 Q And was one of the men that you recall from the home
5 invasion present at the hearing?

6 A Yes.

7 Q Did he speak at the hearing?

8 A Yes, sir.

9 Q Did you see him at the hearing?

10 A Yes, I did.

11 Q How did seeing him and hearing his voice at that
12 hearing make you feel?

13 A My hair stood up. My stomach turned. I mean I knew
14 immediately when I heard his voice -- I had listened to him
15 beat on my son and threaten to take his life and everything
16 else and his -- when he spoke and stood up, I knew
17 immediately without -- beyond a shadow of a doubt. Every
18 fight or flight response your body has came out inside of
19 me.

20 Q Okay, and I just want to be clear. You had heard his
21 voice the day of the ---

22 A Home invasion, yes.

23 Q --- home invasion.

24 A I spent a lot of that time in that closet listening
25 rather than being able to see, so I mean I heard him, yes.

1 Q So you had heard his voice more than just that forty-
2 five seconds ---

3 A Yes.

4 Q --- face-to-face?

5 A Right. I had listened to him talk crap at my family
6 for an hour and a half, you know, at one point, threatening
7 to take my son's life.

8 Q So at the hearing would you say it was more of the
9 voice or more seeing him that caused you to have the
10 reaction or is there any way to tell?

11 A I'm not really certain. Probab -- most likely the
12 voice. That was -- when I heard him speak that moment was
13 a reckoning for me.

14 Q But is it fair to say it's hard to tell which one it
15 was?

16 A Yes.

17 Q Or hard to say I guess I should say.

18 A It's hard to say, yeah.

19 Q And seeing and more importantly hearing his voice that
20 day in November at the preliminary hearing, describe your
21 level of confidence that he was one of the men at that
22 point?

23 A Undeniable. It was ---

24 Q I believe you used ---

25 A --- absolutely positive.

1 Q --- one hundred percent?

2 A One hundred percent.

3 Q Is your testimony today based on your recollection of
4 the events and your certainty that that was him, is that
5 based on your recall of what happened in your home on July
6 11th, 2016?

7 A Yes, sir.

8 Q And do you see the man you've been describing in the
9 courtroom today?

10 A Yes, sir.

11 Q How certain are you that that's the man?

12 A A hundred percent.

13 Q Is there any doubt in your mind whatsoever?

14 A None.

15 Q Does he have a different haircut today?

16 A Yes, he does.

17 Q But you're still certain?

18 A Absolutely.

19 Q Please point him out for the Judge.

20 A He's sitting right there.

21 MR. SHELTON - Your Honor, please note that the
22 witness has indicated to the defendant sitting next to Mr.
23 Steltzner.

24 Mrs. Parker, please answer any questions that Mr.
25 Steltzner may have.

1 MR. STELTZNER - Thank you. I know this is hard
2 for you to do.

3 MRS. PARKER - Yes, sir.

4 CROSS EXAMINATION

5 BY MR. STELTZNER -

6 Q You said that they had bandanas on their faces.
7 Correct?

8 A Yes, sir.

9 Q How long were -- were the bandanas -- so you're saying
10 that ---

11 A They were ---

12 Q I'm sorry?

13 A I'm sorry, you're asking me how long the bandanas were
14 on?

15 Q How long were the bandanas on their faces?

16 A They were falling off. At one point the one was tying
17 me up with the red one, his was falling off then. I went
18 into the closet initially then, so I don't know at what
19 point the bandanas came off, but when I came back out of
20 the closet, there were no bandanas on their faces. They
21 were around their necks.

22 Q Okay, so the closest distance you said you were to the
23 defendant was maybe about five or six feet for about forty-
24 five seconds. Correct?

25 A Yes, sir.

1 Q You were in a high stress situation and you were
2 begging and pleading for your son's life. Is that correct?

3 A Yes, sir.

4 Q Did you note the -- the invader's style of the hair?

5 A Yes, that he had ---

6 Q Was it short dreads or long dreads?

7 A It was longer dreads.

8 Q Thick dreads or skinny dreads?

9 A I don't know much about dreads really, but they were
10 pulled back in a ponytail.

11 Q Any tattoos or any other ---

12 A I did not notice.

13 Q --- markings? Okay, and so -- and so when the police
14 officers came around to you for -- to come in for the
15 photographic lineup, it was about ten days afterwards.

16 Correct?

17 A I guess, yeah.

18 Q And you hadn't seen these people before. Is that
19 correct?

20 A No, sir.

21 Q And so you went through -- you went through the photo
22 lineup. Did you -- did you make an -- so you were
23 unwilling to make a photo identification of any person in
24 any lineups. Is that correct?

1 A I picked one out of the lineup, but I gave a forty to
2 fifty percent ---

3 Q It says in the photographic -- photographic lineup
4 there was no -- you didn't, actually, sign the form. Is
5 that correct?

6 A Right. I freaked out on him, yes.

7 Q So if you were certain, why didn't you sign the form?

8 A Like I said, I started second-guessing myself and just
9 -- I wasn't willing to -- definitely not pointing the
10 finger at someone without being a hundred percent certain.

11 Q Now, Mr. Shelton talks about the preliminary hearing,
12 the hearing that happened -- happened in the Court. And he
13 was the -- the person who was later identified to you as
14 Mr. Ervin. Was he in the courtroom at the time?

15 A Was -- at the time of the hearing?

16 Q Yes.

17 A Yes, sir.

18 Q Was he the only person in the hearing besides --
19 besides court personnel, Mr. Shelton and you guys and the
20 Judge?

21 A I'm not certain.

22 Q Okay. Have you ever mistaken somebody's voice on the
23 phone, somebody else's?

24 A Maybe, I'm not sure. As far as ---

25 MR. STELTZNER - Okay. Thank you.

1 RE-DIRECT EXAMINATION

2 BY MR. SHELTON -

3 Q I just want to be clear. When you were looking --
4 when you were shown the six-pack lineup, did you look at
5 each one of the photographs?

6 A Absolutely, yes, very carefully.

7 COURT REPORTER - She needs to speak up. I'm
8 having trouble hearing her.

9 MR. SHELTON - I'm sorry. Let me back up just to
10 make sure she got that.

11 Q Did you look at each one of the six photographs?

12 A Yes, I did.

13 Q And was anyone else out of those six, did you have any
14 thoughts that they looked like the man?

15 A None, no.

16 Q So just the first photograph you've indicated was the
17 only one that you recall ---

18 A Yes.

19 Q --- looking like one of the men.

20 A Yes.

21 MR. SHELTON - No further.

22 THE COURT - Any follow-up or cross?

23 MR. STELTZNER - Nothing, Your Honor.

24 THE COURT - You can step down and have a seat
25 back in the gallery.

1 MRS. PARKER - Thank you.

2 MR. SHELTON - Your Honor, I figure it'd probably
3 be easiest just to do all of -- kind of part parcel with
4 the detective at the end.

5 THE COURT - Okay.

6 MR. SHELTON - So the next one we'll call is Mr.
7 Danny Parker.

8 DANNY PARKER, AFTER BEING FIRST DULY SWORN,
9 TESTIFIES AS FOLLOWS -

10 MR. SHELTON - Good morning, sir.

11 MR. PARKER - Good morning.

12 DIRECT EXAMINATION

13 BY MR. SHELTON -

14 Q Please state your name for the record.

15 A Danny Preston Parker.

16 Q And, Mr. Parker, make sure you speak up clearly so the
17 court reporter can record everything that you're saying.

18 Okay?

19 A All right.

20 Q Where do you live, sir?

21 A [REDACTED], Clover, South Carolina.

22 Q And what do you do for a job or occupation?

23 A I work for myself. I do commercial and residential
24 fence, landscaping, cut grass.

1 Q And were you working in that capacity back in July of
2 2016?

3 A Sir?

4 Q Was that what you were doing back in July of 2016?

5 A Yes, yes.

6 Q Do you recall the events of July 11th, 2016?

7 A Yes, sir.

8 Q And would you please in your own words describe to the
9 Judge what you recall on that day?

10 A Me and a co-worker were working, stopped by the bank
11 to get money out to make payroll, come home, left my truck
12 running in the driveway. I was going to kiss my wife and
13 tell her that I was going to make payroll and pay my -- my
14 employees, walked through the door, just swung the door
15 open, walked in. The door slammed behind me keeping my co-
16 worker outside actually, it shut so fast. There was a tall
17 black fellow behind the door with a mask on his face
18 waiting on me, told me to get down on the floor. I thought
19 it was a joke. I just like laughed and smiled at him, was
20 like, yeah right, and turned around to go on back to my
21 bedroom. I figured he was one of my kid's friends. He's
22 got -- he has friends come over. So uh, I headed on toward
23 the back of the house to give my wife a kiss and he started
24 hitting me upside the head with a gun down the hallway into
25 my kid's room where I fell upon the floor, seen other guys

1 in my kid's room hitting on my kid with guns, so he left me
2 alone for just a second, so I got up and run and made my
3 way tot he living to where I had a pistol in the side
4 cabinet beside the couch. I got the pistol and turned
5 around and aimed it at the guy who was behind the door and
6 pulled the trigger and it was clicking. My -- didn't know
7 at the time but my finger had been broken from trying to
8 put up to my head where I got hit with the gun. It was my
9 finger clicking. The gun wasn't clicking. It was my broke
10 finger, so they apprehended me and got me tied up and a
11 fellow told -- one of the guys told me, you might as well
12 quit fighting because I got your gun, so I just -- I quit
13 struggling and tried to do whatever I could to get them
14 what they wanted and get them out of my home. Tied up,
15 laid on the floor. Didn't know where my wife was at,
16 because I hadn't seen her. They ended up bringing my son
17 into the living room, tied him up, put him down on the
18 floor. Me -- I was facing this way, and he was faced the
19 other way facing toward me. A guy was putting a gun in the
20 back of his head asking me have I ever seen a person's
21 brains be blowed out. That -- at that time was when my
22 wife come blasting out of the closet begging -- or she said
23 you told me if I stayed in the closet that you wouldn't
24 hurt anybody and y'all just take what you want and then uh,
25 they put her back into the closet and then me and my son

1 are laying face-to-face on the ground both of us bleeding
2 from the head, blood pouring out on my carpet. I could
3 feel blood coming down my back from my finger where my bone
4 was sticking through my finger. The -- they started
5 talking about taking my -- asking me about X pills and
6 where's all the cash at, all the X pills. They said -- one
7 of them said they was going to take my wife to the bank to
8 go get money. I said, nah, we ain't taking nobody to the
9 bank, they's almost two thousand dollars cash in my wallet,
10 take that and get whatever else you want and leave -- leave
11 -- and he said, you pretty smart, pops, that's what we want
12 too, so then they commenced to -- the whole time there's
13 people carrying stuff -- there's a guy carrying stuff out
14 of my house, all our belongings. So they -- let's see --
15 tie up -- they already had me tied up. They put my son
16 with my co-worker in the bathtub in the bathroom, tied them
17 up with a lamp that was in the living room, tied -- bound
18 their hands up with a lamp cord and put them in the bathtub
19 and put a comforter over top of them, then they put me into
20 the little bitty closet in the living with my wife, shoved
21 us in there. I mean it's not a two-person closet. It's
22 really not even a one-man closet, man. And I was like --
23 the door wouldn't shut. They kept trying to slam the door
24 shut on me. I was like, it's not going to shut, man, we
25 don't fit in here, you know. So I just squeezed up against

1 the wall as hard as I could, waited for a couple of minutes
2 til I didn't hear anything else and I spun around and had
3 my wife untie me, and I came out of the closet as one of
4 the guys was coming back through the backdoor from my back
5 yard. He asked me, do you want to get shot, then I suggest
6 you get back in there. I was like, no, I'm just trying to
7 take my family to get my son to the hospital. So I got
8 back in the closet. He was telling the ones outside to go
9 ahead and pull out. I guess they're in the driveway -- go
10 ahead and pull out, at which time they pulled out. And
11 then he -- I could hear him running off down the walkway,
12 and uh, then that's when I come out of the closet and went
13 to my truck. There was another pistol in my truck under my
14 console. I got it out and but by this time they were
15 already gone. I ran -- hollered for the neighbor; she was
16 checking her mail. I hollered for the neighbor and asked
17 her did she see a car, and she said yes she did. I said
18 they just -- they just come in our home. So I jumped in
19 the car with her and we tried to chase them and follow, but
20 they -- they were gone too fast, and we couldn't catch
21 them.

22 Q How long were the three men in your house while you
23 were there?

24 A While I was in there about forty-five minutes to an
25 hour probably.

1 Q And what time of day was this?

2 A Around -- after work, so about 3:00 o'clock, 3:30,
3 around in there.

4 Q And this was inside your home?

5 A Yes, sir.

6 Q Was it well-lit inside?

7 A Yes, sir.

8 Q You said earlier that one of them was wearing a
9 bandana mask?

10 A Yeah, just for a second.

11 Q And so ---

12 A After mine and his scuffle down the hallway he wasn't
13 -- the mask was gone.

14 Q What about -- I think you said there was a shorter
15 guy, as well?

16 A Yeah.

17 Q Was he wearing a mask?

18 A He never had a mask on while I dealt with him. The
19 one guy tried to cover his face when I initially came
20 through the door, but after -- after mine and his scuffle
21 down the hallway, there was no bandanas on anyone anymore.

22 Q So the man you described as scuffling with you down
23 the hallway, describe his general appearance.

24 A The one I fought with down the hallway?

25 Q Yes, sir.

1 A Oh, he's a tall goofy guy about six -- man, what I --
2 what looked like at then about six six, six four, something
3 like that, real tall, skinny, narrow-build fellow.

4 Q Wearing a hat or anything like that?

5 A Yeah, he had a red baseball cap on and a red bandana,
6 but by the time me and him was done scuffling, he had no
7 bandana on anymore. He was just wearing a red ball cap.

8 Q Is he the same man that was telling you you might as
9 well quit, we got your gun now?

10 A Nope.

11 Q Can you describe that man?

12 A The man that was telling me might as well quit, I got
13 your gun now?

14 Q Yes.

15 A He had dreads, short built, short guy.

16 Q And all three men, were they African Americans?

17 A Yes, sir.

18 Q And do you recall what the shorter man with dreadlocks
19 was wearing?

20 A Yes, sir, he was wearing bluer -- bluer-colored shirt,
21 bluer pajamas, socks, flip-flops, like slide-in flip-flops,
22 not the in between your toes flip-flops, and that was it.

23 Q And did you get a good look -- a good look at the face
24 of that man in particular?

25 A Yes, sir, I dealt with him for a while.

1 Q And so they were -- forty-five minutes to an hour they
2 were in the home, so can you kind of estimate how long --
3 how much of that time were you face-to-face with him?

4 A The whole time. The whole time. Between him and the
5 other guy, the whole time they stayed with me.

6 Q And did you get a good look at the face of the other
7 man as well?

8 A Yes, sir.

9 Q And were you paying particular attention to their
10 faces?

11 A Yes, sir, I was paying attention to anything that I
12 could, because I just -- I knew that if for some reason we
13 was to stay alive, that I needed to know every detail that
14 I could know.

15 Q And um, what's the closest you got to either of the
16 men?

17 A Face-to-face.

18 Q Face-to-face.

19 A Yes, sir.

20 Q Particular -- in particular, the shorter man with
21 dreadlocks and the pajama pants and slide flip-flops, how
22 close did you get to him?

23 A Two foot. As I'm laying on the floor, he's the one
24 with the gun in the back of my son's head asking me did --
25 have I ever seen anybody's brains blowed out.

1 Q And what was he doing the rest of the time he was in
2 the house? Do you recall?

3 A Sitting on my couch -- sitting on my couch like this
4 right here looking out my blinds and my window watching for
5 anybody else, because I have another son and they saw the
6 picture on my wall and asked when my other kid was supposed
7 to be home.

8 Q Prior to that day had you ever seen any of these men?

9 A No, sir.

10 Q On July 21st, 2016 did you go with your wife, Dawn,
11 and your son, Timothy, to meet with Detective Branham?

12 A Yes, sir.

13 Q And was that in the sheriff's department here at Moss
14 Justice Center?

15 A Yes, sir.

16 Q And did -- did the detective show you a photo lineup
17 that day?

18 A Yes, sir.

19 Q And to your knowledge did he show a photo lineup to
20 Dawn and Timothy as well?

21 A Yes, sir.

22 Q Were y'all shown those lineups together or separately
23 and individually?

24 A Separate and individually. He took us off each one at
25 a time.

1 Q I'm going to pass up to you your -- what I believe to
2 be the lineup you were shown. Take a second and look at
3 that.

4 A (Witness complies) I need to look at all of them?

5 Q Yeah, just make sure -- make sure we're on the same
6 page here.

7 A (Witness complies) Yes.

8 MR. SHELTON - Your Honor, before I forget, I'd
9 like to go ahead and pre-mark this for identification as
10 State's Number 51.

11 THE COURT - All right.

12 MR. SHELTON - So that way we know which one we're
13 talking about. I hadn't pre-marked Mrs. Parker's yet
14 because there's a question of law whether that's going to
15 be admissible or not, so I was going to see if it's a
16 State's exhibit or a Court's exhibit at the appropriate
17 time.

18 (WHEREUPON, DOCUMENT MARKED AS STATE'S EXHIBIT
19 NUMBER 51.)

20 Q Danny, do you recognize that item that's been marked
21 as State's 51?

22 A Like this paper here? Yes, sir.

23 Q Yes, sir. And is that the six-pack photo lineup the
24 detective showed you that day?

25 A Yes, sir.

1 Q Did the detective or anyone else, including anyone in
2 your family, did they say or do anything to suggest to you
3 which one of the photos to select?

4 A No, sir, they did not have to.

5 Q And did you look at each one of the six photos?

6 A Yes, sir, I did.

7 Q And prior to looking at those photos, did Detective
8 Branham read you the disclaimer that's outlined on the
9 first page of that packet?

10 A Yes, sir, he did.

11 Q And were you able to identify anyone from this group
12 of photos?

13 A Yes, sir, I was.

14 Q Which one?

15 A Number one.

16 Q The first photo?

17 A Yes, sir.

18 Q And specifically by identifying him, were you
19 indicating to the detective he was one of the people who
20 invaded your home on July 11th?

21 A Yes, sir.

22 Q And are you certain?

23 A One hundred percent. I dealt with him for a while.

24 Q Did you tell Detective Branham that?

25 A Yes, sir.

1 Q And did you mark your selection in any way?

2 A Yes, sir, circled it and put my name on it.

3 Q And on the first page of that packet there's an
4 affidavit section for the first page. Did you sign
5 indicating that your was selection?

6 A Yes, sir.

7 Q And that's your signature on it.

8 A Yes, sir.

9 Q And do you see that man in the courtroom today?

10 A Yes, sir.

11 Q Please point him out for the jury -- or for the Judge.

12 A Sitting right there.

13 Q How certain are you?

14 A One hundred percent certain. Even with the new
15 haircut.

16 THE COURT - Please note that he's indicated --
17 pointed towards the defendant sitting next to Mr.
18 Steltzner.

19 Q And, Danny, did you go with your wife, Dawn, to a
20 preliminary hearing on November 22nd, 2016?

21 A Yes, sir.

22 Q Here at Moss Justice Center?

23 A Right here in this room.

24 Q And had you been -- how had you been notified of the
25 hearing?

1 A My wife got a thing on the e-mail or something on the
2 computer where we had signed up for the victim's thing,
3 notified e-mail, call, something, somehow or another.

4 Q She told you that there was hearing ---

5 A My wife informed me that it was to be held here.

6 Q And was it your understanding that y'all could be
7 there if you wanted to be?

8 A Yes, sir.

9 Q But weren't told to be.

10 A Weren't told to be, didn't have to come.

11 Q And was the man you had picked out of the lineup
12 present for that hearing?

13 A Yes, sir.

14 Q Have you since then learned that man's name is
15 Jarnelle -- or at some point learned that man's name is
16 Jarnelle Ervin?

17 A Yes, sir.

18 Q Did that man speak at the hearing?

19 A Yes, he did.

20 Q And does the fact that he was present and spoke at the
21 hearing have any impact on your recollection of what
22 happened on July 11th, 2016?

23 A I already knew who he was.

24 Q So it had no impact on your ability to identify him in
25 Court?

1 A No, I didn't need no -- no more reassurance.

2 MR. SHELTON - Okay, please answer any questions

3 Mr. Steltzner may have.

4 CROSS EXAMINATION

5 BY MR. STELTZNER -

6 Q Okay, so just to begin, how tall are you?

7 A Five ten.

8 Q Five ten. Okay. And you said this man was a little
9 shorter than you. Correct?

10 A Little bit shorter than me.

11 Q Okay. And were you able to observe the dreads on him?
12 Were they long dreads or short dreads?

13 A Medium size.

14 Q Okay. Okay, were they thin dreads or the thick
15 dreads?

16 A Medium size. They weren't -- they weren't very, very
17 skinny, and they weren't very thick. They were probably a
18 little bit bigger than a pencil, ---

19 Q Okay.

20 A --- reddish kind of tips.

21 Q Any colorization or anything like that?

22 A Reddish kind of -- reddish kind of end toward the ends
23 of them.

24 Q Okay. And you said that they were -- you were in the
25 house for about a hour. Is that correct?

1 A Yep.

2 Q Okay. So you'd never seen -- you'd never seen these
3 men in your life.

4 A No. No, sir.

5 Q And so -- and so ten days later you went to -- you
6 went to -- you went pick them out of a lineup. Is that
7 correct?

8 A I don't know exactly how many days later it was, but I
9 did go pick them out of a lineup on apparently 7/21.

10 Q Okay. So that would be ten -- that would be ten days.
11 Is that correct?

12 A All right.

13 Q Okay. Were you ever told the picture of the man that
14 you chose was an older picture?

15 A Was I ever told it was an older picture?

16 Q Yes.

17 A I never asked was it an older picture. I didn't.

18 Q Okay. You said he was the man who was holding over
19 your -- holding a gun over your head.

20 A My son -- to the back of my son's head looking me in
21 the face asking me have I ever seen anybody's brains be
22 blowed out.

23 Q Okay. And did you -- and was this the -- was this the
24 guy who was carrying stuff out to the car?

25 A No.

Timothy P. - DIRECT BY MR. SHELTON

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1 Q Okay. Okay.

2 A No, it was not the guy carrying stuff to the car.

3 MR. STELTZNER - Thank you. No further questions.

4 THE COURT - Re-direct?

5 MR. SHELTON - None.

6 THE COURT - All right, you can step down. Thank
7 you for coming.

8 MR. PARKER - Okay, sir. Oh, what do I need to do
9 with this?

10 THE COURT - Just hand it to that lady.

11 (WHEREUPON, WITNESS COMPLIES)

12 THE COURT - Thank you.

13 MR. SHELTON - All right, Your Honor, next I will
14 call Timothy P.

15 Timothy P. , AFTER BEING FIRST DULY SWORN,

16 TESTIFIES AS FOLLOWS -

17 MR. SHELTON - Your Honor, I can pass you up the
18 two lineups we've already talked about.

19 (WHEREUPON, DOCUMENTS HANDED UP TO THE COURT)

20 DIRECT EXAMINATION

21 BY MR. SHELTON -

22 Q Please stated your full name.

23 A Timothy P.

24 Q Timothy, how old are you?

25 A Nineteen.

1 Q Do you live with your parents?

2 A Yes, sir.

3 THE COURT - You need to speak up.

4 A Yes, sir.

5 Q And is that on Birchwood?

6 A Yes, sir.

7 Q Were you living there with them in July of 2016?

8 A Yes, sir.

9 Q Do you recall the events of July 11th, 2016?

10 A Yes, sir.

11 Q And if you would please briefly describe in your words
12 what you recall on that day.

13 A I woke and looked to the backdoor and saw a gun coming
14 through the glass after they'd broken it and instinct so I
15 just turned and ended up getting underneath the coffee
16 table at the corner of my living room, and after that they
17 came over and got in my face with the guns and they were
18 screaming at me where's Tim, where's Tim, where's Tim, and
19 I think either my mom said it or I said I was like, I'm
20 here, and after that they -- I got up from behind the
21 coffee table, and they took me to the -- in the hallway at
22 my bedroom and started going through my stuff. I told
23 them, I said, I have a little bit of weed -- I didn't know
24 if that's what it was about -- and I gave them that, and
25 then not long after that my dad came home and I heard them

Timothy P.

- DIRECT BY MR. SHELTON

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1 start beating him, and so I took the gun from the one
2 behind me, and as another one came from the door I turned
3 and tried to shoot him, flipped the safety, kept pulling
4 the trigger, nothing. I got -- I was trying to pull back
5 the sight on it, but I believe it was a BB gun, and after
6 that I kind of tossed the gun and then they started beating
7 me with the guns on the couch, and I just laid there for a
8 second and pretended like I was unconscious and after that
9 I heard my dad go down the hallway, but I was just thinking
10 should I jump out the window, should I just go and find
11 some -- find someone else and um, after that they ended up
12 taking me to the living room, putting me down on the living
13 room floor and they were -- had us all there just pretty
14 much talking crap, taunting us and they were saying
15 something about life is too short, like that, why would you
16 do some girl like that ---

17 THE COURT - You need to speak -- you need to
18 speak up.

19 A They were saying why would I do something like that to
20 this girl or why I did something like that to Shorty, and I
21 didn't know who they were talking about, and I still don't
22 know what they were talking about, and after that they were
23 carrying stuff in and out of the house for a while and just
24 standing there talking crap and asking if I'd ever seen
25 anybody's brain blowed out and uh, -- (pause) then after

1 that they, uh, -- I think they ended up leaving shortly
2 after that. Well, they put me in the bathtub, tied me up
3 with a heat lamp cord and then tied Will up with a standing
4 lamp cord, threw a cover over us and then left us there and
5 after that they left. I heard them talking to my parents,
6 told them to get back in the closet a couple of times.

7 Q Timothy, had you had your wisdom teeth removed earlier
8 that day?

9 A Yes, sir. I was recovering from anesthesia whenever
10 they came through the door.

11 Q Had you been given any pain medication?

12 A I don't recall. I remember a short video getting
13 taken and I believe I put it on my Snapchat at some point,
14 but other than that, it's just all -- all black.

15 Q And despite at least coming out of anesthesia you have
16 at least a decent recollection of the events from that
17 afternoon?

18 A Yes, sir.

19 Q How many men were there?

20 A Three. I remember two vividly and then the third I
21 believe was carrying stuff in and out as the other two were
22 ---

23 Q And was one taller and one shorter?

24 A Yes, sir.

25 Q Were they wearing bandana masks?

Timothy P.

- DIRECT BY MR. SHELTON

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1 A I recall one of them was, and I didn't see the other
2 one that much.

3 Q Which of the two do you recall wearing bandana masks?

4 A The shorter one.

5 Q Do you recall his hairstyle?

6 A Yes, sir, about ---

7 Q What was it?

8 A About medium-length dreads. I believe they were about
9 medium in size.

10 Q Do you have any recollection of what that man was
11 wearing?

12 A I remember a bandana from about his nose up and other
13 than that I didn't ---

14 Q From his nose down do you mean?

15 A Yes, sir.

16 Q Covering the bottom part of his face?

17 A Yes, sir.

18 Q Could you tell what kind of shoes he was wearing?

19 A Flip-flops. I'd saw them when he was sitting on the
20 couch looking out the window and when he was sitting on the
21 coffee table.

22 Q Did you ever see that man without his face covered by
23 the bandana mask?

24 A No, sir.

1 Q Did you spend most of your time in the back of the
2 house?

3 A Yes, sir and face down in the living room.

4 Q And when you were face down on the floor, was that man
5 behind you or in front of you?

6 A He was in front of me sitting on my coffee table.

7 Q Were you looking at the floor or were you looking at
8 him?

9 A I was looking at the floor.

10 Q From the time that you did see him with the -- see the
11 man with the bandana mask on, did you get a good look at
12 his face even though it was covered with the bandana mask?

13 A Yes, sir.

14 Q At least from the nose up is what I'm trying to say.

15 A Yes, sir.

16 Q How close were you to him at that point?

17 A Couple of feet.

18 Q For approximately how long?

19 A Just a couple of seconds.

20 Q This was in the middle of the day in your home. Was
21 the lighting good?

22 A Yes, sir. It was right at the beginning of the
23 hallway and we normally don't keep the hallway light on, so
24 there wasn't too -- there wasn't much light but still
25 plenty enough for me to see him.

Timothy P.

- DIRECT BY MR. SHELTON

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1 Q And do you recall meeting with Detective Branham with
2 your parents on the 21st of July, 2016?

3 A Yes, sir.

4 Q At The Moss Justice Center?

5 A Yes, sir.

6 Q Do you recall the detective showing you a photo
7 lineup?

8 A Yes, sir.

9 Q And did he show that lineup to you by yourself or were
10 your parents there?

11 A By myself.

12 Q Did he take you into another room?

13 A Yes, sir.

14 Q I'm going to hand up to you what I believe to be the
15 lineup you were shown. If you would take -- take just a
16 second to look at that.

17 A (Witness complies)

18 Q Before I ask you about that lineup, I forgot to ask
19 you a question. Had you ever seen any of those men before?

20 A No, sir.

21 Q And is it your belief that they did not know who you
22 were based on asking who's Tim to your face?

23 A Yes, sir.

24 Q Do you recognize the item you're holding in your hand?

25 A Yes, sir.

1 Q And is that the six-pack lineup Detective Branham
2 showed you?

3 A Yes, sir.

4 Q Did Detective Branham or anyone else including your
5 parents say or do anything to suggest to you which of the
6 photos to select?

7 A No, sir. I did ask about the age of the photos, and
8 he said that it was about two years old at the time.

9 Q So you asked Detective Branham how old the photograph
10 was?

11 A Yes, sir.

12 Q One in particular or all of them?

13 A Yes, sir, just that one, or number five specifically.

14 Q And did the detective read the disclaimer on the first
15 page to you prior to you looking at the photos?

16 A Yes, sir.

17 Q Did you look at all six?

18 A Yes, sir.

19 Q And were you able to recognize or identify anyone from
20 that group of photos?

21 A Number 5 on the lineup I was decently certain. It was
22 the only one of any that looked even familiar whatsoever
23 and ---

24 Q When you say decently certainly, did you indicate at
25 some point you were fifty percent certain?

1 A Yes, sir.

2 Q And is there writing underneath that photograph ---

3 A Yes, sir.

4 Q --- indicating you saying ---

5 A I believe so. Yes, sir, I said I'm fifty percent sure
6 this is one of the individuals that was in my home.

7 Q Okay, and is that your handwriting?

8 A Yes, sir, and my initials underneath the -- so ---

9 Q So I think you already said that, but was there anyone
10 else in the lineup that you thought could've been involved?

11 A No, sir.

12 Q Just the one, just photo number five.

13 A Yes, sir.

14 Q Did you sign the affidavit on the first page?

15 A Yes, sir.

16 Q And you never got a complete look at the man's face.

17 A No, sir.

18 MR. SHELTON - All right, please answer any
19 questions Mr. Steltzner may have.

20 CROSS EXAMINATION

21 BY MR. STELTZNER -

22 Q You said you had -- you had dental surgery that day.

23 Is that correct?

24 A Yes, sir.

1 Q And you were under -- was it local or general
2 anesthesia?

3 A I believe general, because I would've been blacked
4 out.

5 Q And so after the surgery I assume your mom took you
6 home. Would that be correct?

7 A Yes, sir.

8 Q And she put you on the couch to sleep. Is that
9 correct?

10 A Yes, sir.

11 Q Okay, and then you said three black men came into the
12 -- or you just said that one -- you said that one of them
13 was -- one of them was short. How tall are you?

14 A About five nine, five ten.

15 Q Okay. All right. So -- so you came -- so basically
16 you -- were you -- did you have any other drugs at the
17 time? You said that you didn't or ---

18 A Just ---

19 Q --- you can't recall. Is that correct?

20 A It would've been ---

21 COURT REPORTER - He needs to speak up a little
22 bit.

23 A No, sir. None over that what was stated.

24 Q Okay.

Timothy P. - RE-DIRECT BY MR. SHELTON

53

1 A Well, I guess there would've been pain medicine at the
2 time for the wisdom teeth surgery, but they told us that we
3 could keep that so.

4 Q Okay. Were you taking any other drugs at the time of
5 your surgery?

6 A No, sir.

7 Q And had a drug test been performed on you at the time,
8 could you have passed it?

9 A No, sir, would've been flagged for THC.

10 Q So you're basically -- you were smoking weed?

11 A Yes, sir, in small amounts.

12 Q All right, now, you were only forty -- fifty percent
13 certain that the person in the photographic lineup was the
14 subject of this in your home.

15 A Yes, sir.

16 COURT REPORTER - He needs to speak up.

17 A Yes, sir.

18 Q But not a hundred percent certain. Correct?

19 A No, sir.

20 MR. STELTZNER - All right. I have nothing
21 further, Your Honor.

22 RE-DIRECT EXAMINATION

23 BY MR. SHELTON -

24 Q Timothy, were you -- one more question. Were you
25 smoking weed on July 11th, 2016?

1 A No, sir. I didn't smoke the night before as well,
2 because I didn't know if it would have an conflict with the
3 anesthesia or -- I was told not to eat before, so I didn't
4 do anything else as well.

5 Q But you do admit that you had smoked marijuana in the
6 recent past, just not within the last night or that day.

7 A No, sir.

8 MR. SHELTON - Okay. Thank you.

9 THE COURT - You can step down. Thank you.

10 MR. SHELTON - All right, finally, Your Honor, we
11 would call Detective Pete Branham.

12 PETE BRANHAM, AFTER BEING FIRST DULY SWORN,

13 TESTIFIES AS FOLLOWS -

14 DIRECT EXAMINATION

15 BY MR. SHELTON -

16 Q Please state your name.

17 A My name is Pete Branham.

18 Q What do you do for a living?

19 A Currently I am a lieutenant over the property crimes
20 unit at the York County Sheriff's office.

21 Q How long have you been in law enforcement?

22 A For over 22 years.

23 Q And what was your assignment in July of 2016?

24 A I was assigned as a detective for the crimes against
25 persons unit at the sheriff's office.

1 Q And were -- are you the lead investigator in this
2 case?

3 A I am.

4 Q Can you briefly explain how Jarnelle Ervin was
5 developed as a suspect?

6 A Yes. During the time on July 11th Investigator George
7 Weeks with our forensics unit went and processed the scene
8 at [REDACTED] where the incident took place that
9 day. Investigator Weeks was able to develop a fingerprint
10 off of a television that one of the suspects attempted to
11 remove from inside the home. That print was then run on
12 AFIS and was matched to a gentleman by the name of Jermaine
13 Lowery. Detective Strickland who was present at the scene
14 on July 11th, based on the information and the fact that
15 the Parkers did not know Mr. Lowery, signed an arrest
16 warrant for burglary first degree for Jermaine Lowery and
17 then given the fact that he had a Charlotte address, asked
18 for assistance from the Charlotte Mecklenburg Police
19 Department. Jermaine Lowery was also entered in the NCIC
20 as wanted and then at the same time the -- our unit which
21 is our ACT Team got with the violent crime action team in
22 Charlotte to go and look down -- or go look for Jermaine
23 Lowery at a current residence they had. Mr. Lowery was
24 also on probation at the time and North Carolina Probation
25 and Parole went with the VCAT Unit to go apprehend Mr.

1 Lowery. During the time on July the 14th Mr. Lowery was
2 apprehended, part of the rea -- part of the reason why the
3 probation and parole got out with him was he was in
4 violation of being past-due on his curfew for being at
5 home, but when Mr. Lowery was seen outside, because there
6 was descriptions given to the VCAT Unit that Mr. Lowery may
7 be in the -- may be in a blue Ford Explorer or a blue Ford
8 SUV or a blue SUV that was seen at the vicinity of the
9 crime that happened on July 11th and that the description
10 of the other males could be a shorter black male, twenty-
11 ish, medium to longer dreads, another shorter black male
12 with short dreads could be two of the other suspects given
13 off the description that the Parkers had given us at the
14 time the incident had occurred, so when the VCAT Unit and
15 the North Carolina Probation and Parole got out with Mr.
16 Lowery, he was in the accompaniment of Mr. Jarnelle Ervin,
17 Jarnelle Ladarius Ervin and Mr. Xzavier Sanchez Horton who
18 was driving an older model blue Ford Explorer at the time.
19 Also, there was a Deion Boyd that was hanging around with
20 the group at the time who was later arrested by them for
21 outstanding warrants that the Charlotte Mecklenburg Police
22 Department had on them. I went up to Charlotte Mecklenburg
23 Police Department and spoke with Investigator, Cicio,
24 because at the time of Mr. Ervin's arrest, they had done a
25 consensual search of Mr. Lowery's home and found a X-Box.

1 One and a flat screen television and that they seized that
2 Mr. Lowery's younger brother told them that the um -- those
3 items had been brought into the home the same day of the
4 robbery and those two items were similar to the ones that
5 we had stolen in the home during the time of the invasion
6 on July the 11th. Also during that time the officers
7 seized three cell phones that were in Lowery's possession,
8 two being on his person and one being inside the residence.
9 And Investigator Cicio with the Charlotte Mecklenburg
10 Police Department advised that there were pictures on one
11 of the cell phones that had a Ruger Mini 14 which was very
12 descriptive of one of the guns stolen from the Parker's
13 residence, also along with a 50 inch plus television that
14 also matched the description of an item that was stolen
15 from the Parker's residence at the time. So myself and
16 Detective Stickland on July the 18th, 2016 met with Officer
17 Cicio at the Charlotte Mecklenburg Police Department
18 central location on Trade Street to recover the evidence at
19 the time of the incident. So we recovered the cell phones
20 and the X-Box One and the television that had been
21 recovered, and then we went back to Cicio's main office
22 over off Steele Creek, and she then in turn -- because of
23 the -- the photos that she had sent us and the fact that
24 they matched descriptions of the people that the Parkers
25 had given at the time of the incident, she printed out

1 photo lineups for us on Mr. Jarnelle Ervin and also on Dion
2 Boyd. The only picture that they had in their database at
3 the time for Mr. Xzavier Sanchez Horton, he had short hair
4 and didn't match the description. They gave us a picture
5 but did not print out a photo lineup, because it just
6 didn't match the description of what the Parkers had given
7 us at the time of the -- at the residence. So after
8 recovering the evidence, I then set up an appointment to
9 meet with the Parkers at my office on July the 21st, two-
10 fold, one, to return back the property, because during a
11 search of the X-Box One, I was able to determine that the
12 X-Box One belonged to Timothy P. given the fact that it
13 had user ID names with his name in it and also that
14 Jermaine Lowery or someone to that extent had created a
15 user name of Jermaine Lowery inside the system as well, so
16 I felt very confident that the X-Box One along with the
17 television were items that were seized and stolen from the
18 Parker's residence. And then at that time that's when I
19 met with each one of them individually to show them the
20 photographic lineups that I had gotten from Officer Cicio
21 from Charlotte Mecklenburg Police Department.

22 Q So Detective Cicio prepared the lineup for you?

23 A She did.

1 Q And were you advised the names, date of birth,
2 etcetera of the individual -- six individuals depicted
3 therein?

4 A Yeah, there was a database that they had created with
5 those little jail numbers that associate with someone at
6 the jail to be able to pin back to names and date of births
7 on individuals.

8 Q Specifically, were you advised that a photograph of
9 Jarnelle Ervin was included in that six-pack?

10 A Yes.

11 Q Did you share those -- that information with the
12 Parkers at any time?

13 A Prior to the lineup?

14 Q Yes, sir.

15 A Not prior to the lineup, no.

16 Q Were the six photos grouped together on one page or
17 were they prepared as separate individual ---

18 A They were prepared as separate six individual pieces
19 of paper.

20 Q And how were they presented to the Parkers?

21 A The way -- the way I presented them was we sat down at
22 the table in our conference room so we'd have a large area
23 to work with. I laid each individual out upside down so
24 where they're face down, if you will. I didn't pay
25 attention to the order, because normally we show a one-page

1 six-pack lineup from our records, so I laid them out
2 individually. I then read the disclaimer on our affidavit
3 and then -- from past experiences on showing the six-pack
4 like that, some people get to the first one and they
5 automatically judge and then after they go through the rest
6 of the lineup, they're, oh, I made a mistake, so to keep
7 from that, I tell them, please turn each page over
8 individually, look at it, and then make a decision if that
9 person -- after, you know, reading the affidavit, if that
10 person is in there, don't make a hasty -- hasty choice, and
11 um -- so anyway I laid each one of them out individually in
12 front of them and then read my disclaimer and then they
13 folded them over each one by one and looked at them.

14 Q And did you show the same six photos to each one of
15 the three Parkers?

16 A I did.

17 Q And were they -- were they in exact same order each
18 time you showed you them?

19 A They were -- they were mixed up a little bit, because
20 I actually turned them -- the whole packet over myself. I
21 had tried to get it all together to get it -- to basically
22 get the Parkers in and out. I didn't want to hold them up;
23 I didn't want to hold me up. It was late in the afternoon,
24 so I tried to get everything in order so I just placed them
25 out. I didn't -- to be honest with you, I didn't even -- I

1 knew the packet, but I didn't know what order I was placing
2 them in.

3 Q And you testified that each one was shown the six
4 photos separately and individually?

5 A That is correct. I called them back each one at a
6 time.

7 Q And was this on July 21st, 2016?

8 A It was.

9 Q At sheriff's department at Moss Justice Center?

10 A Yes, it was.

11 Q Approximately, what time?

12 A May I look at the lineup?

13 Q Certainly. I believe they're right there in front of
14 you.

15 A Just to be clear, I showed Mr. Danny Parker his at
16 4:35, Mrs. Dawn Parker at 4:25 and Mr. Timothy P. at 16
17 -- or 4:40, so it was about 4:30, 4:40 in the afternoon.

18 Q So the order was you showed Dawn first, then Danny,
19 then Timothy.

20 A That is correct.

21 Q And did you watch them look at each one of the
22 photographs?

23 A Yes.

24 Q And did you read the disclaimer on the first page?

25 A Yes, I did.

1 Q Is that part of your standard procedure for showing a
2 witness a photo lineup?

3 A It is.

4 Q And what's the purpose of that disclaimer?

5 A Just to let them know that the pictures -- because the
6 printers, colors could be different, the photos could be of
7 -- you know, several years back. It could show people with
8 shorter hair, longer hair, people have facial hair, people
9 don't have facial hair, just to let them know that it could
10 be different than what they actually physically saw that
11 person at the time.

12 Q So you want to make sure that they're giving a
13 reliable identification.

14 A That is correct.

15 Q Did you say anything to any of the three Parkers to
16 suggest which photograph to select?

17 A No, like I said, the only thing I say after reading
18 the disclaimer is please, in that timeframe, is look at
19 each one of them individually before you -- if you make a
20 decision or if you're going to make a decision, please
21 don't hastily make one without looking over all of them
22 first.

23 Q And was this the only lineup they shown as it relates
24 to identification of Jarnelle Ervin?

25 A That is correct.

1 Q All right, I would like to walk you through them.

2 Let's start with Dawn's. I believe you have that original
3 in front of you there. Is that correct?

4 A Yes, sir.

5 Q And do you recognize it as being the original lineup?

6 A I do.

7 MR. SHELTON - Your Honor, at this time I would
8 move to admit for purpose of this hearing with the
9 understanding that depending on your ruling, this will
10 either be a Court's or a State's Exhibit?

11 THE COURT - All right. It's -- you've lost me.

12 MR. SHELTON - I'm sorry.

13 THE COURT - I thought it was already in for ID.

14 MR. SHELTON - I hadn't actually like moved it in.
15 We've been referencing it so ---

16 THE COURT - All right, well, you're moving it in
17 ---

18 MR. SHELTON - Just for the purpose of this
19 hearing. I think as a Court's Exhibit ---

20 THE COURT - Let me ask the court reporter. How
21 does that end up getting marked?

22 COURT REPORTER - I don't know. Is it ---

23 THE COURT - It's got to be ID or into evidence --

24 -

25 COURT REPORTER - Is it the State's 51?

1 THE COURT - We'll make it a Court's Exhibit at
2 this point.

3 COURT REPORTER - Okay.

4 THE COURT - How about that?

5 MR. SHELTON - Yes, sir, that'll be good.

6 COURT REPORTER - Is it the one you have up there?

7 THE COURT - I don't have any.

8 MR. SHELTON - That one did not have a number yet,
9 so the one that we're talking about is just simply a
10 Court's Exhibit at this point.

11 COURT REPORTER - Thank you.

12 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
13 NUMBER 1.)

14 Q All right, detective, will you please read the
15 disclaimer that you advised Dawn prior to showing her that
16 lineup?

17 A Yes. This is the part that we would read to the
18 witness: In a moment I'm going to show you a group of
19 photographs. This group of photographs may or may not
20 contain a picture of the person who committed the crime now
21 being investigated. Keep in mind that hair styles, beards
22 and mustaches may be easily changed, also photographs may
23 not always depict the true complexion of a person. It may
24 be lighter or darker than shown in the photographs. Pay no
25 attention to any markings or numbers that may appear on the

1 photographs or any other differences in the type or the
2 style of the photographs. When you have looked at all the
3 photographs, tell me whether you see the person who
4 committed the crime. Do not tell others that you have or
5 have not identified anyone.

6 Q And is that the same disclaimer you read before
7 showing each of the three Parkers their lineup?

8 A It is.

9 Q And specifically to Dawn, did she look at each of
10 these photos?

11 A She did.

12 Q And did she select or indicate that any of them looked
13 like one of the people?

14 A Yes, she did stop at -- which is marked as photograph
15 number one, which was a picture of Mr. Jarnelle Ervin.

16 Q And you know that's a picture of Ervin because Cicio
17 had told you that that's a picture of him.

18 A That is correct.

19 Q Was Mrs. Parker certain in her selection?

20 A She was not a hundred percent correct. She did
21 question me about the age of the photo. We did after -- we
22 looked at all of them. We stopped and that's -- you know,
23 she picked that one out, and I'm like, well, what's your
24 hesitancy, and she asked me about the age of the -- of the
25 photograph, and then I told her it could be a couple years

1 old and she was -- didn't want to make a positive
2 affirmation on it given the fact of the picture itself. So
3 I asked her -- because part of our policy is, we ask what
4 percentage would you say if you had to think that was the
5 person that committed the crime, and so she estimated
6 forty, fifty percent is what she thought or felt that
7 that's the person it was.

8 Q But that is a known photograph of Jarnelle Ervin, she
9 just was not certain from looking at it that that was one
10 of the men.

11 A That is correct. She did ask me about -- and I didn't
12 go into the height or the weight and -- and, you know, I
13 just told her it was a couple years old photograph. I
14 didn't go into how tall that person was or their stats.

15 Q Did she ask you anything about the height, weight,
16 anything like that?

17 A She -- she just mentioned the fact that she couldn't
18 tell based off the photograph.

19 Q Based just off the photograph.

20 A Yeah, just based on the photograph it was hard for her
21 to determine that.

22 Q And did she -- did she sign that affidavit?

23 A No, she did not sign this one, because she wasn't a
24 hundred percent correct on this one, or she wasn't a
25 hundred percent on this one, so she did not sign it.

PETE BRANHAM - DIRECT BY MR. SHELTON

1 Q I think you used the word -- she wasn't a hundred
2 percent certain or confident. Is that what you're meaning
3 in your ---

4 A That's correct. Yeah, she just -- I just put not
5 positive and then witnessed it.

6 Q Did you sign that as a witness?

7 A Yes.

8 Q Okay. Let's transition to Danny's. That's what's
9 been pre-marked as State's Number 51. Do you recognize
10 that item?

11 A I do.

12 Q That's the original?

13 A Yes, it is.

14 Q And are all six photographs plus the advisement and
15 affidavit page included therein?

16 A They are.

17 Q Is it true and accurate?

18 A It is.

19 MR. SHELTON - Your Honor, I'd move to admit for
20 the purpose of this hearing.

21 THE COURT - Which one is it?

22 MR. SHELTON - Danny's, State's Number 51.

23 THE COURT - Court's Exhibit.

24 Q Did you advise ---

25 COURT REPORTER - You want me to mark ---

1 MR. SHELTON - I'm sorry.

2 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
3 NUMBER 2.)

4 Q Detective, did you advise the same disclaimer to Danny
5 prior to showing the lineup?

6 A I did.

7 Q And he looked at all six photos?

8 A He did.

9 Q Did he mark a selection?

10 A He did.

11 Q Which one?

12 A He marked picture that I have tabbed as number one,
13 which was a photograph of Jarnelle Ervin.

14 Q And did he hesitate in any way?

15 A He did not.

16 Q How confident was he?

17 A He was a hundred percent.

18 Q Was that noted on the -- on his lineup?

19 A It is. It's marked with a hundred percent on the
20 front of the affidavit sheet.

21 Q And do you see Jarnelle Ervin present in the
22 courtroom?

23 A I do.

24 Q Please point him out for the Judge.

25 A Yes, sitting in defense chair.

1 MR. SHELTON - Your Honor, please let the record
2 reflect he's pointing to the defendant sitting next to his
3 Attorney, Mr. Steltzner.

4 Q Did Danny sign that affidavit?

5 A He did.

6 Q And did you fill in the blanks on that affidavit?

7 A I did, yes.

8 Q Specifically, where it says he selected photo number
9 one, that was filled in after his viewing?

10 A That is correct.

11 Q And he signed it indicating that that was his
12 identification, and you signed it as a witness?

13 A That is correct.

14 Q Let's finally -- let's transition over to Timothy's.
15 I believe it's there in front of you.

16 MR. SHELTON - We need to mark that as Court's
17 Exhibit as well, Your Honor.

18 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
19 NUMBER 3.)

20 Q Do you recognize that item?

21 A I do.

22 Q Is that the original lineup shown to Timothy P. ?

23 A Yes, it is.

24 Q Contains all seven pages with the six pictures and the
25 cover page?

1 A It does.

2 Q Is it true and accurate?

3 A It is.

4 MR. SHELTON - I'd move to admit this for the
5 purpose of the hearing, Your Honor.

6 THE COURT - Court's Exhibit.

7 Q And you read him the same disclaimer or advisement
8 prior to showing him the lineup?

9 A I sure did.

10 Q He looked at all six lineups?

11 A He did.

12 Q All six photos of them?

13 A Yes, sir.

14 Q And that was separate from him and his parents?

15 A That is correct.

16 Q Did he mark a selection?

17 A He did. He marked which I denoted as picture number
18 five which was a picture of Mr. Jarnelle Ervin.

19 Q And was he certain in his selection?

20 A He was not a hundred percent certain. He was about
21 fifty percent.

22 Q And did he -- did he indicate to the same -- the same
23 to you when he was making his selection?

24 A Yes, he did.

25 Q And did he initial that picture?

1 A He did and he also wrote on there I am fifty percent
2 sure this is one of the individuals that was in my home
3 that day.

4 Q And that's a photograph of Jarnelle Ervin as well?

5 A That is, yes.

6 Q Timothy signed that affidavit?

7 A He did.

8 Q And did you sign it as well?

9 A I did.

10 Q And below -- below Timothy's signature there appears
11 to be a handwritten word, short? Is that correct?

12 A Yes.

13 Q Who wrote that?

14 A Um, it almost seems as if I did, but I'm not sure for
15 the reasoning why.

16 Q Okay. You can't recall why?

17 A No, I can't recall why.

18 Q And you signed the affidavit as a witness?

19 A I did.

20 MR. SHELTON - Okay. Please answer any questions
21 Mr. Steltzner may have.

22 MR. BRANHAM - Yes.

23 MR. STELTZNER - All right.

24 CROSS EXAMINATION

25 BY MR. STELTZNER -

1 Q You said that -- that prior to -- prior to receiving
2 the lineup no physical evidence had been gathered concerned
3 Mr. Lowery -- I'm sorry, Mr. Ervin. Is that correct?

4 A That is correct, yes, sir.

5 Q All right. So Mr. -- so when Mr. Ervin was placed in
6 the lineup, did you know which one he was?

7 A Rephrase that again or help me understand your
8 question.

9 Q When you received the lineup from -- from the
10 detective, the detective from CMPD, did you know which
11 photo was Mr. Ervin?

12 A Yeah, I knew which photo was his, yes.

13 Q Okay. All right. And from what you had heard -- what
14 -- let me get this straight. Was Ervin with Lowery at the
15 time of his arrest?

16 A Yes. He was -- from what I understand, he was with
17 him prior to his arrest. I'm not sure -- you'll have to
18 ask Officer Cicio, but there was a group of three or four
19 of them together and they may have let Mr. Lowery walk off
20 or they may have approached him. I'm not really sure on
21 the whole dynamics of the arrest itself, but Mr. Ervin was
22 identified as one of the group along with that blue SUV
23 that was identified or possibly identified to match the
24 same one that may have been involved in the Parkers'
25 incident.

1 MR. STELTZNER - Okay. All right, nothing
2 further.

3 MR. SHELTON - No re-direct.

4 THE COURT - You can step down.

5 MR. SHELTON - Your Honor, that's our proffer.
6 Your Honor, I do want to note ---

7 THE COURT - All right, it's a quarter after
8 12:00. Should we let the jury go til ---

9 MR. SHELTON - Or if you want to take this matter
10 under advisement given that we've handed you the brief
11 about ---

12 THE COURT - I'm ready to rule on it.

13 MR. SHELTON - Okay.

14 THE COURT - I believe I can ---

15 MR. SHELTON - Okay. Certainly.

16 THE COURT - What are you going to do about the
17 jury?

18 MR. SHELTON - We could -- we could -- after your
19 ruling we could go ahead and pick and then send them -- to
20 come later and then resume pre-trial.

21 THE COURT - All right. Why don't we do that.

22 MR. SHELTON - Without swearing them, of course.

23 THE COURT - Yeah. All right. I've looked over
24 the case law and, of course, I've heard testimony. I'll be

1 glad to hear short -- if you have much to say on the issue,
2 I'll be glad to hear from you.

3 MR. SHELTON - Your Honor, we spoke in chambers
4 about this. I think that the brief covers our position
5 well. Danny's identification is certain. I believe he
6 should be allowed to give an in-court identification.
7 Timothy was not certain. To the extent that he said that
8 that individual looked like him, I think that's relevant
9 for the jury's consideration including admission of the
10 lineup as an exhibit. As for Dawn, she indicated it looked
11 like the person, there was some hesitancy. She was not
12 willing to sign the affidavit, but I think that's certainly
13 -- she explained her reasons for that. I think those
14 things can be fleshed out on cross examination. I think
15 that lineup can still be admitted. Moreover, I think the
16 fact that she attended the preliminary hearing was not
17 unduly suggestive in any way. She attended as a victim and
18 she testified that she was basing her one hundred percent -
19 - hundred percent confidence on hearing his voice as much
20 as seeing him in person and that -- that was -- she
21 comparing that to her recollection of the events. She had
22 a very good opportunity to view him face-to-face when he
23 was threatening her son, and she heard his voice throughout
24 the hour and a half he was in the home. Your Honor, I
25 believe that that's enough to satisfy the cases and the law

1 on this issue and it would be a jury question as to what
2 weight they give her identification.

3 One other thing, Your Honor. The whole purpose
4 of the Biggers analysis is to deter law enforcement or any
5 suggestive procedures. There's nothing in the record -- in
6 fact, completely the opposite, this procedure was done the
7 appropriate way. Nothing was suggestive about it to
8 suppress Ms. Parker's in-court identification of the
9 defendant. There's no deterrent value in that, that, you
10 know, this was not a law enforcement action. The Parkers
11 were notified as victims as is their right to be present
12 under the South Carolina Constitution, and they were not
13 told to be here. They were not told they had to be here.
14 They were advised of the hearing and told they could be
15 here if they wanted to. There are cases in that -- there
16 is a case in that packet that specifically allows for the
17 in-court identification in a similar situation. I did tell
18 you and as we noted in the brief there's a case that goes
19 the other way where there was a bond hearing -- a victim
20 attended a bond hearing and the Court made the
21 determination not to allow the in-court identification.
22 That case doesn't give a lot of specifics on the reason for
23 that, whether they were told to be here, that they needed
24 to be here for the hearing I think it's a relevant factor,
25 but, Your Honor, in either situation, the Appellate Court

1 affirmed the trial court's decision, and I think the cases
2 are very clear that the trial court has the discretion in
3 allowing these -- in determining whether to admit in-court
4 identifications or not.

5 THE COURT - Mr. Steltzner, anything?

6 MR. STELTZNER - We believe, sir, that the in-
7 court identification of Mr. Ervin by Mrs. Parker and
8 Timothy P. is problematic for a couple -- let's start
9 with Dawn Parker. For one reason she claims that she saw
10 him but she only saw him for about 45 minutes second or so
11 through the entire thing. She didn't -- wasn't even
12 willing to sign -- sign her lineup, unlike the -- unlike
13 Timothy her son who was still forty, fifty percent certain
14 and still signed his -- signed his -- signed his lineup.
15 She was unwilling to do so. And when she came to Court,
16 when she came to Court for the preliminary hearing --
17 whether she's a victim or not or whether she's coming
18 voluntarily or not has -- I don't think has any relevance.
19 The fact is that she was in a courtroom with one person.
20 It was like a -- it was like a -- basically a -- with a --
21 claims with hearing him she was a hundred percent certain,
22 but at the same time that's -- that's like a hearing
23 identification of one person, which is -- which is
24 manifestly unfair to the defendant and can cause -- can
25 cause misidentification simply because there isn't -- there

1 isn't such thing as a hearing line -- as a auditory lineup
2 or something like that. There's -- there's lineups for a
3 reason. If she's unable to make certainty on the lineup --
4 on lineup, which we believe was fair, then she shouldn't be
5 allowed then to make the identification based on voice,
6 which no court has ever accepted, as far as, you know,
7 hearing six different voices accept in maybe a -- in live
8 lineup which was never done in this case. So it's only one
9 person to judge from. As far as Timothy was concerned, we
10 don't -- believe he only gave a forty to fifty percent
11 certainty and -- and, again, we also have to recognize that
12 the lineup -- the photographic lineups within ten days
13 after the fact, so -- so if he's only forty, fifty percent
14 certain, that shouldn't be -- and I think it's under the
15 threshold of even, you know -- you know, clear -- of even
16 let's say the preponderance of the evidence. He doesn't
17 even think that this was the person that he -- that he saw,
18 only maybe forty, fifty percent certain, so we believe that
19 he should not be allowed to make an in-court identification
20 as well.

21 THE COURT - All right.

22 MR. SHELTON - Your Honor, I just want to be
23 clear, we're not offering him for an in-court
24 identification, just simply the lineup.

1 THE COURT - All right. Well, I can start with
2 Timothy. He did not make an in-court identification, and
3 I am not going to allow his forty or fifty percent
4 identification. Of course, that doesn't even reach
5 preponderance of the evidence standard, not that I'm -- I'm
6 not aware that the Courts have set a standard for this type
7 identification, but I don't believe forty or fifty percent
8 is sufficient enough to allow the use by Timothy P. of
9 the lineup, and so I will not allow that as to Timothy. As
10 to Jessica Dawn Parker, as to the photo lineup, my ruling
11 is the same. I do not believe that the lineups were unduly
12 suggestive. I looked at them. They all had dreadlocks.
13 They were all African American. There was one -- they all
14 had some facial hair, although one -- I thought I wrote the
15 number down -- but there was one that had much sparser --
16 if that's the right way to define it -- facial hair than
17 the others, but I'm not going to allow Mrs. Parker's
18 testimony regarding her identification based on the photo
19 lineup. I am going to allow her in-court identification
20 based on her seeing Mr. -- the defendant at the preliminary
21 hearing. I find that her testimony was that she was
22 undeniable, it was a hundred percent beyond a shadow of a
23 doubt. She -- based on the totality of the circumstances
24 she recognized his voice, which she heard over a good
25 period of time, she recognized his build, she saw him face-

1 to-face in the encounter, it was a well-lit area, she had a
2 heightened observation because of the threatening remarks
3 directed to her son and she heard the voice over a long
4 period of time. I will allow her to relate her in-court
5 identification to her identification of the defendant at
6 the preliminary hearing. I find that that is -- that --
7 that identification is reliable based on the totality of
8 the circumstances.

9 As to Danny Parker he is completely reliable in
10 my ruling and my belief. He had a face-to-face
11 confrontation in a well-lit area. He testified that he was
12 trying to pay attention to identifying remarks (sic) --
13 identifying characteristics, and that he got a good look at
14 the assailant, that he dealt with the individual face-to-
15 face and like he said he made an effort to note
16 identification characteristics. He was a hundred percent
17 certain with no hesitancy at the photo lineup. Again, I do
18 not believe the photo lineup was suggestive. The pictures
19 were of similar individuals with the one exception that I
20 made about the sparse facial hair on one, and I thought I
21 wrote the number down, but I don't see it, so I'm going to
22 allow Mr. Parker's testimony both from the photo lineup and
23 from the -- I don't believe he really testified much from
24 the preliminary hearing other than he did identify the
25 defendant at the preliminary hearing, so I'm going to allow

1 his identification on both those -- based on both the photo
2 lineup and the preliminary hearing.

3 MR. SHELTON - Your Honor, I just want to be
4 clear, so Danny and Dawn are allowed the in-court ID, but
5 the lineup for Dawn is inadmissible and the lineup for
6 Timothy is inadmissible.

7 THE COURT - That's right.

8 MR. SHELTON - Okay.

9 THE COURT - All right, let's see if we can get
10 the jury up, and we'll take -- while they're coming up,
11 we'll take a short break and let Mr. Ervin have -- out ---

12 (WHEREUPON, RECESS TAKEN)

13 (WHEREUPON, DURING RECESS A DECISION IS MADE OFF
14 THE RECORD TO SEND THE JURY PANEL AND COURT PERSONNEL TO
15 LUNCH AND START BACK AFTER LUNCH.)

16 THE COURT - All right what's next?

17 MR. PORTER - Your Honor, the next ---

18 THE COURT - Well, let me let her get seated.

19 Now, what's next?

20 MR. PORTER - Your Honor, we're back on the record
21 in the State vs. Jarnelle Ervin. The State suggests the
22 next procedure should be a hearing to determine if the
23 three search warrants that were served on two phones
24 belonging to the defendant, one phone belonging to the co-

PETE BRANHAM - DIRECT BY MR. PORTER

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1 defendant, Jermaine -- Jermaine Lowery, were proper and
2 probable cause to support those affidavits.

3 THE COURT - All right. You may proceed.

4 MR. PORTER - Thank you, Your Honor.

5 The State calls Lieutenant Pete Branham.

6 THE COURT - Yeah, you're still under oath.

7 PETE BRANHAM, AFTER BEING PREVIOUSLY SWORN,

8 TESTIFIES AS FOLLOWS -

9 MR. PORTER - Good afternoon, lieutenant.

10 MR. BRANHAM - Good afternoon.

11 DIRECT EXAMINATION

12 BY MR. PORTER -

13 Q Lieutenant, did you apply for a search warrant for a
14 Sprint cell phone with the number 980-████-8774 on May 4th,
15 2018?

16 A I did.

17 Q I'm showing you what's been marked for identification
18 as Court's Exhibit 4. Please tell the Court what that is.

19 A That is the search warrant for the Iphone that's cell
20 phone number 980-████-8774 that was applied for on May the
21 4th.

22 Q Is it, in fact, the original?

23 A Yes, it is written in blue ink and appears to be the
24 original.

1 MR. PORTER - Your Honor, at this point we'd move
2 this in as Court's Exhibit 4.

3 THE COURT - In as Court's Exhibit 4.

4 MR. PORTER - Thank you, Your Honor.

5 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
6 4.)

7 Q Lieutenant, would you please explain to the Court why
8 you applied for that search warrant?

9 A Yeah, the search warrant for this phone was in subject
10 to the arrest of Jermaine -- or -- sorry -- to Jarnelle
11 Ervin which was in his possession when he was arrested in -
12 - in the -- or do you want me to read the affidavit for the
13 probable cause?

14 Q Uh, well, we'll get to that in a second. Were you the
15 affiant on that search warrant?

16 A I was.

17 Q And did you fill out that search warrant affidavit
18 when you were applying for it?

19 A I did.

20 Q What did you include in the affidavit -- actually
21 would you just go ahead and describe what items you were
22 searching for with that search warrant?

23 A Yeah, any and all text messages and phone calls
24 incoming and outgoing, photographs, videos, websites and
25 any and all other information located on the Iphone that

1 belonged to Jarnelle Ervin that was recovered by Charlotte
2 Mecklenburg Police and found on Ervin's person at the time
3 of his arrest.

4 Q And would you please read the affidavit that supports
5 your search warrant?

6 A The affiant who was a certified law enforcement
7 officer with the York County Sheriff's Office with over 22
8 years of experience to include investigations ---

9 THE COURT - Slow down a little, because the court
10 reporter's got to keep up with you.

11 MR. BRANHAM - Sorry, Your Honor.

12 THE COURT - That's okay.

13 A States the following facts to search an Apple Iphone,
14 serial number DX3RX666FFDNMEID number 5202906450453, cell
15 phone 980-████-8774 belonging to Jarnelle Ervin and was in
16 his possession when arrested by Charlotte Mecklenburg
17 Police Department. On July 11th, 2016, the Parkers at █████
18 █████, Clover, South Carolina, York County,
19 reported a home invasion style armed robbery where four
20 victims were assaulted and bound and items were stolen from
21 their residence. Through forensic evidence Jermaine Lowery
22 was placed at the residence during the robbery and Lowery
23 was later arrested by Charlotte Mecklenburg Police
24 Department. During Lowery's arrest, Jarnelle Ladarius
25 Ervin was accompanying Lowery and attempted to call Lowery

1 while he was placed under arrest. Lowery admitted to his
2 involvement in the robbery. Lieutenant Branham showed a
3 photographic lineup of Jarnelle Ervin to the victims, and
4 two of the victims picked Ervin out of the lineup. Arrest
5 warrants were issued for Ervin's arrest, and Ervin was
6 arrested on August 19th, 2016 by Charlotte Mecklenburg
7 Police Department. Ervin was in possession of an Apple
8 Iphone, serial number DX3RX666FFDNMEID35202906450453, cell
9 phone 980-████-8774 which was found his (sic) person.

10 Lieutenants Branham and Moore interviewed Ervin at
11 Charlotte Mecklenburg Police Department headquarters and
12 Lieutenant Branham read Ervin his Miranda Rights from a
13 form, and Ervin acknowledged his rights agreeing to speak
14 with Lieutenants Branham and Moore. Ervin admitted having
15 knowledge of the crime and advised that his cell phone may
16 have been used by Jermaine Lowery during the commission of
17 the robbery. The affiant believes that probable cause
18 exist to search an Apple Iphone, serial number
19 DX3RX666FFDNMEID35202906450453, cell phone, 980-████-8774.

20 Q Did you provide any supplemental oral testimony at
21 that request?

22 A I did not.

23 Q Did you omit any relevant details from your factual
24 summary?

25 A I didn't.

1 Q And was it your belief the information you provided by
2 the witnesses and that had developed at that point through
3 investigation that the information was credible and
4 reliable?

5 A It -- yes, I did.

6 Q Did you swear or affirm to the magistrate that the
7 information in the affidavit was true and accurate?

8 A I did.

9 Q And did you sign the affidavit to that effect?

10 A I did.

11 Q Did York County Magistrate Judge Doug Sexton sign that
12 search warrant approving it's validity?

13 A He did.

14 Q Detective Branham, is this the only search warrant
15 that you applied for on this phone?

16 A On this phone, no, sir; there was one originally.

17 Q Could you explain to the Court why you applied for a
18 subsequent search warrant?

19 A Yeah, the first officer that downloaded the cell phone
20 or executed the search warrant on the cell phone has passed
21 since that time.

22 Q And could you explain briefly to the Court why you
23 believe this cell phone would serve -- would further your
24 investigation?

1 A Well, based off of the first information on Lowery's
2 arrest where pictures were taken of our actual stolen -- or
3 what we believe to be our actual stolen items and also GPS
4 locations that can certify where people are at at certain
5 times that are stored on the phones and that Mr. Ervin's
6 testimony or statement to us was that he gave his phone to
7 Lowery who we can place at the scene of the crime at the
8 time, I felt that it was justified in searching the phone.

9 MR. PORTER - Thank you. Please answer any
10 questions that -- Your Honor, actually I would suggest that
11 we move through each of the three search warrants.

12 THE COURT - That's probably a good idea.

13 MR. PORTER - Thank you, Your Honor.

14 Q Moving next to -- when you finish with Court's Exhibit
15 4 -- Lieutenant, did you apply for a search warrant for a
16 Sprint cell phone with number 704-████-6039 on August 16th,
17 2016?

18 A I did.

19 Q I'm showing you what's been marked for identification
20 as Court's Exhibit 5. Could you please tell the Court what
21 that is?

22 A That is the search warrant that was issued on August
23 16th, 2016 for Sprint records on cell phone -- Sprint cell
24 phone number 704-████-6039.

1 Q Were you the affiant on -- or, actually, let's -- is
2 that the original search warrant that you submitted to the
3 magistrate?

4 A Yes.

5 MR. PORTER - Your Honor, I move this as -- State
6 moves this as Court's Exhibit 5 into evidence. As Court's
7 Exhibit's 5.

8 THE COURT - Accepted as Court's Exhibit 5.

9 MR. PORTER - Thank you, Your Honor.

10 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
11 NUMBER 5.)

12 Q Were you the affiant on that search warrant?

13 A I was.

14 Q Did you fill out that search warrant affidavit that's
15 included with the search warrant?

16 A Yes.

17 Q And what did you include in the affidavit that's
18 property sought?

19 A The property sought is all information to include
20 names and personal information for the Sprint cell phone
21 number 704-████-6039 to include all cell phone calls and
22 texts to and from during the dates and times of July 10th,
23 2016 at 8:00 a.m. eastern standard time to July 12th, 2016
24 at 8:00 p.m. eastern standard time and to include any and
25 all cell phone tower pings and cell phone tower locations

1 during those times to assist in the investigation of an
2 armed robbery kidnapping case.

3 Q And those times were the time -- included the times in
4 which you believe the defendants were committing this armed
5 robbery.

6 A That is correct.

7 Q Did you include an affidavit or summary of the facts
8 in that search warrant application?

9 A I did include an attachment affidavit, yes.

10 Q Could you please read that to the Court?

11 A The affiant who is a certified law enforcement officer
12 with the York County Sheriff's Office with over 20 years of
13 law enforcement experience to include investigations,
14 states the following facts to search for records on the
15 Sprint cell phone number 704-████-6039. On July 11th, 2016,
16 Timothy P. at ██████████, Clover, South
17 Carolina, York County, reported a home invasion style armed
18 robbery at his residence where money, electronics and guns
19 were stolen from his residence and where he and other
20 members of his family were assaulted, bound and placed into
21 a closet and bathroom. Timothy P. advised that three subjects
22 entered his home. The York County Forensics Unit officers
23 were able to gather fingerprints from the scene and
24 identified Jermaine Lowery as a subject. Lowery was
25 arrested in Charlotte, North Carolina by Charlotte

1 Mecklenburg Police Department officers. Jarnelle Ladarius
2 Ervin was identified as another individual that was with
3 Jermaine Lowery when Lowery was arrested. Officer Cicio
4 advised that Ladarius Ervin kept calling Lowery's phone
5 when they were searching Lowery's residence. Detective
6 Branham showed a photograph lineup to Timothy and Danny
7 Parker to include a picture of Ladarius Ervin. Timothy and
8 Danny Parker identified Ervin as one of the individuals
9 that committed the armed robbery. Detectives Branham and
10 Yeager with the York County Sheriff's office interviewed
11 Jermaine Lowery about the incident in which Lowery admitted
12 to his involvement in the incident. Some items were
13 recovered from the robbery and were located at Lowery's
14 residence during the arrest and pictures on Lowery's phone
15 show that Lowery may know where other items may be located.
16 Detective Branham utilizing Facebook.com found that Ervin
17 utilizes 704-████-6039 as his phone number and Lowery had
18 704-████-6039 stored in his phone -- in his phone as
19 Jarnelle. The applicant believes that a search of the cell
20 phone records on Sprint cell phone number 704-████-6039 is
21 warranted and will lead to additional evidence into the
22 case, ie, recovery of stolen goods or the information of
23 additional suspects and that there is probable cause for
24 the search of the cell phone records.

1 Q And did you provide any supplemental oral testimony
2 during that application?

3 A I did not.

4 Q Did you omit any relevant details from that factual
5 summary?

6 A I didn't.

7 Q And was it your belief that the information you
8 provided -- that were provided to you by witnesses that you
9 discovered through investigation were credible ---

10 A Yes.

11 Q --- and reliable?

12 A Yes.

13 Q Did you swear and affirm to the magistrate that
14 information in the affidavit was true and accurate?

15 A I did.

16 Q Did you sign that affidavit to that effect?

17 A I did.

18 Q Did Judge -- Magistrate Judge Lynn Benfield sign that
19 search warrant making it effective?

20 A She did.

21 Q Now, lieutenant, the affidavit includes a reference to
22 Ladarius Ervin. Is Ladarius the defendant's middle name?

23 A Yes, it is.

1 Q So that would be a scrivener's error that you did not
2 include Jermaine -- Jermaine Ladarius -- Jarnelle Ladarius
3 Ervin.

4 A That is correct, yes.

5 Q And to your knowledge, was a copy of the data
6 recovered on both the May 4th search warrant and this
7 search warrant provided to the solicitor's office and the
8 defense?

9 A Yes.

10 Q And now moving to a search warrant -- did you apply
11 for a search warrant, a white Motorola Android cell phone
12 for number 704-████-8267 on October 4th of 2017?

13 A I did.

14 Q I'm showing you what's been marked for identification
15 as Court's Exhibit 6. Could you please tell the Court what
16 that is?

17 A Yes, that is the search warrant that I obtained on
18 October 4th, 2017 for a Motorola cell phone that was --
19 belonged to Jermaine Lowery.

20 Q And is that the original copy -- the original copy you
21 submitted?

22 A Yes, it appears to be.

23 MR. PORTER - Your Honor, I move this as Court's
24 Exhibit 6.

25 THE COURT - Marked as Court's Exhibit 6.

1 MR. PORTER - Thank you, Your Honor.

2 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
3 NUMBER 6.)

4 Q Were you the affiant on that search warrant?

5 A I was.

6 Q And did you fill out the affidavit in support of your
7 search warrant?

8 A I did.

9 Q What did you include in the affidavit as property
10 sought?

11 A All incoming and outgoing phone calls and text
12 messages to include photographs and videos, website
13 searches and any and all other information on a white
14 Motorola droid belong to Jermaine Lowery.

15 Q And did you include a affidavit or a summary of facts
16 in your application for the search warrant?

17 A I did.

18 Q Would you please read that for the Court?

19 A The affiant who is a certified law enforcement officer
20 with the York County Sheriff's office with over 21 years of
21 law enforcement experience to include investigations,
22 states the following facts to search the cell phone, a
23 white Motorola droid cell phone number 704-████-8267. On
24 July 11th, 2016 Timothy P. and several other victims
25 reported a home invasion style robbery at the residence

1 located at [REDACTED], Clover, South Carolina,
2 York County. The victims in the case were robbed by three
3 individuals at gun point, and various items were stolen
4 from the home to include firearms, money and electronics.
5 Through forensic evidence Jermaine Lowery was placed at the
6 scene and warrants were issued for his arrest. On July
7 14th, 2016, Lowery was arrested by officers with Charlotte
8 Mecklenburg Police Department, and the Motorola droid cell
9 phone number 704-[REDACTED]-8267 was found on Lowery's person.
10 Investigator Cicio with The Charlotte Mecklenburg Police
11 Department advised that pictures of a Ruger mini 14 and a
12 television, items stolen from the residence, were found on
13 Lowery's phone. The affiant believes with these combined
14 facts that a search of the Motorola cell phone 704-[REDACTED]-8267
15 is warranted and that the search of the cell phone result
16 in the recovery of additional evidence.

17 Q So when you applied for the search warrant, you
18 already had information that there was evidence pertaining
19 to this crime on that phone.

20 A Yes.

21 Q Did you omit any relevant details with your
22 investigation in that affidavit?

23 A I did not.

24 Q Did you provide any supplemental oral testimony?

25 A I did not.

1 Q Do you believe that the information you've been
2 provided by the witnesses and discovered through your
3 investigation that it was credible and reliable?

4 A I did.

5 Q And did you swear or affirm to the magistrate that
6 that information contained in the affidavit was true and
7 accurate?

8 A Yes, I did.

9 Q Did you sign the affidavit to that effect?

10 A I did.

11 Q And did the magistrate -- York County Magistrate Judge
12 Lynn Benfield sign that search warrant approving it?

13 A She did.

14 Q And to your knowledge, has the information produced as
15 a result of that phone been provided to both the State and
16 defense?

17 A That is correct.

18 MR. PORTER - Thank you, Your Honor. No further
19 questions for this witness.

20 THE COURT - All right. Mr. Steltzner?

21 CROSS EXAMINATION

22 BY MR. STELTZNER -

23 Q As to -- as to attachment one on the search warrant
24 for [REDACTED]-6039, it says Jarnelle Ladarius Ervin was
25 identified as another individual that was with Jermaine

1 Lowery when Lowery was arrested. So he was identified as
2 an individual who was there present at the time of the --
3 of Mr. Lowery's arrest, then how was it that he was making
4 phone calls as well?

5 A I'm sorry, you have to ---

6 Q Then how was he making phone calls as well? It was
7 stated in the affidavit also that he was -- that a phone
8 call had been made to that ---

9 A From my -- from my understanding he was arrested and
10 then transported back to his house where he was engaged in
11 a consensual search and while they were still there on the
12 scene, there were phone calls coming to his cell phone that
13 came from that cell phone number with the profile of
14 Jarnelle on the cell phone.

15 Q Okay. And so -- but Jarnelle was there when -- the
16 person that was identified as Jarnelle was there at the
17 scene when Mr. Ervin -- when Mr. Lowery was arrested.
18 Correct?

19 A Mr. Lowery was not arrested at his home. He was
20 arrested outside of his home and then escorted back to his
21 home, and that's when the phone calls began from Mr. Ervin,
22 but Mr. Ervin was identified as being with Mr. Lowery just
23 prior to his arrest with the other individuals, and then
24 Mr. Lowery was escorted back to his home for a consensual
25 search of his house with probation and parole where the

1 stolen items were found, the other cell phone was found,
2 and during that time-frame, Mr. Lowery kept receiving cell
3 phone phone calls from that number registered to -- on the
4 phone itself to Jarnelle profile.

5 Q Okay. Do you have any -- no evidence was shown that
6 Jarnelle was -- was even a suspect at this point. Correct?

7 A At this point? This one? He was -- he was picked out
8 of a photo lineup. Right?

9 Q But -- let's see here ---

10 A Yeah, see, at this point in time Danny Parker had --
11 on this one Danny Parker had already ---

12 THE COURT - This one -- which one ---

13 A I'm sorry, the -- the search warrant that we were
14 referring to, Danny ---

15 THE COURT - Which Court's Exhibit?

16 A Oh, Exhibit Number 5. That -- yes, that Danny Parker
17 had picked Mr. Ervin out of a photographic lineup at that
18 time.

19 Q Okay, and do you recall what date Mr. Lowery was
20 arrested?

21 A The date that Mr. Lowery was arrested? I can tell
22 you. Refer to my notes, please. Did you say Mr. Lowery or
23 Mr. Ervin? I'm sorry.

24 Q Mr. Lowery.

25 A Mr. Lowery was arrested on July 14th, 2016.

1 Q I'm sorry? Can you repeat that?

2 A Mr. Lowery was arrested on July 14th at (sic) 2016.

3 Q Any showing that the phone call that was ringing in
4 from -- from supposed -- from a number -- number labeled
5 Jarnelle was actually Jarnelle.

6 A At that time?

7 Q Correct.

8 A Not until after the results came back from the search
9 warrant.

10 Q Okay. And -- was this phone ever recovered?

11 A This phone? No, sir, not to my knowledge.

12 MR. STELTZNER - Okay, nothing further.

13 MR. PORTER - Just one matter of housekeeping.

14 RE-DIRECT EXAMINATION

15 BY MR. PORTER -

16 Q The -- did you also apply for a second search warrant
17 -- a -- was the search warrant, Court's Exhibit 6, was that
18 the first search warrant you did on that phone?

19 A Let me just double check, but I believe this is the
20 second search warrant for this phone.

21 Q And is that for the same reason you applied for a
22 second search warrant on Court's Exhibit 4?

23 A Because the officer that executed has passed away,
24 yes, sir.

25 MR. PORTER - Thank you. No further questions.

1 THE COURT - Counselor, do you have anything else?

2 MR. STELTZNER - Nothing else.

3 THE COURT - Hand me those Court's exhibits.

4 MR. BRANHAM - Yes, sir.

5 THE COURT - You can step down. Is this all?

6 Just three of them?

7 MR. BRANHAM - Yes, sir.

8 THE COURT - I'm a little confused. Did you seize
9 all three? Of these phones?

10 MR. BRANHAM - One is for cell phone records and
11 the other two are seized cell phones.

12 THE COURT - Okay.

13 All right, Mr. Porter, call your next witness.

14 MR. PORTER - Your Honor, that would complete the
15 witnesses for this proffer.

16 THE COURT - Mr. Steltzner, do you have any issues
17 with the ---

18 MR. STELTZNER - Yes, I do, concerning --
19 concerning all the affidavits -- all the affidavits that it
20 states that a certain officer -- well, the fact is that it
21 looks like that -- when the officer was testifying as to
22 the -- as to the providence of the other information that
23 they received, the only -- basically they -- they had a
24 cell phone and then they had -- they had a cell phone
25 number called and then they -- and they had a person.

1 That's all they really had as a basis for -- for, yes, this
2 person called, this person who's title was Jarnelle in the
3 phone called this -- called the defendant's phone, but at
4 the same time, Jarnelle was, actually there, so we knew
5 that the defendant had been arrested, so -- so it doesn't
6 make any -- make any sense from the four corners of the
7 document, the attachment that, yeah, he was there at the
8 time of the arrest, but he was also calling him. What
9 sense does that make? That doesn't make any sense at all,
10 especially if you can't answer the phone, you're under
11 arrest. And there is no showing that this -- this phone
12 was never recovered, that he was in possession of the phone
13 at the time. He wasn't a suspect at the time, and that the
14 phone was never recovered, the phone itself was never
15 recovered, so -- so we ask the Court to find -- and not
16 only that, the officer who made those statements is not
17 here to testify to the truth -- to their truth here in this
18 hearing.

19 THE COURT - But he's -- this -- Officer Branham
20 signed these ---

21 MR. STELTZNER - Yes, but he received information
22 from Charlotte Meck about -- about a certain cell phone
23 number that had been called during the arrest of Mr.
24 Lowery.

25 THE COURT - Is that all?

1 MR. STELTZNER - That's all.

2 THE COURT - Anything in response to that?

3 MR. PORTER - Your Honor, with respect to why Mr.

4 Ervin was calling Jermaine Lowery's cell phone, it's

5 because the defendant was a co-conspirator in this crime

6 and was concerned that he'd been outed, so I'd like to

7 point that out to the Court first. With respect to why we

8 would hear, the affiant has testified he had credible and

9 reliable information from other people he had developed

10 through investigation. He testified that he had observed

11 the Parkers, both Danny and Dawn make a full identification

12 and a partial identification of the defendant as one of the

13 people that were in the home. That alone is sufficient for

14 probable cause. In addition, Jarnelle -- or Jermaine

15 Lowery, he was present at the scene by a fingerprint that

16 Detective Branham had received through people he had worked

17 with on a daily basis, trusted their opinions and no reason

18 to disbelieve that statement. Jermaine Lowery was in

19 possession of items that were stolen from the residence.

20 His phone had items on it that were stolen from the

21 residence, and Jermaine -- and then you have this traffic

22 back and forth on Jermaine Lowery's phone from someone

23 named Jarnelle. I submit that in and of itself is

24 sufficient for probable cause in this case. Ervin further

25 stated in both of the -- the affidavits for Court's 4 and

1 Court's 5, Ervin stated his phone may have been used during
2 the commission of these crimes, so by the defendant's own
3 admission, there's probable cause for these search warrants
4 to be validated. Your Honor, there is just ample probable
5 cause for these search warrants. With respect to the
6 Sprint search warrant, Court's Exhibit 5, no cell phone was
7 recovered, however, this -- it is reasonable to believe
8 that records pertaining to a cell phone number linked to
9 the defendant would be -- would produce information that is
10 necessary for the furtherance of the investigation.

11 THE COURT - And so 5 is -- I don't have to
12 consider 5 because nothing was seized?

13 MR. PORTER - Oh, no, sir, Your Honor, 5 -- and if
14 we need to -- if we need to bring Lieutenant Branham up to
15 explain it more, that was served on Sprint, and Sprint
16 produced cell phone records from their own ---

17 THE COURT - I got you, okay, all right. He
18 explained it. I just wasn't following him.

19 MR. PORTER - So, and just for ---

20 THE COURT - I see it now, custodian of records,
21 Sprint.

22 MR. PORTER - Yes, sir. And I apologize for not
23 making that clear on the proffer, but it -- with the --
24 with the number ringing in to Jermaine Lowery's phone, it
25 is reasonable to believe that Jarnelle Ervin was in

1 possession of that from the Facebook information, from the
2 information on Lowery's cell phone, and that it would be
3 any sort of location data that comes from a number, that
4 number linked to Sprint's records would be relevant and
5 reliable and there's probable cause for that as well.

6 THE COURT - All right, so, you want to introduce
7 the phones seized under numbers 4 and 6.

8 MR. PORTER - As well as the data from 5.

9 THE COURT - Let me -- let me go one at a time.

10 MR. PORTER - Yes, sir, my apologies.

11 THE COURT - That was a direct question.

12 MR. PORTER - Yes, sir, 4 and 6 will be actual
13 cell phone records ---

14 THE COURT - All right, and ---

15 MR. PORTER - --- from Ervin and Lowery
16 respectfully.

17 THE COURT - And you want to introduce records
18 under 5.

19 MR. PORTER - That's correct, Your Honor.

20 THE COURT - All right, well, I find there is
21 probable cause under all three. I did note in 5 is the
22 statement of Timothy and Danny Parker, identified Ervin as
23 the -- as one of the individuals and in number 4 states two
24 of the victims picked Ervin out. I point that out because
25 at the time of the issuance of these search warrants and

1 those affidavits, the Court hadn't ruled that those forty
2 to fifty percent identifications were not enough, so I kind
3 of pre-supposing what may happen down the road. If that is
4 brought to the appellate court's attention that those
5 identifications were suspect, I'm finding that at the time
6 the search warrants were -- at the time the affidavits were
7 signed, that the facts as known to the officer did support
8 those statements even though I'm now ruling inadmissible
9 criteria for the search warrant I think was met
10 sufficiently through the affidavit, so I'll allow the
11 seized items into evidence.

12 MR. PORTER - Thank you, Your Honor.

13 THE COURT - All right, what's next?

14 MR. SHELTON - Judge, it's ten after 2:00. We can
15 do the Denno hearing or we can pick the jury and then do a
16 -- the jury just reported at 2:00 o'clock, so ---

17 THE COURT - All right, let's see if we can do the
18 Denno hearing.

19 MR. SHELTON - Yes, sir. That one should be
20 relatively brief.

21 THE COURT - And then we can get them up and start
22 working with them.

23 MR. SHELTON - Your Honor, I'm going to go ahead
24 and call Detective Branham to the stand for this hearing.

25 THE COURT - You're still under oath.

1 PETE BRANHAM, AFTER BEING PREVIOUSLY SWORN,

2 TESTIFIES AS FOLLOWS -

3 DIRECT EXAMINATION

4 BY MR. SHELTON -

5 Q Detective Branham, what date was Jarnelle Ervin
6 arrested in connection with this investigation?

7 A On August 19th, 2016.

8 Q Did you interview him that day?

9 A I did. Myself and Lieutenant Moore did.

10 Q And where was that interview?

11 A At Charlotte Mecklenburg Police Department's downtown
12 headquarters at 601 East Trade Street in Charlotte, North
13 Carolina.

14 Q And was he in custody at that time?

15 A He was.

16 Q Had he been arrested for a warrant related to the
17 7/11/16 home invasion?

18 A He was.

19 Q Was Ervin advised of his Miranda rights prior to
20 questioning him?

21 A He was.

22 Q Who advised him?

23 A I did.

24 Q How did you advise him?

25 A In a written -- written form.

1 Q Is that your standard practice?

2 A It is.

3 MR. SHELTON - Beg the Court's indulgence. I need
4 to put my hands on it.

5 Q And did you advise him by reading his rights from that
6 form?

7 A I did.

8 Q Did he waive his rights and agree to talk with you?

9 A He did.

10 Q Did he sign the form indicating the same?

11 A He did.

12 Q I'm going to hand to you what I'd ask to be marked as
13 a Court's Exhibit first.

14 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
15 NUMBER 7.

16 Q It's been marked for identification as Court's Number
17 7. Do you recognize this item?

18 A I do. That's the original Waiver of Right's form.

19 Q And is that your signature on that page?

20 A Yes, it is.

21 Q And is Mr. Ervin's signature there?

22 A It is.

23 Q Actually, it appears -- did Lieutenant Moore sign that
24 page?

25 A He did as well, yes.

1 Q Okay, very good. And you witnessed the signature of
2 the other two, Moore and Ervin?

3 A Yes, I was present.

4 MR. SHELTON - Your Honor, I'd like to move this
5 in as a Court's Exhibit number 7.

6 THE COURT - In as Court's Exhibit 7.

7 (WHEREUPON, DOCUMENT IN AS COURT'S EXHIBIT NUMBER
8 7.)

9 Q And, lieutenant, would you please read exactly the
10 rights as you advised Mr. Ervin that day?

11 A Yes. Your rights before I ask you any questions I
12 want to advise you of your rights. You have the right to
13 remain silent, anything you say can and will be used
14 against you in a court of law. You have the right to talk
15 to an attorney and have him or her present with you while
16 you're being questioned. If you cannot afford to hire and
17 attorney, one will be appointed to represent you before any
18 questioning if you wish. You can decide at any time to
19 exercise these rights and not answer any questions or make
20 any statements. Do you understand each of these rights I
21 explain to you?

22 Q Did he indicate that he understood?

23 A Yes, he checked the yes box and then signed and dated
24 it.

1 Q And did he also indicate that he was willing to waive
2 those rights and speak with you and Lieutenant Moore?

3 A He did.

4 Q Was he threatened in any way?

5 A He was not.

6 Q So he was not threatened to get him to waive his
7 rights?

8 A No, he was not.

9 Q Or to agree to talk with you?

10 A No, he was not.

11 Q Were you carrying a weapon?

12 A I was.

13 Q Was Lieutenant Moore?

14 A Yes.

15 Q Were your weapons pulled or were their holstered?

16 A They were holstered.

17 Q Did you -- had you identified yourself as police
18 officers?

19 A We did.

20 Q And did you explain to him why you wanted to talk with
21 him?

22 A I did.

23 Q Did you promise him anything if he waived his rights
24 and talked with you?

25 A I did not.

1 Q Did he appear to be under the influence of any kind of
2 drugs or alcohol at the time?

3 A He did not.

4 Q Did he appear to be coherent?

5 A He did.

6 Q Did he appear to understand his rights?

7 A He did.

8 Q Did he appear to understand why you were there and the
9 questions you were asking him?

10 A He did.

11 Q Did he indicate to you that he understood those
12 rights?

13 A He did.

14 Q Did he ask you any questions about his rights?

15 A No, he did not.

16 Q At some point did you allow him to take a break?

17 A Yes, we did.

18 Q And was that noted on that waiver, in fact?

19 A It's noted at the bottom, yes.

20 Q And with the -- with the time-frame?

21 A Yes, it is.

22 Q Could you specifically read that for the record?

23 A Yes, I -- at the bottom I had wrote smoke break and
24 restroom break at 15:10 to 15:20 hours or 3:10 to 3:20
25 hours.

1 Q Approximately, how long into the interview was that?

2 A The waiver was signed at 1:52, so -- get my math right
3 -- an hour and twenty minutes, an hour and thirty minutes
4 into it.

5 Q Okay. Did he at any point ask for an attorney?

6 A He did not.

7 Q Did he at any point invoke his right to remain silent?

8 A He did not.

9 Q Was the interview recorded?

10 A It was.

11 Q Was it audio and visual?

12 A Unfortunately, it was just visual. The, uh, audio
13 apparently was not turned on or not working.

14 Q And this was at Charlotte Mecklenburg Police
15 Department headquarters?

16 A It was.

17 Q Did you have any control over that equipment?

18 A I did not.

19 Q To your knowledge, at the time was it recording both
20 audio and visual?

21 A Yes.

22 Q And you later found out that it was just the visual.

23 A That's correct.

24 Q Did you verify that fact?

1 A I have -- we went and got an extra copy just to make
2 sure and it's the same, no audio at all.

3 Q So it wasn't a matter of the way it was transferred to
4 us. You did verify that.

5 A That's -- that's correct, we did verify it with an
6 attempt to a second copy of it.

7 Q Did you prepare a summary of this interview?

8 A Yes.

9 Q And would you please reference your notes if you need
10 to, describe your interview with Ervin specifically what
11 you asked and what were his responses?

12 A Yes, Ervin was asked his (sic) -- asked about
13 involvement in the armed robbery that occurred at the
14 Parker's residence, and Ervin denied any involvement in the
15 armed robbery but stated to us that he did used to commit
16 small robberies in the past. Ervin told us that he had
17 never been to Clover, South Carolina, which is where the
18 crime occurred, and the closest he had was relatives that
19 lived in Rock Hill, South Carolina. Ervin advised on that
20 day in question, on 7/11/2016, he was looking to commit a
21 robbery but could not find one, but he knew that Jermaine
22 Lowery, the other co-defendant was looking to do one.
23 Ervin also said that he was on crutches that day, he had
24 injured his legs playing basketball. He stated that he was
25 at work at the Exxon during that time as well. Ervin

1 stated that he was around someone name Deion Boyd, Terry
2 Reid, Shawn Reid and a white boy in which we were able to
3 determine through his recollection was a kid by the name of
4 Andrew Zeiss, and he said that he was in a hotel on South
5 Tryon Road in the Charlotte area. He said that the hotel
6 was in a different name than anyone he was staying with. I
7 questioned him about his relationship with Shawn Reid who
8 we thought was a connection, and he advised that they were
9 cousins. He stated that Jermaine had left out to commit a
10 robbery that day and that he knew that Lowery was going to
11 rob a white boy in Clover, because he heard that the white
12 boy might have something. Ervin advised that he stayed at
13 the hotel while Jeremy -- and Jeremy had come back with a
14 black duffle bag with red on it. He advised that Jeremy
15 had a bag of marijuana or weed and wanted to share the
16 marijuana with them so they all smoked weed. Ervin advised
17 that he did aid Jeremy -- and I've got Jeremy -- I guess
18 it's Jermaine -- typo on my fault, I'm sorry -- Jermaine in
19 burning the clothes and a hat in the woods behind the
20 hotel. He said that Jermaine -- let's see -- he said he
21 told Jermaine that since Jermaine had committed the
22 robbery, he needed to get rid of the evidence, so he aided
23 him in getting rid of the evidence. He was questioned
24 about his cell phone being in the area of the robbery,
25 which the Sprint records had indicated that it showed up in

1 that area, and at first he said he shouldn't have anything
2 on it, and then he said he had let Jermaine borrow it that
3 day of the robbery. I then -- for the rest of it he did
4 wind up giving us his pass code for the red Apple -- the
5 red covered Apple cell phone that we recovered off his
6 person that day, or that was recovered off his person that
7 day.

8 MR. SHELTON - Please answer any questions Mr.
9 Steltzner may have.

10 CROSS EXAMINATION

11 BY MR. STELTZNER -

12 Q And so Mr. Lowery did not -- did not admit to the
13 robbery at all.

14 A Mr. Ervin.

15 Q I'm sorry. I'm sorry, wrong -- so Mr. Ervin did not
16 admit to the robbery according to your statement.

17 A Correct.

18 Q And he did state that Mr. -- he did state that Mr.
19 Lowery was involved. Correct?

20 A That is correct.

21 Q And, uh ---

22 MR. STELTZNER - Nothing further.

23 MR. SHELTON - No re-direct, Your Honor. That's
24 the State's proffer.

1 THE COURT - All right, you can step down. Hand
2 me the document. Hand me the exhibit.

3 MR. BRANHAM - Yes, sir.

4 THE COURT - All right.

5 MR. SHELTON - Your Honor, very briefly, you've
6 heard testimony of the detective, he followed all the
7 proper procedures prior to a custodial interrogation.
8 There was no threats or promises made. Mr. Ervin had been
9 fully advised of his rights as you see in the Court's
10 Exhibit. That's the original form. The defendant signed
11 it indicating he understood and was waiving those rights.
12 Detective Branham was a witness. He also said that
13 Lieutenant Moore was there. There was audio video
14 recording equipment running, which I argued puts a little
15 more reliability factor on this in a sense that everybody's
16 minding their p's and q's as it were, and, Your Honor, I
17 just feel that for the purpose of this hearing we're
18 satisfied the legal requirements necessary for this to be
19 an admissible statement by the defendant.

20 THE COURT - All right, Mr. Steltzner?

21 MR. STELTZNER - Well, I'll just say for the
22 record that we -- that -- that we object to the
23 admissibility of the statement. That's all.

24 THE COURT - All right, well, I find by a
25 preponderance of the evidence -- and, of course, the jury

1 will get to make an examination also under a different
2 standard, that is, beyond a reasonable doubt, that the
3 statement was freely, voluntarily, knowingly and
4 intelligently given by the defendant after having been
5 advised of his fifth and sixth amendment rights,
6 specifically he was advised that he had the right to remain
7 silent, that anything he said could be used against him in
8 a court of law and would be so used, that he had the right
9 to talk to an attorney and have them present while he was
10 being questioned, that if he could not afford to hire an
11 attorney, one would be appointed to represent him before
12 any questioning if he desired, wished is the word, and he
13 was informed that he could decide to exercise those rights
14 at any time and not answer any questions or make any
15 statements. He -- there's a check that says, quote, do you
16 understand each of these rights I have explained to you,
17 question mark, and that is marked yes, a signature which I
18 can't read, but it was testified to as being the
19 defendant's, Ervin's, dated 8/19/16. I find that there's
20 also a signed by the same signature, a waiver of rights,
21 wherein the signator agreed to talk to police, answer
22 questions, indicated he did not want an attorney at that
23 time, that he understood what he was doing and that no
24 promises or threats had been made to him or pressure of any
25 kind had been placed upon him. There's no evidence that

1 there was any coercion or threats of any kind, and I find
2 that the, as I said, that the statement is admissible, it
3 was freely, voluntarily, knowingly and intelligently
4 entered as I have indicated, and, of course, the jury will
5 have to determine the voluntariness and whatever use it
6 chooses, if it does so, that is, if it determines the
7 statement was voluntarily given they would have to be --
8 the jury would have to make that assessment based on beyond
9 a reasonable doubt and their use of any or all of the
10 contents of the statement would also have to be within the
11 standard of beyond a reasonable doubt, so I'll allow the
12 statement to come in.

13 MR. SHELTON - Thank you, Your Honor. You heard
14 the context of the interview and the statement. It is the
15 State's belief that that is a self-serving statement. We
16 haven't decided yet if we're going to use it in our case in
17 chief and want to do the analysis under Jackson vs. Denno
18 just to -- to see if it was admissible. If we elect not to
19 use it, Your Honor, I would make a motion in limine to
20 determine that a -- this statement would not be admissible
21 on cross examination by the defense or of any of the
22 State's witnesses if the State chooses not to enter in it
23 as -- during direct evidence. Under the Rules, Rule
24 801(d) (2) admission of party opponent, the State has to be
25 offered against a party in order for it to be inadmissible

1 -- or in order for it to be admissible under the Rules.
2 Also, Rule 804(b)(3) deals with the admissibility of
3 statements like this, so, I know Your Honor's familiar with
4 this. This is a -- I believe this is a standard practice.
5 I can go further ---

6 THE COURT - Well, I -- the Rule's pretty clear
7 that the defendant can get his or her statements in through
8 third parties or other sources of evidence. I mean there
9 may be some ways that it could be done, but -- and I'll
10 have to listen to if that arises. I'll have to look at
11 where we are at that time, but generally the black letter
12 law is that self-serving statements are not allowed into
13 evidence through third parties.

14 MR. SHELTON - Thank you.

15 THE COURT - All right. Anything else before we
16 get the jury up?

17 MR. SHELTON - I want to just make one inquiry,
18 Your Honor. Just ask if that's the defense (sic) to answer
19 to the Court if they have complied with the State's
20 reciprocal Rule 5 and specifically our alibi notice. I do
21 want to note for the record that I received notice of two
22 alibi witnesses yesterday, two of the people -- two people
23 on the defendant's list. I filed our alibi notice and
24 reciprocal discovery motion some time ago, and just heard
25 yesterday from the defense. I'm not asking for a

1 continuance. I'm just making that part of the record, but
2 I just would like to know if there's anybody else we need
3 to be aware of at this point.

4 THE COURT - All right, Mr. Steltzner, any -- let
5 me be clear on where we are with the alibi notice has to be
6 given. I can't remember whether it's five days or ten
7 days, because I hadn't had one in a while, but no -- no
8 alibi notice was given by the defense? Is that correct?

9 MR. SHELTON - I received it in writing yesterday,
10 Your Honor.

11 THE COURT - Notice of alibi ---

12 MR. STELTZNER - Excuse me?

13 MR. SHELTON - I believe it's in Rule 5, Your
14 Honor.

15 THE COURT - It's Rule -- Yes, it's 5(e)(1), --
16 well, (1), (2), (3) and (4). All right, we'll deal with that
17 if it materializes.

18 MR. SHELTON - Yes, sir, and I just wanted to note
19 for the record at this point, and specifically, I'd just
20 ask if there's anything else the defense needs to make us
21 aware of.

22 THE COURT - All right. The defendant has
23 indicated three possible witnesses, Angela Mason, Zavon
24 Simpson, Cateta Paul. Any other witnesses from ---

25 MR. STELTZNER - No, Your Honor.

1 THE COURT - Anything else before the jury comes
2 up from the State?

3 MR. SHELTON - No, sir, I just would recommend we
4 seat two alternates in the jury.

5 THE COURT - All right.

6 MR. SHELTON - And I believe under the law that
7 defense is entitled to ten strikes and the State five.

8 THE COURT - And then on the alternate, State one
9 and defense two.

10 MR. SHELTON - Okay.

11 THE COURT - Anything else, Mr. Steltzner, before
12 we get the jury up?

13 MR. STELTZNER - No, Your Honor.

14 THE COURT - All right, let's get the jury up and
15 I've got voir dire; I've got the indictments and we'll draw
16 the panel and go from there. (Pause)

17 I'm going to step back. Just let me know when
18 the jury's up.

19 (WHEREUPON, RECESS TAKEN)

20 (WHEREUPON, PANEL ENTERS THE COURTROOM)

21 THE COURT - Thank you, you may take your seats.
22 Good afternoon. Members of the jury panel, I'm John Hayes.
23 I'm from Rock Hill. I'm actually retired, but in our
24 system our Supreme Court assigns retired judges to hold
25 court, which I'm allowed to do and retirement was quite a

1 change for somebody who's worked as long as I have, so I'm
2 a retired judge and I'm here holding court this week along
3 with Judge McKinnon, and we're starting the first trial in
4 this courtroom for the week and that is The State versus
5 Jarnelle Ladarius Ervin. Mr. Ervin, would you stand?

6 (WHEREUPON, MR. ERVIN COMPLIES)

7 THE COURT - This is Mr. Ervin, and he's
8 represented by Mr. Donovan Steltzner.

9 You may be seated.

10 (WHEREUPON, MR. ERVIN COMPLIES)

11 THE COURT - The State is represented by Mr.
12 Shelton and Mr. Porter. They're with the solicitor's
13 office, Mr. Kevin Brackett.

14 (WHEREUPON, Mr. Shelton and Mr. Porter stand)

15 THE COURT - Mr. Ervin is charged in several
16 indictments with several charges. He is charged with
17 what's called -- all these allegedly occurred on July 11th,
18 2016 in Clover --- at what address? ---

19 MR. SHELTON - On Birchwood, Your Honor.

20 THE COURT - --- on Birchwood Street or Drive in
21 Clover. It's alleged that these events occurred on July
22 11th, 2016. I'm not going to go into detail as to what
23 these indictments say. I'm just going to tell you what the
24 charges are. If you end up sitting on the jury, you'll get
25 a full explanation as to the elements of these charges, but

1 he's charged with criminal conspiracy, burglary in the
2 first degree, possession of a weapon during the commission
3 of a violent crime, a violent crime being burglary first
4 degree, armed robbery and four counts of kidnapping. The
5 kidnapping is alleged to have been of Jessica Dawn Parker,
6 Danny Preston Parker, William Joseph Mosteller and Timothy
7 P. First I ask, are any of you related by
8 blood or marriage or are you a close personal friend or
9 acquaintance of Mr. Ervin, his attorney or the two
10 attorneys from the solicitor's office or the three -- four
11 individuals who allegedly were kidnapped? If so, please
12 stand.

13 (WHEREUPON, NO REPSONSE)

14 THE COURT - No one stands.

15 Have any of you been represented by Mr. Steltzner
16 or anyone from our solicitor's office? If so, please
17 stand.

18 (WHEREUPON, NO RESPONSE)

19 THE COURT - Have any of you heard about this case
20 from any source whatsoever or have any of you formed or
21 expressed any opinion about any manner or issue which would
22 be involved in this particular case? If so, please stand.

23 (WHEREUPON, NO RESPONSE)

24 THE COURT - No one stands.

1 Were any of you members of the grand jury which
2 passed on this indictment at an earlier time? If so,
3 please stand.

4 (WHEREUPON, NO RESPONSE)

5 THE COURT - No one stands.

6 Are any of you or a member of your immediate
7 family involved in law enforcement or the prosecution of
8 criminal cases at any level, anything from a solicitor or a
9 judge advocate general, air marshall, policeman, sheriffs -
10 - and what I'd like you to do is when you stand like this
11 lady has, if you'll give me your name and number and then
12 why you're standing, that is, Uncle Joe's a sheriff's
13 deputy or whatever.

14 Yes, ma'am?

15 JUROR - Okay. I'm Kristie Wensil, number 237.
16 My sister, Shannon, is a York County Deputy Sheriff.

17 THE COURT - All right. This is a York County
18 Sheriff's office case, so I'll excuse you. Don't leave,
19 but I'm going to excuse you from sitting on this particular
20 case. So you, Ms. Wensil ---

21 Anyone else?

22 (WHEREUPON, NO RESPONSE)

23 THE COURT - No one else stood.

24 There's a long list of witnesses. I don't
25 believe all of these witnesses will be called, but even if

1 they're not called as a witness, their name may pop up some
2 time during testimony of other witnesses, so I'm going to
3 ask if you know any of these individuals or -- of course,
4 if you're related by blood or marriage -- you probably
5 don't -- but if you know these individuals or are related
6 to these individuals, please stand.

7 From the sheriff's office here in York County,
8 Sergeant Michael Gregory, Deputy Samuel Bruining, ---
9 Bruining. Haven't seen that name before, so let me spell
10 it, B-r-u-i-n-i-n-g. Detective Nick Schifferle, Detective
11 Tracy Strickland, Detective Pete Branham, Detective David
12 Vaughn, Detective Paul (sic) Moore, Detective Alan (sic)
13 Clark, Detective Russ Yeager, York County Forensic Science
14 -- Forensic Services Unit, Investigator Brian Bagwell,
15 Investigator George Weeks, more individuals from the
16 sheriff's office, Patrick Patterson, Barbara Traylor, Jimmy
17 Stiles, Pete Mitchum, from the York County GPS -- or GIS
18 actually, James Hibbert, from the detention center, Officer
19 Sean Edwards, from North Carolina Department of Public
20 Safety, Cameron Winchester, from Charlotte Mecklenburg
21 Police Department, Melissa Cicio, Amy Kelly, Ervin Dunham,
22 Yaquii, that's Y-a-q-u-i-i, Matthews, Elaine (sic) Wallace,
23 Julie Blackmon, Traci Stroyer, Angela Mason, Jessica Dawn
24 Parker, Timothy P. , Danny Parker, William Joseph
25 Mosteller, Rebecca Thomas, Jeremy (sic) Lamar Lowery, Brian

1 Schettler, Jeff Rasmussen and John Ryan (sic) R-y-a-n. Any
2 of you know any of those individuals? If so, please stand.

3 (WHEREUPON, NO RESPONSE)

4 THE COURT - No one stands.

5 You've heard what the charges are. Do any of you
6 have any beliefs of any type, religious or otherwise, or
7 philosophical that would prevent you from passing judgment
8 against Mr. Ervin or for the State in a criminal case? If
9 so, please stand. That is, if you have any religious or
10 theological or philosophical reasons that you don't believe
11 you could be fair and impartial to both Mr. Ervin and the
12 State in this case. If so, please stand.

13 (WHEREUPON, NO RESPONSE)

14 THE COURT - No one stands.

15 Anything further from the State?

16 MR. SHELTON - Your Honor, may we approach just
17 briefly?

18 THE COURT - (Indicating yes)

19 (WHEREUPON, BENCH CONFERENCE IS HELD OUT OF THE
20 HEARING OF THE JURY PANEL AND EVERYONE WHICH WAS NOT
21 REPORTED.)

22 THE COURT - All right, I'm being told that I did
23 not notice that John Ryan actually is called John Ryan
24 Keep, K-e-e-p. Also, Angela Mason, Javon Simpson or Cateta
25 Paul, C-a-t-a --- C-a-t-e-t-a. Those are possible

1 witnesses or names you might hear during the trial. Any of
2 you know any of those individuals? If so, please stand.

3 (WHEREUPON, NO RESPONSE)

4 THE COURT - No one stands.

5 Anything further from the State?

6 MR. SHELTON - No, sir, Your Honor.

7 THE COURT - Anything further from defense?

8 MR. STELTZNER - No, Your Honor.

9 THE COURT - And I believe I've asked if any of
10 you heard about this case and no one stood.

11 Finally, do any of you know of any reason
12 whatsoever why you could not or should not serve as a fair
13 and impartial juror in the trial of this case? If so,
14 please stand.

15 (WHEREUPON, NO RESPONSE)

16 THE COURT - No one stands.

17 Now, the way we draw jurors in this courtroom is
18 as follows: If you hear your name and number called, just
19 stand where you are and face first the table where the
20 solicitors are seated and one of them will say either,
21 excuse the juror, which means you can sit down or they'll
22 say, present the juror. If you hear the words present the
23 juror, turn and face where Mr. Ervin and his attorney are
24 seated, and Mr. Steltzner will say either excuse the juror,
25 which again means you can take your seat or he will say,

1 swear the juror. If you hear the word swear the juror,
2 please come forward and the bailiff will tell you where you
3 will sit in the jury box. And we're going to draw twelve
4 jurors and two alternates. The State can excuse up to five
5 individuals. The defense can excuse up to ten individuals
6 as to the first twelve. As to the alternates, the State
7 can excuse one of each alternate and the defense two as to
8 each alternate. So the bottom line is, if you hear your
9 name called, please stand, face the solicitor's office,
10 follow those instructions and we'll go from there.

11 Madam clerk?

12 DEPUTY CLERK - Number 127, Melanie Legger. What
13 say you for the State?

14 MR. SHELTON - Please present.

15 DEPUTY CLERK - And the defense?

16 MR. STELTZNER - Please present.

17 DEPUTY CLERK - Please have a seat in the jury
18 box.

19 (WHEREUPON, JUROR 127 IS SEATED.)

20 DEPUTY CLERK - Number 258, Reid Williams. What
21 say you for the State?

22 MR. STELTZNER - Can you read the number again?
23 I'm sorry.

24 DEPUTY CLERK - 258.

25 MR. SHELTON - Please present.

1 MR. STELTZNER - Please present.

2 DEPUTY CLERK - Thank you.

3 Please have a seat in the jury box, please, sir.

4 (WHEREUPON, JUROR 258 IS SEATED)

5 DEPUTY CLERK - Juror number 171, Michael Osborne.

6 What say you for the State?

7 MR. SHELTON - Please excuse the juror.

8 DEPUTY CLERK - You're excused from this case.

9 Number 7, Justin Angel. What say you for the State?

10 MR. SHELTON - Please present the juror.

11 DEPUTY CLERK - And the defense?

12 MR. STELTZNER - Please excuse this juror.

13 DEPUTY CLERK - You're excused from this case.

14 Number 119, Pernell Joseph. What say you for the
15 State?

16 MR. SHELTON - Please present the juror.

17 DEPUTY CLERK - And the defense?

18 MR. STELTZNER - Please present this juror.

19 DEPUTY CLERK - Please have a seat in the jury
20 box.

21 (WHEREUPON, JUROR 119 IS SEATED.)

22 DEPUTY CLERK - Number 50, Kristin Cranford. What
23 say you for the State?

24 MR. SHELTON - Please present the juror.

25 DEPUTY CLERK - And the defense?

1 MR. STELTZNER - Please excuse this juror.

2 DEPUTY CLERK - You're excused from this case.

3 Number 198, Corey Sercy. What say you for the
4 State?

5 MS. SHELTON - Please present the juror.

6 DEPUTY CLERK - And the defense?

7 MR. STELTZNER - Please excuse this juror.

8 DEPUTY CLERK - You're excused from this case.

9 Number 79, Clifton Fisher. What say you for the
10 State?

11 MR. SHELTON - Please present the juror.

12 MR. STELTZNER - I'm sorry, can I have that number
13 again?

14 DEPUTY CLERK - (Indicating yes) 79.

15 MR. STELTZNER - Please excuse this juror.

16 DEPUTY CLERK - You're excused from this case.

17 Number 217, Andrew Thomas. What say you for the
18 State?

19 MR. SHELTON - Please present the juror.

20 DEPUTY CLERK - And the defense?

21 MR. STELTZNER - Please excuse this juror.

22 DEPUTY CLERK - You're excused from this case.

23 Number 241, Thomas Logan Whitmire. What say you
24 for the State?

25 MR. SHELTON - Please present the juror.

1 DEPUTY CLERK - And the defense?

2 MR. STELTZNER - Please present this juror.

3 DEPUTY CLERK - Please have a seat in the jury

4 box.

5 (WHEREUPON, JUROR 241 IS SEATED)

6 DEPUTY CLERK - Number 163, Kim Neely. What say

7 you for the State?

8 MR. SHELTON - Please present the juror.

9 DEPUTY CLERK - And the defense?

10 MR. STELTZNER - Please present this juror.

11 DEPUTY CLERK - Please have a seat in the jury

12 box.

13 (WHEREUPON, JUROR 163 IS SEATED)

14 DEPUTY CLERK - Number 109, Robert Hogue.

15 MR. SHELTON - What was the number again?

16 DEPUTY CLERK - 109. What say you for the State?

17 MR. SHELTON - Please present the juror.

18 DEPUTY CLERK - And the defense?

19 MR. STELTZNER - Please present this juror.

20 DEPUTY CLERK - Please have a seat in the jury

21 box.

22 (WHEREUPON, JUROR 109 IS SEATED)

23 DEPUTY CLERK - Number 15, Christi Beard. What

24 say you for the State?

25 MR. SHELTON - Please present the juror.

1 DEPUTY CLERK - And the defense?

2 MR. STELTZNER - Please present this juror.

3 DEPUTY CLERK - Please have a seat in the jury
4 box.

5 (WHEREUPON, JUROR 15 IS SEATED)

6 DEPUTY CLERK - Number 156, Aisha Muhammad. What
7 say you for the State?

8 MR. SHELTON - Please present the juror.

9 DEPUTY CLERK - And the defense?

10 MR. STELTZNER - Please present this juror.

11 DEPUTY CLERK - Please have a seat in the jury
12 box.

13 (WHEREUPON, JUROR 156 IS SEATED)

14 DEPUTY CLERK - Number 249, Mark Yeatts. What say
15 you for the State?

16 MR. SHELTON - Please present the juror.

17 DEPUTY CLERK - And the defense?

18 MR. STELTZNER - Please present this juror.

19 DEPUTY CLERK - Please have a seat in the jury
20 box.

21 (WHEREUPON, JUROR 249 IS SEATED)

22 DEPUTY CLERK - Number 193, Angelo Ruocco. What
23 say you for the State?

24 MR. SHELTON - Please present the juror.

25 DEPUTY CLERK - And the defense?

1 MR. STELTZNER - Could I get the number again?

2 DEPUTY CLERK - 193.

3 MR. STELTZNER - Please excuse this juror.

4 DEPUTY CLERK - You're excused from this case.

5 Number 184, Haley Richmond. What say you for the

6 State?

7 MR. SHELTON - Please excuse the juror.

8 DEPUTY CLERK - You're excused from this case.

9 Number 230, Malcolm Varner. What say you for the

10 State?

11 MR. SHELTON - Number one more time, please.

12 DEPUTY CLERK - 230.

13 MR. SHELTON - Please present the juror.

14 DEPTUY CLERK - And the defense?

15 MR. STELTZNER - Please excuse this juror.

16 DEPUTY CLERK - You're excused from this case.

17 Number 202, Brenda Sippel. What say you for the

18 State?

19 MR. SHELTON - Please present the juror.

20 DEPUTY CLERK - And the defense?

21 MR. STELTZNER - Please present this juror.

22 DEPUTY CLERK - Please have a seat in the jury

23 box.

24 (WHEREUPON, JUROR 202 IS SEATED)

1 DEPUTY CLERK - Number 130, Karen Rebecca Martin.

2 What say you for the State?

3 MR. SHELTON - Please present the juror.

4 DEPUTY CLERK - And the defense?

5 MR. STELTZNER - Please excuse this juror.

6 DEPUTY CLERK - You're excused from this case.

7 Number 118, Jessica Jones. What say you for the
8 State?

9 MR. SHELTON - Please present the juror.

10 DEPUTY CLERK - And the defense?

11 MR. STELTZNER - Please present this juror.

12 DEPUTY CLERK - Please have a seat in the jury
13 box.

14 (WHEREUPON, JUROR 118 IS SEATED)

15 DEPUTY CLERK - Number 14, Gerald Beach. What say
16 you for the State.

17 MR. SHELTON - Please present the juror.

18 DEPUTY CLERK - And the defense?

19 MR. STELTZNER - Um, could you repeat that again,
20 please?

21 DEPUTY CLERK - Number 14, Gerald Beach.

22 MR. STELTZNER - Please present this juror.

23 DEPUTY CLERK - Please have a seat in the jury
24 box.

25 (WHEREUPON, JUROR 14 IS SEATED)

1 DEPUTY CLERK - This will be for the alternate.
2 Number 33, Roger Jamie Byers. What say you for the State?

3 MR. SHELTON - Please present the juror.

4 DEPUTY CLERK - And the defense?

5 MR. STELTZNER - Please excuse this juror.

6 DEPUTY CLERK - You're excused from this case.

7 Number 1, Tammy E. Adams. What say you for the
8 State?

9 MR. SHELTON - Please present the juror.

10 DEPUTY CLERK - And the defense?

11 MR. STELTZNER - Please present the juror.

12 DEPUTY CLERK - Please have a seat in the jury
13 box.

14 (WHEREUPON, JUROR 1 IS SEATED)

15 DEPUTY CLERK - Number 254, Douglas Robinson.
16 What say you for the State?

17 MR. SHELTON - Please present the juror.

18 DEPUTY CLERK - And the defense?

19 MR. STELTZNER - Please excuse this juror.

20 DEPUTY CLERK - You're excused from this case.

21 Number 18, Bobbi Riley. What say you for the
22 State?

23 MR. SHELTON - Please present the juror.

24 DEPUTY CLERK - And the defense?

25 MR. STELTZNER - Please present this juror.

1 DEPUTY CLERK - Please have a seat in the jury
2 box.

3 (WHEREUPON, JUROR 18 IS SEATED)

4 THE COURT - Anything from the State involving the
5 striking of the panel?

6 MR. SHELTON - No, sir, Your Honor.

7 THE COURT - Anything, Mr. Steltzner?

8 MR. STELTZNER - No, Your Honor.

9 THE COURT - All right. Let me see counsel up
10 here just one minute.

11 (WHEREUPON, BENCH CONFERENCE WAS HELD OUT OF THE
12 HEARING OF EVERYONE WHICH WAS NOT REPORTED.)

13 THE COURT - Those of you who were not chosen, I'm
14 going to let you leave and call back tonight after 6:00
15 o'clock and receive whatever instructions are on the
16 voicemail and just follow them to whatever they say. If
17 they say report, report. If it says to call back, call
18 back at a certain time, so I'm going to allow you to leave
19 at this time. I doubt I will see you again this week, so
20 thank you for your service, so just call back tonight.

21 Those of you who were chosen, if you'll stand,
22 the clerk is going to administer an oath.

23 (WHEREUPON, DEPUTY CLERK ADMINISTERS THE OATH TO
24 THE JURY.)

1 THE COURT - All right, just remain standing for
2 right now. Mr. Hogue, I'm going to ask you to be the
3 foreman when you come back in. We're going to take a short
4 refresher break. I'm going to let you go to the jury room.
5 When you come back in, I'm going to talk to you a little
6 bit and then I'll turn it over to the attorneys to make
7 opening statements. Don't start discussing the case; you
8 really don't know anything about it and it would be
9 improper to discuss the case until I instruct you to
10 jointly deliberate and return a unanimous verdict, and I'll
11 tell you more about that in a moment. Don't be trying to
12 make up your own mind about this case. Again, it's not
13 proper to do so. So when you come back, I'll have some
14 instructions to give you and then the attorneys will make
15 their opening statements. So we'll take a real short,
16 maybe ten minute, refresher break.

17 (WHEREUPON, JURY EXITS THE COURTROOM)

18 THE COURT - All right, we'll be at lease for ten
19 or twelve minutes.

20 (WHEREUPON, RECESS TAKEN)

21 (WHEREUPON, NOTE IS SENT OUT FROM A JUROR DURING
22 THE RECESS.)

23 THE COURT - Thank you. Take your seats.
24 Sometimes I must not be quite as clear with my questioning
25 as I should be. Gerald Beach, juror -- he calls himself

1 Juror 14 -- the last alternate -- says I may have
2 previously -- previous experience with the defendant, and
3 I'm going to bring Mr. Beach in and ask him to clarify that
4 and then let him go back out and we'll decide what to do.
5 All right, bring Mr. Beach in.

6 (WHEREUPON, JUROR 14, Gerald Beach, enters the
7 courtroom.)

8 THE COURT - All right, Mr. Beach, I hate to kind
9 of single you out, but you think you've had some experience
10 with Mr. Ervin?

11 JUROR - I think -- sir, I'm not quite sure, sir,
12 but I mean I think I might have -- I think he might be the
13 person that attacked my son.

14 COURT REPORTER - He needs to speak up.

15 THE COURT - All right, he may have been someone
16 who attacked your son.

17 JUROR - Yes, sir.

18 THE COURT - All right, well, I'm going to excuse
19 then. You're an alternate anyway, but ---

20 JUROR - Okay. I apologize. I'm not sure, but I
21 -- I mean ---

22 THE COURT - Well, I ---

23 MR. SHELTON - Judge, I believe he was the twelfth
24 juror selected, not an alternate.

1 THE COURT - Okay. Well, I'm going to excuse you
2 then, because I think that -- if that's itching away at
3 you, it will certainly affect your ability to be fair and
4 impartial in this case. I'm not going to ask you to tell
5 me that, because, I know -- so I'm going to excuse you and
6 then, of course, seat one of the alternate.

7 MR. SHELTON - Your Honor, could we just out of an
8 abundance of cause ask Mr. Beach if he had had a
9 conversation with anyone else in the jury panel about his
10 belief?

11 THE COURT - Did you tell anybody ---

12 JUROR - Oh, no, absolutely not.

13 THE COURT - Okay. I didn't -- all right, you can
14 be excused. Call back tonight after 6:00.

15 JUROR - Okay. All right, thank you.

16 THE COURT - All right. All right, I'm going to
17 put the alternates' names on slips of paper and let the
18 clerk draw one. Adams on one and Riley on the other. All
19 right, pull one.

20 (WHEREUPON, DEPUTY CLERK COMPLIES)

21 DEPUTY CLERK - Oliver.

22 THE COURT - No. Adams.

23 DEPUTY CLERK - That already out? Had Oliver on
24 it then, huh. Adams.

1 THE COURT - Okay. Adams. Tammy Adams number 1
2 will be on the jury, so when she comes in, just tell her to
3 -- have her -- well, you won't need to send the back row
4 down as far, because we'll only have one alternate now,
5 that's Mr. Riley. So the foreman will sit there and Mr.
6 Riley will sit behind them.

7 Bring them on in.

8 (WHEREUPON, NOTE IS MARKED AS COURT'S EXHIBIT
9 NUMBER 8.)

10 THE COURT - Bring them on in.

11 (WHEREUPON, JURY ENTERS THE COURTROOM)

12 BAILIFF - Ms. Adams is the alternate.

13 THE COURT - No, no, Mr. Riley's the ---

14 BAILIFF - You need to be here. Is that correct,
15 Your Honor?

16 THE COURT - Well, let me make -- you drew the
17 name -- Ms. Adams is no longer an alternate. Which one's
18 Ms. Adams?

19 (WHEREUPON, JUROR RAISES HER HAND)

20 THE COURT - All right, are you Ms. Riley?

21 (WHEREUPON, JUROR RESPONDS)

22 THE COURT - All right, swap back. Y'all had it
23 right. And Mr. Beach was excused. He didn't do anything
24 wrong. In fact, he did exactly what he should have under

1 the circumstances, so he didn't do anything wrong. He did
2 the right thing, but I had to allow him to be excused.

3 I'm going to chat with you just for a few minutes
4 and then I'm going to turn the case over to the attorneys
5 for them to make for you opening statements. They're not
6 required to make opening statements, but they have a right
7 to come before you and tell you what they see in this case.
8 It's kind of a blueprint or an outline of the trial. They
9 will tell you more about the case than I have or I will.

10 Mr. Ervin to all of these charges has entered
11 pleas of not guilty. Those pleas of not guilty place on
12 the State the burden of proving his guilt beyond a
13 reasonable doubt. The State has to prove each and every
14 element of each and every offense before you could as to a
15 particular offense find Mr. Ervin guilty of that offense.
16 He is presumed innocent under our law. Anyone charged with
17 an offense in our system is presumed innocent and need not
18 prove their innocence. The State has to prove their guilt
19 beyond a reasonable doubt before a trial could convict that
20 person. I have three primary jobs as the trial judge in
21 this case. One is, I'm the logistics person. I make sure
22 we take breaks, that one person speaks at a time. I do the
23 mechanical part of the trial. I also rule on questions of
24 admissibility of evidence. If one party believes evidence
25 of a certain type should be allowed for your consideration

1 and the other based on some particular rule or case
2 believes that the evidence is not admissible, I have to
3 rule on it. My third job is that I am the sole judge of
4 the law in this case. You must take, accept and apply the
5 law as I charge it, even if you think I charge the law in
6 error or even if you think the law should be different. Y
7 your oath requires you take, accept and apply the law as I
8 charge it. You're not to infer from anything I say or do
9 at any time during this trial as indicating an opinion of
10 mine on the facts of this case. As the trial judge, I am
11 not allowed to intimate or express to you any opinion on
12 the facts. That is solely your job. It is solely your job
13 to examine the evidence, determine the facts and return a
14 verdict in this case, a unanimous verdict. You can believe
15 one witness as opposed to several, several witnesses as
16 opposed to one. You may believe all, part or none of the
17 witnesses' testimony. Use your common sense, your sense of
18 logic, your sense of reason. Use your experiences in life
19 as you analyze the evidence. As judges of the facts, you
20 necessarily must judge the credibility, that is the
21 believability of the witnesses who testify. In assessing
22 believability, use those things that you in your day-to-day
23 life find indicate believability in an individual and you
24 can use certain evaluators, how a witness acts on the
25 stand, are they hesitant or straight-forward, is there

1 testimony consistent or inconsistent. Consider whether
2 that witness had the opportunity to know those things to
3 which the witness testified, and you can consider whether a
4 witness has any bias or prejudice, that is, any reason to
5 help or hurt one side or the other. Consider all those
6 things, apply the law as I charge it, and then you will be
7 in a position to return your verdict.

8 Do not use any electronic means or any means
9 whatsoever, particularly any electronic digital devices to
10 obtain any information that could remotely deal with this
11 trial. That would be a violation of your oath. Don't go
12 on Facebook to learn anything about it. Don't go to
13 Wikipedia to learn anything about the case, about the law,
14 about the rules of evidence, about solicitor, about Mr.
15 Steltzner, Mr. Ervin or me. Just -- you've got to base
16 your verdict solely on the law as is developed in the
17 trial, so don't access any type of information through any
18 source whatsoever, electronic or otherwise. Do not let
19 yourself be exposed to any news coverage if there is any.
20 Don't read, watch or listen to anything that can remotely
21 deal with this trial. If you hear -- if anything catches
22 your ear or your eye that could remotely deal with this
23 trial, avoid it. Do not read or watch or listen to
24 anything that could deal with this trial. Mr. Hogue, as
25 foreman, you will be the liaison between the jury and

1 myself. You will preside over the jury's deliberation and
2 ultimately sign on behalf of the jury its unanimous
3 verdict. We take breaks about every hour and a half. I
4 find that is a good break time for most people, but if any
5 of you need a break at any time, simply raise your right
6 hand and with no questions asked we'll take a break. It's
7 hard to pay attention if you're uncomfortable, so if you
8 need a break, let me know, and I extend that to counsel and
9 Mr. Ervin. We want to move the case along, but we're not
10 in such a hurry that we won't take breaks if someone needs
11 a break. You do not need to take notes. Please listen
12 attentively, and again, I will at the end of the case
13 charge you the law that you are to apply and you must take
14 and apply the law as I charge it, and at this time when the
15 attorneys come before you, they are making, as I said, an
16 opening statement, which is sort of an outline or a
17 blueprint of the trial. They're not at this stage of the
18 trial arguing anything, that is, not trying to convince you
19 of anything. They're simply telling you what they believe
20 will develop as this trial progresses.

21 Counsel?

22 MR. SHELTON - May it please the Court, Your
23 Honor.

24 On July 11th, 2016 Jarnelle Ervin and two of his
25 friends invaded the home of the Parker family. They lived

1 at [REDACTED]. They live there now. It's in York
2 County. They busted in in the middle of the day with
3 bandana masks on their face, guns out, shattered a back
4 glass window and attached 17 year old Timothy P. who
5 was sleeping on the couch. His mother, Dawn, was working
6 in the back of the room, back of the house in her room.
7 She heard the noise. She came in to defend her son.
8 Initially, she thought he just fell, because he had his
9 wisdom teeth cut out earlier that day. She came to defend
10 him and walked into the beginnings of a nightmare. Ladies
11 and gentlemen, the men were in the house for an hour and a
12 half. At some point Dawn's husband, Danny, came home with
13 a man name Will that he works with. They had no idea what
14 was going on in the house. They walked through their front
15 door. Danny was attacked. Will was bound and put in the
16 bathtub. His son, Danny, (sic) was joined with him, tied
17 up with a lamp cord in a bathtub. Before they did that,
18 they had their fun. Before they did that they taunted
19 Danny and Timothy with guns to their head in their living
20 room after they'd beaten them, blood coming down their face
21 into their carpet, saying the words, "You ever seen
22 somebody's brains blown out?" Dawn came to defend her son.
23 She saw the man. She was face-to-face with that man. Her
24 husband was face-to-face with that man as well, and they
25 will identify him as being one of the assailants. You'll

1 hear other evidence to corroborate their testimony. We'll
2 be here for a couple days. This trial will at least go
3 into Thursday, possibly Friday. There are going to be a
4 number of witnesses. The reason it's going to take so long
5 is because we have to prove our -- the case to you beyond a
6 reasonable doubt. We have to prove each and every element
7 of all seven charges you heard Judge Hayes read out
8 earlier. The first one was burglary in the first degree.
9 We have to prove that a burglary occurred and that the men
10 were armed, became armed or assaulted and/or assaulted
11 somebody who wasn't a part of the burglary during the
12 incident. We will establish all three of those things in
13 this case. We have to establish and specifically that
14 Jarnelle Ervin was one of those people. We will establish
15 that Jarnelle Ervin committed that crime while armed with a
16 gun. We will establish that during the commission of that
17 crime he arm robbed Danny Parker of sixteen hundred some
18 odd dollars. Danny was going to make payroll for his
19 company that day. There's a criminal conspiracy element or
20 charge. We'll have to establish that there was someone
21 else there. You'll hear evidence of at least one other
22 person identified in this and at least one, if not two
23 other people, that were involved for a total of three or
24 four involved in this invasion. We will also prove to you
25 beyond a reasonable doubt that the four people I named to

1 you, Jessica Dawn Parker, Timothy P. , Danny Parker and
2 Will Mosteller were all kidnapped during this incident.
3 They were tied up. You will see evidence of ligature
4 markings. You will see evidence of the items they were
5 tied up with. You will see evidence of the beating that
6 these men gave to this family in their living room. You
7 will see that their cell phones were thrown out the
8 backdoor, and you will hear that a number of items were
9 stolen, electronics, video-gaming equipment, television,
10 cell phone and some guns.

11 I ask you to pay very careful attention to all
12 the testimony. At the appropriate time I will argue to you
13 why during your deliberations the appropriate finding, the
14 appropriate verdict, is guilty on every one of these
15 charges.

16 THE COURT - Mr. Steltzner?

17 MR. STELTZNER - Good afternoon, ladies and
18 gentlemen of the jury. My name is Donovan Steltzner. I am
19 charged with representing Mr. Jarnelle Ervin, my client.
20 You heard the story from the State. The crime was a
21 horrific one. Shall not make light of it. The criminals
22 terrorized their family for more than an hour and a half.
23 The victims in this case had they been armed themselves or
24 been able to defend themselves would've had every right to
25 shoot every single one of them dead. Had the victim's gun

1 not malfunctioned this scene could've been much worse, but
2 let me tell you a parallel story of July 11th 2016. It's
3 hard to commit a crime when you're not there. He was
4 playing midnight basketball, Mr. Ervin, around midnight
5 around July 10th through July 11th. Early morning he gets
6 injured. Mom takes him to the hospital; he's in a lot of
7 pain. When he gets to the hospital he has to be carried
8 out of the car -- carried out of the car by his brother.
9 The diagnosis you'll hear is two ankle sprains, quite
10 painful, can't walk. He gets wheeled out of the car and
11 taken back to this apartment, and his brother, Javon who
12 lives with him has to carry him into the house. It's that
13 bad. Now, mom's there, Javon's there, another brother and
14 a few other friends as well. Javon leaves his apartment a
15 few times during this -- during this day, a few afternoon
16 errands but comes back and sees his brother on the couch
17 where he left him. Now, Javon has to carry his brother to
18 the bathroom, which is only a few feet away from the couch
19 where he placed him. Mom has to run errands including
20 dropping the other brother off at his job and where does
21 she see him when she comes back? On the same couch where
22 she left him all day long. Gets up later that evening but
23 by then the robbery is -- this robbery that you're hearing
24 of is gone. (sic) You'll hear eyewitness testimony from the
25 victims themselves, and I do want you to pay attention to

1 them. Their pain and their story is real. You'll hear
2 from the police officers and the investigators and other
3 people, but I want you to pay special attention -- this is
4 key -- to the testimony of those who analyze the cell phone
5 data. The nice thing about cell phones is -- we use them
6 every day and those little computers keep track of wherever
7 we are. I don't know about you, but mine's like my second
8 brain. I can't go without it, or at least I don't want to.
9 So we carry it around with us, whether it be at our job or
10 work or whatnot. The consequence is that the cell phone
11 carries a bunch of data, information, who we talk to, where
12 we go, our social connections, etcetera. And one thing
13 they don't do, they only do what they're programmed to do.
14 They take accurate notes of our activities and store away.
15 Eyewitness testimony that you'll hear from the victims is a
16 good tool for investigators to use, the flaws that we human
17 beings can make mistakes. We think sometimes a -- or some
18 characteristic that may or may not be there. Memories are
19 tied to emotions. They're strong. We aren't lying but we
20 must remember. Computers don't care; they don't have
21 emotions and they record everything, even the imp --
22 unimportant stuff. What you're going to hear in this
23 testimony, in part, is that Mr. Ervin had two cell phones
24 tied to his name. Prosecution will present evidence that
25 one was tied to the -- one was tracked to the scene of the

1 crime. The other one, the one of them that Mr. Ervin had
2 on his person? Well, we'll hear about that later. All I'm
3 asking you is to take a look at the evidence. It's a lot
4 to do. I also ask you to think from your own experience.
5 Ever had a foot or ankle injury that's so severe you went
6 to the hospital to have it treated because you just
7 couldn't walk or know someone who has. It's not a one-day
8 heal, not a twelve hour heal certainly. Even with
9 painkillers you're not walking right. Committing a robbery
10 of this mayhem would've been completely out of the
11 question. It's hard to commit a crime when you're not
12 there. It's even harder to commit when you're incapable of
13 doing it. What I ask you to do is to find Mr. Jarnelle
14 Ervin not guilty. Thank you.

15 THE COURT - Call your first witness.

16 MR. SHELTON - Thank you, Your Honor. May it
17 please the Court. Call Sergeant Michael Gregory.

18 MICHAEL GREGORY, AFTER BEING FIRST DULY SWORN,

19 TESTIFIES AS FOLLOWS -

20 DIRECT EXAMINATION

21 BY MR. SHELTON -

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q Please state your name for the record.

25 A Michael Gregory.

1 Q What do you do for a job or occupation?

2 A I am a uniform patrol sergeant for the York County
3 Sheriff's Office.

4 Q How long have you worked at the sheriff's office?

5 A Almost 13 years.

6 Q What's your -- what is your current role or
7 assignment?

8 A I am the B shift Clover supervisor.

9 Q How long have you held those responsibilities?

10 A Three years, I think.

11 Q So you were working in that capacity on July 11th,
12 2016?

13 A Yes, sir.

14 Q Do you recall the events of that day?

15 A I do.

16 Q Please describe to the jury what you recall.

17 A I think it was around 4:50 in the afternoon, our
18 dispatch gave out a call for a home invasion in progress,
19 which basically meant that there was somebody being
20 burglarized while they were there. That resulted in us
21 running what we call a priority response, so, of course, we
22 got there or went to the call, lights and sirens, it was at
23 -- on [REDACTED], [REDACTED], I believe. So we arrived on
24 the scene just a couple minutes after the call came out.
25 When we got there, I found -- it was me and another deputy,

1 Deputy Terrence Knox who is no longer employed with the
2 sheriff's office. We arrived on the scene first when we
3 arrived across the street at Ms. Suchenski's house who was
4 the neighbor across the road. That's where we encountered
5 Mrs. Parker and her son, Timothy. Timothy had blood
6 pouring down his head and around his eyes. Mrs. Parker was
7 visibly shaking, crying, upset. She also had severe
8 ligature marks on her wrists. We asked Mrs. Parker if, you
9 know, the suspects had left. Once she gave us that
10 information, Deputy Knox and I went into the house to do a
11 protective sweep to make sure that nobody else was present.
12 When we went into the house, immediately it was disheveled.
13 I saw several bullets laying in the floor. The back glass
14 to the back door -- it was kind of like the french double
15 doors on a patio -- the back glass was completely
16 shattered. There were blood smears all over the wall. The
17 bathroom was a bloody mess. There was blood in the tub, on
18 the floors. There was an empty gun holster around the
19 recliner in the living room. The closet door was partially
20 open. There were cables like, uh, -- like you plug into a
21 VCR that -- that were laying on the floor, and so once we
22 made sure that that scene was secure, that there was no
23 other bad people in there, at that point my other unit
24 started arriving, and that's when I started putting
25 everybody in place. So once that was done, we, uh -- we

1 roped off, put crime scene tape up around the house to
2 secure it, started calling for our investigators, our
3 forensic service unit, called for our canine unit to start
4 running a track and waited for the investigators to arrive
5 and started communicating with them.

6 Q To your knowledge, was the canine team dispatched?

7 A They were.

8 Q Were they able to establish a trail?

9 A Not to my knowledge.

10 Q And was a crime scene log kept?

11 A It was.

12 Q What's the purpose of that?

13 A The purpose of the crime scene log is to establish who
14 comes in and out of the crime scene and what time that
15 takes place for security of the evidence.

16 Q And were you responsible for beginning the -- to
17 secure the scene as you described it?

18 A Yes, sir.

19 Q After you swept it to make sure no one else was there?
20 Is that -- was that the purpose of taping off the house?

21 A That's correct.

22 Q And, again, is that for -- to make sure that when the
23 forensic services arrived, that the -- that the scene is
24 un-tampered with?

1 A Yeah, it -- to make sure that it's in the condition
2 that it was upon our arrival.

3 Q And did anyone from York County Forensic Services Unit
4 respond?

5 A They did.

6 Q Do you recall who that was?

7 A I believe it was Director Weeks?

8 Q George Weeks?

9 A Yes, sir.

10 Q And had anyone disturbed the crime scene prior to his
11 arrival?

12 A They had not.

13 Q Had anyone moved anything inside?

14 A Not to my knowledge.

15 Q And had anyone collected any evidence?

16 A No, sir.

17 Q You said this was [REDACTED] ?

18 A That's correct.

19 Q Is that in Clover?

20 A It is, in the County of York, which is under the
21 jurisdiction of the sheriff's office.

22 Q I'm going to hand you an exhibit here that's marked
23 for identification as State's Exhibit Number 1. Do you
24 recognize that item?

25 A I do.

1 Q Is it a true and accurate reflection of the area that
2 you've been describing?

3 A It is.

4 MR. SHELTON - Your Honor, I'd ask to have this
5 entered as State's Exhibit Number 1?

6 THE COURT - Any objection?

7 MR. STELTZNER - Without objection.

8 THE COURT - In without objection.

9 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
10 STATE'S EXHIBIT NUMBER 1.)

11 MR. SHELTON - And I'd ask for permission to
12 publish.

13 THE COURT - You may.

14 MR. SHELTON - Madam clerk, can you dim the
15 lights, please?

16 (WHEREUPON, DEPUTY CLERK COMPLIES)

17 Q And so this road that loops around, is this Birchwood?

18 A Yes, it -- it runs off of Ridge Road which is a ---

19 Q Ridge Road down here?

20 A Yeah, it's a secondary highway.

21 Q Okay. And Birchwood makes kind of a horseshoe shape
22 off of ---

23 A Yeah. Yeah, you can't really see it from the map but
24 it goes -- it horseshoes all the way back around up toward
25 the top of the screen there and comes back out.

1 Q And the red outlined area, is that the property of
2 [REDACTED]?

3 A Yes, sir. That is [REDACTED].

4 Q And that is the home you responded to on this home
5 invasion call.

6 A Yes, sir.

7 MR. SHELTON - Please answer any questions the
8 defense attorney may have.

9 MR. GREGORY - Certainly.

10 CROSS EXAMINATION

11 BY MR. STELTZNER -

12 Q So Officer, did you -- so you came to the scene of the
13 -- of the crime that had been committed after -- after any
14 of the parties had left. Is that correct?

15 A Well, yes, sir, once we determined -- I mean we had to
16 determine that nobody else was there. That's correct.

17 Q Okay, so -- so no -- no criminal activity was being
18 observed at the time at the residence. Correct?

19 A No, sir.

20 Q So no identification could be made of any of the --
21 any of the persons that were -- that committed this crime.
22 They were all gone, long gone before you even showed up.

23 A I couldn't make any identification at the initial
24 response, no, sir.

25 MR. STELTZNER - Okay. Thank you.

1 MR. GREGORY - Yes, sir.

2 THE COURT - Any re-direct?

3 MR. SHELTON - No, sir.

4 THE COURT - You can step down and be excused. We
5 appreciate your time.

6 MR. GREGORY - Thank you, Your Honor. Have a good
7 day.

8 MR. SHELTON - And, Your Honor, the next officer
9 will be Deputy Samuel Bruining.

10 SAMUEL BRUINING, AFTER BEING FIRST DULY SWORN,

11 TESTIFIES AS FOLLOWS -

12 DIRECT EXAMINATION

13 BY MR. SHELTON -

14 Q Please state your name for the record.

15 A Samuel Bruining.

16 Q What do you do for a job or occupation?

17 A I'm a deputy with the York County Sheriff's Office.

18 Q How long have you been a deputy?

19 A Roughly three years.

20 Q Were you working the day of July 11th, 2016?

21 A I was.

22 Q Were you on patrol that day?

23 A Yes, sir, I was.

24 Q Is Sergeant Gregory your shift supervisor?

25 A He is.

1 Q And was he at the time?

2 A Yes, sir.

3 Q Do you recall the events of July 11th, 2016?

4 A I do.

5 Q Please describe what you recall from that afternoon.

6 A We got the call for a home invasion at [REDACTED]
7 [REDACTED] in Clover, South Carolina in the County of York. As
8 Sergeant Gregory described, responded priority one lights
9 and sirens. I arrived shortly after Sergeant Gregory and
10 Deputy Terrence Knox arrived. When I arrived, they were
11 doing a sweep of the house and that's when I confronted the
12 Parkers who were across the street at their neighbor's
13 house. When I saw them, they -- Timothy and Danny Parker
14 both had blood coming from their face. Mrs. Parker was
15 frantic. You could tell that they had all three just been
16 through a very traumatic experience. They were having, you
17 know, a hard time trying to, you know, recollect everything
18 that had just occurred due to the -- how traumatic that
19 experience was, but that's what -- what we drove up to when
20 we arrived.

21 Q Did you at any point go inside the house?

22 A I did not.

23 Q Did you take some photographs of the Parkers?

24 A I did.

1 Q Show you what's been marked for identification as
2 State's Exhibits Number 2 through 13. Take a moment to
3 look at those.

4 A (Witness complies)

5 Q Do you recognize those images?

6 A I do.

7 Q How do you recognize them?

8 A They're the images that I took that afternoon.

9 Q And are they true and accurate?

10 A They are.

11 MR. SHELTON - Your Honor, I'd like to move these
12 in as State's Exhibits Number 2 through 13.

13 MR. STELTZNER - Without objection.

14 THE COURT - In without objection.

15 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
16 EXHIBITS NUMBER 2 THROUGH 13.)

17 MR. SHELTON - And I would like permission to
18 publish, Your Honor.

19 THE COURT - You may.

20 Q I'm showing State's Number 2.

21 MR. SHELTON - We'll just go through these
22 sequentially, Your Honor.

23 Q And this individual in these first three pictures, is
24 this Timothy P. ?

25 A It is.

1 THE COURT - When the picture's up, tell us what
2 exhibit number it is.

3 MR. SHELTON - Okay.

4 Q State's Number 2, 3, 4 and 5, are those pictures of
5 Timothy P. ?

6 A (No response)

7 Q Deputy, are ---

8 A Yes.

9 Q --- those ---

10 A Yes.

11 Q Are those -- 2 through 5 are Timothy P. ?

12 A Yes.

13 Q State Number 6, is that Jessica Dawn Parker?

14 A It is.

15 Q As well as a close-up of her wrist on State's Number

16 7?

17 A Correct.

18 Q And are these the ligature markings that were

19 observed?

20 A They are.

21 Q State's Number 8, Danny Parker?

22 A Yes, sir.

23 Q And there's an individual in the background. Were you

24 able to identify this guy with the blue hat in the

25 background of State's 8?

1 A That's William Mosteller.

2 Q State's Number 9 is also Danny?

3 A Correct.

4 Q As well as 10?

5 A Yes.

6 Q And 11?

7 A Yes.

8 Q And 12?

9 A Yes.

10 Q And is that Mr. Mosteller in the background of Number
11 12?

12 A It is.

13 Q And State's Number 13 is that an image of Danny's hand
14 or his finger, the tip of it?

15 A It is.

16 MR. SHELTON - Please answer any questions the
17 defense attorney may have.

18 CROSS EXAMINATION

19 BY MR. STELTZNER -

20 Q And did you have -- and you took these with a camera.
21 Is that correct?

22 A That's correct.

23 Q Okay, and with -- and with that camera it came with a
24 -- did it -- was it automatic download to your computer or
25 did you -- did you use a SD card in that -- in that camera?

1 A We plug the computer (sic) directly up to our computer
2 to download the images.

3 Q Okay. All right, and -- and those images were
4 produced from printers that you have or did you take --
5 take the -- take them elsewhere to get developed? How ---

6 A We download them onto a server when we create a case.
7 It's called a Lv (phonetic) server where our dash cam
8 videos and any photos we take, we all produce into a case.

9 MR. STELTZNER - Thank you. No further questions.

10 MR. SHELTON - That's all I have for this witness.

11 THE COURT - You can step down and be excused.

12 Thank you. Appreciate your time.

13 MR. BRUINING - Thank you, sir.

14 MR. SHELTON - Your Honor, our next witness will
15 be Jessica Dawn Parker.

16 JESSICA DAWN PARKER, AFTER BEING FIRST DULY

17 SWORN, TESTIFIES AS FOLLOWS -

18 DIRECT EXAMINATION

19 BY MR. SHELTON -

20 Q Good afternoon, ma'am.

21 A Good afternoon.

22 Q Please tell these folks your name.

23 A Jessica Dawn Glover Parker.

24 Q Where do you live?

25 A At [REDACTED], Clover, South Carolina.

1 Q How long have you lived there?

2 A Ten years plus.

3 Q Who lives there with you?

4 A My husband, Danny, and our two sons, Timothy and
5 Michael.

6 Q How old is Timothy?

7 A He's 19 now.

8 Q What do you do for a job or occupation?

9 A Medical biller. I work from home.

10 Q How long have you done that?

11 A From home about five years now.

12 Q Mrs. Parker, do you remember the events of July 11th,
13 2016?

14 A Yes.

15 Q I need you to remember to speak up. Okay?

16 A Okay.

17 Q That lady's got to record everything you're saying and
18 these folks have to hear you. Okay?

19 A Okay.

20 Q Please describe what happened that day in your own
21 words. Just take your time. Okay?

22 (WHEREUPON, MRS. PARKER CRIES DURING HER
23 TESTIMONY)

24 A My youngest son, Timothy, was 17 at the time and he
25 had his wisdom teeth scheduled to be out that morning, so I

1 was obviously very nervous and he was being put to sleep.
2 Got home from that around 1:30, had his medicine filled and
3 I needed to get work done, was trying to get him tucked
4 him. I ended up getting him rested down on the couch
5 around 3:00. I had put a movie on for him, just started
6 it. It was the movie Thirteen Hours. We had rented that
7 the night before and he was asleep, and I went back to my
8 room and started to work and I wasn't in my room more than
9 a few minutes and I heard a loud crashing bang, and I came
10 flying down the hall. My first thought was that he'd
11 gotten up and fell or something, and I was coming into
12 this, you know, him splattered on the floor or something,
13 and as I come around the curve there was three black coming
14 in through the back door, one very tall, over six foot
15 wearing red on his face, one around five nine or so with a
16 darker bandana on his face. They all three had guns and
17 they were screaming, where's Tim, where's Tim, and I wanted
18 to double back to the bedroom, but they got a hold of me
19 and once I realized I wasn't going to be able to do
20 anything, I just kind of dove on top of my son and covered
21 him up, because I really thought that bullets were just
22 going to start flying and I just wanted to die first, you
23 know, at that moment. And they were -- kept screaming,
24 where's Tim, where's Tim in our faces, and Timothy finally
25 said, that's me. I think I said this is my son, Timothy, I

1 don't know what you're talking about and they were
2 screaming and screaming, and they'd kind of backed us up
3 between the couch and the table. We were clinging to each
4 of other and kind of -- trying to just -- and they got us
5 back as far as we could and they were right in faces, and
6 the tall goofy one, the tallest one over six foot, he took
7 me and put me on the -- got me -- come out and told me to
8 put my hands out and was tying my hands and telling me that
9 if I would just cooperate and everything that they wouldn't
10 kill my son, that they wouldn't -- they tied me up and they
11 put me in a closet behind the front door and then the TV
12 mounts on that wall, so when -- the speakers coming out of
13 the back of the TV I could hear all this violent gunfire
14 and fighting and stuff going on, but I can't really tell
15 what's my son being beat and what's coming from the TV and
16 every now and again it would get quiet and I would be able
17 to hear something. I did realize at one point that Timothy
18 had given them our big gun, the M14 trying to -- them --
19 just something to get them out of the house, offering them
20 whatever he could for things to leave and they were -- I
21 could hear them giddy, jumping around and ecstatic about
22 the gun that that they had gotten, but that still didn't
23 appease them to leave. Then I realized that Danny was
24 there. I don't really know exactly when he had came in,
25 but he -- there was a scuffle and a commotion kind a going

1 on outside the door, sounded like wrestling around fighting
2 a little, and then I don't know much time passed. I kept
3 praying for God to just let me stay in the closet, because
4 that's -- they told me they wouldn't kill my son if I would
5 stay there, and I just needed to stay there and so I had in
6 the mind that I had to stay there, and I heard them -- one
7 of them say that have you ever seen somebody's brains me
8 splattered and -- out -- and Danny say no and I couldn't
9 take it and I dove out of the closet and there was -- the
10 one with the dreads, the shooter one, he had the gun to
11 Timothy's head and I was begging him, I told him you said
12 if you wouldn't -- you wouldn't kill him if I stayed in the
13 closet, just please leave our house, you know. I asked him
14 if -- I said, don't you have a mother or a sister or
15 someone -- for a -- trying to bringing him back to a human
16 point, that these -- we are people, you know, and Danny
17 told me to just get back in the closet, please, and then he
18 was screaming at me to get back in the closet and -- and --
19 and I went back in there and it seemed like forever again
20 the time passed and then they ended up putting Danny in the
21 closet with me on top of me and his blood was dripping down
22 on my face and stuff and I didn't really know where Timothy
23 was. Things were confused. We thought they'd left and I'd
24 gotten Danny kind of untied and my hands were tied in the
25 front and his were tied in the back and I'd gotten him

1 untied and we went to step out of the door and the tall
2 goofy one over six foot, tall guy, he came back in the back
3 door and putting our gun to our faces and told us to get
4 back in the closet and we were backing up and Danny was
5 telling him that we needed to get to the hospital, Timothy
6 needed medical attention, he was -- they were both bleeding
7 from the head profusely where they had been beaten and it
8 was squirting out and then we got back in the closet and
9 after just seconds again had passed -- we felt like they're
10 -- or minutes, I don't know -- felt like they had gone, we
11 left the closet again and Danny took off and I dialed --
12 ran and grabbed the phone and dialed 911 and then I was in
13 Becca's yard. I don't -- it's kind a blurry right that,
14 but I don't know. That's the events of the day.

15 Q Mrs. Parker, how many men came in your house?

16 A Three. One very tall, one medium build with
17 dreadlocks. They were pulled back in a ponytail, like I
18 said, had a dark bandana on, and then the other one a
19 lighter complex (sic) and short kind a -- I guess you call
20 those dreads, too. He didn't span the house much. The
21 tall guy and the five foot ten, nine, ten, guy he -- they
22 stayed in there, the dreadlock guy the whole time. They
23 were -- they were there. Every time I would open the door
24 to the closet -- several times while I was in there I would
25 try to peek the door open to see if I could see him, if

1 there was a way, like I could get to the phone in the
2 living room or the gun that was between the rocking chair
3 and the couch -- I knew there was one there and -- that
4 amount of distance, ten feet, it was just so far in that
5 moment and I couldn't. I knew I couldn't. But every time
6 I would open that closet door, the one that was sitting
7 there on his knee in the window looking out the blinds, he
8 was like watching the ones with the dreadlocks, you know,
9 for somebody to pull up or something like that. I would
10 see his profile there every time. And he's the same one I
11 was face-to-face with when I came out of the closet,
12 finally jumped out and was screaming and begging them to
13 quit and leave. They were there so long and they -- they
14 had fun with it. The longer they were there, the more fun
15 they had. They just were animal behavior. It was awfulest
16 (sic) thing I could every imagine. I -- you don't torture
17 people and just take joy in their suffering like that.
18 Humans don't do that to other humans. They're not supposed
19 to.

20 (WHEREUPON, WITNESS CONTINUES CRYING THROUGHOUT
21 HER TESTIMONY)

22 Q Just take a second. Okay?

23 A Okay.

24 Q Dawn, did you have your cell phone with you when you
25 were in the closet?

1 A I did not.

2 Q Did you have any access to a phone when you were in
3 the closet?

4 A No.

5 Q So you had no way to call for help.

6 A Right.

7 Q And you were tied up?

8 A Yes. He tied me very -- very tight in the front, yes.

9 Q When the three men came into your house, was -- did
10 they have anything covering their face?

11 A Initially, yes. Uh, the tall goofy guy had the red
12 bandana on his face and the dread -- the guy with the
13 dreadlocks, he, um, had the darker bandana on his face.
14 They didn't stay on very long though. The guy that was
15 tying my hands, his fell off like while he was trying to
16 tie my hands, and he would try to push it back up, but the
17 longer that they were in the house, the more arrogant they
18 became. It was -- when Danny and Will came in, it was -- I
19 don't know -- like it took it up a next notch for them.
20 They kind a got -- got off on it, and their excitement
21 level grew the more people involved and -- they really
22 seemed to be enjoying themselves. Once Danny and Will were
23 subdued as well, they didn't -- they didn't have their
24 bandanas on at all at that point, didn't bother even trying
25 to put them back over their faces.

1 Q Were they armed?

2 A Yes. Had -- one had what looked like a revolver.

3 They had -- it looked like it had a flash suppressor on the

4 tip and another one had a longer gun, looked like a

5 shotgun, and the other one looked like something that

6 looked like a semi-auto -- or fully automatic or assault

7 rifle or whatever you want to call those, a big scary gun,

8 I guess, it looked like when they came in.

9 Q Could you tell if those guns were real or not?

10 A I could not.

11 Q Did they appear to you to be real?

12 A Yes.

13 Q Did all three of the men have guns?

14 A Yes.

15 Q And were they brandishing or pointing those guns at

16 you during all this?

17 A Yes.

18 Q So they were acting as if they were ---

19 A Yes.

20 Q And you testified that you were afraid they were going

21 to unload or start shooting?

22 A Yes. And as they were leaving, they did threaten to

23 kill us if we called the police.

24 Q How did the men get inside your home?

1 A That -- later realized they had busted the glass out.
2 There's -- it's double french doors and all glass on them
3 and they just busted the glass out of the -- out of the
4 swing side of the door, only one had swings.

5 Q Is that on the back or the front side of the house?

6 A The back side of the house.

7 Q Did you know the men?

8 A No.

9 Q Had you ever seen any of the three men prior to that
10 day in your life?

11 A No.

12 Q How long were they in your home?

13 A An hour and a half. About three -- the credits had
14 played through that movie completely before they were --
15 had left. Say about an hour and a half we figured.

16 Q This was the middle of the day in July?

17 A Yes, they came in just shortly after 3:00 some time.

18 Q Was the inside of your home well lit?

19 A Yes.

20 Q Were they wearing gloves?

21 A No.

22 Q Did they say anything to suggest why they were there
23 or what they were looking for?

24 A They asked for X pills several times. I tried to give
25 them Timothy's pain medicine that I had just got filled.

1 The tall goofy guy threw that back at me and said that, no,
2 he needs to keep those, he's going to need those. They
3 wanted X pills, like I said, and money. They asked where a
4 safe was many a times, and they'd made reference to Danny
5 and I owning a business and wanted to know where the safe
6 was, and I told him that your money's in the bank, you
7 don't keep cash in a business like that laying around and
8 they were talking about taking me to the bank, making
9 conversation about that at one point. I would offer
10 actually to go to the bank. I wanted them to leave my son
11 alone, just wanted them to quit beating on him. And then
12 Danny, like I said, he came -- about forty-five minutes
13 into thereabouts is where Danny had came in finally.

14 Q When they're asking about the X pills, did you have
15 any idea what they were talking about?

16 A No, I did not know what that even was.

17 Q You know what pills are.

18 A Yes, that's why I'd offered them pain pills, so ---

19 Q Did they act as if they knew you or your son?

20 A No, they -- they actually kept screaming, where is
21 Tim, where is Tim when they were pointing the gun in our
22 faces, and didn't know what to make of that. I mean,
23 screaming where is Tim, we -- I -- we call him Timothy.
24 I've never called him Tim. I don't know anybody who does

1 call him Tim. He's Timothy or Timbo at home or Timmy at
2 school, and so ---

3 Q So you don't know any friends that call him Tim?

4 A No, I didn't know any of his friends that called him
5 Tim.

6 Q Did Timothy have a job at this time?

7 A Yes.

8 Q Where was he working?

9 A At River Blue in -- on 49 in Charlotte.

10 Q What kind of -- kind of a place is that?

11 A It's a restaurant. He was bussing tables and such
12 through high school, during high school.

13 Q I want to take you back to the moment when they tied
14 you up, just want to make sure you explain that to this
15 jury. What did they use to tie you up?

16 A It's kind of like a coax cable or something, I guess
17 what you call it. Like a -- that you run the cable of a TV
18 into a DVR. It was white and it was thick. It's about
19 like that.

20 Q Was it tight?

21 A Yes, very tight on my hands.

22 Q Around your wrists?

23 A Yes.

24 Q Did it hurt?

25 A Yes.

1 Q Did it leave marks on your skin?

2 A Yes.

3 Q I turn your attention to State's Exhibit Number 7.

4 A Yes.

5 Q Is that an image of your wrists?

6 A Yes, sir.

7 Q And are those the marks you're describing?

8 A Yes.

9 MR. SHELTON - Your Honor, I'm going to show the
10 jury the image so they know. I'm showing the jury State's
11 Number 7, Your Honor.

12 (WHEREUPON, STATE'S EXHIBIT 7 DISPLAYED TO THE
13 JURY.)

14 Q Please describe how you felt during this ordeal?

15 A Helpless. I prayed and cried and so helpless. Just
16 to do anything to help my son. I couldn't -- couldn't
17 figure out what to do, what was right to do, what was wrong
18 to do, going over and over and over in your mind how to put
19 a stop to it, how to make it stop and make them stop, but
20 being so helpless to do anything, caught off guard.

21 Q So were you essentially tied up the entire time they
22 were in the house?

23 A Yes.

24 Q And in the closet?

25 A Yes.

1 Q But you testified earlier you were able to steal
2 glimpses in a couple -- at least at one point you came out
3 of the closet?

4 A Right, yes. I pushed the -- the closet door wouldn't
5 latch. It was -- there's -- it's a very small closet and
6 there was already a vacuum in there and like luggage that's
7 stored in there and coats. It was already fairly full, and
8 then they put me in there with those things, so my -- I was
9 -- you know, the door wouldn't latch shut against me and so
10 I -- it would ease back open and I would get a glimpse of
11 the one sitting on the couch on his knee keeping -- out the
12 blinds peeking. I -- he -- being very visible to me there
13 at that point so I saw him a lot sitting there, and then
14 he's the same one at one point that was threatening to blow
15 my son's head off when I came out of the closet.

16 Q And is that the man you described earlier as being
17 shorter -- not the tallest guy, one of the -- one of the
18 two shorter guys with dreads?

19 A Yes, the long dreads.

20 Q The dreads that were pulled back in a ponytail?

21 A Ponytail.

22 Q Did any of the men ever come back and check on you,
23 ever come back and check on you in the closet?

24 A Yes, the tall goofy guy came back several times. He
25 would open the door and said, you aren't going to die on me

1 in there are you, mom, and things like that, and he checked
2 several times and I think probably, too, to make sure I
3 didn't have a phone or something like that, too.

4 Q And do you recall if that taller guy was wearing a hat
5 of any kind?

6 A Yes, he had on a red hat.

7 Q Say that one more time?

8 A A red ball cap, yes.

9 MR. SHELTON - Beg the Court's indulgence, Your
10 Honor.

11 Q Dawn, at some point did they put Danny in the closet
12 with you?

13 A Yes. There was -- they wanted to put all four of us
14 in the closet actually, and like I said, there was barely
15 room for me in there. They -- Danny was on top of me when
16 they got him in there and shoved in there. He was kind of
17 standing on top of me and the blood was dripping --
18 dripping down his -- off of his face onto me, and they got
19 the two of us in there, into the closet. They were trying
20 to leave, I guess.

21 Q Was he also tied up?

22 A Yes. They had tied him behind his back.

23 Q Where was Timothy and Will during all this?

24 A They were in the bathtub. They -- like I said, we
25 wouldn't all fit in the closet. They had screamed and

1 hollered and put them in the bathtub on top of each other
2 and covered them up with a blanket.

3 Q Were you at some point able to get free?

4 A Yes. I had been working on loosening those things up
5 while I was in there and it didn't take much for me to be
6 able to untie Danny and then get myself finally worked free
7 of it.

8 Q Again, you were tied in the front.

9 A Yes.

10 Q Were they still there whenever you were able to free
11 Danny?

12 A We -- I was untying him when I -- we thought that they
13 had left, and I had got him untied and we went out to open
14 the door for the first time and thought they were already
15 gone and then that tall goofy guy came in the back door,
16 the one with the red hat, and he put him around (sic) the
17 corner and come through the backdoor again with the gun in
18 our faces and I really thought he was going to start
19 shooting again there, just sheer panic went all over me,
20 and he started screaming for us to get back in the closet,
21 if we want to die, didn't he tell us to stay in there, and
22 Danny started putting his hands up and trying to block him
23 from me and telling him that -- the gun from me, that, you
24 know, we were -- just to take him to the hospital, for them
25 to please leave and we'd already said that to him several

1 times. He put us back in the closet, shut the door again
2 and then -- he didn't tie us back up and he took off out
3 the door.

4 Q Were you eventually able to call for help?

5 A Yes, I went immediately -- as soon as they left again
6 and we believed they were gone I -- it wasn't very long. I
7 took off back to my room and grabbed the cordless phone and
8 dialed 911 immediately from the cordless phone and was
9 getting Timothy and checking on him and things.

10 Q What did Danny do?

11 A He took off out the door. I really didn't know where
12 he went. I know -- do know now, but at the time I didn't
13 really know where he was.

14 Q Was he trying to see if he could catch them?

15 A Catch them, yes.

16 Q And so you -- did you call 911?

17 A Yes, I was on the phone with 911 operator during that
18 time.

19 Q And the police responded?

20 A Yes.

21 Q And did you talk with the police and tell them what
22 had happened?

23 A I did, yes.

24 Q Did Danny talk with them?

25 A When they arrived at our home he did.

1 Q And did they take the pictures that you've seen?

2 A Yes.

3 Q Did Timothy go to the hospital?

4 A Yes.

5 Q How did he get there?

6 A By ambulance.

7 Q And did you ride with him?

8 A Yes.

9 Q What, if anything, happened during the ride to the
10 hospital?

11 A Timothy started to vomit in the ride to the hospital
12 and my experience in the medical field in a head trauma, I
13 just knew right then that it was a concussion and bleed on
14 his brain and my mind started going crazy on the ride there
15 and when he was vomiting they pulled over because we were
16 going to CMC Steele Creek, but that's not a full service
17 hospital, and so she said they were fixing to re-route us
18 to Main, because he would need surgeon, more attention I
19 guess than they had there, but the EMS operator driver was
20 telling me and I was trying to wrap my brain around
21 everything, but at that point I think I was going into
22 shock of some sort, because I just felt like I was so numb
23 from emotionless and I couldn't even speak. She kept
24 asking me if I was okay and I would just nod, because I
25 couldn't even make words anymore at that point.

1 Q Did Danny ultimately go to the hospital?

2 A He did much later that night. He was so upset and
3 trying to figure out what was going on. I couldn't get him
4 to go. Me and Timothy came back from the hospital and
5 Timothy had been checked out and had staples in his head
6 and, um, had CT scans and things of his brain and all and
7 checked -- they checked the incisions too from the doctor
8 that morning to make sure nothing came up there, got him
9 stapled up and came back home with him, and then I finally
10 talked Danny into going to the hospital in the wee hours of
11 the morning and convinced him that his finger was broken.

12 Q Was his finger broken?

13 A Yes.

14 Q Did it require surgery to repair?

15 A Yes. It was a compound open fracture.

16 Q I want to call your attention back to the point where
17 you called 911 for help. You called that from your home
18 phone?

19 A I did. The 911 operator said she would -- well, she
20 didn't -- I didn't think she had dispatched the police, but
21 she did. And I was going to talk to the -- when I came
22 down here for the hearing ---

23 Q We'll get to all that in just a little bit. Okay?

24 A Okay, okay.

1 Q And would you -- I'm going to show you what's been
2 marked for identification as State's Number 14. Okay?

3 A Okay.

4 Q Do you recognize this?

5 A I do.

6 Q Have you listened to the recording that's on this CD?

7 A Yes.

8 Q Is it your voice?

9 A It is.

10 (WHEREUPON, WITNESS CONTINUES TO CRY THROUGHOUT
11 HER TESTIMONY)

12 Q Is it your conversation with the 911 operator that
13 afternoon?

14 A Yes.

15 Q Is it true and accurate as to the 911 call that you
16 made?

17 A It is.

18 MR. SHELTON - Your Honor, I'd move to admit
19 State's 14.

20 THE COURT - Any objection?

21 MR. STELTZNER - Once it's playing.

22 MR. SHELTON - Your Honor, I ---

23 THE COURT - Well, we can't play it until it's in
24 evidence.

JESSICA DAWN PARKER - DIRECT BY MR. SHELTON

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1 MR. SHELTON - Yeah, I think maybe we should -- if
2 he has an objection, we need to take it up.

3 MR. STELTZNER - Go ahead.

4 THE COURT - Any objection?

5 MR. STELTZNER - No, I don't.

6 THE COURT - Okay. In without objection.

7 MR. SHELTON - Thank you, Your Honor.

8 (WHEREUPON, ITEM IS MARKED INTO EVIDENCE AS
9 STATE'S EXHIBIT NUMBER 14.)

10 MR. SHELTON - Your Honor, I'd move to publish.

11 THE COURT - All right.

12 MR. SHELTON - (Pause) Your Honor, can we have a
13 five minute break, because we're having a technical issue.
14 Apparently somebody switched our cables on us. We're going
15 to need to fix it.

16 THE COURT - All right, I'm going to let you go to
17 the jury room for a refresher, about five minute break just
18 long enough for them to get this straight.

19 (WHEREUPON, JURY EXITS THE COURTROOM)

20 (WHEREUPON, RECESS TAKEN)

21 THE COURT - All right, ready for the jury?

22 MR. SHELTON - Yes, sir.

23 THE COURT - We can bring them back in.

24 (WHEREUPON, JURY ENTERS THE COURTROOM.)

25 THE COURT - All right, you may proceed.

1 MR. SHELTON - Your Honor, prior to break we were
2 about to publish the 911 call, State's Exhibit 14. I would
3 ask permission to do that at this time.

4 THE COURT - All right.

5 (WHEREUPON, 911 CD IS PLAYED FOR THE JURY.)

6 Q Dawn, I believe you said at some point to the
7 dispatcher they -- they had told Timothy it was his ex-
8 girlfriend that sent them?

9 A Yes.

10 Q Was that your understanding at the time?

11 A Yes. When -- they made a reference, told him that he
12 was going to learn how to treat women, that he had done
13 something to a girl and that's what sent them. They
14 taunted us and said a lot of things but that one stuck out,
15 that -- it was said more than once.

16 Q Did you at that point have any idea what he was
17 talking about?

18 A No.

19 Q Do you to this day have any idea what he was talking
20 about?

21 A No.

22 Q Dawn, did you get a good look at the faces of the men?

23 A Two of them, yes.

24 Q And I think you've been talking about the taller,
25 goofy guy with the red hat ---

1 A Yes.

2 Q --- as one of them?

3 A Yes.

4 Q And the shorter guy with the dreads who kept looking
5 out the blinds of the window?

6 A Yes.

7 Q And I think you also described he was the man that had
8 the gun to Timothy's head ---

9 A Yes, when I came out of the closet.

10 Q --- in the living room ---

11 A Yes.

12 Q --- when Timothy and Danny were face-to-face on their
13 hands and knees?

14 A Yes.

15 Q I want to ask you specifically about that second man,
16 the shorter one.

17 A Yes.

18 Q Did you get a good look at his face?

19 A Yes.

20 Q For how long?

21 A The profile of him, each time I opened the closet door
22 -- the closet door would come up, I saw him several times,
23 his profile there face-to-face forty-five seconds to a
24 minute and a half, thereabouts I came out of the closet and
25 I was pleading with him face-to-face within a few, five,

1 six feet of him, with him to please not kill my son. They
2 told me if I stayed in the closet then they would let him
3 live, and I was begging them to just -- just leave, just
4 take whatever you want, just leave, please, so -- and I was
5 pleading with him, like I said, face-to-face.

6 Q And those two times when you -- those times that you
7 were seeing his profile and that face-to-face, he did not
8 have a mask on his face. Correct?

9 A He did not.

10 Q And what were you focused on specifically during those
11 moments?

12 A I was making eye contact with him at that moment when
13 I came out of the closet trying to get some human out of
14 him. There's something got to be here, and please don't
15 kill my son. That's all I cared about at that moment, just
16 don't kill him -- trigger pulling -- not much, you know,
17 and I was completely focused on him and begging him to
18 please stop.

19 Q On November 22nd, 2016 did you attend a hearing at
20 Moss Justice Center?

21 A Yes, I did.

22 Q In fact, was that in this courtroom?

23 A It was.

24 Q Was your husband, Danny, with you?

25 A He was.

1 Q And did you see and hear one of the men?

2 A I did. That hearing was -- the -- like we were signed
3 up for a victim's notification. They automatically notify
4 you when they have somebody in custody and you're a victim
5 of a crime, of any kind of hearings or anything that
6 they're going to have done, get e-mails and phone calls
7 letting you know and so I really didn't know what the
8 hearing was or anything, but we just wanted to attend and
9 needed to make sure that anybody related stayed in jail or
10 if they were going to have a hearing, we wanted to be here
11 and see it, so when we got down here that day, oh, it was
12 so awful, I didn't -- I really didn't know that he would be
13 speaking or anything, but when he spoke it just sent
14 shivers down my spine. I mean every fight or flight
15 response in my body went crazy, just want to get away from
16 him again. I listened to that voice taunt my son and
17 threatened our lives for so long within that closet -- and
18 there was ---

19 Q When you saw him and you've heard him, did you --

20 A Yes.

21 Q Did you recognize him as one of the men?

22 A Yes.

23 Q How certain were you?

24 A Beyond a shadow of a doubt.

25 Q Was there any doubt in your mind whatsoever?

1 A None.

2 Q Dawn, do you see that man in the courtroom today?

3 A Yes.

4 Q Please point him out for the jury.

5 A He's sitting right there in the defense chair.

6 Q Does he look different today?

7 A Yes, he shaved his dreadlocks off and he put glasses
8 on, but it's still the same man.

9 Q Are you certain?

10 A Without out a shadow of a doubt, one thousand percent
11 positive, never forget it, ever. Once you've been through
12 something and somebody doing something like that to your
13 child, it's not something you can forget, don't have that
14 luxury.

15 (WHEREUPON, WITNESS CONTINUES TO CRY)

16 MR. SHELTON - Thank you, ma'am. Please answer
17 any question from defense.

18 THE COURT - Mr. Steltzner?

19 CROSS EXAMINATION

20 BY MR. STELTZNER -

21 Q So you were in the -- so after the gentlemen came in
22 and put you in the closet, they still had their bandanas on
23 their faces when they originally did that. Is that
24 correct?

25 A When they put me in the closet?

1 Q Yes.

2 A They were already falling off at that point.

3 Q Okay.

4 A They guy that tied me up, his fell off as he was tying
5 me up, and he tried to put it back up, but he couldn't get
6 it back up. He was tying me up, so he couldn't get it back
7 on his face again. Never saw them with them back on after
8 that.

9 Q About how long were -- how long were the spaces of
10 time where you were out of the closet or that you were --
11 you were in the closet and then maybe could see something,
12 then -- and then got out of the closet. Did you -- can you
13 estimate how long you -- you actually were able to view the
14 - view the persons?

15 A I have no idea.

16 Q Would you say about a minute, minute and a half would
17 accurate?

18 A The one -- the one time that I came out of the closet,
19 yes, that would've been accurate for that when -- when I
20 was pleading with him and begging him to stop.

21 Q And so you described as a -- of course, the big tall
22 one, big tall one with a -- with a hat on, but you also --
23 also described one with dreads and another person. Could
24 you -- you tell us which one of those persons the -- my
25 client was?

1 A I'm sorry?

2 Q You said that there were three persons ---

3 A Yes.

4 Q -- or two -- that means there were two other persons
5 besides the tall one ---

6 A Yes.

7 Q --- tall one and you said the one with dreadlocks and
8 there's another one.

9 A Three initially came in and one I never saw again
10 until he was carrying things out of the house at the end
11 very briefly. The other two that were stayed (sic) in the
12 house, this guy and the other tall goofy guy with the red
13 hat, and those two were the ones who stayed in that area
14 all the time. He stayed on the couch with his knee kind of
15 on the couch propped out the window. Every time I would
16 ease the closet door open, that's where I would see him out
17 until at what point Danny had gotten there and then it kind
18 of got -- the violence took on another level and that's
19 when I heard him threatening to kill my son and I came out
20 of the closet and faced him.

21 Q Okay. And as far as -- as far as -- did they have any
22 distinctive hair color?

23 A I didn't notice any.

24 Q Any tattoos or markings?

25 A I did not notice any.

1 Q Any special walk or a gait?

2 A I did not notice any.

3 Q Okay. All right. And on November 22nd when you came
4 to the preliminary hearing, that was -- that was four
5 months after the event. Right?

6 A (No response)

7 Q And you ---

8 COURT REPORTER - She needs to answer verbally.

9 A Yes.

10 Q And -- and are you saying you can still recognize
11 voices after four months ---

12 A Yes.

13 Q --- even though you hadn't heard them prior?

14 A Oh, absolutely, yes. That voice I listened to for an
15 hour and a half taunt my family, yes.

16 MR. STELTZNER - All right. All right, no further
17 questions.

18 THE COURT - Re-direct?

19 MR. SHELTON - No re-direct, Your Honor.

20 THE COURT - All right, you can step down.

21 MR. SHELTON - Your Honor, we could call another
22 short witness ---

23 THE COURT - Yeah, I think that -- that's what I
24 was getting ready to ask. Call your next witness.

1 MR. SHELTON - We'd like to call Rebecca Thomas,
2 formerly Rebecca Suchenski, Your Honor, for the record.

3 REBECCA THOMAS, AFTER BEING FIRST DULY SWORN,
4 TESTIFIES AS FOLLOWS -

5 DIRECT EXAMINATION

6 BY MR. SHELTON -

7 Q Please state your name.

8 A Rebecca Thomas.

9 Q Did your last name used to be Suchenski?

10 A Yes, sir.

11 Q And were you married to Mark Suchenski?

12 A I was.

13 Q Were you still married with name on July 11th, 2016?

14 A I was.

15 Q And where do you live?

16 A [REDACTED] in Clover.

17 Q Do you live across the street from the Parkers?

18 A I do.

19 Q Do you know them?

20 A I do.

21 Q Do you recall the events of July 11th, 2016?

22 A Yes.

23 Q In your words please tell the jury what you remember
24 from that day?

1 A I came home with my daughter. I pulled right inside
2 my driveway and got out to check the mail. I noticed a
3 car, it was a blue/green -- it looked to be similar to an
4 Explorer -- I'm not sure if it was an Explorer but that's
5 what I remembered it looked -- I just assumed it was
6 friends or someone leaving, so I waived, went to get the
7 mail and, um, they were still sitting there after I looked
8 through the mail. I got a letter from my daughter's school
9 -- I remember that -- because it was registration time and
10 I was still in my car, because I'd opened the letter to see
11 what the letter was about and they were still sitting there
12 and I thought that was really strange that they were just
13 sitting in the road for so long, and um, I'm not sure, it's
14 within maybe thirty seconds or a minute after I was sitting
15 in the car that, um, I hear someone yelling, Mark, Mark,
16 and I look up and it's Danny running down -- he lives right
17 across from me -- and um, he couldn't see who was in the
18 car, so he assumed it was my ex-husband, and um, I look up
19 and he is running from his house, and as he gets closer, I
20 see he's just got blood just streaming down his face and he
21 comes running to me and he asks if I had seen who had just
22 left his house and, um, I'm just kind of confused and
23 shocked, because that's not the kind of thing you see every
24 day, and I said yes, I said, what -- what happened to you,
25 and, you know, he said I've just been robbed, I've just

1 been robbed. He said, can you go after them, and he said,
2 please, Becca, please, and he hops in the car and we take
3 off from Birchwood Drive and go to Ridge Road and we get to
4 the end of the road and I asked him, I said, which way,
5 Danny, which way, and he said right, so we go to the right
6 and there's no cars in sight and we go a short distance and
7 realize that, um -- I was just hoping maybe we could get a
8 license plate if we caught up, but we quickly realized
9 that, um, they're long gone, so we turn around and he's
10 just in excruciating pain, he's in shock. His hand's
11 busted open, he's just bleeding, so he's like I need to get
12 back to family, I need to get back to my family. Um, I
13 turn around, I drive him back to his house, and I'm just
14 sitting there in complete shock, because I feel like I -- I
15 don't know what to do and, um, he comes running out of his
16 house and says, they're gone, they're gone, they took them,
17 and, um, my daughter sees that Timothy and Dawn were, um,
18 across the road at my house and so I -- I'm like, Danny,
19 it's okay, they're at my house, so he just takes off
20 running and I go to my house and see Timothy and he's just
21 covered in blood, and Dawn, I just -- I remember I've never
22 felt somebody shaking like she was, just -- just holding
23 her and just hoping that if I just held her it could just
24 help her to stop shaking. I've just never experienced

1 anything like that, um, and uh, seems very quickly the cops
2 were there. Um, -- I -- it was just a nightmare.

3 Q Were you able to identify any of the men from the
4 vehicle?

5 A No, um, I couldn't see who was in the car. I couldn't
6 make out who was in the car.

7 Q Could you tell how many people were in the car?

8 A I couldn't.

9 Q Could -- and could you even tell what their race was?

10 A No, I mean -- I -- if I'd known what had happened, of
11 course, I wouldn't be standing there in the road waiving at
12 them, but, um, I just assumed it was friends or family or
13 someone visiting leaving, just not something you expect or
14 -- so I wasn't paying the closest attention except when
15 they kept sitting there for a long time. I thought this is
16 a little bit odd, but, um, just had no idea what was going
17 on.

18 MR. SHELTON - Thank you for coming. Please
19 answer any questions the defense may have.

20 MR. STELTZNER - I just have a few questions.

21 CROSS EXAMINATION

22 BY MR. STELTZNER -

23 Q So you basically only saw -- saw the aftermath of the
24 crime. Is that correct? You saw -- you saw the vehicle --

25 -

1 A Um, right.

2 Q You saw the vehicle there. Correct?

3 A Yes, I saw the vehicle.

4 Q You were unable to identify any persons that were
5 inside the vehicle.

6 A That's correct.

7 Q Or even count their number. Is that correct?

8 A That's correct.

9 Q And, uh, -- and you were unsuccessful in following
10 them. Correct?

11 A Correct.

12 MR. STELTZNER - All right, nothing further.

13 THE COURT - Re-direct?

14 MR. SHELTON - No, sir.

15 THE COURT - All right, you can step down and be
16 excused.

17 MR. SHELTON - Your Honor, we have one more
18 witness we'd call that would be real brief and free him up
19 for tomorrow if ---

20 THE COURT - All right, yeah, one more short
21 witness.

22 MR. PORTER - Yes, sir, Your Honor. State calls
23 Detective Nick Schifferle.

24 NICK SCHIFFERLE, AFTER BEING FIRST DULY SWORN,

25 TESTIFIES AS FOLLOWS -

1 DIRECT EXAMINATION

2 BY MR. PORTER -

3 Q Good afternoon, Detective. Could you please state
4 your name for the record.

5 A My name is Nicholas Edward Schifferle.

6 Q And what do you do for a job or occupation?

7 A My current job is deputy with the York County
8 Sheriff's Office. I'm assigned to the criminal
9 investigation division as a detective in the property
10 crimes unit.

11 Q How long have you been in law enforcement?

12 A I've been in enforcement over twelve years.

13 Q And do you recall being involved in the investigation
14 of this case?

15 A I do.

16 Q At [REDACTED] in Clover?

17 A Yes, I do.

18 Q Is that in the County of York?

19 A It is.

20 Q How were you involved in that investigation?

21 A Initially I responded to the scene after hearing the
22 call on the radio. I responded to that location to assist
23 with the investigation and assist with the patrol division.

24 Q And were you one of the first detectives on scene?

25 A I was.

1 Q So would you please describe once you arrived on the
2 scene what you did?

3 A When I arrived on scene, initially I met with Sergeant
4 Gregory who was one of the officers that was in there and
5 who was in control of the scene, met with him and I briefly
6 met with Mrs. Parker. I spoke with her briefly as far as.
7 getting some information about the scene. I also briefly
8 talked to some of the other witness -- or some of the other
9 victims that were there, and then eventually I met with
10 Director Weeks of our forensics unit and went inside the
11 house to take part in the investigation.

12 Q And you mentioned you spoke to Dawn Parker. Did you
13 speak to any of the other -- did you speak to Timothy

14 P. ?

15 A Yes, I did, to Timothy P. ---

16 Q Yes.

17 A --- and I also spoke with Danny Parker.

18 Q And could you -- do you recall their -- how they were
19 acting, what they appeared -- how they appeared?

20 A I spoke with them very briefly, but they were
21 distraught. Mr. Parker -- and when I say Mr. Parker, I
22 refer to Danny Parker, him particularly, he was going
23 through several emotions between being scared, anger, being
24 upset, being worried, being emotional. I could see that he
25 was -- he was in pain. He showed me his injuries to his

1 hand, obviously see the injuries to his head. I could see
2 that he was in pain.

3 Q You mentioned you met with Investigator Weeks with
4 forensics services. What did you do with Investigator
5 Weeks?

6 A Investigators Weeks was processing the crime scene, so
7 I went inside the crime scene to examine everything, kind
8 of assist with searching for evidence. During the course
9 of that I went out in the backyard area of the single story
10 structure and I searched the backyard area.

11 MR. PORTER - Beg the Court's indulgence.

12 Q Detective, I'm showing you what's been marked for
13 identification as State's 42, 43, 44 and 45.

14 A Thank you.

15 Q Just take a moment to review those if you would.

16 A (Witness complies)

17 Q Can you please tell the Court what those are
18 photographs of?

19 A These are photographs that were taken in the backyard.
20 In the backyard area there was a lot of debris out there.
21 There's fencing. There are chickens running loose.
22 There's a chicken pen. There are logs on the ground and
23 outside there were -- I found two cell phones that were
24 laying on the ground. They did not match the outside area.
25 The outside area was covered in leaves and dirt. These

1 were relatively fresh. These were, you know, were just
2 recently put there, which caught my attention, and when I -
3 - I saw that I believed that they were somewhat connected
4 to the case, so I notified Investigator Weeks of my
5 discovery and he came out there and he actually took these
6 photographs.

7 Q Were you there when those were photographed?

8 A Yes, I was.

9 Q Are those true and accurate copy of the photos as they
10 appeared on the day that you observed them?

11 A Yes.

12 MR. PORTER - Your Honor, the State moves
13 photographs marked State's 42, 43, 44 and 45 into evidence.

14 MR. STELTZNER - No objection.

15 THE COURT - In without objection.

16 MR. PORTER - Thank you, Your Honor.

17 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
18 STATE'S EXHIBITS 42, 43, 44 AND 45.)

19 Q While you were inside the outside the house -- if you
20 would please set those to the side.

21 A (Witness complies)

22 Q Detective Schifferle, while you were inside the house,
23 did you pick anything up?

24 A No. I went through and looked at some things, but I
25 was careful to not disturb anything.

NICK SCHIFFERLE - DIRECT BY MR. PORTER

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1 Q So you didn't disturb the scene.

2 A (No response)

3 Q Did you -- did you participate in collecting any of
4 the evidence?

5 A No, I did just look through the house, but I didn't
6 actually collect any of the evidence there at that day.

7 MR. PORTER - Beg the Court's indulgence. State
8 has no further questions for this witness, Your Honor.

9 THE COURT - Anything on cross?

10 MR. STELTZNER - I have -- I have no questions,
11 Your Honor.

12 THE COURT - All right. You can step down and be
13 excused. We appreciate your time. Thank you.

14 MR. SCHIFFERLE - Yes, sir.

15 THE COURT - Members of the jury panel, we'll stop
16 for the day, and we'll start back at 9:30 in the morning.
17 The bailiffs will tell you how to get in and out of the
18 building while you're serving as a juror. Keep in mind
19 don't let yourself be exposed to any news coverage if there
20 is any. Don't use any devices or otherwise -- one thing I
21 did not tell you earlier that I should have, but I will
22 now, I eluded to it at one point, do not make up your own
23 mind or discuss the case among yourselves until such time
24 as I instruct you to jointly deliberate and return a
25 unanimously verdict. Prior to that time you are not

1 equipped with all the tools you need to make a fair and
2 reasoned decision, so don't discuss the case among
3 yourselves or try to make up your own mind until we reach
4 that point. Do not let anyone outside the courtroom
5 discuss this case with you. If anyone tries to discuss
6 this case with you, report that back to me hopefully give
7 me the identity of anyone who has tried to discuss the case
8 with you as they would be in contempt of Court for trying
9 to talk to a seated juror. Again, don't try to make up
10 your own mind, and if anyone does try to discuss the case
11 with you, report that fact and don't use any devices or any
12 other means to try to determine the issues in this case.
13 So have a pleasant evening and we'll see you at 9:30.

14 (WHEREUPON, JURY EXITS THE COURTROOM)

15 THE COURT - Anything from the State before we
16 stop for the day?

17 MR. SHELTON - Nothing at this time, Your Honor.

18 THE COURT - Anything, Mr. Steltzner?

19 MR. STELTZNER - Nothing from me.

20 THE COURT - All right, we'll be at ease until
21 9:30 in the morning. Y'all have a pleasant evening.

22 (WHEREUPON, COURT IN RECESS FOR THE DAY AT 5:15
23 P.M.)

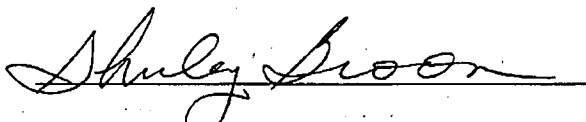
24 * * * * *

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 198 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Jarnelle Ladarius Ervin, as taken by me in The Court of General Sessions for the Sixteenth Judicial Circuit on May 15, 2018, and provided by me this the 10th day of August, 2018.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

State of South Carolina

Court of General Sessions

County of York

State of South Carolina)

)

Transcript of Record

v.)

2016-GS-46-04532

)

2016-GS-46-04533

Jarnelle Ladarius Ervin)

2016-GS-46-04534

)

2016-GS-46-04535

Defendant.)

2016-GS-46-04536

2016-GS-46-04537

2016-GS-46-04538

2016-GS-46-04532A

May 16, 2018

York, South Carolina

B E F O R E:

The Honorable John C. Hayes, Judge; and a jury.

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

Matthew W. Shelton, Senior Solicitor
Attorney for the State

Dan Porter, Assistant Solicitor
Attorney for the State

Donovan Steltzner, Esquire
Attorney for the Defendant

Lisa Scott

Circuit Court Reporter

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STATE EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
15-41	Pictures		X
46	Black Ops cart.		X
47, 48, 49	Fingerprint card		X
65	Aerial view		X
52	Consent to search		X
53	Pictures - two		X
55	Disk - Motorola contents		X
54	White Android phone		X
56, 57, 58	Pics - Jermaine's phone		X
59	Apple iPhone		X
61	Flash drive		X
60	Pics - cell phone		X
64	GPS coordinate map		X
50	Ruger 14		X
66	Call log		X
67	Contacts		X
51	Sixpack photo lineup		X

DEFENSE EXHIBITS

1	Phone extraction coordinates	X

- - -

P R O C E E D I N G S

- - -

THE COURT: Good morning. We're ready to get back on the trial involving Mr. Ervin, the defendant.

We've got two notes from jurors. One says, "Can we smoke?" I allowed them.

The other was a little more substantive. Juror No. 15, Christi Beard, says, "I work with Kelly Schifferle, Nick Schifferle's wife. I teach their son once a week in PE. I do not know Nick other than by name.. I don't believe this would cause me to be unfair in my decision, but I needed for you to know."

I'm going to call her in and quiz her a little bit, and then I'll let her go out and see what counsel has to say. So could you bring in Christi Beard, Number 15?

MR. SHELTON: Your Honor, before we get her, can I just note for the record that Detective Schifferle did disclose to -- to us after court yesterday that he thought that she was someone that worked at the school where his child goes. He told us that he's only talked with her maybe a couple of times face-to-face. Wasn't even sure if she would

1 know who he is, but he did note that to us.

2 And we had a conversation in chambers earlier
3 when you brought this note to our attention, and we
4 made you aware of that. And he is present here in
5 case the Court had any questions.

6 THE COURT: I don't have any questions for him,
7 but you're correct. We did have an in-conference
8 conversation about that, so would you bring
9 Ms. Beard in?

10 THE BAILIFF: (Complying.)

11 THE COURT: Hey, Ms. Beard. I hate to single
12 you out, but I got your note. And you know
13 Ms. Schifferle?

14 THE JUROR: I do. I know Ms. Schifferle.

15 THE COURT: Okay. You teach their son once or
16 twice a week? Once a week?

17 THE JUROR: Once a week.

18 THE COURT: And you met Mr. Nick, you've met
19 him, but you -- or have you?

20 THE JUROR: I -- I've seen him and I recognized
21 the name, but I don't -- I haven't talked to him.

22 THE COURT: Would you -- in spite of knowing
23 his wife and teaching their son once a week, would
24 you still be able to be fair and impartial in this
25 trial?

1 THE JUROR: I think so.

2 THE COURT: Would you -- you just think so?

3 THE JUROR: Yes, I can.

4 THE COURT: You feel -- you feel comfortable?

5 THE JUROR: I do. I do.

6 THE COURT: Okay. All right. I'll let you go
7 back out.

8 THE JUROR: Okay.

9 THE COURT: Any comments by the State?

10 MR. SHELTON: No, sir. I think she touched on
11 it and said she can be fair and impartial.

12 THE COURT: Defense?

13 MR. STELTZNER: I think, Your Honor -- Your
14 Honor, out of an abundance of caution, she knows the
15 family and they're part of this investigation. She
16 should be excluded from the jury.

17 THE COURT: Well, she said she could be fair.
18 Would you have struck -- if you had known that and
19 had that information, would you have exercised a
20 strike on her? You had strikes left when she came
21 up..

22 MR. STELTZNER: I would've struck her.

23 THE COURT: All right. Well, I'm going to
24 excuse her then. In my heart, I believe she
25 probably would not have told us if she claimed to be

1 subterfuge and not fair. She was aboveboard --
2 aboveboard, but I still feel more comfortable in
3 allowing her to be excused.

4 And I think it's Ms. Reilly is our now juror.
5 So would you bring her back in again?

6 THE BAILIFF: (Complying.)

7 THE COURT: Would you mark these Court
8 exhibits?

9 THE REPORTER: (Complied.)

10 THE COURT: I'm going to excuse you. You've
11 been very upfront and honest and I feel comfortable
12 that you could be fair and impartial, but it's
13 important to the case so I'm just going to make sure
14 and go ahead advise you and protect it as the Court
15 can do. I'm going to excuse you. You haven't done
16 anything wrong. In fact, you've done exactly right.
17 So I ask that you call back tonight.

18 THE CLERK: They're excused for the week.

19 THE COURT: You're excused for the week. Do
20 you have a pocketbook or anything that you need to
21 pick up?

22 THE JUROR: I do.

23 THE COURT: The bailiffs, just don't say
24 anything to the jury and just...

25 THE JUROR: Okay.

1 THE COURT: Thank you for that.

2 THE JUROR: Okay.

3 THE COURT: Other than that, anything before we
4 get the jury in?

5 MR. STELTZNER: I do have a few housekeeping
6 matters, Your Honor.

7 THE COURT: Okay.

8 MR. STELTZNER: Now, I'll just go ahead and
9 renew all my previous motions -- objections.

10 THE COURT: All right.

11 MR. STELTZNER: All right. And I'll ask for a
12 standing objection on all pretrial motions.

13 THE COURT: All right. The only -- the only
14 comment I have on that, and I -- I think you're
15 protected.

16 At a conference just within the last couple of
17 weeks, I don't know how it came up, but there's a
18 question of whether or not you can do a blanket
19 protected on all of them.

20 MR. STELTZNER: Okay.

21 THE COURT: I think you should be able to once
22 you've made an objection and I've ruled. I think
23 you have a standing objection, but I want you to be
24 comfortable in protecting the record. And I feel
25 bound to tell you that some issue came up where it

1 was questioned if you could comfortably do that, so
2 I'll leave that up to you.

3 MR. STELTZNER: Okay. Thank you, Your Honor.

4 THE COURT: All right. Bring in the jury,
5 please.

6 THE BAILIFF: (Complying.)

7 (At 11:29 a.m., jury entered the courtroom.)

8 THE COURT: It's still morning, so good
9 morning. And I apologize. I'm not sure we need to
10 apologize, but I'm bringing you up-to-date.

11 We have in South Carolina, between Circuit and
12 Family court, probably over 100 terms of court going
13 on every week. And we are limited with our number
14 of court reporters.

15 Ms. Scott had to come from Anderson by way of
16 Greenville because the court reporter that was here
17 yesterday is unavailable today. We -- and I'm glad
18 I'm not the chess master, but somebody in Columbia
19 has to move our court reporters around like chess
20 pieces. And as of 7:30 this morning, she did not
21 know she was going to be here, nor did I. So she
22 did -- I started to say young one -- maybe young
23 woman effort to get here at all in the time she did
24 coming down I-85.

25 Since we have tried your patience, we are

1 ordering lunch today to makeup, rather than take an
2 hour and 15 or an hour and a half. For everybody to
3 take lunch, everybody has to go somewhere so we
4 can't take just a 45-minute or an hour lunch. This
5 will break it down so we can have half an hour or
6 40-minute lunch and move forward.

7 So we apologize for it again. We're going to
8 try to ratchet things up and move along. Not to the
9 expense of everybody being heard and all the
10 evidence being elicited that needs to be elicited,
11 but to the part that using that hat that I mentioned
12 yesterday of being a mechanical person and kind of
13 right of master, I'm going to do by best to move
14 things along.

15 Call your next witness.

16 MR. SHELTON: Thank you, Your Honor. If it
17 please the Court.

18 THE COURT: Go ahead.

19 MR. SHELTON: The next witness is Timothy P.
20

21 THE WITNESS: (Approaching.)

22 THE CLERK: Do you solemnly swear or affirm
23 that the information that you give will be the
24 truth, the whole truth, and nothing but the truth so
25 help you God?

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Would you please have a seat.

3 Timothy P.

4 having been produced and first duly sworn as a
5 witness on behalf of the State, then testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. SHELTON:

9 Q. Good morning.

10 A. Good morning.

11 Q. Remember to speak up. Okay?

12 A. Yes, sir.

13 Q. Tell us your name.

14 A. Timothy P.

15 THE COURT: You'll have to speak a little
16 louder.

17 MR. SHELTON: That microphone doesn't work, so
18 you'll have to just speak up. Okay?

19 THE WITNESS: Timothy P.

20 BY MR. SHELTON:

21 Q. Timothy, how old are you?

22 A. Nineteen.

23 Q. Where do you live?

24 A. Clover, South Carolina.

25 Q. What's your address?

1 A. [REDACTED]

2 Q. And do you live there with your parents?

3 A. Yes, sir.

4 Q. Are your parents Dawn and Danny Parker?

5 A. Yes, sir.

6 Q. Were you living with them in July of 2016?

7 A. Yes, sir.

8 Q. Who else was living there?

9 A. Me and my parents and my brother.

10 Q. What's your brother's name?

11 A. Michael Smith.

12 Q. Timothy, do you recall the events of the
13 afternoon of July 11, 2016?

14 A. Yes, sir.

15 Q. Please describe in your own words what happened
16 that day.

17 A. I had got my wisdom teeth taken out that
18 morning. And after going to sleep, all I remember
19 is waking up on my couch in my living room to guns
20 coming through my back glass after it got shattered.

21 And I got up and I somehow ended up underneath
22 the coffee table against the wall in the corner of
23 my living room.

24 And the men then ran in and they got in front
25 of us and had guns pointed in my face and my mom's

1 face screaming, "Where's Tim? Where's Tim? Where's
2 Tim?" And I finally -- either I ended up saying,
3 "I'm Tim," or my mom said, "This is Timothy, my
4 son."

5 And -- and then after that, they took me to my
6 room. And then I guess they tied my mom up and put
7 her in the closet. And when I was in my room, they
8 started -- or one person started rummaging through
9 everything and tearing everything apart.

10 And I heard someone else come in. And when
11 that person came in, I also heard my dad in there.
12 And at that time, I took the gun from him.

13 And by then, the other men who was beating my
14 dad came down the hallway with him, and the -- I had
15 took the gun and I tried to shoot him. And I
16 flipped the safety in it so it wouldn't fire. I
17 went to go try to pull back the slide, it was like
18 it was a BB gun.

19 And then they kind of tackled me on the couch
20 and started beating me with guns. And then I
21 believe my dad took off to the living room to try to
22 get another gun.

23 And after they started beating me, I kind of
24 laid there for a second and pretended to be
25 unconscious to try to get my thoughts together. And

1 then I couldn't really do anything else. I couldn't
2 run. My window was unlocked, but I couldn't get out
3 of it.

4 And I -- they ended up taking us to the living
5 room after that and put us down on the floor
6 facing -- I was facing my dad. And I had my hands
7 tied behind my back, and they just stayed there
8 talking junk to me or talking crap to me and had the
9 gun in the back of my head. Asked me if I'd ever
10 seen anybody's brains splattered out.

11 And then after that, after they finished
12 talking crap and walking everyone -- or after they
13 finished talking crap, and they took me and Will and
14 put us in the bathtub and they threw a cover over us
15 and left us there.

16 And then they put my parents in the closet and
17 started to leave, and I heard one of them walk back
18 through the house and tell them to get back in the
19 closet. And they ended up leaving. And then after
20 that, we all went over to my neighbor's house after
21 we called 9-1-1.

22 Q. Timothy, you said they put a cover over "us" in
23 the bathroom. Who do you mean by "us"?

24 A. Me and Will.

25 Q. And is that Will Mosteller?

1 A. Yes, sir.

2 Q. One of the guys that worked for your dad?

3 A. Yes, sir.

4 Q. And was he there when the men first came in?

5 A. No, sir. They -- him and my dad both came in

6 at -- when I was in my room and my mom was in the

7 living room, or I guess she would've been in the

8 closet tied up.

9 Q. You were in the back of the house, so you can't
10 say for sure?

11 A. No, sir.

12 Q. Okay. How many men came in your home that day?

13 A. Three.

14 Q. And how did they get inside?

15 A. They busted out the back glass French door.

16 The double French doors, they busted in.

17 Q. You may have already answered some of these
18 questions. I just want to make sure that we get all

19 the facts out. Okay. So where -- where were you
20 when the three men broke in your home?

21 A. Asleep on the couch. I hadn't -- I hadn't
22 awoke up yet since the anesthesia.

23 Q. So you had your wisdom teeth removed earlier
24 that day?

25 A. Yes, sir.

1 Q. And they put you under with anesthesia to do
2 that, right?

3 A. Yes, sir.

4 Q. And you said they had guns. How many of the
5 three men had guns?

6 A. When they came in, at least the first two that
7 were in my face. And I can't remember if the third
8 had one, but they ended up also getting more guns.

9 Q. And did they say what they wanted other than,
10 "Where's Tim? Whose Tim"?

11 A. No, sir.

12 Q. Did they ask for "X" pills or weed ---

13 A. I heard ---

14 Q. --- or anything like that?

15 A. I heard them screaming about "X" pills close to
16 before they left when they were all just into it and
17 everything. And they didn't ask about weed. I
18 just -- I said I had a little bit, and I told them
19 where it was.

20 Q. Did you know the men?

21 A. No, sir.

22 Q. Had you ever seen them before in your life?

23 A. No, sir.

24 Q. And did they act as if they knew you?

25 A. No. They knew my name or what people from my

1 work had called me.

2 Q. Yeah, but they're asking you in your face,

3 "Where's Tim?" right?

4 A. Yes, sir.

5 Q. And we'll get back to that in a minute. Not
6 everybody calls you Tim, correct?

7 A. No, sir.

8 Q. In fact, most people don't call you Tim, do
9 they?

10 A. No.

11 Q. Timothy, can you describe how you felt when the
12 men broke into your home?

13 A. Just kind of -- just kind there I guess.

14 Q. Say that again?

15 A. I was just kind of there. I didn't really feel
16 any specific way about it at the time.

17 Q. Okay. Again, you were coming out of
18 anesthesia ---

19 A. Yes, sir.

20 Q. --- for wisdom teeth surgery, right?

21 A. But I still came to really quick or I still
22 woke up.

23 THE COURT: Keep your -- keep your voice up.

24 THE WITNESS: I still woke up and knew or I
25 guess could understand what all was happening around

1 me.

2 BY MR. SHELTON:

3 Q. I understand. Were you scared?

4 A. Yes, sir.

5 Q. Do you recall what they were wearing?

6 A. I recall the tallest one had on a bandanna. I
7 believe it was red. And then the shorter one had on
8 a darker bandanna, I believe. It was red. I
9 believe darker red.

10 Q. Were their faces covered when you saw them?

11 A. Yes, sir. His face was covered from about the
12 nose down.

13 Q. Were they wearing gloves?

14 A. No, sir.

15 Q. Were any of them wearing gloves?

16 A. No, sir.

17 Q. You said one was taller and one was shorter?

18 A. Yes, sir.

19 Q. What race were they?

20 A. African American.

21 Q. And were they all males?

22 A. Yes, sir. From what I had seen.

23 Q. Did they hurt you?

24 A. Yes, sir. Whenever they started hitting me
25 with guns or whatnot when I was on my couch, my head

1 got split and I had to get five staples. And my
2 hand was kind of messed up a little bit from putting
3 my hand over my head.

4 Q. So they hit you on the head?

5 A. Yes, sir.

6 Q. You had to have the five staples in your head?

7 A. Yes, sir. On the -- right there (indicating).

8 Q. And you're kind of describing your hairline?

9 A. Yes, sir. I have a part there now, so...

10 Q. Okay. Were you able to fight back?

11 A. I tried at one point, but there was nothing
12 else I really could've done.

13 Q. You said you were in the living room on the
14 couch when they broke in. Where was your mom?

15 A. She would've been in her bedroom working.

16 Q. And how did she react?

17 A. She just ran down the hallway. Whenever I woke
18 up, I started screaming "Mama" and she just ran.
19 She just thought I'd fell and...

20 Q. Did she try to protect you?

21 A. Yes, sir. She kind of got in between me and
22 them and just kind of tried to get on top of me.

23 Q. I think you described you were trying to get
24 away from them, trying to get over by the coffee
25 table ---

1 A. Yes, sir.

2 Q. --- against the wall?

3 A. Yes, sir.

4 Q. Did they hurt your mom?

5 A. They tied her up and put her in the closet.

6 And I remember I kept talking to her and saying

7 some -- calling her "Mama."

8 Q. I want you to think for about a minute about
9 the guns that you saw them come in with. Could you
10 tell when they -- when you first saw them whether
11 the guns were real or not?

12 A. No, sir.

13 Q. Did they look real?

14 A. Yes.

15 Q. Speak up, please.

16 A. Yes, sir.

17 Q. Did you think they were real?

18 A. Yes, sir. I had got a glimpse of the longer
19 gun. Whenever they were first coming through the
20 glass, that was the first thing that came through.
21 And then I had seen the pistol when it was in my
22 face, the revolver or whatnot.

23 Q. And they pointed those guns at you and your
24 mom?

25 A. Yes, sir.

1 Q. A moment ago I think you said something about
2 you were able to get one of the guns from one of the
3 men?

4 A. Yes, sir.

5 Q. And did you try to shoot one of the men with
6 that?

7 A. Yes, sir.

8 Q. Were you successful?

9 A. No.

10 Q. You may have already said that, but what
11 happened? Describe that moment, please.

12 A. I had took the gun from him behind me. And
13 then when the next one came through the door after
14 he had beat the crap out of my dad, I tried to shoot
15 him. And then it wouldn't do anything. I flipped
16 the safety. It wouldn't do anything. I even tried
17 to pull back the thing over the top of it, but
18 looking back on it, it was -- I'm pretty sure it was
19 a BB gun.

20 Q. Did it appear to be real when you grabbed it?

21 A. Yes, sir. Or I hadn't even seen it at that
22 point. He was still behind me.

23 Q. Why did you grab it?

24 A. They were in my home.

25 Q. You were trying to protect yourself and your

1 family, right?

2 A. Yes, sir.

3 Q. So you believed the gun to be real?

4 A. Yes, sir.

5 Q. Did you have your cell phones nearby?

6 A. Yes, sir. Whenever they first came in, I had
7 it behind the couch. And I had it in my hand the
8 whole time they were there screaming at me, and I
9 just -- I didn't do anything with it. I just slid
10 it up behind the couch and left it there.

11 Q. Were you able to call for help?

12 A. No, sir.

13 Q. Why not?

14 A. If I would've looked at it or tried to really
15 dial 9-1-1 or anything, then they probably would've
16 noticed and so I didn't even...

17 Q. So you weren't sure what they would've done if
18 you tried to call for help?

19 A. Yes, sir.

20 Q. They were threatening you with guns and had
21 just broke into your home?

22 A. Yes, sir.

23 Q. Did you -- were you in fear that if you tried
24 to call for help, they would hurt you more?

25 A. Yes, sir.

1 Q. Or worse?

2 A. Yes, sir.

3 Q. I want to turn your attention to Will. Were
4 you in the front of the house or the back of the
5 house when Will came in behind your dad?

6 A. No. I would've been in the back of the house.

7 Q. At what point did you first see Will?

8 A. Whenever they brought me into the living room
9 and put me down on the floor and when I was laying
10 there facedown.

11 Q. How was Will acting?

12 A. I believe they -- they either tied him up at
13 that point or he was still -- I believe he was still
14 laying there in almost a fetal position just
15 covering his face.

16 Q. So he wasn't really looking around. He was in
17 a defensive position?

18 A. Yes, sir.

19 Q. Did he appear to be scared?

20 A. Yes, sir.

21 Q. And you said if he wasn't tied up at that
22 point, they did tie him up?

23 A. Yes, sir.

24 Q. Where did they -- where did they put him?

25 A. In the bathtub with me.

1 Q. And that's the same bathtub that they
2 eventually put you in?

3 A. Yes, sir.

4 Q. And were you tied up when they put you in the
5 bathtub?

6 A. Yes, sir.

7 Q. Did they put anything over you?

8 A. A blanket or a cover.

9 Q. Were you scared?

10 A. Yes, sir.

11 Q. What did you think was going to happen?

12 A. I just thought it was -- was just going to be
13 over.

14 Q. You thought they were going to kill you?

15 A. Yes, sir.

16 Q. What about Will?

17 A. He peed himself in the bathtub, so...

18 Q. He urinated on himself?

19 A. Yes, sir. So I figured he probably thought the
20 same thing.

21 Q. All right. I'm going to show you a couple
22 pictures that have not been introduced as evidence
23 yet, but they're marked for identification. I'm
24 going to show them to you one at a time and ask you
25 to take a look at them. States's Number 22. Do you

1 recognize that photo?

2 A. Yes, sir.

3 Q. And is that of your living room?

4 A. Yes, sir.

5 Q. And are there two blood stains on the floor?

6 A. Yes, sir.

7 Q. Is that where you and your dad were beaten in
8 the living room?

9 A. Yes, sir.

10 Q. And is that where the men had the gun to you
11 threatening to blow your brains out?

12 A. Yes, sir.

13 Q. Show you State's Exhibit -- what's been marked
14 for identification as State's No. 23 and 24. And
15 are those photographs of the bathroom?

16 A. Yes, sir.

17 Q. With the blanket in the bathtub?

18 A. Yes, sir.

19 Q. Is that the blanket they covered you and Will
20 with?

21 A. Yes, sir.

22 Q. It appears to be some sort of light?

23 A. Yeah, they took the lamp out of the living room
24 and -- the heat lamp that we had for baby chickens,
25 and they tied me up with a heat lamp and Will with

1 the -- the actual lamp.

2 Q. So that lamp that's in or near the bathtub,
3 they tied you up with that cord?

4 A. Yes, sir.

5 Q. Next I'm going to show you State's 25, 26, 27,
6 28, 29, and 30 marked for identification. Look at
7 all of those photos, please.

8 A. (Complying.)

9 Q. Are those photographs of your room?

10 A. Yes, sir.

11 Q. Is that after this home invasion?

12 A. Yes, sir.

13 Q. Was your room in that condition before the men
14 came in your house?

15 A. No, sir.

16 Q. There appears -- appears to be a number of
17 things thrown about the room, drawers tossed, items
18 thrown about the room. That's not the way your room
19 was in earlier that day?

20 A. No, sir.

21 Q. And appears to be blood in that room. Whose
22 blood is that?

23 A. Mine.

24 Q. Is that from where they beat you?

25 A. Yes, sir.

1 Q. Timothy, to your knowledge, what all did they
2 take?

3 A. A flat screen TV, an Xbox One, Xbox 360, a
4 laptop, my brother's flat screen, my brother's Xbox,
5 a Ruger Mini-14, Taurus PT-9 -- or Taurus PT-111
6 pistol.

7 Q. Is that a 9-milimeter pistol?

8 A. Yes, sir. They took my great uncle's broken
9 .22 revolver. I think that's...

10 Q. Did they take a bookbag from your room?

11 A. Yes, sir.

12 Q. Where was that bookbag?

13 A. Behind my couch.

14 Q. What was in that bookbag?

15 A. A little bit of weed and some bags.

16 Q. Less than an ounce of weed?

17 A. Yes, sir.

18 Q. Did they take a pair of your shoes?

19 A. Yes, sir.

20 Q. I believe those were LeBron's?

21 A. Yes, sir.

22 Q. That you had just gotten, right?

23 A. Yeah, I hadn't even worn them yet.

24 Q. And you hadn't even been able to wear them yet?

25 A. No, sir.

1 Q. Was some of your property returned by a
2 sheriffs -- sheriffs detective some time later?

3 A. Yes, sir.

4 Q. What was returned?

5 A. My Xbox One, my Xbox 360, my brother's TV, and
6 I believe that's it.

7 Q. And how do you know that that was your stuff?

8 A. My Xbox One still had my profile signed in on
9 it.

10 Q. Well, hang on just a second. So your profile,
11 you mean your Xbox Live account profile?

12 A. Yes, sir.

13 Q. It was still signed in as your profile name ---

14 A. Yes, sir.

15 Q. --- and information? Was there anyone else
16 that knew how to log in on that?

17 A. Yes, sir. They had added a couple of accounts.
18 Ones -- they had actually changed the name on my
19 account to Jermaine Lowery and a bunch of stuff in
20 my account. And then they had made new accounts,
21 and they made a couple of them.

22 Q. And was there anything on the machine that
23 identified it as well just by looking at it?

24 A. Yes, sir. There was candle wax on it that had
25 spilled on it whenever -- it had been a while ago,

1 but it was just kind of stuck in the vents on it and
2 I knew it was on there.

3 Q. So there was no question that that was your --
4 at least that was your Xbox, right?

5 A. Yes, sir.

6 Q. Did you admit to the police that you had given
7 them that less than an ounce of marijuana?

8 A. Yes, sir.

9 Q. And at that point, were you just looking to
10 give them things to take?

11 A. Yes, sir.

12 Q. To try to get them out of your house?

13 A. Yes, sir.

14 Q. Isn't it true that back then prior to this
15 incident, you would sometimes sell a little bit of
16 marijuana or hook your friends up with a little bit
17 of marijuana?

18 A. My friends, yes, sir.

19 Q. You testified earlier that -- well, hang on.
20 Let me back up a second. Were your parents aware of
21 that?

22 A. No, sir. Not at all.

23 Q. And when had you -- that -- that little bit of
24 marijuana, a little less than an ounce of marijuana,
25 when did you acquire that?

1 A. The night before.

2 Q. The night -- so the night of July 10th?

3 A. Yes, sir.

4 Q. Before you had your wisdom teeth removed?

5 A. Yes, sir.

6 Q. And when did you first make your parents aware
7 of the fact that you had weed?

8 A. They probably wouldn't have known until
9 after -- after all this happened.

10 Q. Did you tell your mom at some point?

11 A. After this, yes, sir.

12 Q. Sure. That's what I mean. They -- they didn't
13 know at the time, but did you tell her afterwards?

14 A. Yes, sir.

15 Q. You testified earlier that you didn't know any
16 of the three men who invaded your home that day?

17 A. (No response.)

18 Q. Okay. But you also testified that they were --
19 they were looking for a person named Tim ---

20 A. Yes, sir.

21 Q. --- right? They were screaming in your face,
22 "Where's Tim?"

23 A. (No response.)

24 THE COURT: Make it a question.

25 MR. SHELTON: Yes, sir.

1 BY MR. SHELTON:

2 Q. Were they screaming in your face, "Where's
3 Tim?"

4 A. Yes, sir.

5 Q. Does anyone call you Tim?

6 A. No one other than the people who I worked with
7 at River Blue and people at work pretty much.

8 Q. Okay. So what do people normally call you?

9 A. Timothy or Timmy.

10 Q. Does anybody ever call you Timbo?

11 A. Yes, sir. My parents and family.

12 Q. So people who call you Tim would be people that
13 you work with?

14 A. Yes, sir.

15 Q. Tell me again where you were working.

16 A. River Blue.

17 Q. What kind of establishment is that?

18 A. It's a pretty nice restaurant. It was -- it's
19 supposed to be like kind of fine dining, but also
20 where a family could just go eat and have a good
21 time.

22 Q. And how long did you work there?

23 A. Probably about three months.

24 Q. What did you do there?

25 A. I was a busboy and a food runner, and sometimes

1 I would run the food expo or I would be the food
2 expo.

3 Q. Make sure you don't trail your voice off.

4 Okay. So what was that last part?

5 A. Sometimes I would be the food expo, so I'd be
6 in charge of making sure every -- all the dishes
7 were right for the guests. And I would make sure
8 that people held them right and that they were set
9 down right.

10 Q. Okay. Did a man named Shawn Reed work there
11 with you?

12 A. Yes, sir.

13 Q. And did you know him just through work?

14 A. Yes, sir.

15 Q. How long had you known him prior to July 11,
16 2016?

17 A. The entirety of the job and after. I guess we
18 had actually both left River Blue then because we
19 had went and looked for jobs together, and I drove
20 him around and went place to place putting in
21 applications, talking to people.

22 Q. So you knew him from work, but was he -- was
23 he -- was he someone you would consider a friend?

24 A. Yes, sir, he was.

25 Q. At the time?

1 A. Yes, sir.

2 Q. Had he ever been to your house?

3 A. Once.

4 Q. Had you ever talked about your family and what
5 your parents do?

6 A. Yes, sir.

7 Q. The fact that they own their own business?

8 A. Yes, sir.

9 Q. Had you talked to him about getting your wisdom
10 teeth removed the morning of July 11, 2016?

11 A. Yes, sir.

12 Q. Had you talked to him about getting marijuana
13 the night before?

14 A. Yes, sir.

15 Q. And you'd known him at that point for at least
16 a couple of months?

17 A. Yes, sir.

18 MR. SHELTON: Timothy, please answer any
19 questions the defense attorney may have.

20 THE WITNESS: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. STELTZNER:

23 Q. All right. When the gentlemen came into your
24 -- came in and invaded your house, you were asleep,
25 correct?

1 A. Yes, sir.

2 Q. Okay. And you said they had bandanas across
3 their -- across their faces, so you couldn't really
4 see them. Was that all three men or just -- just
5 one or two of them?

6 A. The two men that I saw at first did. And then
7 towards the end of everything when they were walking
8 me down the hallway, I caught a glimpse of the
9 taller one, and he -- he didn't have one over his
10 face. And then shorter one I had only seen once
11 when he was walking in the hallway.

12 THE COURT: Keep -- keep your voice up, please.

13 THE WITNESS: And then the shorter one I had
14 only seen once when we were walking down the
15 hallway.

16 BY MR. STELTZNER:

17 Q. Okay. And -- and you said -- you said in prior
18 testimony that you -- that you -- that you smoke
19 marijuana and distribute it to your friends,
20 correct?

21 A. I didn't say distribute it, but, yes, sir.

22 Q. Now, you are aware that this -- this sort of
23 activity is illegal in the state of South Carolina,
24 correct?

25 A. Yes, sir.

1 Q. Now, during the police investigation, were you
2 aware of any -- did the -- were you aware of any
3 police -- of the police finding any other marijuana
4 in the course of this investigation?

5 A. I -- I don't believe so.

6 Q. Okay. And did you see any of the -- did any of
7 the assailants as far as you could tell use any cell
8 phones?

9 A. No, sir.

10 Q. Have cell phones out during the course of the
11 robbery?

12 A. No, sir. Not that I had seen.

13 MR. STELTZNER: All right. Thank you.

14 THE COURT: Redirect?

15 MR. SHELTON: None.

16 THE COURT: You can step down. Thank you. I
17 appreciate your time.

18 (Witness excused.)

19 THE COURT: Call your next witness.

20 MR. PORTER: The State calls Investigator
21 George Weeks.

22 THE WITNESS: (Approaching.)

23 THE CLERK: Do you solemnly swear or affirm
24 that the information that you'll give the Court this
25 morning shall be the truth, the whole truth, and

1 nothing but the truth so help you God?

2 THE WITNESS: I do.

3 INVESTIGATOR GEORGE WEEKS,

4 having been produced and first duly sworn as a
5 witness on behalf of the State, then testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. PORTER:

9 Q. Good morning. Would you please state your name
10 for the jury?

11 A. George Weeks, W-e-e-k-s.

12 Q. And what is your job or occupation?

13 A. Current title is director of the forensics
14 services unit for York County.

15 Q. How long have you had that position?

16 A. July will be eight years.

17 Q. And what are your duties and responsibilities
18 as that -- in that position?

19 A. To manage a forensic program or
20 multi-jurisdictional forensic unit that it's made up
21 of other agencies outside York County, within York
22 County, but not with the sheriff's office.
23 Originally, we had Rock Hill PD, Fort Mill PD,
24 Clover and York. All have members that work within
25 the unit.

1 Q. So you supervise other forensic investigators?

2 A. Yes.

3 Q. Is it required to do specialized training or
4 education to become an investigator?

5 A. Yes, sir.

6 Q. Could you please describe what that training
7 would be?

8 A. Whew. You want me to describe my training or
9 for the other investigators or ---

10 Q. No. Just a -- just a forensic investigator in
11 general.

12 A. The majority of the time, individuals,
13 especially in South Carolina, tend to have been a
14 law enforcement officer elsewhere. And they are
15 kind of a lateral transfer or either a promotion
16 into various units within the law enforcement, no
17 longer work the road or be a deputy or a city
18 officer, whichever it may be.

19 And normally coming in, they are sent to
20 numerous schools, anything from crime scene
21 processing to fingerprint schools to processing
22 photography. Just there's a very large number of
23 schools you could go to.

24 Q. And you mentioned processing. What does it
25 mean to process a crime scene?

1 A. Typically, our -- our duties include going to
2 the scene, getting with the investigators that are
3 working the actual incident, as well as the uniform
4 patrol people. Finding out what has occurred and
5 collection and preservation of any type evidence
6 that might be there, as well as collection of that
7 evidence.

8 Often times, we bring evidence back into the
9 lab. It could be anything from an item that we
10 don't want to process at the crime scene. A lot of
11 times our ability to process something at a crime
12 scene is very limited. We have a lot better means
13 of doing so within our labs.

14 Q. And you -- you're -- you're talking about
15 processing in your lab. So there -- is there
16 other equipment that you utilize in the performance
17 of your duties?

18 A. Definitely. We -- as far as on the scene lab,
19 what ---

20 Q. Yes, sir. On the scene or off the scene, is
21 there anything in particular that you utilize?

22 A. We process crime scenes as far as photography
23 end of it because we want to document what evidence
24 is there on the scene and try to keep the scene like
25 we found it prior to collection of any evidence.

1 We make detailed photographs. We may make
2 comparison photographs of footwear impressions;
3 blood stains; blood spatter; fingerprints. Any type
4 of evidence that might back up something that a
5 complainant or a victim might state to us or state
6 to the investigators to show what they saw.

7 Q. Okay.

8 A. Conditions that exist there.

9 Q. And were you asked to assist in the
10 investigation of this case that occurred on July 11,
11 2016?

12 A. Yes, sir.

13 Q. At [REDACTED] in Clover?

14 A. Yes, sir.

15 Q. Before I get to -- to this case in general,
16 approximately how many crime scenes have you
17 actually processed? Just a ballpark number.

18 A. I've been involved in it since -- November will
19 be 40 years, so 1978, so quite a few. I'd hate to
20 put a number on it. It's in the -- probably in the
21 thousands.

22 Q. Okay. When you arrived on -- did you -- did
23 you arrive on scene that day?

24 A. Yes, sir. I drove over there. I received a
25 message from dispatch about what had occurred and

1 the -- actually, I think it was a uniformed officer
2 who requested my presence there.

3 Q. Would that be Sergeant -- Sergeant Mike Gregory
4 possibly?

5 A. That is correct.

6 Q. And when you arrived on the crime scene, what
7 did you -- what did you do?

8 A. Normally, we -- I remember speaking with
9 Detective Schifferle and certain other ones there.
10 There was quite a large number of law enforcement
11 personnel there. And we usually try to speak with
12 whomever has gotten the information from the victims
13 and let us -- let them walk us through the scene and
14 let us see what -- what they see.

15 Usually, more than one person sees things
16 differently than others. And so more people you
17 have sometimes, the better off you are. But on that
18 particular occasion, we were walked through the
19 scene and shown what evidence they saw.

20 And then asked if we could do what we normally
21 do, document what's there through photography, and
22 then collect anything that needs to be collected,
23 process anything that needs to be processed. Then
24 collect the stuff and bring it back if we can't
25 process on the scene.

1 So for anything from fingerprints to footwear
2 to swabbing of the blood for DNA purposes, whatever
3 it might be.

4 Q. And, Detective, you do -- let's -- there's a
5 lot of -- there's a lot stuff there. Let's start
6 with photography. Do you recall taking photographs?

7 A. Yes, sir.

8 Q. Investigator, I'm showing you what has been
9 marked for identification as State's 15 through 41.
10 If you would please thumb through these, and then
11 look up when you're done, please.

12 A. (Complying.) Yes, sir. I took all of those.

13 Q. So, Director, just -- you took all of those
14 photographs?

15 A. Yes, sir. What you have here. I'm sure there
16 was many more taken, but these are the bulk of them.
17 I remember taking these.

18 Q. Are they true and accurate depictions of the
19 scene as you witnessed them that day?

20 A. Yes, sir.

21 MR. PORTER: Your Honor, the State moves
22 exhibits -- or what's marked as State's 15 through
23 41 into evidence.

24 MR. STELTZNER: Without objection.

25 THE COURT: Entered without objection.

1 (State's Exhibit Nos. 15 through 41 were
2 received into evidence.)

3 MR. PORTER: Move to publish, Your Honor.

4 THE COURT: Okay.

5 (State's Exhibit Nos. 15 through 41 were
6 published to the jury.)

7 BY MR. PORTER:

8 Q. Investigator, if we could just walk through
9 these photographs just briefly.

10 A. Pretty much the roadway there. Outside I
11 remember there was a little incline here walking up
12 to the home and just making a ---

13 Q. Okay.

14 A. --- photograph of the home itself.

15 Q. And for the record, that's State's 15 that's
16 being displayed right now. Thank you, Director
17 Weeks.

18 Could you tell the jury what that's a picture
19 of?

20 A. That is the -- standing from the roadway.
21 They -- the crime scene tape you there. If I'm not
22 mistaken, that was from the roadway itself looking
23 up toward the home.

24 Q. Okay. You mentioned crime scene tape.

25 A. Yeah, and the crime scene tape in order to

1 protect the scene as well as to prevent access to it
2 by others outside of law enforcement.

3 Q. And that's State's 16.

4 I'm showing on the screen State's 17. Could
5 you please describe that?

6 A. That was the back door of the residence leading
7 out into a porch area that the entire section of
8 glass. I think it was a ceiling or pane going from
9 top to bottom there had been shattered inward.

10 The majority of the glass, some of which was
11 there on the porch, but the majority of it was going
12 toward -- I think that's opening into the living
13 room area if I'm not mistaken. It goes through the
14 kitchen into the living room.

15 Q. In your experience, that would be consistent
16 with someone breaking into -- knocking it inside the
17 home?

18 A. Definitely. It wasn't broken from the
19 outside -- inside out.

20 Q. Showing you State's 18. Could you describe for
21 the jury what that's a picture of?

22 A. That's the same door. I'm trying to -- I think
23 the ---

24 Q. If you need to step down.

25 A. It's difficult for me to -- can I look at

1 this -- this photograph here that I'd taken up
2 close?

3 Q. Yes, sir.

4 A. I saw it here just a second ago. Here it is.
5 That's the same door that's been forced, and I took
6 the -- I think that's a ---

7 Q. It's of the same door?

8 A. That's from the outside going in, shooting back
9 toward the -- I think that's the kitchen back toward
10 the living room area.

11 Q. Okay. And State's 19?

12 A. From the inside looking out.

13 Q. Okay. State's 20?

14 A. That was actually a -- I wasn't real sure at
15 the time, but it was a -- what's known as a Black
16 Ops BB round or it's a cartridge case which has a --
17 I believe it's a .177 caliber BB in it.

18 Q. Okay.

19 A. I had never seen one prior to that. Was not
20 sure what it was, but that's what it turned out to
21 be after looking at it.

22 Q. Okay. And State's 21. Is that another Black
23 Ops cartridge?

24 A. Yes, sir. And that -- where that parquet
25 flooring meets the carpet area, to the best of my

1 knowledge, that was leading -- leaving the kitchen
2 starting into the living room. I think the carpet
3 area is the actual living room, beginning of the
4 living room, family room, den area.

5 Q. Yes, sir. Did you collect those Black Ops
6 photos -- or the Black Ops cartridges?

7 A. Yes, sir.

8 Q. And I'm showing you what's been marked for
9 identification as State's Exhibit 46. Would you
10 please tell the Court and jury what's contained in
11 that envelope?

12 A. It states there's two Black Ops cartridges
13 here. I will see if they're still in there.

14 MR. PORTER: For the record, I'm handing the
15 witness a knife. Thank you.

16 THE WITNESS: Yes, sir. They are still in
17 there in the package here.

18 BY MR. PORTER:

19 Q. Are those the same Black Ops cartridges you
20 collected from -- in State's 21 and 20?

21 A. Yes, sir.

22 Q. Is your signature on the outside of that
23 package indicating that you collected those?

24 A. I collected them initially and turned them over
25 to our property and evidence room. Since that time,

1 it's been checked out, but initially -- my initials
2 there.

3 Q. And the seal that you just opened with the
4 State's knife, was that intact -- had that been
5 intact since you sealed it?

6 A. Yes, sir. It's still signed.

7 MR. PORTER: Your Honor, the State moves what's
8 been marked as State's 46 into evidence.

9 MR. STELTZNER: No objection.

10 THE COURT: Entered without objection.

11 MR. PORTER: Thank you, Your Honor.

12 (State's Exhibit No. 46 was received into
13 evidence.)

14 BY MR. PORTER:

15 Q. Now, getting back on track with these
16 photographs, State's 22.

17 A. That's looking from the kitchen into the living
18 room area. And that is a -- what appeared at the
19 time to be a blood stain on the carpeted area there.

20 Q. Okay. Are you referring the jury's attention
21 to this area here (indicating)?

22 A. Yes, sir.

23 Q. And the other here (indicating)?

24 A. Yes, sir.

25 Q. Thank you. Now, State's 23. Would you please

1 describe for the jury that what's depicted here?

2 A. That was a -- I couldn't say which one, but to
3 my understanding someone was in the bathroom area
4 there in the tub area.

5 And I was asked to -- since each room had been
6 entered, I took photographs of them documenting what
7 was in there. It appeared that someone was in the
8 tub area from what I was told at the time.

9 Q. And State's 24. Is that a photograph of the
10 same bathroom?

11 A. Yes, sir.

12 Q. What did you notice that was inside the bathtub
13 there?

14 A. From these photographs, it appears to be some
15 type of blanket to the best of my -- but I don't
16 remember. It's not something that I actually
17 collected.

18 Q. But you did take this photo?

19 A. But I did take the photographs. Yes, sir.

20 Q. State's 25.

21 A. That is the -- the back bedroom that appeared
22 to have been ransacked.

23 Q. Okay.

24 A. And before collection of some of the items from
25 in there, we just documented where the items were,

1 the condition of the room.

2 Q. Yes, sir. And State's 26.

3 A. That is the same room the best of my knowledge,
4 just a different shot of it.

5 Q. Okay. State's 27.

6 A. Same.

7 Q. Okay. State's 28.

8 A. That was a basket which was a clothing basket
9 that had blood. You can see it was running down the
10 side of it there.

11 Q. Okay.

12 A. At some point there was a bloodletting
13 somewhere around that basket there, and that was
14 also in that back bedroom.

15 Q. All right. State's 29.

16 A. Same thing, additional. That was a singular
17 droplet there on the -- I think that was a page
18 divider of some type. And it was just a single
19 blood droplet on it.

20 Q. Okay. And State's 30.

21 A. That's looking back toward the entry point of
22 the bedroom there. Just documenting what's --
23 what's there.

24 Q. State's 31.

25 A. That is a 9-milimeter -- if I'm not mistaken --

1 9-milimeter round that was found. You come from the
2 kitchen and round the corner there of the living
3 room area before you -- starting down the hallway.

4 Q. Okay.

5 A. And there's actually a close-up of it. I think
6 your next photo.

7 Q. State's 32.

8 A. Right. That is the close-up of it.

9 Q. And your opinion -- in your opinion as an
10 investigator, you thought that would have some
11 relevance to this investigation?

12 A. Yes, sir. You typically don't see shell
13 casings or live ammo just lying around on the
14 carpet, so definitely.

15 Q. State's 33 -- or it's actually State's 36. Is
16 that marked as State's 33 or is it 36?

17 A. It shows -- that one. Okay. That one. It's
18 shown as ---

19 MR. PORTER: Beg the Court's indulgence, Your
20 Honor.

21 THE WITNESS: --- 34 I believe. Is that not --
22 or is that -- is that the right one?

23 MR. PORTER: I'll find it.

24 THE WITNESS: I'd say that one right there.

25 MR. PORTER: That's it.

1 THE WITNESS: Yes, sir. It's marked as ---

2 MR. PORTER: This is State's 33.

3 THE WITNESS: Okay. Thirty-three.

4 BY MR. PORTER:

5 Q. And we're showing on screen what we've marked
6 as State's 33. Could you please describe what
7 that's a picture of?

8 A. That appears to me initially looking at it that
9 there was some type of smearing, possibly a hand.
10 You see the kind of digitated impressions there
11 without having a close-up of it, but it appears
12 someone was walking down the hallway there and
13 touched the side of the wall.

14 Q. Your -- your testimony is that would be
15 consistent with a handprint with blood on it?

16 A. Appears to be fingers, yes.

17 Q. And where is that located?

18 A. I believe that's the left wall. I'm trying to
19 get my bearings here.

20 Q. It was in the wall in the hallway, suffice to
21 say?

22 A. Yes. I believe -- yes. It's on -- in the
23 hallway. I believe that's the left side of the wall
24 coming back out -- actually the right side if you
25 were going down the hall ---

1 Q. Okay.

2 A. --- toward the bedroom.

3 Q. So this will be State's 34?

4 A. Just a closer photo of it.

5 Q. Okay. State's 35.

6 A. Those were holes that were -- appeared to be
7 since we were told what allegedly occurred there, an
8 altercation. Typically, you don't see plaster with
9 holes in the walls, so it was something that we
10 noted through photography that there was possibly
11 damage or there was damage to the plaster.

12 Q. Thirty-six. Is this a photograph of one of the
13 rooms?

14 A. I could not say which bedroom that was. It was
15 one of the other rooms within the home.

16 Q. Okay.

17 A. That's -- I believe that was the master bedroom
18 if I'm not mistaken.

19 Q. Okay. And State's 37.

20 A. Room. Again, one of the bedrooms.

21 Q. All right. And you -- you were not -- you --
22 you're doing cleanup at this point. You didn't
23 witness any of the events that occurred in this
24 room?

25 A. No, sir. No, sir.

1 Q. So I gotcha. Now, State's 38.

2 A. Once again, one of the bedrooms. I -- I can't
3 say which -- who it belonged to or which bedroom.
4 It just appeared that things were kind of out of
5 place there.

6 Q. Okay.

7 A. And so we document each and every room.

8 Q. Sure. State's 39. Is that the same room?

9 A. Same room there.

10 Q. State's 40.

11 A. That was one of the bedrooms.

12 Q. Okay. And State's 41.

13 A. Same room which was 40. That same bedroom,
14 just a different angle.

15 Q. And after you mentioned photographs, you talked
16 about fingerprint evidence. Did you ---

17 A. I mention -- I actually mentioned processing.

18 Q. Yes, sir.

19 A. That -- that process can entail a lot of
20 different things. It ---

21 Q. Okay.

22 A. --- a lot of times it involves actually using
23 some chemical or powder in which to try to recover
24 any prints. Yes, sir.

25 Q. And did you check for fingerprints at this

1 location?

2 A. Yes, sir. Both in the back bedroom; in the
3 living room; various areas; rear door. Anything and
4 everything possibly we could process, we attempted
5 to recover some.

6 Q. Okay. Did you recover anything useful during
7 your search in that regard?

8 A. Initially, there at the scene, yes, we
9 recovered several impressions, but to tell the total
10 of all latent impressions that we recovered, both in
11 the lab and that, to the best of my knowledge, I
12 think was in excess of 60.

13 Q. Okay. But did you -- did you receive anything
14 that was particularly useful ---

15 A. Yes, sir. We ---

16 Q. --- that advanced the investigation?

17 A. Yes. We -- we were able to identify several of
18 the impressions that we recovered that I lifted
19 actually from a TV, the left side of a TV, that one
20 of the victims had mentioned was -- had been pulled
21 from the wall.

22 And we processed it and was able to recover --
23 I can't say exactly how many, but we -- it led us
24 in -- in a direction where we were going today.

25 Q. All right. Thank you. And, Director Weeks --

1 Director Weeks, I'm showing you what has been marked
2 for identification as State's 47, 48, and 49.

3 Could you please tell the Court and jury what's
4 contained on each of those pages? And there are two
5 pages.

6 A. These are actually just photographic copies of
7 a fingerprint card. This is not actually the card,
8 just a photograph of it which has been enlarged.

9 The back side of it has the information of
10 where we recover our latent fingerprints from. And
11 this is just a photographic copy of the actual lift.
12 Very difficult to see, but it has what we call
13 friction ridge detail on it, so that's why it was
14 kept.

15 Same thing on ---

16 Q. And for -- could you please state for the
17 record ---

18 A. Yes, sir.

19 Q. --- the numbers you're speaking about just now?

20 A. This is Exhibit 47.

21 Q. Okay.

22 A. And it was recovered from left side of the TV.

23 Q. Okay. And, Investigator Weeks, before we go
24 through these, are those true and accurate
25 depictions of the documents that you prepared and

1 the lifts that you recovered on scene that day?

2 A. Yes. They're much larger than what I
3 actually -- the actual impressions that were
4 recovered, but they are the actual lifts themselves.
5 Yes.

6 MR. PORTER: Your Honor, the State moves
7 exhibit -- what's been marked as 47 through 49 into
8 evidence.

9 THE COURT: Any objection?

10 MR. STELTZNER: No objection.

11 THE COURT: Entered without objection.

12 (State's Exhibit Nos. 47 through 49 received
13 into evidence.)

14 BY MR. PORTER:

15 Q. And you had started discussing State's 47.
16 Could you please describe where you located that --
17 that print?

18 A. It was latent. It was recovered from the left
19 side of the TV. It also has my initials on it.

20 Q. Okay.

21 A. And it was recovered from the left side of the
22 TV itself, where it had been pulled from the wall.

23 Q. With respect to States's 48.

24 A. Forty-eight is marked as top of the TV, very
25 top of it.

1 Q. Okay.

2 A. And that is an accurate representation of it
3 there.

4 Q. And State's 49.

5 A. Samsung TV, the right side of it, about halfway
6 down. And the orientation of it, I usually mark
7 which is up and down or in this case up, so this
8 would be the right side of the TV between the screen
9 and the actual plaster.

10 Q. And you had -- you had stated -- you mentioned
11 a latent print. Could you please describe for the
12 jury what that means?

13 A. Ladies and gentlemen, a latent -- the word
14 "latent" means hidden. We typically find
15 fingerprints on a crime scene in three different
16 forms.

17 Latent meaning they're hidden and there needs
18 to be some type of powder or chemical or
19 photography, lighting, or something to make them
20 appear.

21 We have the other ones to which we can actually
22 see we call patent prints. Those of you that have
23 children and French fries or chocolate or something
24 on a refrigerator, your car windows, and stuff that
25 you can actually see.

1 And then we have what's known as three
2 dimensional impressions we call plastic. Grab a bar
3 of soap, wax candle wax where it actually has
4 length, width, and depth to it.

5 So the latent impressions in this case, they
6 could probably be considered both patent and latent,
7 meaning that we could, with a light source, just a
8 flashlight or the light -- sunlight. A lot of times
9 you can see impressions, but then we put an
10 application of powder on it, graphite powder, which
11 allows us to put a piece of tape down and actually
12 lift that print off of it.

13 So it's just if they're hidden, we call them
14 latent prints. And that's what we typically refer
15 99 percent of the time because we've applied some
16 method to recover them.

17 Q. Yes, sir. And you're speaking in depth of
18 knowledge here. Do you have any specific training
19 in finger -- in fingerprint examination?

20 A. Yes, sir. Initially, I was with Greenville
21 County back many, many years ago.

22 That was -- most latent examiners start off
23 with on-the-job training, and in later years was
24 sent to what's known as a basic course at the
25 Criminal Justice Academy.

1 And from there, many, many different classes
2 over the years. And for 17 years, I actually taught
3 fingerprints at the Criminal Justice Academy, as
4 well as fingerprint courses for the National
5 Forensic Academy out of Tennessee.

6 Q. Do you have any certifications in that regard?

7 A. Not certifications. We -- we do have
8 certifications as far as the use of our software,
9 our AFIS systems, but there's really only one
10 certification known as a latent examiner with the
11 International Association for Identification. And I
12 do not have that. I've never taken that exam.

13 Q. Okay. But it's suffice to say you have
14 attended South Carolina law -- law enforcement
15 trainings?

16 A. South Carolina at the Criminal Justice Academy,
17 and many, many courses over the years throughout the
18 United States.

19 Q. In your career, approximately how many
20 fingerprints have you examined?

21 A. I always use tens of thousands because every
22 fingerprint card has at least ten on it, and I've
23 seen a pile of them.

24 Q. And how many -- have you ever been qualified as
25 an expert in fingerprint examination in court -- in

1 General Sessions court?

2 A. Yes, sir. I've been qualified both here in the
3 Sixteenth Circuit numerous times, Eleventh Circuit,
4 which is Lexington County, Greenville County. What
5 is there -- that circuit as well as Federal court,
6 so many times in all of them.

7 Q. I believe that would be the Eighth Circuit.

8 A. It is the Eighth Circuit.

9 MR. PORTER: Now, Your Honor, the State moves
10 Investigator Weeks or Director Weeks to be qualified
11 as a fingerprint examiner.

12 THE COURT: Any voir dire?

13 MR. STELTZNER: No objection.

14 THE COURT: I find he's qualified.

15 MR. PORTER: Thank you, Your Honor.

16 BY MR. PORTER:

17 Q. Now, the latent prints that you recovered, did
18 you receive a possible match for those prints?

19 A. I received a candidate list. You want me to
20 explain to the jury? We -- we typically ---

21 Q. If we could just -- just to narrow it down.

22 A. Sure.

23 Q. Were you able to identify a potential suspect
24 from a candidate list?

25 A. Yes, sir. Yes, sir.

1 Q. And how did -- who did you identify as a
2 possible candidate?

3 A. I'd have to look at the notes -- my notes
4 there. I'm trying to --- give me just one second.

5 MR. PORTER: Your Honor, may I ---

6 BY MR. PORTER:

7 Q. Investigator Weeks, would reviewing a copy of
8 your ---

9 A. Yeah.

10 Q. --- of your report refresh your recollection?

11 A. I've got my case file there.

12 Q. Investigator Weeks, you could just ---

13 MR. PORTER: May I approach the witness, Your
14 Honor?

15 THE COURT: Yes, sir.

16 THE WITNESS: I cannot remember the name.

17 BY MR. PORTER:

18 Q. Is that a copy of your report?

19 A. Yes, sir, it is. One of -- one of my reports.

20 Q. Does that refresh your recollection as to the
21 possible suspect?

22 A. Jermaine Lowery.

23 Q. If I could have that back. And so now that --
24 now that you've reviewed your report, are you
25 comfortable stating who the potential suspect was

1 that you identified?

2 A. Yes, sir.

3 Q. And who was that?

4 A. Jermaine Lowery.

5 Q. Okay. Did you do anything to verify that
6 potential suspect?

7 A. Mr. -- we actually pull what we call a
8 "ten-print card" and compared it to Mr. Lowery's
9 ten-print card to the latent impression.

10 Q. Okay.

11 A. And then later on, that particular report that
12 you handed me was actually -- the request was made
13 when Mr. Lowery was arrested to compare it to the
14 card that I initially had to see that they were one
15 in the same person.

16 And, yes, sir, that -- both my identification
17 was verified by latent examiner Brian Bagwell, both
18 initially and the ten print.

19 Q. And is it your expert opinion that those
20 fingerprints came from Jermaine Lowery?

21 A. Yes, sir. No doubt.

22 Q. You mentioned no doubt. Are fingerprints
23 specific as to each ind -- each specific individual?

24 A. They are. They are -- it's always been
25 accepted that no two individuals have the same

1 fingerprint. You can have the same fingerprint
2 patterns, and they often times are very close.
3 That's why it's -- it takes the human eye. They
4 have not yet developed a computer to say
5 100 percent, so...

6 Yes, it's a -- and we do peer review. Don't
7 take my word for it. We pass it to other examiners
8 for verification purposes.

9 Q. Did Investigator Brian Bagwell do ---

10 A. Yes, sir.

11 Q. --- a peer review process on this?

12 A. That is correct.

13 Q. And you've already -- I think you already
14 addressed this, but have you ever seen two
15 impressions -- or have you ever witnessed in your
16 thousands of examinations two fingerprints came back
17 -- come back?

18 A. I have never seen two the same.

19 Q. Okay.

20 A. Unless they came from the same individual.

21 MR. PORTER: Okay. Please answer any questions
22 the defense may have.

23 THE WITNESS: Sure.

24 MR. STELTZNER: Your Honor, may we ---

25 THE COURT: We'll take a short break. Let you

1 go to the jury room. And this won't be a lunch
2 break, but we'll take a little refresher break.

3 (At 12:36 p.m., the jury left the courtroom.)

4 THE COURT: Yes, sir.

5 MR. STELTZNER: As to the -- to the
6 investigator's report that was used to refresh his
7 memory, should not that have been entered into
8 evidence prior or offered into evidence prior to his
9 using it as a ---

10 THE COURT: No. It was not put into evidence.
11 It was only offered to him to refresh his
12 recollection.

13 MR. PORTER: That -- that's the State's
14 position, Your Honor. Although it was -- I
15 attempted to comply with all the requirements of the
16 refreshing recollection and constrain the witness to
17 be able to review it and then testify after it had
18 been removed, which is why I asked the follow-up
19 question to Director Weeks as to who he was able to
20 identify.

21 THE COURT: All right. Okay.

22 MR. STELTZNER: Okay.

23 THE COURT: Let's take -- let Mr. Ervin use the
24 restroom if he needs to, and we'll take just a -- no
25 more than ten minutes.

1 (From 12:37 12:50 p.m., recess was taken.)

2 THE COURT: We received another note from the
3 jury.

4 The foreman, Mr. Holing, was just asking while
5 the jury is eating, he asked to take care of some
6 personal business, so I'm going to allow him to go
7 leave and do that and try to get back as quick as he
8 can. He says it will only take a half an hour. I
9 haven't looked at his address, but I'm going to let
10 him do what he needs to do.

11 All right. Bring in the jury, please.

12 THE BAILIFF: (Complying.)

13 (At 12:52 p.m., jury entered the courtroom.)

14 THE COURT: You can take care of whatever you
15 need to take care of during lunch.

16 THE JUROR: Thank you.

17 THE COURT: You may proceed.

18 CROSS-EXAMINATION

19 BY MR. STELTZNER:

20 Q. Okay. So we've gone through all your
21 testimony. Did you -- did you -- so out of all
22 the -- out of all the fingerprints and all the
23 photographs that you took during the course of this
24 investigation, did any of them positively
25 identify -- they all identified Jermaine Lowery; is

1 that correct?

2 A. That is correct, sir, and the victims
3 themselves, the people within the home. Yes, sir.

4 Q. And that none of them identified or pointed to
5 Jarnelle Ervin; is that correct?

6 A. That's correct.

7 MR. STELTZNER: That's all the questions I
8 have.

9 THE COURT: Recross?

10 MR. PORTER: None, Your Honor.

11 THE COURT: Well, that was short, but the pizza
12 is here so we'll take our lunch break.

13 Mr. Foreman, what I'll let you do is, I'm going
14 to let the lady go run the errand she needs to run.
15 Y'all take your time eating lunch, and just let me
16 know when she's back and ready to go and return to
17 the courtroom. I'll try and set the schedule over
18 lunch. Thank you.

19 (At 12:54 p.m. jury left the courtroom.)

20 THE COURT: We'll be at ease for at least half
21 an hour. So, Solicitor, and, Mr. Steltzner, make
22 sure you're back. And make sure also that -- be
23 back by 1:30.

24 And, Mr. Steltzner, of course you do the same
25 and we'll hopefully crank up close to 1:30. Thank

1 you. And you're excused.

2 THE WITNESS: Thank you.

3 THE COURT: Mr. Weeks, is excused.

4 (Witness excused.)

5 (From 12:55 to 1:40 p.m., lunch recess.)

6 THE COURT: State ready?

7 MR. SHELTON: Yes, Your Honor.

8 THE COURT: Defense ready?

9 MR. STELTZNER: Ready as I will ever be.

10 THE COURT: All right. Bring in the jury.

11 (At 1:41 p.m., jury entered the courtroom.)

12 THE COURT: You can call your next witness.

13 MR. PORTER: Thank you, Your Honor. The State
14 calls Investigator Brian Bagwell.

15 THE WITNESS: (Approaching.)

16 THE CLERK: Do you solemnly swear or affirm
17 that the testimony that you'll give the Court today
18 shall be the truth, the whole truth, and nothing but
19 the truth so help you God?

20 THE WITNESS: I do.

21 INVESTIGATOR BRIAN BAGWELL,
22 having been produced and first duly sworn as a
23 witness on behalf of the State, testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. PORTER:

2 Q. Good afternoon, Investigator. Would you please
3 state your full name for the jury?

4 A. It's Brian Bagwell.

5 Q. And what is your job or occupation?

6 A. I work for the York County Sheriff's Office.
7 I'm currently assigned as a forensic investigator.

8 Q. How long have you worked for the York -- for
9 the sheriff's office?

10 A. Since 1995.

11 Q. And what are your duties and responsibilities
12 as an investigator?

13 A. We go out and we document crime scenes, collect
14 evidence from the crime scenes. My duties also
15 include processing the evidence turned in by other
16 officers that need chemical processing on it,
17 fingerprint identification analysis. That sort of
18 thing.

19 Q. Does it require any specialized training and
20 education to become an investigator?

21 A. It does.

22 Q. And what -- what specific investigation and
23 training have you received?

24 A. I've had fingerprint class from the Public
25 Agency Training Counsel. I've had crime scene hands

1 on from the Public Agency Training Counsel. I've
2 had fingerprint recognition and comparison from the
3 South Carolina Criminal Justice Academy. I've also
4 had AFIS certification through SLED which is State
5 Law Enforcement Division. I've had Advanced
6 Palmprint Comparison Techniques through Ron Smith
7 and Associates. I've had Basic Latent and Coding
8 through Morpho Track. Had advanced Latent and
9 Coding through Morpho Track. And I've also had
10 Advanced Latent Image Enhancing through Morpho
11 Track. Other various conferences and seminars I've
12 attended.

13 Q. Investigator Bagwell, all that training you
14 just listed, was that pertaining to specifically
15 fingerprint examination?

16 A. That is only fingerprint work. Yes, sir.

17 Q. And what is -- briefly, what does a fingerprint
18 examiner do?

19 A. We take a known standard and compare it to a
20 latent, as the officer other described as a hidden
21 print when we've developed from a crime scene. So
22 we make a comparison of a known print versus a
23 latent print.

24 Q. And how -- how many times have you compared
25 fingerprints?

1 A. Thousands and thousands of prints.

2 Q. Have you ever been qualified as an expert in
3 fingerprint examination?

4 A. I have.

5 Q. Approximately, how many times?

6 A. Probably about 12 to 15.

7 MR. PORTER: Your Honor, at this point the
8 State presents Investigator Bagwell as an expert in
9 the field of fingerprint investigation.

10 THE COURT: Any voir dire?

11 MR. STELTZNER: No objection.

12 THE COURT: I find he is qualified.

13 BY MR. PORTER:

14 Q. Investigator Bagwell, were you asked to do a
15 comparison of a latent fingerprint in this case?

16 A. I was.

17 Q. And who asked you to do that?

18 A. Investigator Weeks. Director Weeks.

19 Q. Did you perform that -- that comparison?

20 A. I did.

21 Q. To what?

22 A. To a known standard, Jermaine Lowery.

23 Q. Okay. And what were your conclusions?

24 A. Positive identification three times. Two of
25 his fingers were positively ID'd and one piece of a

1 palm print was a positive identification.

2 Q. So it is your expert opinion that those
3 fingerprints were left by Jermaine Lowery?

4 A. Absolutely.

5 MR. PORTER: No further questions, Your Honor.

6 MR. STELTZNER: Just one simple question.

7 CROSS-EXAMINATION

8 BY MR. STELTZNER:

9 Q. No fingerprints or any evidence that you
10 collected in this case pointed to my client,
11 Jarnelle Ervin; is that correct?

12 A. That's correct.

13 MR. STELTZNER: Thank you.

14 THE COURT: You can step down and be excused.

15 THE WITNESS: Thank you, sir.

16 (Witness excused.)

17 MR. PORTER: The State calls Detective Tracy
18 Strickland.

19 THE WITNESS: (Approaching.)

20 THE CLERK: Do you solemnly swear or affirm
21 that the information that you give the Court today
22 will be the truth, the whole truth, and nothing but
23 the truth so help you God?

24 THE WITNESS: Yes, ma'am.

25 DETECTIVE TRACY STRICKLAND,

1 having been produced and first duly sworn as a
2 witness on behalf of the State, then testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. PORTER:

6 Q. Afternoon, Detective. Would you please state
7 your name for the jury?

8 A. Tracy Strickland.

9 Q. And what is your current job or occupation?

10 A. I'm a detective with York County Sheriff's
11 Office.

12 Q. How long have you been with the sheriff's
13 office?

14 A. Since 1986.

15 Q. And what are your duties and responsibilities
16 in your current position?

17 A. I'm an investigator assigned to the criminal
18 investigative division at the sheriff's office.

19 Q. Were you an investigator on July 11, 2016?

20 A. Yes, sir, I was.

21 Q. Do you recall speaking with Investigators
22 Bagwell and Weeks regarding a burglary that occurred
23 at that residence?

24 A. Yes, sir, I was.

25 Q. And what information did you receive from the

1 investigators?

2 A. There was a fingerprint match from the
3 residence. The fingerprint was obtained off the --
4 one of the televisions inside the residence. And
5 the fingerprint match was to Jermaine Lowery.

6 Q. Based on that information, what did you do?

7 A. Based on that information, I obtained a -- an
8 arrest warrant for burglary first degree. And once
9 the warrant was obtained, I had the warrant entered
10 into NCIC.

11 Q. Would you please explain to the jury what NCIC
12 is?

13 A. NCIC is a database used by law enforcement.
14 It's a nationwide database that warrants are entered
15 into, stolen property is entered into it, missing
16 persons are entered into it. It's just a database,
17 a tool used and law enforcement.

18 Q. Did you notify any other law enforcement agency
19 specifically regarding the pending warrant?

20 A. Yes, sir. We found out that Jermaine Lowery
21 was from the Charlotte, North Carolina, area. So I
22 contacted Detective Cicio with Charlotte-Mecklenburg
23 Police Department and supplied her with information
24 on Lowery that he was involved in a home invasion in
25 Clover, South Carolina, and that we had active

1 warrants on him, felony warrants for his arrest, and
2 just basically advised them to be on the lookout for
3 him.

4 Q. Did you ever meet with Detective Cicio or
5 anyone from CMPD?

6 A. Yes, sir, I did.

7 Q. And what did you do during that meeting?

8 A. Myself and Lieutenant Branham met with
9 Detective Cicio. She provided us with a
10 photographic lineup of ---

11 Q. And we'll talk specifically about the property.

12 A. Okay. We recovered a television, an Xbox, and
13 I think some other items that were stolen from the
14 Parker's residence in Clover.

15 Q. Was that meeting after July 14th, after the
16 July 11th offense date?

17 A. Yes.

18 MR. PORTER: No further question of this
19 witness.

20 THE COURT: Cross?

21 CROSS-EXAMINATION

22 BY MR. STELTZNER:

23 Q. So -- so what you're saying is that Jermaine
24 Lowery was your main suspect; is that correct?

25 A. We had a fingerprint match on Jermaine Lowery

1 and we obtained warrants on him for the burglary --
2 the home invasion at the Parker residence. At that
3 time he was -- he was the only one that was
4 identified at that time.

5 Q. Okay. And you said that -- that -- that
6 upon -- upon the results from CMPD, you then were
7 received -- received back the stolen property; is
8 that correct?

9 A. Yes.

10 Q. Was that -- to your knowledge, was any of that
11 stolen property processed -- processed in any way
12 for fingerprints or any other kind of evidence?

13 A. I don't think that the property that we -- we
14 got back was processed. I do not think it was.

15 MR. STELTZNER: Thank you. Nothing further.

16 THE COURT: Redirect?

17 MR. PORTER: None, Your Honor.

18 THE COURT: You can step down and be excused.

19 Appreciate your time.

20 (Witness excused.)

21 THE COURT: Call your next witness.

22 MR. SHELTON: Your Honor, may it please the
23 Court? Cameron Winchester.

24 THE WITNESS: (Approaching.)

25 THE CLERK: Do you swear or solemnly swear or

1 affirm that the information that you'll give this
2 Court shall be the truth, the whole truth, and
3 nothing but the truth so help you God?

4 THE WITNESS: Yes, ma'am.

5 AGENT CAMERON WINCHESTER,
6 having been produced and first duly sworn as a
7 witness on behalf of the State, then testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. SHELTON:

11 Q. Hello.

12 A. Hello.

13 Q. Please state your name.

14 A. Cameron Winchester.

15 Q. And where do you work?

16 A. North Carolina Department of Public Safety.

17 Q. How long have you been with the Department of
18 Public Safety?

19 A. Five years.

20 Q. And do you work in Charlotte?

21 A. Yes, sir.

22 Q. Were you involved in the arrest of Jermaine
23 Lowery in Charlotte, North Carolina, on or about
24 July 14, 2016?

25 A. Yes, sir.

1 Q. And where did that arrest take place?

2 A. [REDACTED] ---

3 Q. Northstream?

4 A. --- Northstream, Apartment [REDACTED], Charlotte, North
5 Carolina.

6 Q. And is that an apartment complex?

7 A. Yes.

8 Q. Do you know the name of that apartment complex?
9 It's okay if don't recall. I'm just asking.

10 A. I don't recall.

11 Q. And had you been notified that Jermaine Lowery
12 was wanted on a warrant out of York County at that
13 time?

14 A. Yes, sir.

15 Q. Please describe how you came into contact with
16 him that night.

17 A. We went -- based off the information we were
18 given, we went to his house to attempt to make
19 contact with him at the residence.

20 Q. And so he lived there at [REDACTED] -- [REDACTED]
21 Drive, Apartment [REDACTED]?

22 A. Yes, sir.

23 Q. And that's where you found him?

24 A. Yes, sir.

25 Q. And was he placed under arrest?

1 A. Yes, sir.

2 Q. Was he advised that he was under arrest?

3 A. He was advised he was under arrest once we got
4 to that part in the evening. Yes, sir.

5 Q. Okay. And did he have anything in his
6 possession at the time that he was arrested?

7 A. Yes, sir. When we made contact with him, he
8 had two cell phones in his pocket.

9 Q. Okay. And did you secure those phones from
10 him?

11 A. Yes, sir. I maintained control of them.

12 Q. And did you eventually turn those phones over
13 to Detective Cicio with Charlotte-Mecklenburg Police
14 Department?

15 A. Yes, sir.

16 Q. And did you hand those directly to her?

17 A. Yes, sir.

18 Q. Showing -- I'm going to show you what's been
19 marked for identification as State's Exhibit No. 54.
20 Have you ever seen this item before?

21 A. Yes, sir.

22 Q. Okay. And how do you recognize it?

23 A. This was in Mr. Lowery's possession at the time
24 I made contact with him at the residence.

25 Q. Okay. So is there an actual cell phone in that

1 bag?

2 A. Yes.

3 Q. Can you please pull it out so the jury can see?

4 A. (Complying.)

5 Q. I believe it's a white Motorola; is that
6 correct?

7 A. Yes, sir.

8 Q. And is there also another manila envelope in
9 that evidence bag?

10 A. Yes, sir.

11 Q. And would you please pull that out and review
12 that -- that item?

13 A. (Complying.)

14 Q. Please describe what that is.

15 A. It's an evidence envelope.

16 Q. From what agency?

17 A. CMPD, Charlotte-Mecklenburg Police Department.

18 MR. SHELTON: Very good. Please answer any
19 questions the defense may have.

20 CROSS-EXAMINATION

21 BY MR. STELTZNER:

22 Q. Just -- just to reiterate, Officer, were any
23 other persons in -- in the home when -- when
24 Jermaine Lowery was arrested?

25 A. Yes.

1 Q. And who were those persons?

2 A. His mother and his younger brother.

3 Q. All right. So no other arrests were made
4 besides Jermaine Lowery; is that correct?

5 A. Correct.

6 MR. STELTZNER: All right. Nothing further.

7 THE COURT: You can step down and be excused.
8 Appreciate your time.

9 THE WITNESS: Yes, sir.

10 (Witness excused.)

11 THE COURT: Call your next witness.

12 MR. SHELTON: Your Honor, Detective Cicio.

13 THE WITNESS: (Approaching.)

14 THE CLERK: Do you solemnly swear or affirm
15 that the information that you'll give the Court
16 today shall be the truth, the whole truth, and
17 nothing but the truth so help you God?

18 THE WITNESS: I do.

19 DETECTIVE MELISSA CICIO,
20 having been produced and first duly sworn as a
21 witness on behalf of the State, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. SHELTON:

25 Q. Good afternoon, ma'am.

1 A. Afternoon, sir.

2 Q. What is your name?

3 A. Melissa Cicio, C-i-c-i-o.

4 Q. What do you do for a job or occupation?

5 A. I'm a police detective with the
6 Charlotte-Mecklenburg Police Department with the
7 covert operations division, specifically gang
8 intelligence, anti-crime.

9 Q. And how long have you worked in that capacity?

10 A. I've been in covert operations for three years..
11 I've been employed with Charlotte-Mecklenburg for
12 seven and a half.

13 Q. And were you working in that capacity on July
14 of 2016?

15 A. I was.

16 Q. Were you involved in locating and arresting
17 Jermaine Lowery on July 14th of 2016?

18 A. Yes.

19 Q. Was Agent Cameron Winchester with the North
20 Carolina Department of Public Safety also involved?

21 A. Yes.

22 Q. And where did that arrest take place?

23 A. [REDACTED] Drive, Apartment [REDACTED], in
24 Charlotte North Carolina, Mecklenburg County.

25 Q. And is that an apartment complex?

1 A. Yes, sir.

2 Q. What is the name of that apartment complex?

3 A. Forestbrook Apartments.

4 Q. And who lives at that -- in that apartment?

5 A. That apartment specifically, Tawanda Lowery,
6 Jermaine Lowery, and a younger brother. I don't
7 know his name.

8 Q. Detective, I'm going to hand you what's been
9 marked for identification as State's No. 65. Take a
10 second to look at that.

11 A. (Complying.)

12 Q. And would you describe what is that?

13 A. It's an aerial view of the apartment complex.

14 Q. Of the Forest ---

15 A. Forestbrook.

16 Q. --- brook apartment complex?

17 A. Yes, sir.

18 Q. And is that image true and accurate of the
19 area?

20 A. Yes.

21 Q. And you yourself have been there, correct?

22 A. Correct.

23 Q. And it's in Charlotte, North Carolina, in your
24 jurisdiction?

25 A. Yes.

1 MR. SHELTON: Your Honor, I move to admit this
2 as State's No. 56.

3 MR. STELTZNER: Without objection.

4 THE COURT: Entered without objection.

5 MR. SHELTON: Oh, I'm sorry. Sixty-five is
6 what I meant to say. I got my numbers backwards.

7 (State's Exhibit No. 65 was received into
8 evidence.)

9 BY MR. SHELTON:

10 Q. And the arrest occurred on July 14th of 2016;
11 is that correct?

12 A. Yes.

13 Q. Approximately, what time?

14 A. Approximately, 10:00 p.m.

15 Q. And why was Jermaine Lowery -- Jermaine Lowery
16 arrested that night?

17 A. I was contacted by detectives from York County,
18 Strickland and Branham, that the -- Jermaine Lowery
19 had outstanding warrants and he possibly resided in
20 our jurisdiction, so we were requested to go look
21 for him.

22 Q. I want to back up a second. The address -- are
23 you familiar with an address in Charlotte of [REDACTED]

24 [REDACTED]?

25 A. I know the location. Yes, sir.

1 Q. And is that in this same apartment complex?

2 A. No, sir.

3 Q. Approximately, how far away is it?

4 A. From this apartment complex, probably -- in a
5 car, probably 15 to 20 minutes.

6 Q. And so had you verified that York County had,
7 in fact -- the active arrest warrants were, in fact,
8 in place for Jermaine Lowery at that time?

9 A. Yes. I had contacted our dispatch to have them
10 run a warrant check on that name and date of birth
11 through NCIC, and confirmed that they were active
12 through our dispatcher.

13 Q. And were you aware at that time that property
14 was alleged to have been stolen during the burglary
15 in York County for which the warrants had been
16 issued?

17 A. Yes, sir.

18 Q. Would you please describe to the jury what you
19 recall from that night during your investigation in
20 assisting York County police who did this
21 investigation.

22 A. Sure. I was in an undercover vehicle in plain
23 clothes with another officer at the time. We were
24 in the area observing the area of Mr. Lowery's
25 apartment, as well as several other buildings in the

1 complex.

2 The probation officers advised that they were
3 going to attempt to make contact at Mr. Lowery's
4 residence due to outstanding warrants.

5 During that time, I was advised that he was not
6 there, and I remained in place in my undercover
7 vehicle observing several subjects in the apartment
8 complex.

9 At one time we did identify Mr. Lowery coming
10 through the complex being in undercover capacity.
11 He came in front of a building in the complex and
12 met with several subjects in front of the building
13 near a green SUV. During the investigation, it
14 turned out to be a green Explorer.

15 That vehicle -- at first, we believed he got in
16 the vehicle. That vehicle was subsequently stopped
17 down the road and Mr. Lowery was not, in fact, in
18 the vehicle. Several other subjects were in the
19 vehicle at the time.

20 Then as we continued to conduct surveillance in
21 the area, a unit advised that they believed they saw
22 Mr. Lowery walking on Tuckaseegee Road, which is an
23 adjacent road to the apartment complex on
24 Forestbrook Drive.

25 Myself and the other undercover detective at

1 the time did then observe Mr. Lowery walking from
2 one of the paths that led into the complex and
3 walking toward his apartment.

4 The off -- the probation officers then made
5 contact at the door, and Mr. Lowery was then, in
6 fact, in the residence.

7 Q. All right. So you said you made contact or
8 observed several subjects make contact with Lowery?

9 A. Yes, sir.

10 Q. Were you able to obtain that -- were you able
11 to obtain the identity of those subjects?

12 A. Yes, sir. After Mr. Lowery was placed in
13 custody, we went back over to the same area,
14 observed the same vehicle and the same subjects
15 standing near vehicle.

16 A voluntary contact was conducted by several
17 uniformed officers in the area that had come to
18 assist with transport of Mr. Lowery and the other
19 things that were happening on scene.

20 Contact was made with several subjects standing
21 outside near that vehicle, and they were identified.
22 They were very cooperative, gave their names;
23 identification; dates of birth. And they were
24 checked for warrants, as well.

25 Q. Do you recall the names of those individuals?

1 A. Yes, sir. I have that there were three males
2 specifically that we spoke with. Jarnelle Ervin was
3 one of them, Xavier Horton was the second, and Dion
4 Boyd was the third.

5 Q. And the man identified as Jarnelle Ervin, is he
6 in the courtroom today?

7 A. Yes, sir.

8 Q. Would you please point him out?

9 A. He's seated at the defendant's table.

10 MR. SHELTON: Your Honor, please let the record
11 reflect that the detective has indicated the
12 defendant sitting next to his attorney?

13 BY MR. SHELTON:

14 Q. And I would like show you this map so you can
15 explain to the jury. I think it would be helpful if
16 you came off the stand ---

17 A. Okay.

18 Q. --- and used the pointer to show them where
19 contact was made. And I think I would also like you
20 to point out Mr. Lowery's apartment, in addition to
21 where you saw Mr. Ervin meet with Mr. Lowery.

22 Actually, I'm going to have to stand back and
23 not do that. I've got the wrong map in there. We
24 will go ahead and improvise here.

25 A. Okay.

1 Q. If you would please take this ink pen. Going
2 to do this the old school way.

3 A. All right.

4 Q. If you'll circle on this exhibit, State's 65,
5 where Lowery's apartment building is.

6 A. Okay.

7 Q. And that's in blue ink that you're circling
8 with.

9 A. (Complying.) It's right here. This pen is not
10 writing it on there.

11 Q. Okay. Maybe a highlighter.

12 A. In here (indicating).

13 Q. There you go. And will you please point to the
14 jury what area you've highlighted here?

15 A. Right over here at the top..

16 Q. So this is the top, the right -- on the right
17 half side of this image?

18 A. Uh-huh.

19 Q. And will you also indicate on this image where
20 you observed Mr. Ervin make contact with Mr. Lowery?

21 A. Sure. Right there (indicating).

22 Q. So it's the dot below the first one that you
23 made, correct?

24 A. Right there (indicating).

25 MR. SHELTON: All right. Thank you.

1 MR. STELTZNER: May I see that closer?

2 MR. SHELTON: Yeah.

3 BY MR. SHELTON:

4 Q. And, Detective, did you, in fact, search that
5 apartment?

6 A. I did.

7 Q. And was consent given by anyone to search?

8 A. Yes. Mr. Lowery's mother gave written consent
9 for the search of the apartment.

10 Q. I'm going to hand you now what's been marked
11 for identification as State's Exhibit No. 52. Do
12 you recognize that?

13 A. Yes.

14 Q. What is it?

15 A. It's Charlotte-Mecklenburg Police Department
16 consent to search. It's written in English. And
17 it's basically, you got the information for the
18 residence and then signatures when consent is given.

19 Q. Whose signatures are on that document?

20 A. Ms. Lowery.

21 Q. And did you witness her sign that?

22 A. I did.

23 Q. And did she also give you verbal consent?

24 A. She did.

25 Q. And so that document is just memorializing that

1 consent was given?

2 A. Yes, sir.

3 MR. SHELTON: I move to admit this as a State's
4 exhibit.

5 THE COURT: Any objection?

6 MR. STELTZNER: Without objection.

7 THE COURT: In without objection.

8 (State's Exhibit No. 52 was received into
9 evidence.)

10 BY MR. SHELTON:

11 Q. And did -- you were present when Mr. Lowery was
12 arrested?

13 A. Correct.

14 Q. Were photographs taken of him at arrest?

15 A. Yes.

16 Q. I'm going to hand you what's been marked for
17 identification as State's 53. Do you recognize
18 those images?

19 A. I do.

20 Q. Are there two pictures on that page side by
21 side?

22 A. Yes.

23 Q. And who is the subject of those pictures?

24 A. Jermaine Lowery.

25 Q. And are those pictures taken the night of

1 July 14, 2016?

2 A. Yes.

3 Q. And they were taken incident to Mr. Lowery's
4 arrest as you've described it?

5 A. Yes.

6 Q. Is that the clothes and the hat that he was
7 wearing that night?

8 A. Yes.

9 Q. Are those pictures true and accurate as to his
10 appearance that night?

11 A. Yes.

12 MR. SHELTON: Your Honor, we'd move to admit.
13 This is State's No. 53.

14 MR. STELTZNER: No objection.

15 THE COURT: Entered without objection.

16 (State's Exhibit No. 53 was received into
17 evidence.)

18 MR. SHELTON: Your Honor, I'd like permission
19 to publish State's 52 and 53, please.

20 THE COURT: All right.

21 (State's Exhibit Nos. 52 and 53 were published
22 for the jury.)

23 MR. SHELTON: Showing State's 52, the written
24 consent.

25 And the next one being State's 53, the images

1 of Jermaine Lowery at arrest.

2 BY MR. SHELTON:

3 Q. And, Detective, were you involved in the search
4 of the apartment?

5 A. I was.

6 Q. Please describe what you saw during the search
7 when you first entered.

8 A. Mr. Lowery was being detained at the time.
9 Officer Winchester was in the living room with his
10 mother, younger brother, and I believe grandmother
11 at the time.

12 I went upstairs in the apartment. Behind the
13 front door, the stairs kind of go up behind the
14 front door. And at the top of the stairs, there was
15 a bathroom and a bedroom.

16 Inside the bedroom, there was an Xbox, a TV,
17 some cables, an Xbox controller in that bedroom.

18 Q. And were they connected?

19 A. Yes.

20 Q. Was anyone using them?

21 A. It was on at the time. I spoke to the younger
22 brother, and he said that he had been playing it,
23 that's why it was on, but no one was actually
24 playing it when I entered the room.

25 Q. And the Xbox and television, to your knowledge,

1 was that some of the property that had been taken in
2 the burglary?

3 A. Yes, sir.

4 Q. And was that property seized and collected as
5 evidence at that point?

6 A. Yes.

7 Q. Were you present when it was collected?

8 A. Yes. I collected it.

9 Q. And what did you do with it?

10 A. I placed it into the trunk of my vehicle and
11 transported it to the Law Enforcement Center at 601
12 East Trade Street in downtown Charlotte, North
13 Carolina.

14 Q. And was that property later transferred to the
15 possession of Detective Pete Branham?

16 A. Yes.

17 Q. And was that transfer directly from evidence to
18 you to him?

19 A. Yes.

20 Q. And do you recall the date?

21 A. I believe it was the 18th of July that I
22 transferred the property to Detective Branham.

23 Q. And were any cell phones recovered from
24 Lowery's person?

25 A. Yes. There were two. I was advised by the

1 Probation Officer Winchester that two had been on
2 his person during his initial contact with him.

3 Q. And what happened with those phones?

4 A. I took custody of them from Officer Winchester
5 and also then secured them in my vehicle.

6 Transported them to our property control intake as
7 well, and processed them into property for custody
8 until they could be transferred to Detective Branham
9 and Strickland for York County.

10 Q. And were those phones, in fact, transferred to
11 the York County detectives?

12 A. Yes.

13 Q. On the same day as the other electronics?

14 A. Yes.

15 Q. And transferred directly from the evidence room
16 with you there to you and to the detectives?

17 A. Correct. Yes, sir.

18 Q. And did Officer Winchester give the phones
19 directly to you when you first took possession of
20 them?

21 A. Yes, sir.

22 Q. Both of them?

23 A. Yes.

24 Q. I want to turn your attention to what's marked
25 for identification as State's Exhibit 54. If you

1 would please take a moment to inspect that, as well
2 as the actual item inside -- or items, plural.

3 A. (Complying.)

4 Q. Do you recognize those items?

5 A. Yes, sir.

6 Q. Would you please describe them?

7 A. It's a white Motorola cell phone that I got
8 from Officer Winchester that he advised had been in
9 Mr. Lowery's possession.

10 And this is the original evidence envelope that
11 I placed the item in. The evidence label that
12 prints out from our CMPD property control, as well
13 as my name, my code number, and the date that the
14 envelope was sealed.

15 Q. All right. Thank you. And while you had those
16 phones -- that phone in particular, the white
17 Motorola -- in your possession, did some -- did
18 someone try to call that phone during the arrest
19 process?

20 A. The phone rang several times during the arrest
21 process, and the -- a name popped up on the screen.
22 We never answered the phone. Just let it continue
23 to ring.

24 Q. Do you recall the name that popped up on the
25 screen?

1 A. Yes. Jarnelle.

2 Q. But you did not answer it?

3 A. No, sir.

4 Q. So when the name appeared on the screen, was it
5 your impression that was a stored contact ---

6 A. Yes, sir.

7 Q. --- a stored number?

8 A. Yes, sir. Because the name came up. It didn't
9 come up as a digital telephone number. It actually
10 came up as a name.

11 Q. And, Detective, were you asked at some point to
12 prepare a grouping of six photographs for detectives
13 to show the witnesses?

14 A. I was.

15 Q. Prior to doing that, had you had a conversation
16 with Detective Branham about the individuals you
17 observed the night of July 14, 2016?

18 A. Yes, sir. In fact, I sent all the information
19 that we obtained that night in an e-mail to
20 Detective Branham and Strickland with all that
21 information.

22 Q. And was it your understanding at the time that
23 Detective Branham felt one of those individuals in
24 particular matched the description given?

25 A. Yes, sir.

1 Q. And was a photo lineup prepared after that
2 conversation with Detective Branham?

3 A. Yes, sir.

4 Q. And was -- did that lineup include a known
5 photograph of Jarnelle Ervin?

6 A. It did.

7 Q. And did you transmit that -- the grouping of
8 six photographs to Detective Branham to assist --
9 further assist in his investigation of the case?

10 A. Yes, I did.

11 MR. SHELTON: Please answer any questions of
12 the defense.

13 THE WITNESS: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. STELTZNER:

16 Q. Detective, you said you made contact with the
17 vehicle prior to my client's arrest; is that
18 correct?

19 A. No, sir. Vehicle contact was made after
20 that -- that vehicle had come back to the complex.
21 I was not on the traffic stop where that vehicle was
22 stopped.

23 Q. Okay. All right. And so no other -- no other
24 arrests were made as far as you know at that time of
25 any of the occupants in the vehicle, correct?

1 A. Not -- during the traffic stop. No, sir.

2 Q. All right. Let's see. Now, when you -- now,
3 when you came across the stolen prop -- now,
4 pursuant to the order -- to the request by -- by
5 York County Sheriff's Department, did they say that
6 they were -- just out of curiosity, do they -- do
7 you treat property that you need to get fingerprints
8 off of differently than you would treat, let's say,
9 property just to be recovered?

10 A. Of course.

11 Q. Okay. And how would that -- and how would
12 that -- what is the difference?

13 A. When we collect it prior to moving it, we put
14 on latex gloves so we don't transfer any DNA or our
15 fingerprints to that evidence.

16 Q. And no -- but no request was ever made for
17 that, correct?

18 A. It wouldn't have to be made. It's understood
19 protocol, but no request was made for that, no.

20 Q. Did you do that with respect to this evidence?

21 A. No, I did not.

22 Q. Okay. All right. And at the time that you saw
23 the phone saying Jar -- Jarnelle, did you -- were --
24 were you able to observe Jarnelle actually using
25 this phone?

1 A. Not that phone. No, sir. That was the phone
2 that was in Mr. Lowery's possession.

3 Q. So I just want -- let me get something maybe I
4 missed a little bit. So you weren't involved in the
5 voluntary stop originally?

6 A. There were two different contacts made, sir.
7 There was a traffic stop that was made pursuant to
8 the belief that Mr. Lowery was in that vehicle and
9 had outstanding warrants.

10 And then there was contact made separately
11 after Mr. Lowery was obtained and put into custody
12 in his apartment. That vehicle was back at the
13 complex, and the subjects who had been seen
14 contacting Mr. Lowery in the parking lot prior to
15 his arrest were back in the parking lot.

16 At that point secondary contact was made
17 outside the apartment complex.

18 Q. And you were not part of that secondary
19 contact?

20 A. Yes, sir, I was.

21 Q. You were part of the secondary contact?

22 A. The secondary one, yes.

23 Q. So you were -- so you could tell if -- if they
24 were within visual distance of Mr. -- Mr. Lowery's
25 arrest, correct?

1 A. I mean, I was at Mr. Lowery's arrest inside the
2 house, so I don't know who was outside the house.

3 Q. But you just said that the -- that the
4 secondary -- how long was the second -- between his
5 arrest and the secondary contact?

6 A. Probably -- after his arrest was completed and
7 transported, probably ten minutes.

8 MR. STELTZNER: All right. Nothing further.
9 Thank you.

10 THE WITNESS: Okay.

11 REDIRECT EXAMINATION

12 BY MR. SHELTON:

13 Q. One question I forgot. How tall is Jermaine
14 Lowery?

15 A. Approximately, six-three, six-four.

16 Q. And would you describe his build?

17 A. Slender; thin.

18 MR. SHELTON: Thank you.

19 THE COURT: You can be excused. Step down and
20 be excused.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: Jury panel, let's take a short,
24 about a ten-minute refresher break before we get to
25 the next witness.

1 (At 2:17 p.m., jury left the courtroom.)

2 (From 2:17 to 2:31 p.m., recess.)

3 THE COURT: Bring in the jurors.

4 THE BAILIFF: (Complying.)

5 (At 2:31 p.m., jury entered the courtroom.)

6 THE COURT: All right. Call your next witness.

7 MR. SHELTON: Thank you, Your Honor. May it
8 please the Court? Next witness is Officer Ervin
9 Dunham.

10 THE WITNESS: (Approaching.)

11 THE CLERK: Do you solemnly swear or affirm
12 that the testimony that you shall give today be the
13 truth, the whole truth, and nothing but the truth so
14 help you God?

15 THE WITNESS: I do.

16 OFFICER ERVIN DUNHAM,
17 having been produced and first duly sworn as a
18 witness on behalf of the State, testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. SHELTON:

22 Q. Good afternoon, Officer.

23 A. Good afternoon.

24 Q. What is your name?

25 A. Ervin Dunham, D-u-n-h-a-m.

1 Q. And where do you work, sir?

2 A. I work for Charlotte-Mecklenburg Police
3 Department.

4 Q. And what do you do for the police department?

5 A. I'm a patrol officer in the central division.

6 Q. How long have you worked there?

7 A. Since 2015.

8 Q. So were you working in August of 2016?

9 A. Yes, I was.

10 Q. And do you work in Charlotte, North Carolina?

11 A. Yes.

12 Q. Were you involved in the arrest of Jarnelle
13 Ervin in Charlotte, North Carolina, on or about
14 August 19, 2016?

15 A. I was.

16 Q. And had you been notified prior to that that he
17 was wanted out of York County for an unserved
18 burglary warrant?

19 A. Yes, I was. I answered a call-for-service for
20 him as he was at our Law Enforcement Center.

21 Q. Okay. So had he already been picked up by
22 another officer?

23 A. Yes, he had.

24 Q. So you were called in to process him?

25 A. I was -- I was called in to process and

1 transport him to the Mecklenburg County Jail.

2 Q. Okay. And that was for a warrant related to an
3 incident out of York County?

4 A. It was.

5 Q. You were not involved with the York County
6 incident, just simply the -- the arrest process of
7 Ervin?

8 A. That's correct. And I was -- I was the one who
9 stood by while someone from York County was coming
10 to question the subject.

11 Q. Okay. And did Ervin have anything in his
12 possession?

13 A. He did. I took custody of his property that he
14 had in his possession, and he had a cell phone.

15 Q. And do you recall was it a red iPhone?

16 A. It was.

17 Q. And did you secure the phone from him?

18 A. I did.

19 Q. And did he at some point tell you the phone
20 number associated with that phone?

21 A. Yes. During our arrest process and paperwork,
22 I have to get a telephone number from the arrestee,
23 and he provided his telephone number.

24 Q. Okay. So do you have doc -- documentation of
25 that arrest warrant or that -- excuse me -- that

1 phone number somewhere?

2 A. I do. I have a copy of my -- what we call our
3 arrest worksheet that comes from Mecklenburg County
4 Intake Center. And I have a telephone number for
5 our arrestee who was Mr. Jarnelle Ervin.

6 Q. Okay. And was that number given to you by him
7 during that process?

8 A. It was.

9 Q. And will you please read that number?

10 A. (980) [REDACTED]-8,774.

11 Q. And do you see Mr. Ervin in the courtroom?

12 A. Yes, I do. It's the gentleman seated to my
13 left at the table to my left.

14 Q. Next to defense attorney, Mr. Steltzner?

15 A. Correct.

16 Q. Does he appear different today than he did that
17 day to your recollection?

18 A. He does. I think he's -- some hair. He had
19 quite a bit more hair at the time of arrest.

20 Q. Okay. And that phone, did you eventually
21 transfer custody of it to Detective Pete Branham
22 with the sheriff's department?

23 A. Yes, I did. I transferred custody of that
24 telephone to Detective Branham upon his arrival.

25 Q. And was that on the same day, August 9, 2016?

1 A. It sure was.

2 Q. Did you give it directly to him?

3 A. Yes, I did.

4 Q. And was that at the Charlotte-Mecklenburg
5 police station?

6 A. It was.

7 Q. I'm going to hand to you what's been marked for
8 identification as State's No. 59. And if you'd take
9 a moment to inspect this. If you have a knife, you
10 can cut into it to look for yourself. If not, I'll
11 let you borrow one of ours.

12 A. I do not have a knife.

13 Q. All right. Give me one second. I'll -- I'll
14 grab you mine. Here you go, sir.

15 A. (Opening exhibit.) Yes, it is.

16 Q. And that's the red iPhone in question?

17 A. It is.

18 Q. And that's the phone you transferred directly
19 to Directive Branham that day?

20 A. It is.

21 MR. SHELTON: Very good. Thank you, sir. Set
22 that off to the side.

23 THE WITNESS: Okay.

24 MR. SHELTON: Please answer any questions the
25 defense may have.

CROSS-EXAMINATION

BY MR. STELTZNER:

Q. So -- so how did you get the order to arrest -- to arrest Mr. Ervin?

A. So the Charlotte-Mecklenburg, our Law Enforcement Center, is in my division. And sometimes call for services comes out for one of our officers in the -- in the division to report to the Law Enforcement Center, either to standby with someone who may be in custody or to either just transport someone who's in custody who's being questioned or interviewed by detectives.

Q. And so you said you confiscated the cell phone and you also confiscated all those other personal effects and also and of course arrested of Mr. -- Mr. Ervin, correct?

A. That's right.

Q. And do you transfer all of those at the same -- at the same time to a detective of York County, correct?

A. Yeah, that's right. I think the only property that he had here was the cell phone.

MR. STELTZNER: Okay. I have no further questions.

REDIRECT EXAMINATION

1 BY MR. SHELTON:

2 Q. Forgot to ask one question. Did he give you
3 his address?

4 A. Yes, he did.

5 Q. What was that?

6 A. I have an address of [REDACTED] -- I mean, yes. [REDACTED]

7 [REDACTED], Charlotte, North Carolina [REDACTED]

8 MR. SHELTON: Okay. Thank you, sir.

9 RECROSS-EXAMINATION

10 BY MR. STELTZNER:

11 Q. Just another question. Was that the address in
12 which you arrested him at?

13 A. No, it wasn't. He was at the Law Enforcement
14 Center at 600 -- 601 East Trade Street.

15 MR. SHELTON: Okay.

16 THE COURT: You can step down and be excused.
17 We appreciate your time.

18 THE WITNESS: All right. Thank you much.

19 (Witness excused.)

20 MR. PORTER: The State calls Detective David
21 Vaughn.

22 THE WITNESS: (Approaching.)

23 THE CLERK: Do you solemnly swear or affirm
24 that the testimony that you'll give the Court today
25 shall be the truth, the whole truth, and nothing but

1 the truth so help you God?

2 THE WITNESS: Yes, ma'am.

3 DETECTIVE DAVID VAUGHN,
4 having been produced and first duly sworn as a
5 witness on behalf of the State, testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. PORTER:

9 Q. Good afternoon, Detective. Would you please
10 state your name for the jury?

11 A. David Vaughn.

12 Q. Please spell your last name.

13 A. V-a-u-g-h-n.

14 Q. And what -- what do you do for a job or
15 occupation?

16 A. I'm a detective with the criminal investigation
17 division.

18 Q. How long have you been in law enforcement?

19 A. Thirteen years.

20 Q. How long have you been a detective?

21 A. For two-and-a-half years.

22 Q. And were you involved in the investigation of
23 this case?

24 A. Yes.

25 Q. What was your role in the investigation?

1 A. To execute a search warrant on a cell phone
2 that came from Ervin.

3 Q. Was that Jermaine Lowery?

4 A. I mean, Jermaine Lowery.

5 Q. And were you given that phone in a search
6 warrant?

7 A. Yes.

8 Q. By whom?

9 A. Detective Pete Branham.

10 Q. And would you please briefly describe the phone
11 that you searched?

12 A. It was a white Android device.

13 Q. I'm going to show you what has been marked --

14 I'm going to show you what's been entered into
15 evidence as State's -- or what has been shown as

16 State's 54. Can you tell me what that is?

17 A. This is the evidence package along with the
18 cell phone, the white Android device phone that
19 belongs to Jermaine Lowery.

20 Q. Is that the phone that you searched?

21 A. Yes.

22 Q. How do you know?

23 A. Based off the chain of custody, as well as the
24 devices in here that I searched.

25 Q. Was it in the same condition when you -- when

1 you received it?

2 A. Yes.

3 Q. As it is today?

4 A. Yes.

5 Q. And was the phone on airplane mode when you
6 received it?

7 A. No.

8 Q. Did you place it into airplane mode?

9 A. Yes.

10 Q. And please explain the significance of that to
11 the jury.

12 A. So, basically, when we get a cell phone, we're
13 going to place it on what we call "airplane mode" so
14 nobody can manipulate the phone from an outside
15 source. Basically, it blocks the signal from
16 incoming and outgoing data.

17 Q. Was it powered off before you -- you opened --
18 before you received the phone?

19 A. Yes.

20 Q. Is that similar to being in airplane mode if it
21 it's off?

22 A. Yes.

23 Q. Now, when you executed the search warrant, how
24 did you achieve that execution? What did you
25 utilize ---

1 A. Okay. We -- we have a program that we use to
2 collect the data from the phone. The program takes
3 the data from the phone to the computer and makes a
4 nice little spreadsheet out of it.

5 Q. And were that -- was that spreadsheet and data
6 provided to the Solicitor's Office?

7 A. It was.

8 Q. Have you reviewed a copy of that which you
9 provided to the Solicitor's Office?

10 A. I have.

11 Q. Showing you what has been marked for
12 identification as State's 55. Could you please tell
13 the jury what is on State's 55 and what it is?

14 A. This is a disk that contains the contents of
15 the data that was transferred from the phone to the
16 computer. It has my initials on it and has Motorola
17 written on it.

18 Q. Have you reviewed the contents of that disk?

19 A. I have.

20 Q. Are they a true and accurate copy of your
21 production of what you received when you executed
22 the search warrant on the phone?

23 A. Yes.

24 MR. PORTER: Your Honor, at this point we move
25 State's 55 into evidence.

1 MR. STELTZNER: Without objection.

2 THE COURT: Entered without objection.

3 (State's Exhibit No. 55 was received into
4 evidence.)

5 MR. PORTER: Your Honor, in addition, we would
6 move State's 54 in, the white Android phone.

7 THE COURT: Any objection?

8 MR. STELTZNER: No objection.

9 THE COURT: Entered without objection.

10 (State's Exhibit No. 54 was received into
11 evidence.)

12 MR. PORTER: Thank you, Your Honor.

13 BY MR. PORTER:

14 Q. Detective Branham, did you take any photographs
15 of the phone and the items that actually appear on
16 the phone? I'm sorry. Detective Vaughn, I was
17 reading my notes here. I apologize.

18 Detective Vaughn, did you take any photographs
19 of the phone, it's actual self, with some of the
20 items on it?

21 A. I did take some photographs.

22 Q. Showing you what's been marked for
23 identification as State's 56, 57, and 58. Would you
24 please look through these and then look up when
25 you're done.

1 A. (Complying.)

2 Q. Could you please tell the jury what is depicted
3 on these sheets?

4 A. On the first sheet, there's a picture of a
5 contact that says "Jarnelle" and a phone number. It
6 shows ---

7 Q. If you would just summarize. We'll go over
8 them in a little bit, but would you just summarize
9 if those are photographs that you took of Jermaine
10 Lowery's cell phone?

11 A. These are photographs that I took.

12 Q. And as the phone -- are those true and accurate
13 depictions of the photographs that you took of
14 Jermaine Lowery's phone?

15 A. Yes.

16 MR. PORTER: Your Honor, we move State's 56,
17 57, and 58 into evidence.

18 MR. STELTZNER: Without objection.

19 THE COURT: Entered without objection.

20 (State's Exhibit Nos. 56, 57, and 58 were
21 received into evidence.)

22 MR. PORTER: Move to publish, Your Honor.

23 THE COURT: You may.

24 (State's Exhibit Nos. 56, 57, and 58 were
25 published to the jury.)

1 BY MR. PORTER:

2 Q. Detective Vaughn, I'm showing you what has been
3 marked -- on the screen what has been marked as
4 State's 56. If you need to step down and take a
5 look. If you can see it from there, fine. Could
6 you please describe to the jury what these
7 photographs depict?

8 A. So the upper-left picture has the
9 JermaineLowery@gmail.com. The account was
10 registered to that particular phone.

11 The next picture is a picture of the albums on
12 the top right-hand side.

13 The lower left is just pictures of the
14 individual inside the phone.

15 And the lower right's more pictures of the
16 individual and the phone.

17 Q. Is the individual on the bottom left photograph
18 on State's 56 wearing a hat?

19 A. Yes.

20 Q. What color is that hat?

21 A. It's to be red or pink.

22 Q. Showing you, I believe this is, again, another
23 photograph of State's 56. Would you please explain
24 to the jury what these are?

25 A. The top left picture is basically a picture

1 where some texts are going back and forth. And on
2 that top left picture, the lower right, where a text
3 was outgoing, the picture of a gun, what I believe
4 to be a gun.

5 Q. Okay.

6 A. The top right is the actual picture.

7 The lower left and lower right are just more
8 texts between this particular device and another
9 individual.

10 Q. Okay. Again, another State's 56. Could you
11 tell the jury what those are?

12 A. So top left is a picture that's underneath it
13 has more texts.

14 And the top right is a blown-up portion of that
15 picture is on the top left.

16 And, again, the bottom left picture is a
17 picture of a gun -- a gun -- we believe to be a gun.

18 And the lower right is a picture of that
19 picture blown-up.

20 Q. And, Detective Vaughn, would you note for the
21 jury or state for the jury what dates appear on
22 these photographs in State's 56?

23 A. You have July 12, 2016. Also, you have a
24 July 13, 2016.

25 Q. And to your knowledge, is that one and two days

1 after -- after the incident?

2 A. Yes.

3 Q. All right. And the final page of State's 56,
4 would you tell the jury what's depicted there.

5 A. This is just more texts messages between this
6 device and another individual.

7 And the picture on the lower left is the
8 picture on the right-hand side.

9 Q. Okay. Moving onto State's 57. I believe you
10 already referenced this. Would you tell the jury
11 what this is a picture of?

12 A. This is a picture of what we believe to be a
13 gun.

14 Q. Okay. And is there any date with that, or is
15 that a copy of what was already in State's 56?

16 A. That was already a copy of what's in there.

17 Q. Okay. And State's 58, could you please explain
18 to the jury what this is?

19 A. So in the contact screen of this particular
20 device, it has the contact as Darnelle [sic]. And
21 it has the phone number that correlates with that
22 contact.

23 Q. Would you please read that phone number?

24 A. The phone number is (704) [REDACTED]-6039.

25 Q. Okay. And if you would continue around to the

1 the other photographs.

2 A. The top right is showing where some texts that
3 were sent from this device to that particular
4 device -- that particular contact.

5 Also, some phone calls were placed -- or they
6 were incoming. I'm sorry.

7 And the next picture on the lower left is also
8 just more text messages and phone calls.

9 The lower right is just more text messages that
10 were sent from incoming and outgoing from this
11 device.

12 And the next two photos as well, just some more
13 communication between this device and Jarnelle.

14 Q. Can you note for the jury the dates listed
15 here, as well?

16 A. So the top-right picture by the contact that
17 says Jarnelle, there's an incoming call on
18 July 14th.

19 Another incoming call on July 14th.

20 The lower left is a continuation of those
21 particular calls. After the calls are some texts
22 going back and forth on July 12th.

23 Q. Okay.

24 A. And the picture on the right is just a
25 continuation of what's going on here, July 12th.

1 And the top right-hand picture you have on the
2 screen are some old texts still from July 3rd and
3 July 5th.

4 MR. PORTER: Okay. Beg the Court's indulgence.
5 State has no further questions at this time, Your
6 Honor.

7 THE COURT: Cross-examination?

8 MR. STELTZNER: Yes. Thank you.

9 CROSS-EXAMINATION

10 BY MR. STELTZNER:

11 Q. So we see the texts that you -- that you say
12 was from a phone -- a phone -- a phone labelled
13 "Jarnelle." Any -- any pictures -- were any
14 pictures recovered that have Jarnelle in them?

15 A. I do not know that.

16 Q. Any pictures with Jarnelle with any stolen
17 evidence -- stolen evidence or weapons that were
18 used in this crime?

19 A. Not that I could see.

20 Q. Any texts from Jarnelle concerning -- that
21 might concern this -- this particular incident?

22 A. No, sir.

23 Q. And besides those two phone -- those two --
24 those two phone calls that were -- that were
25 supposedly from a phone labelled Jarnelle, were

1 there any other phone calls made to that phone
2 from -- from Jarn -- from the contact labelled
3 Jarnelle?

4 A. No, sir.

5 MR. STELTZNER: Thank you. Nothing further.

6 THE COURT: Redirect?

7 MR. PORTER: None, Your Honor.

8 THE COURT: You can step down and be excused.
9 Appreciate your time.

10 THE WITNESS: Thank you, sir.

11 (Witness excused.)

12 MR. PORTER: State calls Detective Alex Clark.

13 THE WITNESS: (Approaching.)

14 THE CLERK: Do you solemnly swear or affirm
15 that the testimony that you give today to the Court
16 will be the truth, the whole truth, and nothing but
17 the truth so help you God?

18 THE WITNESS: Yes, ma'am.

19 DETECTIVE ALEX CLARK,
20 having been produced and first duly sworn as a
21 witness on behalf of the State, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. PORTER:

25 Q. Good afternoon, Detective. Would you please

1 state your name for the jury?

2 A. John Alexander Clark, C-l-a-r-k.

3 Q. And what do you do for a job or occupation?

4 A. I work for the York County Sheriff's Office
5 since October of '05, so over 12 years.

6 Q. What's your current role with the sheriff's
7 office?

8 A. I'm a detective in the criminal investigations
9 division, and I currently work on computer forensic
10 downloads and cell phone downloads.

11 Q. And how long have you been in that role?

12 A. About a year since I've been assigned to this.

13 Q. Okay. Were you involved in the investigation
14 of this case?

15 A. Yes, sir, I was.

16 Q. How were you involved?

17 A. I was approached by Detective Branham -- excuse
18 me -- Lieutenant Branham. They brought a search
19 warrant. Said they would need the cell phone
20 downloaded, which was part of my regular duties.

21 , The cell phone was in evidence at this time
22 still, but he brought me a search warrant. I read
23 over it. It was signed. Appeared to be a valid
24 search warrant, so I started that process.

25 Q. Detective, I'm showing you what's marked for

1 identification as State's 59. Would you please tell
2 the jury what's contained in that envelope.

3 A. This is an Apple iPhone in a red case. It has
4 the Apple code to unlock the phone, as well. I
5 stuck on a sticky note inside.

6 Q. Is that the phone that you received to execute
7 the search warrant from Detective Branham?

8 A. It is.

9 Q. Is it in the same or similar condition as when
10 you received it?

11 A. Yes. It was the sealed -- the evidence packet,
12 which was still sealed when I got it from evidence.

13 MR. PORTER: Your Honor, at this point we move
14 State's 59 into evidence.

15 MR. STELTZNER: Without objection.

16 THE COURT: Entered without objection.

17 (State's Exhibit No. 59 was received into
18 evidence.)

19 MR. PORTER: Thank you, Your Honor.

20 BY MR. PORTER:

21 Q. Now, when you received the phone, was it in
22 airplane mode?

23 A. The phone was actually powered off. It had
24 been in evidence previously being powered off. Very
25 similar to airplane mode. It doesn't allow any data

1 to come or go.

2 When I turned the -- when I had to power the
3 phone on, it was in airplane mode once it came up
4 and the battery was dead when I first got it.

5 Q. And how did you execute the search warrant that
6 you received?

7 A. What we do once the cell phone is placed in the
8 proper mode and screen lock is removed, we'll plug
9 it into a forensics software program that we use,
10 and we extract the data through a variety of
11 methods.

12 Q. And which method did you use in this case?

13 A. For this, Apple devices, we generally have to
14 do what they call a full-file system extraction, and
15 basically it does a backup of all of the data that's
16 on the phone.

17 Q. And did you do that in this case?

18 A. Yes. Yeah, I extracted the data using the
19 Cellebrite UFED 4PC software.

20 Q. And did you -- did you collect that data and
21 inventory it?

22 A. Yes. Once the data -- once the extraction was
23 received by the UFED 4PC software, we open it into
24 another program by Cellebrite called Physical
25 Analyzer. And it actually brings the data into a --

1 a readable format.

2 Q. Okay. Now, I'm going to show you what has been
3 marked for identification as State's 60. Could you
4 please tell the jury what's depicted in this
5 photograph?

6 A. The first two are pictures of the cell phone
7 which are in the bag here.

8 The second is the same cell phone with the
9 cover removed.

10 And then the bottom of the Apple phone. It
11 actually has your IMEI number outside and also has
12 the model of the Apple phone inscribed on the back
13 of it. It's just a close-up of that.

14 Q. Are some of those specific for a specific
15 iPhone, the IMEI to iPhone?

16 A. The IMEI is actually unique to your phone.
17 The -- the model of it is -- is general, but the
18 IMEI is very specific.

19 Q. Now, have you reviewed a copy of the cell phone
20 data that was produced in this case to the
21 Solicitor's Office?

22 A. Yes, sir.

23 Q. I'm showing you what has been -- what -- what
24 we would request to be marked as State's 61 for
25 identification. Could you please tell the jury and

1 to the Court what is on that flash drive?

2 A. Yeah, a copy of the -- using the software, I
3 created a report through Physical Analyzer. A copy
4 of that report has been placed on this flash drive,
5 and I have reviewed the contents and I've initialled
6 it. And it is still taped, as well.

7 Q. Those are your initials?

8 A. Yes, sir.

9 Q. Has it changed since you reviewed the copy and
10 closed it up?

11 A. No, sir. Tape is still intact.

12 MR. PORTER: Your Honor, at this point we move
13 State's 61 into evidence.

14 MR. STELTZNER: Without objection.

15 THE COURT: Entered without objection.

16 (State's Exhibit No. 61 was received into
17 evidence.)

18 BY MR. PORTER:

19 Q. Now, when you reviewed, you -- did you -- as
20 you said, you reviewed those cell -- that cell phone
21 is red, correct?

22 A. Yes, sir.

23 MR. PORTER: Beg the Court's indulgence.

24 BY MR. PORTER:

25 Q. I'm showing you what has now been marked --

1 thank you, Your Honor. I'm showing you what has
2 been marked as State's 62 and 63. Would you please
3 tell the jury what is depicted there?

4 A. This first photo is a picture that was -- that
5 was obtained from the cell phone download. It was
6 in one of his -- it was in the memory on the card.

7 The second is, when you do these reports, it
8 actually gives you the name of the file, the path
9 where it was saved, and an MD5 value which is unique
10 to the photo, the day you created, modified, the
11 size of it, the size of the file.

12 There's a couple of video files on here, along
13 with a blown-up shot of one of the photos that was
14 recovered.

15 In this last paper here, State's 63, there's a
16 specific item that I tagged. It was from the GPS
17 coordinates. I believe it was Apple maps
18 application it was used where it actually recorded
19 the physical location of the phone. It's very
20 common for your phones to keep up with where you
21 are. They hit off the different cell towers, Wi-Fi
22 towers.

23 Q. And, Detective, would you please mark for the
24 jury on State's 63 the items that you marked as
25 pertinent to this investigation?

1 A. (Complying.)

2 Q. And is that Item No. 7 on State's 63?

3 A. It is.

4 MR. PORTER: Thank you.

5 MR. STELTZNER: May I see the items
6 highlighted, please?

7 MR. PORTER: Sure.

8 (Showing State's Exhibit No. 63 to counsel.)

9 BY MR. PORTER:

10 Q. Detective, would you please read the GPS
11 coordinates in State's 63, the first set of numbers
12 and then the second set of numbers there?

13 A. The first value is [REDACTED]. And the second
14 coordinate is [REDACTED].

15 Q. And the numbers above it, I believe they --
16 State's 63 reflects from?

17 A. Yes. The -- the from was [REDACTED], with a
18 second coordinate of [REDACTED].

19 MR. PORTER: Beg the Court's indulgence.

20 BY MR. PORTER:

21 Q. Detective, I have one final question for you.
22 Are you familiar with the concept of UTC time?

23 A. Yes, sir.

24 Q. Would you please explain that to the jury?

25 A. As you cross the country or the world, your

1 time zone changes. To combat that, especially when
2 you're dealing with electronics that can reach all
3 across the world, they have what is called
4 "universal time coordination" or UTC.

5 When we do cell phone downloads or computer
6 forensic applications, everything we do is in UTC
7 time so that we can avoid having something that
8 occurred in Central time getting confused with
9 something that was done from the Eastern Standard
10 Time Zone, so UTC is just that universal coordinated
11 time.

12 Q. Is that a similar idea to grand screen time?

13 A. I'm sorry. What?

14 Q. No. I'll -- I'll withdraw that question.

15 Now, UTC time, what would the -- the actual
16 time depicted be in the Eastern Time Zone during
17 the -- on the date of July 11, 2016?

18 A. During the summer, it would've been -4 hours
19 behind UTC time.

20 Q. So it would -- the number would read UTC minus
21 four?

22 A. Correct.

23 Q. If UTC -- if the UTC time was 6:30, it would --
24 it was -- if it was 16:30, it would actually be 4:30
25 UTC time, but you would subtract four from that?

1 A. I would take four away from that. 16:30 would
2 be 2:30.

3 MR. PORTER: Okay. Your Honor, I believe I've
4 done math in public and I apologize.

5 THE COURT: And I say -- I have a saying that
6 you don't do math or spell in public because if you
7 do, you'll get it wrong every time. So that's a
8 running joke that I have with the Solicitors.

9 BY MR. PORTER:

10 Q. So let's -- let's start again. I'm attempting
11 math. 16:30 depicted on UTC time would be actual --
12 be the actual time in Eastern Time Zone would be
13 12:30?

14 A. Yes. As soon as I said 2:30, I realized I did
15 math in public, as well.

16 MR. PORTER: Okay. No further questions, Your
17 Honor.

18 THE COURT: Cross?

19 MR. STELTZNER: May I beg the Court's
20 indulgence. May we approach?

21 THE COURT: Yeah, you can approach.

22 (Sidebar discussion.)

23 THE COURT: Let me let the jury go to the jury
24 room while we take up a legal matter.

25 (At 3:07 p.m., jury exited the courtroom.)

1 THE COURT: Mr. Steltzner, as I understand it,
2 you have some evidence you wanted to have available
3 to use in cross-examination of this witness, but you
4 don't have it with you at this time.

5 MR. STELTZNER: That is correct. It's just a
6 screen shot and snapshots in the same manner as the
7 Solicitor has presented, as well.

8 We also -- also -- also wish to -- wish to let
9 you know that -- let you know as matter of -- as a
10 matter of order that the defendant has -- my --
11 my -- that my client has chosen to put on a defense.

12 So in -- in lieu of last arguments, so -- so
13 we'd like -- so my suggestion for that is maybe just
14 have -- I would like to ask a few questions
15 concerning the -- concerning the data that -- that
16 he received and concerning the evidence that he
17 received with -- with just understanding that he can
18 come back tomorrow, that I'll recall him tomorrow.

19 MR. SHELTON: Your Honor, I think there's a
20 couple of ways we can do this. The entire data is
21 already admitted as a State's Exhibit. So I don't
22 think that the -- to the defense -- to the extent
23 the defense has decided to put up a case, I think
24 they're certainly entitled to make their
25 own exhibits at this point if they choose. That's

1 not nec -- that's not necessary though if we are to
2 take the data, plug it in the computer, and project
3 specific sayings for cross-examination.

4 We're willing to accommodate that. Obviously,
5 this -- this computer is not exclusive to the
6 Solicitor's Office. So we can either do it that
7 way, or we can -- if Mr. Steltzner will give us the
8 page numbers, we'll just simply print them for him,
9 and then he can introduce them as defense exhibits
10 and have them highlighted or whatever if there's
11 something that's easier for his presentation of the
12 defense case.

13 But if they -- if we go the later route and
14 they admit evidence, they have -- at that point,
15 even if they don't decide to put up their own
16 witnesses, they have given up last close in that
17 regard.

18 But I think there's an argument since it's
19 already in as the State's data, that probably makes
20 that likewise moot if you follow what I'm saying.
21 The data was already entered. It's just a question
22 of whether it's in ease of presentation or not.

23 MR. STELTZNER: I'm willing to -- I'm willing
24 to go forward so long as we're -- that unfortunately
25 the computer that I was -- that I'm using ran out of

1 power, and I forgot my cord so -- and that would
2 have given me the page numbers that I needed, so
3 that's...

4 MR. SHELTON: And, Judge, I can pull -- I can
5 pull it up ---

6 THE COURT: Let's take a short break and let
7 Mr. Ervin use the restroom if he has to. And we'll
8 take a break and let y'all see if you can coordinate
9 and do it that way.

10 MR. SHELTON: Certainly.

11 THE COURT: So just let me know when you feel
12 like you are ready to go.

13 MR. SHELTON: Yes, sir. Thank you, Your Honor.

14 THE COURT: We'll take a short break.

15 (From 3:11 to 3:29 p.m., recess was taken.)

16 THE COURT: Are you ready, Mr. Steltzner?

17 MR. STELTZNER: Yes, Your Honor.

18 THE COURT: Bring in the jury.

19 THE BAILIFF: (Complying.)

20 (At 3:30 p.m., jury entered the courtroom.)

21 THE COURT: You may examine the witness,
22 Mr. Steltzner.

23 MR. STELTZNER: Yes, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. STELTZNER:

1 Q. Officer, you -- you gave testimony that you
2 had -- you had extracted data from -- from the --
3 from the cell phone that was -- that belonged to
4 Jarnelle Ervin; is that correct?

5 A. Yes, sir.

6 MR. STELTZNER: I wish to -- okay. As far as
7 procedure is concerned, I wish to go ahead and -- do
8 I mark and then ---

9 THE COURT: You will mark for ID.

10 MR. STELTZNER: I wish to present this as
11 Defense Exhibit 1.

12 THE COURT: Okay.

13 BY MR. STELTZNER:

14 Q. Do you recognize this?

15 A. It appears to be an extraction that does not
16 have -- I'm sorry. Yes. Yes. That's the Item 7
17 where I tagged it. That's what I was looking for.

18 Q. Okay. And on this -- now, on this particular
19 sheet, it shows -- can you read for the Court?
20 There is a "from" point and a "to" point; is that
21 correct?

22 A. Yes, sir.

23 Q. Now, the from ---

24 THE COURT: Have you offered that into
25 evidence?

1 MR. STELTZNER: I wish to offer this as Defense
2 Exhibit 1.

3 MR. SHELTON: No objection.

4 THE COURT: Entered without objection.

5 (Defense Exhibit No. 1 was received into
6 evidence.)

7 BY MR. STELTZNER:

8 Q. There's a from coordinate and a to coordinate;
9 is that correct?

10 A. Yes, sir.

11 Q. And as to the -- as to the from point, can you
12 read off the numbers that -- that exhibit there?

13 A. Yes, sir. This was -- I actually read this as
14 the second point earlier. It was [REDACTED], but the
15 second coordinate of [REDACTED].

16 Q. All right. And what does -- and what does the
17 name underneath -- there's -- there's a label
18 underneath that. What does it say?

19 A. Under here is current location. Are you
20 referring ---

21 Q. I'm referring to ---

22 A. Okay. Current location.

23 Q. Okay. So -- so the -- the phone's current
24 location at that time, at the -- at UT -- UTC 18:37
25 as -- as listed right here is the current location

1 of that phone; is that correct?

2 THE COURT: What date?

3 MR. STELTZNER: On 7/11/2016.

4 THE WITNESS: What that is saying, it's giving
5 you two coordinates with the universal time. The
6 last time it hit was here, which is called the
7 current coordinate. This is where it was hit next,
8 which is the 2. here.

9 Q. Okay. And can you read -- read to me what --
10 what application it was using?

11 A. It's using Apple maps.

12 Q. Okay. And can you reference -- and can you say
13 that the time -- the time from point and the time to
14 point are exactly the same; is that correct?

15 A. Yes, sir.

16 MR. STELTZNER: Okay. Go ahead and publish
17 this.

18 BY MR. STELTZNER:

19 Q. So, basically, your testimony here is that --
20 is that -- is that on this particular phone, someone
21 used Apple maps to -- to give the distance between
22 two locations? Would that be correct?

23 A. That is two coordinates that the phone has hit
24 off of, and it appears to come from the Apple maps
25 application.

1 Q. Okay. And it's at 2 -- and it's at the
2 equivalent of 18:37. Well, it's 18:37 UTC; is that
3 correct?

4 A. Yes, sir. Yes, sir.

5 Q. And the current location is given as somewhere
6 different from the -- from the -- the to location
7 and the from location are different coordinates; is
8 that correct?

9 A. Yes, sir.

10 MR. STELTZNER: All right. Nothing further.

11 MR. PORTER: Just briefly, Your Honor.

12 First, as a matter of housekeeping, Your Honor,
13 I believe the State authenticated State's Exhibit
14 60, but I would move State's 60 into the evidence.

15 THE COURT: Any objection?

16 MR. STELTZNER: No objection.

17 THE COURT: Entered without objection.

18 (State's Exhibit No. 60 was received into
19 evidence.)

20 MR. PORTER: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. PORTER:

23 Q. Detective Clark, you talked with defense
24 attorney about 18:37 UTC time.

25 A. Yes, sir.

1 Q. What would that time be in Eastern Time Zone?

2 A. 2:37 p.m.

3 Q. In the Eastern Time Zone?

4 A. Yes, sir.

5 Q. Is York County in the Eastern Time Zone?

6 A. Yes, sir.

7 MR. PORTER: No further questions, Your Honor.

8 THE COURT: Anything else?

9 MR. STELTZNER: Nothing further.

10 THE COURT: You can step down and be excused.

11 We appreciate your time.

12 THE WITNESS: Thank you, sir.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. PORTER: State calls James Hibbert.

16 THE WITNESS: (Approaching.)

17 THE CLERK: Do you solemnly swear or affirm
18 that the testimony that you'll give today will be
19 the truth, the whole truth, and nothing but the
20 truth so help you God?

21 THE WITNESS: Yes, ma'am.

22 JAMES HIBBERT,

23 having been produced and first duly sworn as a

24 witness on behalf of the State, testified as

25 follows:

DIRECT EXAMINATION

BY MR. PORTER:

Q. Good morning. Would you please state your name for the jury?

A. It's James Hibbert.

Q. And what do you do for a job or occupation?

A. I am a GIS programmer for York County, and I teach as adjunct at -- with the university.

Q. How long have you been in the role with GIS over York County?

A. With York County, two years.

Q. Would you please describe your educational background for the jury?

A. Yes. I have a bachelors and masters of science in Geography from the University of South Carolina.

Q. And while you were pursuing those -- pursuing those degrees, did you take any classes specifically on geographic information systems, mapping, or GIS?

A. Yes.

Q. Do you have any professional experience prior to your current position regarding GIS?

A. Yes. I worked for the University of South Carolina as a research associate in specifically to geographic information systems and epidemiology for eight years prior to my current position.

1 Q. Do you have any technical experience regarding
2 GIS?

3 A. Yes.

4 Q. And could you please describe that for the jury
5 just briefly?

6 A. Briefly, it's just an understanding of the
7 computer systems and geography -- and geography
8 specifically that go into the kind of -- the role
9 that I do. So, basically, from GPS to mapping to
10 computer systems and database systems.

11 Q. Okay. And you mentioned you -- you were
12 actually an adjunct. Have you taught any classes
13 recently or in the past regarding GIS systems?

14 A. Yes. I taught an introduct -- introductory to
15 GIS in spring of 2018.

16 Q. And have you published any papers in the field?

17 A. Yes. I think 14 or 15.

18 MR. PORTER: Your Honor, at this point we would
19 qualify James Hibbert as an expert in the field of
20 geographic information systems.

21 THE COURT: Any voir dire?

22 MR. STELTZNER: No, sir.

23 THE COURT: I find he's qualified.

24 MR. PORTER: Thank you, Your Honor.

25 BY MR. PORTER:

1 Q. Now, would you please describe to the jury what
2 geographic information system or GIS is?

3 A. Yeah. It's basically a computer based system
4 that captures, stores, retrieves, processes, and
5 analyzes geographic data.

6 So, basically, it looks at if you have, say,
7 features on a map, it captures those features and
8 links those features to data about them. If you
9 look at Google maps, that's kind of a stripped down
10 version of a geographic information system.

11 Q. Okay. And how accurate are they with respect
12 to the true point that they're attempting to plot or
13 in the system that use specifically?

14 A. The system that I use is accurate -- it's as
15 accurate as the information you give it. So if it's
16 captured down to the millimeter, it would be down to
17 the millimeter. So it's extremely accurate as far
18 as processing.

19 Q. And you're -- are you familiar with the margin
20 of error that's introduced via cell phones?

21 A. Yes. For the -- as far -- as far as the GPS?

22 Q. Yes.

23 A. Most consumer grade cell phones will be
24 accurate to within 3 to 5 meters or 10 to 20 feet
25 roughly.

1 Q. So I'm showing my -- I'm holding my cell phone
2 for the jury. If -- if you were to plot my location
3 on this cell phone right now, it would display
4 within a 3-meter radius of me on your system?

5 A. Not within the building, but if you were
6 outside perhaps.

7 Q. Okay. So if I was standing outside right now?

8 A. Right. Yeah, you have to have a view of the
9 satellite, so the building kind of ---

10 Q. Sure.

11 A. --- obscures that.

12 Q. Now, were you asked by the Solicitor's Office
13 to create maps based on GPS coordinates that were
14 provided to you?

15 A. Yes.

16 Q. How many maps did you create?

17 A. Two.

18 Q. And what programs or web sites did you utilize
19 to create those maps?

20 A. I used the GIS software or GIS.

21 Q. Okay. For both maps?

22 A. For both maps. Yes.

23 Q. And are those the same -- is that the same
24 program that you utilize in your daily work?

25 A. Daily. Yes.

1 Q. Do they appear to be working in proper order?

2 A. Yes.

3 Q. I'm showing you what's been marked -- what I
4 would request to be marked for identification as
5 State's 64, and what has been previously entered
6 into evidence as State's 65.

7 Mr. Hibbert, could you please tell the jury
8 what is depicted in State's 64 and State's 65?

9 A. In 64, we have GPS coordinates that have been
10 plotted [REDACTED] and [REDACTED]. And also it's
11 depicted an address point for [REDACTED].

12 Q. Did you create those -- did you create that
13 map?

14 A. I did.

15 Q. Is that a true and accurate depiction of the
16 map that you created?

17 A. Yes.

18 Q. And did you plot those points on State's 64?

19 A. I did.

20 MR. PORTER: Your Honor, at this point we'd
21 move State's 64 into evidence.

22 THE COURT: Any objection?

23 MR. STELTZNER: No objection.

24 THE COURT: Entered without objection.

25 (State's Exhibit No. 64 was received into

1 evidence.)

2 BY MR. PORTER:

3 Q. With respect to State's 65, would you please
4 tell the jury what that is?

5 A. Yes. That is a map of a coordinate at

6 [REDACTED] North and West [REDACTED].

7 Q. Did you create that, as well?

8 A. I did.

9 Q. Is that a true and accurate depiction of the
10 map that you -- that you produced?

11 A. It is.

12 MR. PORTER: Your Honor, at this point I move
13 State -- actually, I don't need move the State's
14 exhibit. It's already in.

15 BY MR. PORTER:

16 Q. Is that a true and accurate -- that's a true
17 and accurate depiction?

18 A. Yes.

19 Q. And that shows the area surrounding that
20 coordinate point?

21 A. It does, yeah.

22 Q. In your expert opinion, are those accurate
23 depictions of where those GPS coord -- GPS
24 coordinates would be displayed and would be located?

25 A. Yes.

1 Q. Now, I'm showing you what has been entered as
2 State's 63 previously. I'm referring your attention
3 specifically to the numbers here from point and to
4 point. Could you please read those into the record,
5 as well?

6 A. Yes. The from point is [REDACTED], [REDACTED].

7 Q. And is that the point that you plotted on
8 State's 65?

9 A. It is.

10 Q. Now, in the -- the to point on State's 63, is
11 that the same -- would you please read that into the
12 record?

13 A. Yes. It is [REDACTED], [REDACTED].

14 Q. And is that what you plotted on State's 64?

15 A. It is.

16 Q. [REDACTED], that's a location that
17 you plotted. Stand -- is that standardized for all
18 addresses how those -- those GPS locations are --
19 are positioned?

20 A. For addresses, yes. That is from our address
21 database that is maintained -- maintained by public
22 safety.

23 Q. Okay. And if you would, please, place your
24 initials on State's 63 beside the -- the coordinates
25 that you read into the record.

1 A. Sure. (Complying.)

2 MR. PORTER: If I may see that so I can show it
3 to the defense.

4 THE WITNESS: (Complying.)

5 MR. PORTER: Beg the Court's indulgence. No
6 further questions at this time.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. STELTZNER:

10 Q. Yes. When you -- when you received the
11 information from -- from the Solicitor's Office to
12 generate these maps, did you receive any information
13 concerning what it was for?

14 A. I knew it was for a criminal case, but not
15 anything specific.

16 Q. Okay. And let me refer to Defense Exhibit 1,
17 and I'll also refer to State's Exhibit 63 for
18 reference.

19 Now, are those the same coordinates --
20 coordinates listed on State's Exhibit 63 as are
21 listed on Defense Exhibit 1 on the bottom there?

22 A. This is number seven here?

23 Q. Yes. On number seven, yes, sir.

24 A. They are.

25 Q. Okay. And you were in here for the -- you were

1 in here for the testimony of the -- of the prior
2 witness; is that correct?

3 A. Yes.

4 Q. Okay. Can you read for the Court -- read for
5 the Court the from point and tell us where the from
6 point is in the -- is -- is this -- is this which is
7 labelled State's Exhibit 65, is this the from point
8 on this map?

9 A. Yes. [REDACTED] and [REDACTED]. And does
10 appear -- and this does appear to be that from
11 point.

12 Q. Okay. And is the to point listed there, listed
13 the same as State's Exhibit ---

14 THE COURT: What are you referring to?

15 MR. STELTZNER: I'm sorry?

16 THE COURT: What exhibit are you referring to?

17 MR. STELTZNER: I'm referring to State's
18 Exhibit 64.

19 BY MR. STELTZNER:

20 Q. Is it -- is it the same to point as Defense
21 Exhibit 1?

22 A. So that is [REDACTED] and [REDACTED] and does
23 appear to be the same.

24 Q. Are you familiar with Apple maps?

25 A. Somewhat familiar.

1 Q. Okay. And would you say from your experience
2 if something says it's a current location of
3 something, that means it's -- that the phone is
4 actually at that current location?

5 A. I believe that's what that means.

6 Q. Okay. And -- and would you say that the
7 current location of that phone is indeed at the to
8 point -- to point given on State's Exhibit 65; is
9 that correct?

10 A. I believe this is the from point.

11 Q. Yes. That is the from point.

12 A. Yes. I believe this is the from point. Yes.

13 Q. Okay. Does it necessarily mean that -- that
14 from your familiarity with Apple -- with Apple maps
15 and Apple products, has it -- does it show that the
16 phone actually travelled to that other coordinate?

17 A. I'm not sure. If it is entered into Apple
18 maps, it is essentially like an address is entered
19 that would be geocoded into those coordinates, but
20 it might not necessarily mean that the phone was
21 there.

22 Q. But you would say that if -- if a phone says
23 that a particular coordinate is a current location,
24 it is actually at that location; is that correct?

25 MR. PORTER: Your Honor, object to his

1 question. May I address the objection?

2 THE COURT: Let me have the jury go to the jury
3 room just for a minute. We'll take up a matter of
4 law.

5 (At 3:50 p.m., jury exited the courtroom.)

6 THE COURT: All right.

7 MR. PORTER: Your Honor, Mr. Steltzner's
8 question requires either to speculate to an item
9 which he's already stated he's somewhat familiar
10 with, but not sufficient to making extrapolations as
11 to what this cell phone read, which is not -- which
12 is not a direct replica -- replication of Apple
13 maps.

14 He's asking this witness to speculate and
15 extrapolate something which -- from which he cannot
16 possibly know the answer. So for that reason, Your
17 Honor, we object to that question.

18 THE COURT: Well, following the next question,
19 the witness can always say, "I don't know."

20 MR. PORTER: Thank you, Your Honor.

21 MR. STELTZNER: The witness has already said,
22 "I'm not sure. I'm not sure," and that's fine. I'm
23 willing to accept that.

24 THE COURT: All right. Bring the jury back in.

25 THE BAILIFF: (Complying.)

1 (At 3:52 p.m., jury entered the courtroom.)

2 THE COURT: You may continue.

3 BY MR. STELTZNER:

4 Q. Let me go ahead and just rephrase the question.

5 Do you own a -- do you own a cell phone?

6 A. Yes.

7 Q. Have you ever used the mapping software on the
8 cell phone?

9 A. Yes.

10 Q. Have you ever -- have you ever mapped yourself
11 from where you are to where you're going?

12 A. Yes.

13 Q. Does -- does the phone -- does the phone that
14 you're using, whether Apple or any other -- other --
15 other device, reference your -- reference where you
16 are as the current location?

17 A. It does.

18 MR. STELTZNER: All right. Thank you.

19 THE COURT: Any redirect?

20 MR. PORTER: Just briefly, Your Honor. I move
21 to publish 64 and 65 to the jury.

22 THE COURT: All right.

23 (State's Exhibit No. 64 and 65 were published
24 to the jury.)

25 REDIRECT EXAMINATION

1 BY MR. PORTER:

2 Q. Mr. Hibbert, could you please explain to the
3 jury the two locations that are depicted on this
4 map. And if it may help you, you can step down and
5 utilize this laser pointer.

6 A. So the point center of the map is the
7 coordinates given to me by the office of the
8 Solicitor's. And this point here is from our
9 address database for [REDACTED].

10 Q. And that linear distance depicted, how did you
11 calculate that? Did you calculate that, or is
12 something our GIS did?

13 A. That's the standard function of the software,
14 so it's basically just something -- it wasn't just
15 measuring it.

16 Q. Okay. And to State's 65, could you please
17 explain to jury what that is?

18 A. Yes. The point center of the map is -- depicts
19 the other coordinates given to me by the Solicitor's
20 Office.

21 Q. That would be the from point?

22 A. The from point as we become ---

23 Q. And 64 is the to point?

24 A. Correct.

25 MR. PORTER: Thank you, Your Honor. No further

1 questions.

2 THE COURT: Anything further on cross?

3 RECROSS-EXAMINATION

4 BY MR. STELTZNER:

5 Q. Just a follow-up question. And so -- and so
6 when you mapped yourself to -- from your current
7 location to where you're going on your -- on your
8 own phone as you've said that you've done, do you
9 sometimes not go to your -- to your loc -- to the
10 location?

11 A. Generally, I go if I'm heading there. I
12 suppose it's possible that I could not.

13 MR. STELTZNER: Okay. Thank you. No further
14 questions.

15 THE COURT: Step down. You're excused.
16 Appreciate your time.

17 (Witness excused.)

18 THE COURT: Call your next witness.

19 MR. SHELTON: Yes, sir, Your Honor. State
20 calls Danny Parker.

21 THE WITNESS: (Approaching.)

22 THE CLERK: Do you solemnly swear or affirm
23 that the testimony that you'll give the Court today
24 shall be the truth, the whole truth, and nothing but
25 the truth so help you God?

1 THE WITNESS: Yes, ma'am.

2 DANNY PARKER,

3 having been produced and first duly sworn as a
4 witness on behalf of the State, then testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. SHELTON:

8 Q. Good afternoon, sir.

9 A. Good afternoon.

10 Q. Would you please -- please state your name.

11 A. Danny Parker.

12 Q. Mr. Parker, what do you do for a job or
13 occupation?

14 A. I own my own business, a landscaping company.

15 Q. Do you work here in York County?

16 A. I work all over. York County, Charlotte.
17 Actually, I even do work at this building.

18 Q. How old are you, sir?

19 A. Forty years old.

20 Q. How long have you owned that business?

21 A. About five years probably.

22 Q. Are you married?

23 A. Yes, sir. Twenty-one.

24 Q. What is your wife's name?

25 A. Jessica Dawn.

1 Q. Last name Parker?

2 A. Parker.

3 Q. Do you have any kids?

4 A. Yes, sir, I have two. Michael and Timothy.

5 Q. What are their names?

6 A. Michael and Timothy.

7 Q. How old is Timothy?

8 A. Timothy is 19.

9 Q. Danny, do you recall the events of July 11,
10 2016?

11 A. Very good.

12 Q. In your own words, sir, please, describe what
13 happened that day.

14 A. Me and a guy who was working for me at the
15 time, I had actually just dropped his uncle off at
16 his home. It was another guy that worked for me.
17 And we came to my house.

18 I was actually stopping in to give my wife a
19 kiss and tell her I was going to make payroll. I
20 had just come from the bank.

21 I walked into my home. Opened the door up.
22 The door quickly slammed back between me and my
23 coworker leaving him outside. A guy -- a very tall
24 black man with a gun with a mask, a red bandanna
25 below the bottom of his face, had a gun. Told me to

1 get down on the ground. I thought it was a joke,
2 man, because I come home and there's kids -- my kids
3 play ball. Man, there's -- sometimes I come home
4 and there's ten kids at my house, you know.

5 I thought it was a joke, so I was like, yeah,
6 right, just turned around to go onto my wife's -- to
7 our bedroom to go ahead and give her a kiss, tell
8 her what I was do, and started getting rapped up
9 side the head with a gun.

10 So me and the guy fought down the hallway. End
11 up fighting all the way down the hallway into my
12 kids' room where there were two other black fellows
13 beating on my son in his bedroom.

14 Still had not seen my wife yet, so me and the
15 dude fought around. He left me alone for a minute.
16 My son started fighting again. That's when he ended
17 up taking the gun away from one of them and trying
18 to -- to use it on him, but it failed to work.

19 So as the guy left me to go help the others
20 with my son, I ran down the hallway back to my
21 living room because I always keep a gun on my end
22 table on the bottom shelf. So I got the gun, turn
23 around, aimed it in the dude's face and started
24 squeezing the trigger.

25 Well, my finger was broke from where I put my

1 hand up to keep the gun that he was hitting me with
2 from hitting me in the head. It broke my trigger
3 finger, so it was just clicking. It was the bone in
4 my finger clicking, not the gun.

5 MR. SHELTON: Let me get you a glass of water.
6 Take your time.

7 THE WITNESS: It was the bone in my finger
8 clicking. It wasn't the gun. My finger was broke.

9 So we scuffled around some more. He ended up
10 getting that gun from me. He already had a gun to
11 my face. He hit me a couple of more times with the
12 gun. And me and him fought around.

13 And then another guy said, "Boy, you might as
14 well quit fighting because I got your gun now." So
15 I turned around and looked, and there was another
16 black man looking at me with my Ruger Mini-14 with a
17 60 round clip that I knew was loaded and full. So
18 ain't no need no more in me fighting because I know
19 he has a real gun now.

20 They bound my hands behind my back. Ended up
21 bringing my son in the living room. Put me facedown
22 on the -- on the floor. Put my son facedown facing
23 towards me. And then was rapping me in the back of
24 the head with the gun. He hit me in the back of the
25 head with the revolver enough times for the revolver

1 to come open and the bullets to fly across my home.

2 So, again, the guy got -- gave me -- the gun
3 that he got from me to the other fellow, which then
4 he began to smash in the back of my son's head and
5 ask me if I'd ever seen anybody's brains blown out.

6 So they -- then they started -- they were
7 carry -- a guy was carrying stuff in and out of my
8 house through the glass and all through my kitchen
9 floor. Just kept walking through the glass carrying
10 stuff out the back door.

11 So as he's taunting me with my son in front of
12 my face with another loaded firearm that I know was
13 loaded, he -- they're talking about taking my wife
14 to the bank. What is your -- asking me where the
15 "X" pills at, about all these drugs that I have no
16 idea. I don't have. Telling me that they're going
17 to take my wife to the bank. They're going to take
18 somebody to the bank.

19 I said, "No. You're not taking nobody to the
20 bank. There's \$1,600 in my wallet. Get it. Take
21 what you want. Leave my family alone and get out of
22 my house."

23 One of them spoke up and said, "Pretty smart,
24 Pops. That's what we want too."

25 So they ended up getting that. Then they're

1 still carrying. He's -- the one guy is still
2 carrying stuff out of my house.

3 They ended up -- my wife -- as they're -- as
4 they're taunting me with my kid with the gun in the
5 back of his head, I haven't seen my wife to this
6 point. She comes blasting out of the closet in a --
7 in the -- in the living room -- that's where they
8 had her at, tied up in the closet in the living
9 room, screaming, "You promised me if I stayed in the
10 closet that you wouldn't kill him."

11 So as she's pleading with them, they end up
12 getting my son and Will. They didn't bother Will
13 too much because he didn't have anything. He didn't
14 have -- the only thing he had was a cell phone. He
15 didn't even carry a wallet. They tied my son and
16 Will up and put them in the bathtub together.

17 Then they tied my -- put my wife in the closet,
18 and then I was already bound up on the floor. So
19 they -- so they end up sticking me in the closet
20 with my wife. And as they do, I'm pouring blood
21 from my face, from my hand where my finger is broke
22 and the bone was sticking out. I start telling my
23 goodbyes to my wife because I have no idea what's
24 going to happen next.

25 It all gets quiet for a minute. I didn't want

1 to go out the front door. We go out the back. I
2 hear one. So I get out -- I come out and get turn
3 around and get my wife to untie my hands, and I come
4 out to go get another firearm that was in my bedroom
5 that I didn't see them with. I didn't know if it
6 was still there or not.

7 So the first guy who was behind the door, he
8 comes back through my back door where now we know he
9 threw my phone -- all our phones in the backyard.
10 So he comes back through the back door, and he sees
11 me out of the closet and was like, "What the hell
12 did I tell you? Do you want me to blow my brains
13 out?"

14 I was like, "Man, I just want to get my family
15 to the hospital." I still at this time don't really
16 know what all has been done to my wife. So I get
17 back in the closet. And, man, this closet is
18 little. It's full of jackets and a vacuum cleaner,
19 so we're smashed. Like the door won't even close,
20 like he keeps trying to shut the door.

21 The whole time while they're taunting me with
22 my son, there's one guy sitting on my couch leaned
23 back. And he's opening the blinds and keeps looking
24 for my other son because they see a picture on the
25 wall. And they see that I have two kids, asking me

1 when my other son is coming home. And I told him,
2 "He's not coming home until ten o'clock at night.
3 He works." He doesn't work till that late, but I
4 wasn't telling him that.

5 So then he -- I get back in the closet and he
6 hollers to somebody outside, "Go ahead and pull
7 out." So I wait a couple more minutes. I hear him
8 go down the walkway. And I waited a couple of
9 minutes, which I'm untied now.

10 So I come out -- come out of the closet.
11 There's nobody outside, so I run to my truck to get
12 a gun. I left my truck actually running in the yard
13 because like I said, I was just stepping in for a
14 minute to tell my wife I love her. I was going to
15 go pay my guys.

16 So I run to my truck to get a pistol that's in
17 the console. Becca, my next door neighbor, she's
18 across the street. She was actually checking her
19 mailbox. So I was running toward her, blood pouring
20 down my face.

21 And she actually -- I asked her did she see
22 anybody. She said, "Yeah, they just left."

23 I was like, "They just robbed us." So I jumped
24 in her car. She drives like a grandma, so
25 there's -- we didn't -- we went up to the end of the

1 road and took a right. There's only two ways you
2 can go at the end of the street, left or right. So
3 we took a right to try to catch them, but they were
4 done gone.

5 So we turned around and came home. And my wife
6 at that time was actually in her yard on the phone
7 with 9-1-1.

8 Q. So, Danny, you testified just a second ago you
9 left your truck running?

10 A. Yeah.

11 Q. Okay.

12 A. I wasn't planning on being there but a second
13 now. I was just walking in -- I could've called
14 her, but I just love my wife.

15 Q. Had your son had his wisdom teeth removed that
16 morning?

17 A. Yeah, he had to go to the doctor to be put to
18 sleep and have them cut out.

19 Q. So if you left the truck running, why didn't
20 you take your truck? Why did require Becca now?

21 A. They took the keys out of my -- turned my truck
22 off and throwed the keys away.

23 Q. Did you ---

24 A. I only had one set of keys for the truck. I
25 hadn't owned it but about a month. I had just

1 bought it brand new. I only had one set of keys.
2 It actually ended up taking me seven days to get a
3 set of keys made for my truck.

4 Q. And did those keys turn up at some point?

5 A. Yeah, my neighbor found them about two weeks
6 later. His Bulldog found them in the backyard.

7 Q. So your neighbor -- they were in your
8 neighbor's backyard?

9 A. Yeah, they -- when they throwed my phone, they
10 throwed my keys over the fence in the neighbor's
11 yard.

12 Q. So they took your phone and Will's phone and
13 threw them in your backyard?

14 A. Yeah.

15 Q. Did you get your phone back?

16 A. Yeah.

17 Q. So the police ---

18 A. Yeah, the police found them in the backyard.

19 Q. And did they return Will's phone too?

20 A. Yeah. They kept them for a little while, like,
21 to see if they could get -- extrapolate any
22 fingerprints or whatever off of them.

23 Q. So when you got to your house that day, you
24 were driving in your truck with Will and you pulled
25 in your driveway. Was there any other vehicle in

1 your driveway at that time?

2 A. Wasn't no vehicle in the driveway. There
3 wasn't no vehicle in the road. There was no vehicle
4 outside my home.

5 Q. Did you have any idea what was going on in your
6 house when you walked in?

7 A. Not a clue. You don't really expect something
8 like that to happen at your home, you know what I
9 mean, but it's where it happens.

10 Q. And when you referenced Will, that's William
11 Mosteller?

12 A. Yes.

13 Q. Was he there when the police came and took
14 pictures of you and your family?

15 A. Yes, sir.

16 Q. Do we see him in the background of some of
17 those pictures?

18 A. Yes, sir.

19 Q. How did he react to all of this?

20 A. He was scared enough to piss himself.

21 Q. To your knowledge, did he want to participate
22 in this process?

23 A. He didn't want nothing to do with it. He was
24 scared.

25 Q. And you testified just a moment ago that when

1 they were hitting you in the head in your living
2 room with one of the revolvers, which one of the men
3 was that?

4 A. Jermaine Lowery, the tall six-foot-four, huge
5 big guy.

6 Q. And do you recall if he was wearing a hat?

7 A. Yeah, a red ball cap. Red bandanna. But after
8 mine and his scuffle for just a minute, the bandanna
9 was gone. It was no longer around his face, and
10 he's a pretty standout-able kind of guy.

11 Q. Were you able to ultimately identify him to the
12 police, as well?

13 A. 100 percent.

14 Q. And so when he was hitting you in the living
15 room, I believe you testified a moment ago he hit
16 you so hard that some of the bullets flew across the
17 living room?

18 A. He hit me hard enough and enough times to -- to
19 make the revolver open and the bullets fly across
20 the room ---

21 Q. Was that in the ---

22 A. --- come out of the gun.

23 Q. I'm sorry. Was that in the direction of the
24 kitchen?

25 A. Yeah, there was bullets that was in the kitchen

1 floor.

2 Q. Right there where the kitchen floor and the
3 carpet meet ---

4 A. Yeah.

5 Q. --- in that area? So there's two cartridges.
6 I think they called them Black Ops cartridges. Is
7 that what you're talking about?

8 A. Yeah.

9 Q. And you testified they took money you had in
10 your wallet?

11 A. Yeah.

12 Q. Did they have their gun pointed at you at that
13 time?

14 A. Oh, yeah.

15 Q. And they took it against your will?

16 A. Oh, yeah.

17 Q. Even though you told them it was there ---

18 A. Yeah.

19 Q. --- they took it from you?

20 A. Oh, yeah.

21 Q. Do you normally carry that much cash?

22 A. No. I never carry cash like that. I was
23 making payroll to pay all my guys. That is what I
24 stopped by the bank to get our -- to pay my workers.

25 Q. What else, if anything, did they take from your

1 house?

2 A. They ended up taking the 9-milimeter pistol
3 that they got from me that didn't work because my
4 finger was broke. They got a Ruger Mini-14. They
5 got every television in the house that wasn't bolted
6 down, except the one TV in my living room that they
7 were snatching on trying to get, but it was bolted
8 to the wall. And they even wanted the tools to take
9 it off the wall. They ended up getting my kid --
10 all my kids' gaming stations and televisions and all
11 of that stuff.

12 Q. And did you see them try to rip the TV off the
13 wall?

14 A. Oh, yeah. Oh, yeah.

15 Q. Specifically, Mr. Lowery, the taller guy?

16 A. Yeah.

17 Q. And was he wearing gloves?

18 A. No.

19 Q. Were any of the other men wearing gloves that
20 you saw?

21 A. No, sir.

22 Q. How long were they in the house while you were
23 there?

24 A. At least 45 minutes to an hour with me there.

25 Q. And you can't say for sure how long they had

1 been there before you got there?

2 A. I have no idea how long they'd been in my home
3 before I got there.

4 Q. And you said earlier that at least one of the
5 men had a mask on?

6 A. Yeah, he had it on to begin with. But the
7 longer they stayed there, the more nonchalant and
8 arrogant they got with it. And by the time it was
9 over with, nobody didn't have no mask on.

10 Q. So if anyone was wearing a mask, at some point
11 that mask would've been gone?

12 A. Oh, it was gone. Yeah.

13 Q. Can you describe the general appearances of the
14 men?

15 A. The two that I dealt with the whole time, one
16 was about six-four, six-five, slender build, red
17 hat. We know now Jermaine Lowery.

18 The other guy was wearing -- had dreads pulled
19 back in a ponytail with some like reddish tinted
20 color tips on them, pajama pants, flip-flops, the
21 slide-in flops and socks.

22 He set on my couch half the time like this
23 right here peering out my blinds, pulling my blinds
24 down to make sure nobody else was coming.

25 Q. Is he the man that you described asking about

1 your son -- your other son Michael?

2 A. No. That was Jermaine Lowery.

3 Q. Okay. I think you might've referred to
4 Jermaine as the tall, goofy looking guy at some
5 point, right?

6 A. Yeah.

7 Q. Did you get a good look at -- a good look at
8 the face of the taller man, Jermaine Lowery?

9 A. Yeah. Oh, yeah.

10 Q. So much that you identified him to the police
11 later, right?

12 A. Yes, sir.

13 Q. Did you get a good look at the face of the
14 other guy?

15 A. Yes, sir. I dealt with them for a long time.

16 Q. For -- during that 45 minutes to an hour, how
17 much of that time would you say you could see his
18 face?

19 A. The whole time. Them two stayed with me the
20 whole time. There was always them two with me.

21 Q. And how close were you to the men?

22 A. Face-to-face. At the furthest distance from
23 the edge of this lady right here when he's sitting
24 on my -- one was sitting on the couch with the
25 dreads.

1 Q. What time of day was this?

2 A. About three o'clock, around -- around that
3 area.

4 Q. So afternoon?

5 A. Yeah, broad daylight.

6 Q. Was the inside of your home well lit?

7 A. Always well lit. There's plenty of windows. I
8 always -- when I get up in the morning, I turn the
9 light on and it don't never go off till I go to bed.
10 Even when I got to bed, I leave the lights on in our
11 home.

12 Q. Had you ever seen any of those men before?

13 A. Nope.

14 Q. Danny, on July 21, 2016, did you meet with
15 Detective Branham at the Moss Justice Center?

16 A. Yes, sir.

17 Q. And at that meeting, did Detective Branham show
18 you what we call a sixpack photo lineup?

19 A. Yes, sir.

20 Q. Hand you what's been marked for identification
21 as State's Exhibit No. 51. Please take that from me
22 and look through each of those seven pages in that
23 exhibit.

24 MR. STELTZNER: Objection to our previous
25 motion.

1 THE COURT: Based on the earlier ruling,
2 objection overruled.

3 MR. SHELTON:

4 Q. Do you recognize that?

5 A. Yeah.

6 Q. Is that the lineup that Detective Branham
7 showed you on July 21, 2016?

8 A. Yes, sir.

9 Q. Was that at the sheriff's department here at
10 Moss Justice Center?

11 A. Yes, sir.

12 Q. And was that during the afternoon of that day?

13 A. Yes, sir.

14 Q. Did Detective Branham or anyone else say or do
15 anything to suggest to you which of those photos to
16 select?

17 A. He did not. He gave them to me upside down and
18 said, "Flip these over one at a time and look at all
19 of them and see if the man could possibly be in
20 there."

21 Q. And did he, in fact, read you a disclaimer,
22 something to effect of, "This group of photos may or
23 may not include a picture of one of the people"?

24 A. Yes, sir.

25 Q. And is that disclaimer included on the first

1 page of that exhibit?

2 A. Yes, sir.

3 Q. And if you take -- take a second to read that
4 to see if that seems to be the same thing he read to
5 you that day. Just read it to yourself, please.

6 A. (Complying.) Yes, sir.

7 Q. And did you look at all six of the photos?

8 A. Yes, sir.

9 Q. And so I think you mentioned this. Were they
10 arranged all six -- so in that packet there's seven
11 pages total, right?

12 A. Yeah, with the disclaimer sheet on it.

13 Q. The disclaimer sheet and the affidavit on the
14 first page, and then each of the succeeding six
15 photos pages contain one photograph on each page,
16 right?

17 A. Yeah, just one.

18 Q. So did he include all six of those photos laid
19 out in front of you facedown at the same time?

20 A. Yeah.

21 Q. And asked you to look through them
22 individually?

23 A. Yeah.

24 Q. And specifically wanted you to look through
25 every one of them before you indicated anyone to

1 him?

2 A. Yeah.

3 Q. And you did that?

4 A. Yes, sir.

5 Q. Were you able to identify anyone from those six
6 photos?

7 A. Yes, sir.

8 Q. Which of those photos were you able to
9 identify?

10 A. Number one.

11 Q. And in making that identification, were you
12 indicating that he was one of the people who invaded
13 your home that day on July 11, 2016?

14 A. Yes, sir.

15 Q. Were you certain?

16 A. 100 percent.

17 Q. Are you to this moment still certain?

18 A. Yes, sir. I dealt with him a long time. I'm
19 40 years old. I got a pretty good fine detail.

20 Q. And did you tell Detective Branham that this is
21 one of the men?

22 A. Yes, sir.

23 Q. During this incident -- well, hang on. Let
24 me -- let me back up one second before I lose my
25 place. Did you mark your selection on -- on that

1 exhibit?

2 A. Yes, sir.

3 Q. How did you do that?

4 A. I circled it and wrote my signature and the
5 date.

6 Q. On the picture?

7 A. Yeah.

8 Q. Did you also sign the first page of the
9 affidavit section indicating that that was your
10 selection?

11 A. Yes, sir.

12 Q. And did you do those things in front of
13 Detective Branham?

14 A. Yes, sir.

15 Q. And during the ordeal, the invasion on
16 July 11th, were you paying particularly close
17 attention to the faces of the men?

18 A. I was paying attention to everything that I
19 could to make sure that I could -- if I ever seen
20 him again, that I could pick him out.

21 Q. Danny, do you see that man in the courtroom
22 today?

23 A. Yes, sir, I sure do. Sitting right there in
24 the defendant chair.

25 MR. STELTZNER: Your Honor, objection to the

1 previous motion.

2 THE COURT: Based on the previous ruling,
3 objection is overruled.

4 BY MR. SHELTON:

5 Q. And will you specifically point to the
6 individual?

7 A. Sitting right there in that chair.

8 MR. SHELTON: Your Honor, please let the record
9 reflect that the witness has indicated the defendant
10 in this case sitting next to his attorney at counsel
11 table.

12 BY MR. SHELTON:

13 Q. Danny, how certain are you that that's one of
14 the men?

15 A. 100 percent.

16 Q. Is there any doubt in your mind whatsoever?

17 A. Not a single one.

18 Q. So earlier when you were describing some of the
19 things that were being done to you and your family,
20 you made note of the moment when they took your
21 money and one of the individuals said, "Pretty
22 smart, Pops."

23 A. Yeah, that's him too.

24 Q. And at some point you made mention of one of
25 them threatening to blow your son's head off?

1 A. Yes, sir. That would be him too.

2 Q. Did he also have a gun to your son's head at
3 that time?

4 A. Yeah, my gun.

5 Q. The gun that the men had taken from you?

6 A. Yeah.

7 Q. And one of the men had -- when they -- when you
8 realized they had the Ruger, decided it wasn't worth
9 fighting back?

10 A. Wasn't no need. I know they had 60 rounds in
11 it and they were real.

12 Q. Do you recall which man that was?

13 A. Yeah (indicating).

14 Q. The same man?

15 A. Yes, sir.

16 Q. Danny, did you come to the preliminary court
17 hearing on November 22, 2016, with your wife?

18 A. Yes, sir, I did.

19 Q. Here at the Moss Justice Center?

20 A. Yes, sir. This very room.

21 Q. Was the man you just identified at the hearing?

22 A. Yes, sir.

23 Q. Did he speak at the hearing?

24 A. Yes, sir.

25 Q. And did seeing him and/or hearing him speak in

1 that courtroom change your recollection of what
2 happened that day in any way?

3 A. No. It didn't need no changing. I knew it was
4 him.

5 Q. So were you at that time, as you are now, as
6 you were before that?

7 A. 100 percent sure it was the same man.

8 Q. So, Danny, I want to just walk through a couple
9 of pictures just to cover a couple more things here.
10 So I'm going turn your attention -- I'm going to
11 turn your attention real quick to State's No. 32.
12 If you need to step down to see this, you can.

13 A. (Complying.)

14 Q. Do you recognize that image right there?

15 A. Yeah, that's a bullet out of my gun that they
16 thought didn't work because my finger was clicking
17 where I was pulling the trigger.

18 Q. And how do you know that's one of the bullets
19 from your gun?

20 A. Because that's an RIP round.

21 Q. What does that mean?

22 A. It splits off into nine different parts, so you
23 don't have to have but one.

24 Q. Is that a common bullet?

25 A. No. I ordered them off the internet for mine

1 and my wife's gun.

2 Q. So those were very specific to your gun?

3 A. Yes.

4 Q. Because you bought them and put them in that
5 gun?

6 A. Yes.

7 Q. Okay. You can stay right there. Let's look at
8 State's Number 22. Can you describe that picture?

9 A. Yeah, that's mine and my son's blood in the
10 living room.

11 Q. And is that from the ordeal where they had you
12 facedown?

13 A. Yeah, when they were busting us in the back of
14 the head. Our hands were tied behind our back.

15 Q. So this larger pool of blood here on the
16 ground.

17 A. That would be mine.

18 Q. That's your blood right here?

19 A. Yeah.

20 Q. And behind it, if you were to imagine that this
21 picture extended towards us, is this the kitchen?

22 A. Yeah, the kitchen is towards us.

23 Q. Okay. So those bullets would've been in the
24 direction towards us from this picture, right?

25 A. The bullets?

1 Q. The Black -- the Black Ops?

2 A. Yes. They were in here where he was smacking
3 me in the head. Yeah, they were all towards the
4 kitchen area.

5 Q. And the second area of blood?

6 A. That's my son's blood.

7 Q. More in the middle of the room?

8 A. Yeah.

9 Q. And is this the coffee table that you were
10 referencing where one of the individuals was sitting
11 during that?

12 A. Yeah.

13 Q. Which one of the guys was sitting there?

14 A. The same fellow.

15 Q. The defendant?

16 A. (Nonverbal response.)

17 Q. And who was -- who was hitting you with his
18 gun?

19 A. Jermaine Lowery.

20 Q. The taller guy?

21 A. Yeah.

22 Q. Okay. And is this the couch you were
23 describing?

24 A. Yeah.

25 Q. The defendant is kneeling on?

1 A. Sit -- sitting on -- my blinds was -- those
2 blinds are never, ever closed.

3 Q. So these blinds are behind the blue couch?

4 A. They closed them.

5 Q. And those are the blinds they were -- that
6 Mr. Ervin ---

7 A. He was sitting on -- sitting on my couch on his
8 knees pulling them down.

9 Q. And if we were to, again, imagine that the
10 pictures extend out to the right, is that towards
11 the back of the house?

12 A. It's towards my bedroom to the hall.

13 Q. And immediately right here around this first
14 corner, this is kind of like a corner that -- where
15 the hallway goes down, right?

16 A. Yeah.

17 Q. And in that hallway is where the bullet is,
18 your bullet, your 9-milimeter is down that hallway,
19 right?

20 A. I think it's actual right there in the curb.

21 Q. Okay. And the front door is back here behind
22 the ---

23 A. The front door is actually right there. That's
24 the trim of the front door you see right there.

25 Q. And -- and the closet is just ---

1 A. Just behind the front door.

2 Q. --- behind the door?

3 A. If you open the front door, it opens into the
4 door of the closet.

5 Q. And the television is on that same wall?

6 A. The big wall.

7 Q. Turn your attention to Number 35, State's 35.
8 Can you describe what this picture is?

9 A. That's the hole in the wall where me and
10 Jermaine Lowery was fighting down the hallway.

11 Q. Back up a couple here. State's 33, and a
12 close-up of State's 34.

13 A. That's my bloody handprint where my hand was
14 bleeding like crazy from my bone sticking out of my
15 finger.

16 Q. But that's is a --- that's where blood ---

17 A. My swipe print, yeah, where I was going and
18 fighting him down the hallway.

19 Q. And State's 36, which room is this?

20 A. That's my bedroom.

21 Q. And is this what we'd call the master bedroom?

22 A. Yeah.

23 Q. Was it like that when you left the house that
24 day?

25 A. No. My wife keeps a pretty good house.

1 Q. So it's your understanding that the men did
2 this to your bedroom?

3 A. I know they did.

4 Q. And was the Ruger 14 in this room?

5 A. Yeah, standing right where -- where the bed and
6 the -- the -- right there exactly where you're
7 pointing at, it's leaned up against the wall right
8 there.

9 Q. And is this right here in that corner, is this
10 the space where your wife works?

11 A. It's where my wife conducts her business. Yes,
12 sir.

13 Q. And these are items that she uses in her
14 business process, those boxes and scales?

15 A. Boxes and scales, yeah.

16 Q. But and -- and those things are specific to
17 shipping items?

18 A. To her work. What she does for a -- for a
19 living.

20 Q. And this is?

21 A. Her printer -- that's her printer. It's two
22 printers and computers and...

23 Q. This is ---

24 A. All of her jumble.

25 Q. This is State's 38, so can you tell from here.

1 Is this her cell phone sitting on the desk?

2 A. Yes, sir. It's a blue OtterBox with a pink rim
3 around it.

4 Q. And State's 39, is this just a broader view of
5 the same room?

6 A. Yes, sir. That's actually from coming out of
7 my bathroom, taking a picture of my room coming out
8 of my bathroom.

9 Q. And State's No. 40. Whose room is that?

10 A. That's my son Michael's room.

11 Q. And he was not home during this?

12 A. No, sir. Thank God.

13 Q. But it appears from State's 40 and 41, that his
14 room was also gone through?

15 A. Yeah, they had taken stuff out of his room too.

16 Q. Let's look at State's 23.

17 A. That's my -- that's my kids' bathroom.

18 Q. Okay. Where is this in relation to the ---

19 A. Going down the hallway, that's the first door
20 on the right.

21 Q. And so that's State's 23 and 24, photos of that
22 bathroom?

23 A. Yeah, that's the lamp out of the -- out of my
24 living room that they tied one of them up with and
25 the comforter from off of my son Michael's bed.

1 Q. So the lamp here laying across ---

2 A. Yeah.

3 Q. --- parallel with the edge of the bathtub?

4 A. Yeah, that's -- that's -- was in my liv -- my
5 living room.

6 Q. And this blanket, this kind of beige brown
7 blanket in the bathtub ---

8 A. Yeah, it's actually -- it's actually like a
9 baby blue. It was my son Michael's -- it's like a
10 bluish kind of dull blue color. It's actually my
11 son Michael's comforter off his bed.

12 Q. All right. And 26, 25, whose room is this?

13 A. That's Timothy's room. Tore to pieces.

14 Q. So 25, 26, 27, 28, 29, 30, are those all
15 pictures of Timothy's room?

16 A. That's all Timothy's room. He don't keep a
17 spectacularly clean room, but it ain't nothing like
18 that.

19 Q. I'm going to show you State's 42. Is this your
20 backyard?

21 A. It's in my backyard by my chicken pens.

22 Q. And we see a blue object there.

23 A. That's my -- that's my cell phone.

24 Q. That's your cell phone?

25 A. Yeah. And right behind that pen is where they

1 threw my keys to my truck over the -- over that pen
2 into the neighbor's yard.

3 Q. Okay. So it's the neighbor behind you that
4 found the keys?

5 A. Yes. Yes.

6 Q. So, again, we're looking at State's 42 here.
7 The next one is State's 43. Is that just a
8 close-up of that?

9 A. Close-up of my phone.

10 Q. State's 44, is this a different part of your
11 yard?

12 A. That's exactly -- like right there, you're
13 standing on the phone probably to take that picture.

14 Q. Standing on your phone?

15 A. Yeah.

16 Q. Okay. And so the middle of this picture -- the
17 bottom middle of this picture, State's 44, there's
18 an item behind it, kind of a rock here?

19 A. That's Will's phone.

20 Q. That's Will's phone? State's 45 is a close-up
21 of Will's phone?

22 A. Yeah, Will's phone.

23 Q. And, again, I believe you said earlier, I just
24 want to be clear. Those phones were recovered by
25 the police and returned to you and Will?

1 A. Yes.

2 Q. Danny, I want to show you what's been marked
3 for identification as State's Exhibit No. 50. What
4 is that?

5 A. That's a Ruger Mini-14 I personally built
6 myself.

7 Q. There are two pictures on that page?

8 A. Yes, sir. It's the same gun.

9 Q. Are those pictures that you took?

10 A. Yeah.

11 Q. And you took them some time before July 11,
12 2016?

13 A. I took them when I got finished building the
14 weapon with -- with my cell phone.

15 Q. Approximately, when was that?

16 A. I don't know, man. Six months to a year before
17 they got gone ---.

18 Q. Gotcha.

19 A. --- got taken.

20 Q. What -- is there anything special about that
21 gun?

22 A. Yeah, a lot special about it.

23 Q. All right. Explain -- explain it to these
24 folks, please.

25 A. It's got a folding stock on it. It's got a

1 pistol grip. It's got a bipod. When you squeeze
2 the bipod, the light and laser comes on. Got a
3 folding stock, so if you hold it like a pistol --
4 like a shotgun, a pistol-grip shotgun. It has a
5 retractable bipod, 60-round clip.

6 Q. And all of these things, you said you built
7 this gun, correct?

8 A. Yes, sir.

9 Q. All of these things -- so were these
10 aftermarket modifications?

11 A. Yes, sir.

12 Q. And would you say that this was a very unique
13 gun in that respect?

14 A. Oh, yeah. There wasn't another one built like
15 that.

16 MR. SHELTON: Your Honor, I move to admit this
17 item, State's 50?

18 MR. STELTZNER: If you could bring that up.
19 That'll be fine. Without objection.

20 THE COURT: Entered without objection.

21 (State's Exhibit No. 50 was received into
22 evidence.)

23 MR. SHELTON: All right. I move to publish.

24 (State's Exhibit No. 50 was published for the
25 jury.)

1 BY MR. SHELTON:

2 Q. And this -- this is the gun?

3 A. Yes, sir.

4 Q. And I'm going to turn your attention -- beg the
5 Court's indulgence on this because I got to find it.
6 Turn your attention to State's 57. This has already
7 been entered as a State's exhibit.

8 If you need to come off the stand to see this.
9 Do you recognize this item, sir?

10 A. It's my gun without a clip in it.

11 Q. How confident are you that that's your gun?

12 A. 100 percent.

13 Q. Can you tell us -- tell us some of the details
14 that you're describing from the previous photos?

15 A. Yeah, it has the pistol grip, the folding
16 stock, the bipod in the front. You can see the
17 wires hanging down on the front left right there to
18 where when you squeeze the front grip on it, the
19 light and the laser comes up. The flip back of
20 the -- on the back of the scope. Every piece of it
21 I put on there. I still have the boxes to every
22 piece that's put on that gun.

23 Q. So the only thing that's not there is the clip?

24 A. Yes, sir.

25 Q. And when you last had it in your possession,

1 that clip was loaded?

2 A. Yes, sir. I left it there for my wife's
3 protection. Sad thing she didn't grab it that day.

4 MR. SHELTON: Danny, please answer any
5 questions the defense attorney may have.

6 THE WITNESS: All right.

7 MR. STELTZNER: I have just have a few
8 questions for you, sir.

9 THE WITNESS: All right.

10 CROSS-EXAMINATION

11 BY MR. STELTZNER:

12 Q. Did multiple people carry out -- carry stuff
13 out of your house or just one?

14 A. Man, I really didn't -- I know -- I know for a
15 fact one. I was too busy dealing with the other two
16 to worry about who was carrying stuff out my back
17 door.

18 Q. So all the other persons were -- that you were
19 personally observing or were active in moving about,
20 they were basically participating in the crime?

21 A. They were in the room with me.

22 Q. They were in the room with you?

23 A. Yes, sir.

24 Q. Okay. You said you had a fight with one of
25 them or both of them; is that correct?

1 A. Yes, sir.

2 Q. Which one or both?

3 A. Jermaine Lowery.

4 Q. Okay. And -- and besides that, were you --
5 were you able to tell or notice any other item like
6 marks or features such as tattoos or besides what's
7 on the face?

8 A. No.

9 Q. Okay.

10 A. No. They had -- because they had clothes on.

11 Q. Did you notice any -- did anyone make any --
12 did any of the assailants make any phone calls or
13 anything like that during the time?

14 A. No. I didn't see anybody make no phone calls.

15 Q. So the focus was completely on you totally?

16 A. Sir?

17 Q. Totally on you and your son throughout the
18 entire -- throughout the entire incident; is that
19 correct?

20 A. Since the minute I walked through that door,
21 yeah.

22 MR. STELTZNER: All right. No further
23 questions.

24 THE COURT: Redirect?

25 MR. SHELTON: None.

1 THE COURT: All right. You can step down.

2 Thank you.

3 THE WITNESS: Thank you, sir.

4 (Witness excuse.)

5 THE COURT: Call your next witness.

6 MR. SHELTON: Your Honor, may we approach.

7 THE COURT: Yes, sir.

8 (Sidebar discussion.)

9 THE COURT: All right. We'll take about a
10 five-minute break, a refresher break.

11 (From 4:38 to 4:51 p.m., recess was taken.)

12 THE COURT: Bring in the jury.

13 THE BAILIFF: (Complying.)

14 (At 4:51 p.m., jury entered the courtroom.)

15 THE COURT: All right. Call your next witness.

16 MR. SHELTON: At this time, the State calls
17 Detective Pete Branham.

18 THE WITNESS: (Approaching.)

19 THE CLERK: Do you solemnly swear or affirm
20 that the testimony you'll give the Court today will
21 be the truth, the whole truth, and nothing but the
22 truth so help you God?

23 THE WITNESS: I do.

24 DETECTIVE PETE BRANHAM,
25 having been produced and first duly sworn as a

1 witness on behalf of the State, testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. SHELTON:

5 Q. Please state your name for the record.

6 A. My name is Pete Branham.

7 Q. What do you do for a job or occupation?

8 A. I am a lieutenant over the property crimes
9 division at the York County Sheriff's Office.

10 Q. And how long have you been a police officer?

11 A. I've been a police officer since 1996. Going
12 on 23 years.

13 Q. How long have you been a detective?

14 A. Counting narcotics, I have been in
15 investigations since 2002.

16 Q. And how long have you been in your current
17 assignment?

18 A. As a lieutenant, since February. As in
19 criminal investigations division, I've been there
20 since 2006.

21 Q. And are you the case agent in this case?

22 A. I am.

23 Q. And as such, were you responsible for obtaining
24 a number of search warrants in order to -- to give
25 us the legal basis to search some of the items that

1 have been discussed?

2 A. That is correct.

3 Q. Particularly, the Motorola cell phone?

4 A. Yes.

5 Q. The red iPhone?

6 A. Yes.

7 Q. And the -- what we anticipate discussing
8 tomorrow, data acquired from Sprint?

9 A. That is correct.

10 Q. And have you reviewed the contents of those --
11 those searches?

12 A. I have.

13 Q. So, particularly, we already have data entered
14 in for the Motorola and the iPhone?

15 A. Correct.

16 Q. And the Motorola is linked to Jermaine Lowery?

17 A. That's right.

18 Q. And the red iPhone is linked to Jarnelle Ervin?

19 A. That is correct.

20 Q. And you know that because it was in their
21 possession?

22 A. That is correct.

23 Q. I want to turn your attention to the data
24 acquisition for the red iPhone that was in Jermaine
25 Lowery's -- or excuse me -- in Jarnelle Ervin's

1 possession. And the data for that is in State's No.
2 61; is that the correct?

3 A. Correct.

4 Q. I'm going to hand you what's been marked for
5 identification as State's No. 66 and 67.

6 MR. STELTZNER: Objection. This witness --
7 this witness is basically -- if you want to -- if
8 this evidence was going to be proffered, it
9 should've been proffered through the -- through the
10 prior witness.

11 THE COURT: Go to the jury room just for a
12 minute while we work this out.

13 (At 4:54 p.m., jury left the courtroom.)

14 THE COURT: What are the -- what are -- what
15 are these documents.

16 MR. SHELTON: Your Honor, these are pages from
17 the data that I just referenced, State's No. 61.
18 The data is in the form of a thumb drive. This is
19 just a more user friendly version. These are
20 actually print offs, similar to what we just did for
21 Mr. Steltzner when he introduced Defense No. 1.

22 THE COURT: These print offs are actually
23 already into evidence?

24 MR. SHELTON: Yes, sir. They're -- they're in
25 evidence in State's 61:

1 MR. STELTZNER: Yes, they are in evidence.
2 However, the person who actually did the -- did
3 the -- did the data extraction has already
4 testified. If they want to call him back, that's
5 fine, but...

6 THE COURT: What are you going to ---

7 MR. SHELTON: Your Honor, I just want to set
8 this -- I think this will be easier for the jury to
9 understand. I'm making a connection between we've
10 heard the name Shawn Reed. There is a relevant
11 connection in this case.

12 I'm simply offering these two items to show
13 that Shawn Reed and Jarnelle Ervin had phone
14 calls -- had a phone call the day of the burglary
15 prior to at this number. Also, it is historic
16 contact -- contact under Shawn and Shawn Reed later
17 in the phone. Simply, I'm just making what's
18 already in State's No. 61, the data, in a more user
19 friendly version for the -- for the jury.

20 THE COURT: I'll allow it over the objection.
21 Bring the jury in.

22 THE BAILIFF: (Complying.)

23 (At 4:56 p.m., jury entered the courtroom.)

24 THE COURT: All right. You may proceed.

25 MR. SHELTON: Your Honor, may it please the

1 Court?

2 BY MR. SHELTON:

3 Q. Detective, you're holding in your hands what's
4 been marked for identification as State's Exhibits
5 No. 66 and 67.

6 A. Correct.

7 Q. Do you recognize those items?

8 A. Yes. These are pages for call logs
9 verification from the red iPhone that was got --
10 that was taken off of Jarnelle Ervin's person.

11 And the other one is the stored contact
12 information, a page from it, that was also extracted
13 from the red iPhone that was on Jarnelle Ervin's
14 person.

15 Q. So specifically Number 66, is that the call
16 log?

17 A. That is correct.

18 Q. And Number 67 is a listing of stored -- of some
19 of the stored contacts?

20 A. Correct.

21 Q. And that is data that's already been admitted
22 into evidence on this thumb drive, State's No. 61?

23 A. Correct.

24 Q. Have you reviewed the data on that thumb drive?

25 A. I have.

1 Q. Is there over 1800 pages of information on
2 there?

3 A. There is a lot. Yes.

4 Q. And that's two of those pages you hold in your
5 hand?

6 A. Correct.

7 Q. Are those pages true and accurate as to what is
8 in State's Exhibit No. 61?

9 A. Yes.

10 MR. SHELTON: Your Honor, I move to admit those
11 as State's Exhibits.

12 THE COURT: In over objection.

13 MR. STELTZNER: May I see those, please?

14 MR. SHELTON: (Complying.)

15 MR. STELTZNER: Without objection.

16 THE COURT: Admitted.

17 (State's Exhibit Nos. 66 and 67 were received
18 into evidence.)

19 BY MR. SHELTON:

20 Q. Lieutenant, did you highlight the relevant
21 portions on these two pages?

22 A. I did.

23 Q. And why are those -- why is that information
24 relevant to this case?

25 A. If you look at State's Exhibit No. 66 on the

1 call log, on the day of the burglary at the parking
2 residence which was July 11, 2016, I'll attempt to
3 do the UTC math that it appears that it came in at
4 10:59 a.m.

5 And the call was an incoming call from a
6 contact stored in the phone as Shawn. And the phone
7 number that they have -- it was two. I'm sorry.
8 There was two incoming calls that morning on
9 7/11/2016. There -- I take that back. This is -- I
10 guess this an extraction from the same number, so
11 it's really one, but it's got two different dates --
12 or two different times on it.

13 But the numbers for Shawn was 1(704) [REDACTED]-7066.
14 And it looks like the call time for that was a
15 minute and 56 seconds.

16 And then if you look at State's Exhibit No. 67.
17 The stored contacts, the same number, (704) [REDACTED]-7066,
18 is stored under Shawn and Shawn Reed or Reed Shawn
19 in the contact information sheet.

20 Q. So the same phone number you just read out as
21 stored under those two names?

22 A. That is correct.

23 Q. Why do we know the name Shawn Reed?

24 A. That was the information from Timmy of the only
25 person that knew about the marijuana and called him

1 Tim that he worked with.

2 Q. And is that the guy that he worked with at the
3 restaurant?

4 A. That is correct.

5 Q. And the guy you indicated during your
6 investigation that had been to his house before?

7 A. That is correct.

8 Q. And so that guy's phone number is saved in
9 Jarnelle Ervin's phone?

10 A. Correct.

11 Q. His red iPhone that he is -- that he has on him
12 when he's arrested by COPD?

13 A. That is correct.

14 Q. And Jarnelle and somebody on that number,
15 presumably Shawn Reed, had almost a two-minute phone
16 call the morning of the burglary?

17 A. That is correct.

18 Q. Detective, do you recall asking
19 Charlotte-Mecklenburg Police Department to assist in
20 this investigation?

21 A. Yes.

22 Q. And do you recall them notifying you that they
23 had recovered some of the property they believed to
24 have been stolen from Birchwood on 7/14 of '16
25 recovered from Jermaine Lowery's residence?

1 A. Yes.

2 Q. And did you some time after that meet with
3 Detective Cicio to take possession of those items?

4 A. We did. Myself and Detective Strickland met
5 with Investigator Cicio at their central location on
6 Trade Street.

7 Q. And what are some of the relevant items that
8 were -- you took possession of?

9 A. The Xbox One, a flat screen television, and
10 three cell phones.

11 Q. And the Xbox One, were you able to determine
12 who the rightful owner of that Xbox was?

13 A. Yes. After turning the system on and viewing
14 some of the contents under it, I saw some of the
15 profile names for Timothy P. in there where it was
16 linked to his Xbox Live account.

17 Q. And did -- did you take that system and have
18 Timothy verify that it was, in fact, his game
19 system?

20 A. It was. Also, Timmy had described the
21 candlewax that was on top of the system itself,
22 which was there noted.

23 Q. And the television, was that -- was that also
24 identified by the Parkers?

25 A. It was.

1 Q. Were those items returned to them?

2 A. They were.

3 Q. And the three phones that were in Lowery's
4 house -- apartment, two of those, according to Agent
5 Winchester, were in his possession?

6 A. That is correct.

7 Q. One of them is the Motorola?

8 A. Correct.

9 Q. That is in evidence that Detective Cicio talked
10 about earlier?

11 A. Correct.

12 Q. So that would be -- we have the -- we have a
13 data extraction disk for that as well in evidence?
14 Very good. That is State's No. 55.

15 A. Correct.

16 Q. Have you reviewed the contents of that data
17 extraction?

18 A. I have.

19 Q. And based on your review of those contents,
20 were you able -- were you able to tell if that phone
21 was in working order around the relevant time frame?

22 A. It was. It appeared to be.

23 Q. Was that phone -- was that phone actually
24 receiving and sending messages before the day of the
25 burglary date and after the burglary date?

1 A. It was.

2 Q. Were you able to review to verify for yourself
3 that there were calls or messages from a stored
4 contact of Jarnelle the next morning, July 12th, and
5 then later the night of July 14th and the 15th?

6 A. I did. Yes.

7 Q. Detective, did you apply for a search warrant
8 to Sprint?

9 A. Oh, yes, I did.

10 Q. And was that for -- what was that search
11 warrant for?

12 A. That was for the cell phone number that
13 contacted Jermaine Lowery under the identification
14 of Jarnelle that was stored in the contact
15 information.

16 Q. And that was the individual calling Jermaine
17 the night he was arrested?

18 A. That is correct.

19 Q. And later it popped up as Jarnelle according to
20 Detective Cicio?

21 A. Yes.

22 Q. And later during the data extraction, you were
23 able to get -- you could actually see that phone
24 number?

25 A. That is correct.

1 Q. And did you petition for a search warrant for
2 the cell tower data?

3 A. For the cell -- cell phone tower data and
4 the -- the -- the user account information.

5 Q. Very good. And did you receive a return?

6 A. I did.

7 Q. From the Sprint Corporation?

8 A. Yes.

9 Q. And was that in a digital medium?

10 A. It was.

11 Q. And have you reviewed those -- those items, the
12 digital information that you -- that Sprint sent you
13 pursuant to the search warrant?

14 A. I -- I did. Yes.

15 Q. Detective, I'm going to hand you what's been
16 marked for identification as State's Exhibit No. 68,
17 and this is a red CD. Have you reviewed the
18 contents of that CD?

19 A. Yes.

20 Q. Does it contain the data that you received from
21 Sprint?

22 A. It does.

23 Q. And is that information true and accurate as
24 you received it from Sprit?

25 A. It is.

1 Q. Detective, did you also show Danny Parker a
2 photo lineup in this investigation?

3 A. I did.

4 Q. Do you recall the date?

5 A. I met with him on July 21, 2016.

6 Q. I'm going to hand you what's marked for
7 identification as State's Exhibit No. 51.

8 A. Yes, sir.

9 Q. All right. And do you recognize that item?

10 A. This is the lineup along with the photographic
11 lineup form that we use per our policy.

12 Q. So this is the sixpack photo lineup you showed
13 to Danny?

14 A. That is correct.

15 Q. And this is the group of photos you received
16 with the assistance of CMPD Detective Cicio?

17 A. It is.

18 Q. Did you at that time know the names, dates of
19 birth, et cetera, for the individuals in those
20 photographs?

21 A. I did.

22 Q. Did you share that information at any time with
23 Danny?

24 A. No, I did not.

25 Q. And is there -- on those photos, are there any

1 identifying features that would suggest the identity
2 of a person?

3 A. There is not.

4 Q. Are there numbers below those photographs?

5 A. There are. I think they're numbers to their
6 system, so they could go back.

7 Q. Does it appear on the faces just to be random
8 groupings of numbers?

9 A. Yeah, just identification numbers.

10 Q. But are those ways to associate that picture
11 with a known set of information related to that
12 picture?

13 A. That is correct.

14 Q. And when you presented this lineup to
15 Mr. Parker, please explain to the jury how you did
16 that?

17 A. Right. What I do is, I read the "read to the
18 witness" part which is our affidavit about -- and I
19 can read it if you wish.

20 Q. Please.

21 A. The way it reads our standard policy on
22 photographing lineup is, it has the date, the time,
23 the location, and our case number for us to
24 reference to. And then this is the statement that
25 we read to the witness, and I'll read it for you.

1 "In a moment, I'm going to show you a group of
2 photographs. This group of photographs may or may
3 not contain a picture of the person who committed
4 the crime now being investigated.

5 "Keep in mind that hairstyles, beards, and
6 mustaches may be easily changed. Also, photographs
7 may not always depict the true complexion of a
8 person. It may be lighter or darker than shown in
9 the photographs.

10 "Pay no attention to any markings or numbers
11 that may appear on the photographs or any other
12 differences in the type or style of the photographs.

13 "When you have looked at all the photographs,
14 tell me whether you see the person who committed the
15 crime, and do not tell others that you have or have
16 not identified anyone."

17 So I read that part out. And the way our
18 standard is, usually we have one page with six
19 individual photographs on it, but in this case given
20 the photograph lineup from the Charlotte-Mecklenburg
21 Police Department, they were each on separate
22 individual papers.

23 So I turned them over. We put them all out in
24 front on them. And I asked him, please, just turn
25 each one of them over and look at each one of them

1 carefully before making a decision, just to keep
2 someone from making a hasty decision or just, you
3 know, make sure they got them all looked in before
4 they made their -- their decision.

5 Q. So this is the original sixpack lineup, plus
6 the cover page?

7 A. It is.

8 Q. And is it true and accurate?

9 A. It is.

10 MR. SHELTON: Your Honor, I move to admit
11 State's exhibit.)

12 MR. STELTZNER: Without objection.

13 THE COURT: Entered without objection.

14 (State's Exhibit No. 51 was received into
15 evidence.)

16 BY MR. SHELTON:

17 Q. Did you lay all six photos out facedown?

18 A. I did.

19 Q. And just to be clear, there's six in --
20 individual photos on six separate pages?

21 A. There are.

22 Q. And you laid them all out individually
23 facedown?

24 A. Yes.

25 Q. And did you instruct Mr. Parker to look at each

1 one of them?

2 A. I did.

3 Q. Did he, in fact, look at each one of them?

4 A. He did.

5 Q. Did he select one of those photographs?

6 A. He did select one.

7 Q. And by selecting that, you know, y'all knew why
8 you were there. Was he saying that was one of the
9 men in his house?

10 A. He did.

11 Q. Did he hesitate in making that identification?

12 A. He did not.

13 Q. Did he say anything to you when he made that
14 identification?

15 A. Nothing other than, "That's one of them.

16 That's the guy."

17 Q. Did he mark his selection in any way?

18 A. He did.

19 Q. And which photograph did he select?

20 A. He selected, which I marked as individual and
21 so I keep record of it, but the number one.

22 Q. Okay. And how did he mark the selection?

23 A. He circled the picture, plus he signed and
24 dated it.

25 Q. And who is depicted in that photograph?

1 A. Jarnelle Ervin.

2 MR. STELTZNER: Objection pursuant to previous
3 objection.

4 THE COURT: Based on the previous ruling,
5 objection overruled.

6 BY MR. SHELTON:

7 Q. Do you see that man depicted in the photograph
8 in the courtroom today?

9 A. I do.

10 Q. Please point him out for the jury.

11 A. He's sitting in the defense chair beside
12 defense counsel.

13 MR. SHELTON: Please let the record reflect,
14 Your Honor, that the witness has made a motion
15 towards the defendant sitting next to his attorney
16 at counsel table.

17 BY MR. SHELTON:

18 Q. On the affidavit section, I believe that's the
19 bottom half of the first page.

20 A. That is correct.

21 Q. Did you fill out the blanks there in that
22 paragraph at the bottom?

23 A. I did. It's just for the photographic
24 identification affidavit.

25 And it says "I," and I fill in his name, "Danny

1 Parker, have viewed a group of six photographs on
2 this being the 21st day of July 2016. I have
3 positively identified Photograph No. 1 as being a
4 person -- person, slash, one of the persons who
5 committed the crime to which I was a witness or
6 victim. I make this identification freely and
7 voluntarily and without any influence or threats,
8 coercion, or promises or reward."

9 And then I have them sign that, and then I also
10 witnessed it myself.

11 Q. So you -- you saw Danny sign it?

12 A. I did.

13 Q. And I believe underneath his signature is a
14 handwritten note that reads "Ervin lineup"?

15 A. Yes. And that has my initials out beside where
16 I tabbed it in there.

17 Q. And did you write that note?

18 A. Yes.

19 Q. And it also has, I believe, 100 percent, the
20 numeric 1-0-0 and the percent sign.

21 A. Right. Per one of our standards, we have to
22 ask for percentages and denote that on the
23 affidavit.

24 Q. So that is also your writing?

25 A. That is.

1 MR. SHELTON: Your Honor, I would like to
2 publish this so the jury can see exactly what we're
3 talking about.

4 THE COURT: Yes.

5 (Publishing State's Exhibit No. 51 to the
6 jury.)

7 BY MR. SHELTON:

8 Q. So looking at State's 51, the image on the
9 screen now is the first page; is that correct?

10 A. That is correct.

11 Q. Okay. And the next image that appears is the
12 first photograph that you just said that Mr. Parker
13 selected?

14 A. That is correct.

15 Q. And he circled the photograph. It's kind of
16 faint on this image, but he drew a circle around
17 here?

18 A. Yes.

19 Q. And that's his signature at the bottom?

20 A. It is.

21 Q. And the date, 7/21/2016?

22 A. That is correct.

23 Q. And we're going to go through in sequence and
24 show each of the other photographs.

25 A. Okay.

1 Q. The next one is the second photograph?

2 A. Correct.

3 Q. Then the third one?

4 A. Correct.

5 Q. Then the fourth one?

6 A. Correct.

7 Q. And the fifth one?

8 A. Correct.

9 Q. And then sixth one?

10 A. Yes.

11 Q. And you said Danny was certain. Did he
12 indicate that any of these other people might've
13 been one of the guys?

14 A. No. He never hesitated in any of the others.

15 MR. SHELTON: Please answer any questions the
16 defense may have.

17 CROSS-EXAMINATION

18 BY MR. STELTZNER:

19 Q. Now, Detective, when you -- when you obtained
20 the -- when you obtained the -- the items back --
21 back from CMPD from the robbery, correct?

22 A. Correct.

23 Q. And you just -- you just handed them back to --
24 did you return those items to the family?

25 A. Eventually, yes.

1 Q. Was -- was there any fingerprints or any
2 other -- other identification -- trying to get other
3 trace identification, was that ever done?

4 A. It appears that there was no dust on the items,
5 including the cordage. And it appeared to be wiped
6 down. I didn't appear -- and, also, the information
7 I got, they were in a kids' room and had been set
8 up. To me, that would've meant that someone had
9 handled them and set them up inside the room. So,
10 no, I did not ask for any fingerprints to be done on
11 the property.

12 Q. All right. And you were shown contact
13 information and call -- call data from -- from the
14 day of the burglary to Shawn Reed; is that correct?

15 A. That is correct.

16 Q. And that information shows that he called --
17 called him -- a phone call was made that day, the
18 day of the burglary on that cell phone; is that
19 correct?

20 A. That is correct.

21 Q. Shawn Reed was already put in as a contact,
22 correct?

23 A. Yes. It was already a stored contact.

24 Q. So -- so he was -- he was already a friend
25 identified in the -- in the phone, correct?

1 A. Yes.

2 Q. Or at least an acquaintance or associate or
3 someone that he knew the phone number to?

4 A. Correct.

5 Q. Would that imply to you that -- that -- that
6 he -- that he knew this person already?

7 A. That he knew Shawn Reed?

8 Q. Yes.

9 A. If he had it stored as his contact, I would
10 imagine so, yes.

11 Q. And -- and the prosecution just showed you all
12 of the contact -- all of the -- all of the -- all of
13 the times that Shawn Reed had contacted Mr. Ervin or
14 they had a conversation?

15 A. Did it show all -- the -- what I've been shown,
16 does it show it all?

17 Q. Yes.

18 A. No, it doesn't. Not on the forms that we just
19 looked at, no.

20 MR. STELTZNER: Okay. Nothing further.

21 THE COURT: Redirect?

22 MR. SHELTON: Beg the Court's indulgence.
23 Nothing further.

24 THE COURT: Madam jury panel, we'll stop for
25 the day. We'll start back at 9:30 in the morning.

1 You're not in a position yet to discuss the case.

2 You're not in a position to makeup your own mind.

3 Keep in mind what I told you about reporting
4 back if anyone tries to discuss this case with you.
5 And keep in mind that you're not doing any
6 independent research, digitally, Facebook, or
7 anything, go to the Cloud for information or Google.
8 That would be inappropriate.

9 So probably tomorrow we will get the case in
10 your hands. I can't promise that 100 percent, but
11 it looks like that's where we're headed based on my
12 knowledge of what's going on. So we'll see you at
13 9:30 in the morning ready to go. Thank you. Have a
14 good evening.

15 (At 5:18 p.m., jury was dismissed for the day.)

16 THE COURT: Tomorrow do you have Mr. Keith?

17 MR. SHELTON: Yes, sir. We will have Mr. Keith
18 from Sprint tomorrow. Should be here first thing in
19 the morning. Flying in from Atlanta. He's coming
20 in to Charlotte later this evening.

21 And Brian Schettler and Mr. Rasmussen from the
22 National Insurance Crime Bureau who took the Sprint
23 data and were able to put it in more of a user
24 friendly -- put it on kind of a presentation
25 template that we can show the jury. That may be the

1 extent of the State's case.

2 THE COURT: And, Mr. Steltzner, you indicated
3 you were going to present some witnesses?

4 MR. STELTZNER: Yes. That's my intention to
5 present witnesses.

6 THE COURT: About how many -- I'm really not --
7 I'm not asking you to tip your hand. I'm trying to
8 think, it looks like we might could get this case to
9 the jury some time tomorrow. Bring in a lunch and
10 get it to them some time tomorrow.

11 MR. STELTZNER: I've indicated that I've asked
12 for my witnesses to come in the afternoon.

13 THE COURT: Well, you better get on the phone
14 and try to get them here first thing in the morning
15 because if we start at 9:30 and based on what
16 they've told me, we should be able to utilize
17 witnesses around 11:00 if you have any.

18 MR. STELTZNER: Okay.

19 THE COURT: Because ---

20 MR. STELTZNER: I'll let them both know.

21 THE COURT: Okay.

22 MR. SHELTON: And, Your Honor, I will tell you,
23 I received a phone call -- the days are kind of
24 blending together -- some time today from the woman
25 from CMC, the custodian of records. She called me

1 to let me know that she is having to tap in a
2 substitute. I have the name, but it's in my office.

3 THE COURT: You're talking about substituting
4 Angela Mason?

5 MR. SHELTON: Yes -- yes, sir. Ms. Mason was
6 the one who CMC didn't pay for her to send -- that's
7 the custodian -- for Mr. Ervin's medical records.
8 For the record, we received them pursuant to any
9 search warrant.

10 Detective Branham requested a search warrant
11 through Detective Amy Kelly relaying the probable
12 cause. She petitioned. Got a search warrant. Got
13 the records and gave them to us. We were trying to
14 kind of verify a couple things that Mr. Ervin had
15 said had come up over the life of the case, so we
16 got them to share a copy with the defense.

17 To the extent that it may create an issue with
18 the jury and the odds of a juror knowing this
19 substitute are slim; but the way that our luck has
20 been this week, we have -- we're out of alternates.
21 So if we are putting somebody up, that may create an
22 issue.

23 What I've done in that, Your Honor, is we
24 acquired the information. If the defense is looking
25 to get it in and that -- that is an issue or we even

1 think it may be an issue, we may be in a position
2 just to stipulate to its introduction since, you
3 know, I think it's being offered to establish a
4 timeline and the extent of the injuries of it.

5 I think it's an 80-some-odd page document. I
6 don't know that every single page would need to be
7 admitted. Possibly just the discharge report.
8 There's an affidavit of companies from CMC where
9 they're saying it's true and accurate. So I think
10 we may be able to stipulate to that if the
11 scheduling witness situation becomes an issue.

12 THE COURT: All right. Talk to counsel about
13 that. Do it by stipulation. If you just want to
14 get the records in through the custodian, obviously
15 it would be Ms. Mason or whoever else comes. Can't
16 give opinions or testify to what's in there because
17 the records speak for themselves.

18 So if you reach a stipulation as to any or all
19 of that coming in, that would certainly move things
20 along. I'm not in a hurry, but that would
21 certainly -- if that's where we're headed anyway, it
22 would also curtail the possibility of somebody
23 coming and taking the stand who a juror may know.
24 That's probably -- probably pretty slim, but see if
25 you can work on that today.

1 I have gotten together a package from each of
2 you with my charges on the front page. You'll see
3 I've got the word "additions," and I've got a list
4 of things that is not in here. Most of what is in
5 this package is substantive law and not things
6 like credibility, reasonable doubt, and those sort
7 of things. So take a look at these overnight and
8 let me know what you think about them and also the
9 verdict forms. We'll have a charge conference
10 tomorrow.

11 I don't -- at this point, I'll certainly listen
12 to both sides. I don't see any lesser includes, but
13 I'm open to talking about it in the morning.
14 That's -- that's why we have a charge conference to
15 see. The jury's coming back at 9:30. If we can be
16 here by around 9:15 to kind of put our heads
17 together and see where we are.

18 All right. Here is a packet for each of you.
19 They're identical.

20 And, Lisa, thank you.

21 THE REPORTER: You're welcome.

22 THE COURT: See you at 9:15 in the morning.

23 (The proceedings concluded at 5:24 p.m.)
24 - - -
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for York County, South Carolina, on the 16th day of May, 2018.

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

July 19, 2018

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

State of South Carolina) In the Court of General Sessions
)
) Sixteenth Judicial Circuit
County of York) 2016-GS-46-4532
) 2016-GS-46-4533
) 2016-GS-46-4534
) 2016-GS-46-4535
) 2016-GS-46-4536
) 2016-GS-46-4537

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Jarnelle Ladarius Ervin,)
)
 Defendant.)
)
)

May 17, 2018
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, Judge, and a jury

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Circuit Court Reporter

I N D E XDescriptionPage No.

THURSDAY, MAY 17, 2018

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E X H I B I T S

No.	Description	I.D.	Ev.
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7	S-15 Photograph		13
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9	S-17 Photograph		13
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19	S-27 Photograph		13
20	S-28 Photograph		13
21	S-29 Photograph		13
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1	No.	Description	I.D. Ev.
2	S-34	Photograph	13
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2	S-69	DVD (There is no audio.)	26	30
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21	C-18	Sentencing Sheet		197
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1 THURSDAY, MAY 17, 2018

2 (COURT RESUMES AT 9:52 A.M.)

3 THE COURT: All right, state ready?

4 MR. SHELTON: Your Honor, yes. I do want to put a --
5 do a couple of housekeeping matters. I think Mr. Steltzner
6 -- I don't know if he needs -- something he needs to look
7 into right now, if he's ready to go on the record about
8 this.

9 MR. STELTZNER: I had some witnesses in the witness
10 room.

11 THE COURT: Okay. We'll give you a minute.

12 MR. SHELTON: Your Honor, if we could -- we would move
13 to sequester those witnesses because my understanding is
14 that they are potentially alibi witnesses, and the
15 testimony that's going to be given today is going to be
16 dealing with one of the cell phones linked to Mr. Ervin and
17 specific timeframes. I think ---

18 THE COURT: I'll grant the motion to sequester the
19 witnesses.

20 MR. STELTZNER: All right, let me just let them know.

21 THE COURT: Okay.

22 (A PAUSE.)

23 THE COURT: All right. Yes, sir, go ahead.

24 MR. SHELTON: May it please the court, Your Honor?
25 We, as you are, I'm sure you're well aware, are on court

1 reporter number three for this trial, and we thank her for
2 being here certainly. But, Your Honor, we -- the notes
3 that the court reporter was referencing from previous
4 reporters for this trial, she said it was a little unclear
5 how many of the state's exhibits have been actually
6 admitted into the record by the state during our
7 presentation. By my notes, I have admitted State's 1
8 through 67. I don't know if Your Honor has been keeping
9 track or not, but ---

10 THE COURT: I did for a while, and then I stopped.

11 MR. SHELTON: Okay. So, I think maybe just for the
12 integrity of the record, when the jury comes out I will
13 just make a quick motion to introduce or reintroduce
14 State's 1 through 67 for the record just so it's clear that
15 everything's in as, as -- since we have a new court
16 reporter, if that's appropriate.

17 THE COURT: Yes, sir.

18 Mr. Steltzner, any objection on that?

19 MR. STELTZNER: No objection.

20 MR. SHELTON: And one other thing that Ms. Broome
21 called to my attention. In pretrial on Tuesday we talked
22 about the photographic lineup shown to Mr. Parker in the
23 *Biggers* hearings. It has two stickers on it. It has
24 State's Exhibit 51, and that's been introduced during our,
25 our case in chief. It also has a court's sticker. I'm

1 kind of concerned about that, the jury seeing a state's
2 sticker as well as a court's sticker. I know I referenced
3 it in the pretrial hearing as State's 51, and I think it
4 was given a sticker later.

5 THE COURT: How do you propose to remedy that?

6 MR. SHELTON: I would say for the record any time we
7 were referencing what is marked currently as State's 51, I
8 referenced it as such because I premarked it, but it was --
9 any reference to Court's Exhibit Number 2 would be -- we're
10 talking about the same identical document. This is the
11 original exhibit, or the original lineup. So, I think this
12 is what we moved into evidence. I think, you know, it may
13 be sufficient just to peel off the court's sticker or to
14 put the state's sticker over the top of it.

15 THE COURT: We don't, we don't peel off stickers.

16 MR. SHELTON: Okay. Then as far as that goes, I'm not
17 sure how we would ---

18 THE COURT: Well.

19 MR. SHELTON: --- address that.

20 THE COURT: My suggestion would be run a copy with
21 something, a piece of sticky note or something over the
22 court's exhibit and send back the copy that just shows the
23 defense exhibit. That, that will work.

24 MR. SHELTON: Shows the state's exhibit.

25 THE COURT: Mr. Steltzner, any ---

1 MR. SHELTON: So, would you like me to do that?
2 There's seven pages in this. Do you want me to just do an
3 exact copy just redacting out the court sticker and then
4 supplementing that in as State's Exhibit 51?

5 THE COURT: Well, I don't -- I'll probably say -- let
6 me say it my way.

7 MR. SHELTON: Okay. Yes, sir.

8 THE COURT: Just cover with a sticky note and make a
9 copy of that first page. You have to make, make a copy and
10 the whole exhibit, and that will go back to the jury
11 because it will show only the defense copy. The one with
12 the sticky note will stay in the record as the original and
13 will not go back to the jury.

14 MR. SHELTON: Okay. Very good. So, yeah, that's --
15 this is State's 51.

16 THE COURT: Any objection to that, Mr. Steltzner?

17 MR. STELTZNER: No objection.

18 THE COURT: All right, we can take care of that later;
19 I don't think we need to do it right now.

20 MR. SHELTON: Yes, sir. I will, I will keep this at
21 counsel table just so I -- as a reminder, if that's okay
22 with the court.

23 THE COURT: I don't know. If it's okay with my court
24 reporter.

25 COURT REPORTER: I've made a note of it.

1 THE COURT: All right. We'll keep an eye on you.

2 MR. SHELTON: Yes, sir. I will.

3 THE COURT: Anything else before we get the jury in?

4 MR. SHELTON: I did want to just note at this point,
5 and we can, we can address the specifics in a little bit.

6 Yesterday afternoon we talked about the medical
7 records that the defense wants in for Mr. Ervin from the
8 previous night where he went to CMC. I believe he had an
9 ankle sprain. We had a custodian, Ms. Mason, who was on
10 the state's witness list and was scheduled to appear today.
11 For some reason, she was unable to come. I was notified at
12 some point yesterday they were sending a substitute. That
13 person's name was not on our jury list.

14 Since we're out of alternates and to the extent that
15 it could create confusion or an issue if any of the jurors
16 know that person, we are going to stipulate to the
17 introduction of medical records in the defense's case.

18 The exact extent of what records are coming in, we can
19 iron out those details. I think it's an eighty-page
20 document. I don't know if the whole thing needs to come
21 in.

22 THE COURT: Not a lot of iron -- not a lot of ironing
23 time left. I left here about 5:30 yesterday. I know
24 everybody's entitled to a restful evening, but ---

25 MR. SHELTON: Yes, sir. I was here until 11 last

1 night. Mr. Steltzner, I called him this morning and asked
2 him what records he wants in, and he has not responded to
3 me yet. So, that's why it's open ended because I don't
4 know.

5 THE COURT: All right, we'll do that at the first
6 break.

7 MR. SHELTON: Yes, sir. .

8 THE COURT: Anything else before we get the jury in?

9 MR. SHELTON: No, sir.

10 THE COURT: How many witnesses does the state have?

11 MR. SHELTON: It should be three.

12 THE COURT: All right, bring in the jury. I'm not
13 going to order lunch again for the jury today.

14 (THE JURY ENTERS AT 9:52 A.M.)

15 THE COURT: Good morning.

16 Call your next witness.

17 MR. SHELTON: May it please the court, Your Honor?
18 Before I call my next witness, as we discussed just a
19 moment ago, since we have a new court reporter, the state
20 would move to reintroduce State's Exhibits 1 through 67 for
21 the record.

22 THE COURT: Any objection?

23 MR. STELTZNER: No objection.

24 THE COURT: In without objection.

25 (STATE'S EXHIBITS 1 THROUGH 14, 42 THROUGH 45 WERE

1 ENTERED INTO EVIDENCE DAY 1 OF TRIAL.)

2 (STATE'S EXHIBITS 61 THROUGH 67 WERE ENTERED INTO
3 EVIDENCE DAY 2 OF TRIAL.)

4 (GROUPS OF PHOTOGRAPHS MARKED INDIVIDUALLY INTO
5 EVIDENCE AS STATE'S EXHIBITS 15 THROUGH 41.)

6 (BLACK OPS CARTRIDGES MARKED INTO EVIDENCE AS STATE'S
7 EXHIBIT NUMBER 46.)

8 (GROUPS OF PHOTOGRAPHS MARKED INDIVIDUALLY INTO
9 EVIDENCE AS STATE'S EXHIBITS 47, 48, 49, 50.)

10 (LINEUP MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
11 51.)

12 (CONSENT FORM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
13 NUMBER 52.)

14 (GROUP OF PHOTOGRAPHS MARKED INTO EVIDENCE AS STATE'S
15 EXHIBIT NUMBER 53.)

16 (PHONE MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
17 54.)

18 (DVD MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
19 55.)

20 (GROUPS OF PHOTOGRAPHS MARKED INDIVIDUALLY INTO
21 EVIDENCE AS STATE'S EXHIBITS 56, 57, 58.)

22 (CELL PHONE MARKED INTO EVIDENCE AS STATE'S EXHIBIT
23 NUMBER 59.)

24 (GROUP OF PHOTOGRAPHS MARKED INTO EVIDENCE AS STATE'S
25 EXHIBIT NUMBER 60.)

J. KEEP - DIRECT EXAMINATION BY MR. SHELTON

14

1 MR. SHELTON: At this time, we would call Ryan Keep.

2 JOHN RYAN KEEP, BEING DULY SWORN,

3 TESTIFIES AS FOLLOWS:

4 THE COURT: Just have a seat up here, please, Mr.
5 Keep.

6 WITNESS: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. SHELTON:

8 Q. Good morning, sir.

9 A. Good morning.

10 Q. What is your name?

11 A. My name is John Ryan Keep.

12 Q. And what do you do for a job or occupation?

13 A. I'm a records custodian.

14 Q. And where is your office?

15 A. The Sprint headquarters is in Overland Park, Kansas.

16 Q. So, you work for the Sprint Corporation?

17 A. I do.

18 Q. As a custodian of records?

19 A. Correct.

20 Q. How long have you held that job?

21 A. Since January of this year.

22 Q. And what are your duties and responsibilities in that
23 job?

24 A. I provide records based on legal demands, and then I
25 come to court to explain those records.

J. KEEP - DIRECT EXAMINATION BY MR. SHELTON

15

1 Q. And is part of your job description also to
2 authenticate the records?

3 A. Yes.

4 Q. For the court, and as such, do you have access to
5 business records of the Sprint Corporation in a normal
6 course of business and your job?

7 A. I do.

8 Q. Will you please explain how cell towers and cell
9 phones interact?

10 A. Yes. So, a cell tower has a collection of radio
11 antennas, and it basically broadcasts back and forth with
12 cell phones, not terribly unlike walkie-talkies. And, and
13 then the cell towers are connected to Sprint's larger
14 network such as switches to process those calls.

15 Q. And do you know the range of cell towers?

16 A. The maximum range averages for a very dense urban
17 area, it's up to 2 miles and for a wide open rural area it
18 can be up to 10 miles.

19 Q. So, it really depends on topography and, and the
20 surroundings in that area?

21 A. Absolutely.

22 Q. Would you please explain how data in the, in the
23 course of cell towers interacting with cell phones is
24 preserved and kept by the Sprint Corporation?

25 A. Yes. All calls and text message headers -- so, that

1 would be, like, the numbers the texts were sent to or
2 received from but not the content of the message. That
3 information is automatically stored at the time that it is
4 generated. So, if you make a phone call, it goes to our
5 network and then it's stored on one of our servers.

6 Q. So, and that information, does that include what
7 numbers have interacted in a call?

8 A. Yes. It will have the calling number and the called
9 number.

10 Q. And would it record the duration of the call?

11 A. It would.

12 Q. As far as text messaging goes, just records the fact
13 that there was a text message exchange?

14 A. Correct.

15 Q. But not the content?

16 A. Yes.

17 Q. Can you tell from that data who was using a phone
18 connected with a certain number at a certain time?

19 A. Just that there was a call made, not who the user was.

20 Q. So -- but you can tell whether or not that number was
21 in use?

22 A. Absolutely.

23 Q. And the time and date?

24 A. Yes.

25 Q. And then the general location?

J. KEEP - DIRECT EXAMINATION BY MR. SHELTON

17

1 A. It will have the cell tower that processed the call,
2 and so it will, based on the maximum ranges, give the
3 general vicinity.

4 Q. To your knowledge, was -- did the York County
5 sheriff's department serve a search warrant on the Sprint
6 Corporation August of 2016 requesting Sprint records
7 related to a cell phone number 704-████-6039?

8 A. Yes.

9 Q. And was that request for a specific timeframe?

10 A. Yes.

11 Q. And to your recollection, was that timeframe July 10,
12 2016, at 12 a.m. through July 12, 2016, at 11:59:59 p.m.?

13 A. Yes.

14 Q. To your knowledge, was that search warrant complied
15 with?

16 A. Yes.

17 Q. And did the Sprint Corporation send data kept in the
18 normal course of business to the sheriff's department for
19 York County in response to that search warrant?

20 A. Yes.

21 Q. Did Sprint assign a case number to that request?

22 A. Yes.

23 Q. And is that number documented anywhere?

24 A. It is documented on the records that we sent, and it
25 is also documented on the CD that contains the records.

J. KEEP - DIRECT EXAMINATION BY MR. SHELTON

18

1 Q. And prior to appearing in court today, did you have an
2 opportunity to review Sprint's records related to the use
3 of that phone number during the relevant timeframe?

4 A. I did.

5 Q. Were those -- had those records been kept by Sprint in
6 the normal course of business?

7 A. Yes.

8 Q. And were you able to access those records in your job
9 as a custodian of records for Sprint?

10 A. Yes.

11 Q. Let me show you what's been marked for identification
12 as State's Exhibit Number 68. Do you recognize that item?

13 A. I do.

14 Q. How do you recognize it?

15 A. I reviewed this before court this morning.

16 Q. And upon reviewing it, did you initial it and date ---

17 A. Yes, I did.

18 Q. --- the face of it, and was anyone else present while
19 you were reviewing those documents?

20 A. Yes.

21 Q. Was one of those people Mr. Jeff Rasmussen, Rasmussen
22 who you just met today?

23 A. Yes.

24 Q. Is the information contained on that CD true and
25 accurate?

J. KEEP - DIRECT EXAMINATION BY MR. SHELTON

19

1 A. It is.

2 Q. And it's true specifically as to the business records
3 from the Sprint Corporation related to the subject of the
4 search warrant in question?

5 A. Yes.

6 MR. SHELTON: Your Honor, I'd move to admit as State's
7 Exhibit Number 68.

8 THE COURT: Any objection?

9 MR. STELTZNER: No objection.

10 THE COURT: In without objection.

11 (SPRINT DATA MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 68.)

13 BY MR. SHELTON:

14 Q. Mr. Keep, what part of the country is assigned area
15 code 704?

16 A. I believe that to be the Charlotte area.

17 Q. And the surrounding region?

18 A. Yes.

19 Q. In what time zone are the Sprint records contained on
20 State's 68 for phone calls made to and -- made between and
21 involving this phone number?

22 A. The phone calls are stored in eastern time zone.

23 Q. And that is our time zone?

24 A. Yes.

25 Q. Kansas City is in the central time zone?

1 A. Correct.

2 Q. You're now in the eastern time, and were you able to
3 determine the billing name and address associated with this
4 number from Sprint's records?

5 A. Yes.

6 Q. And do you, do you recall the name of the subscriber?
7 And if you don't, that's okay. I can hand you a copy of
8 your records.

9 A. Please do.

10 Q. Would that help you ---

11 A. Yes.

12 Q. --- answer these questions?

13 (A PAUSE.)

14 Q. First, first off, look at the top. Is that Sprint's
15 case number associated with the data disc that has already
16 been admitted?

17 A. Yes.

18 Q. So, we're talking about the same thing?

19 A. Correct.

20 Q. And for the number that I read out a moment ago, the
21 subject of our conversation here, who was the subscriber?

22 A. The name listed is Jarnelle Ladarius Ervin.

23 Q. And are individuals able to enter whatever name they
24 choose when they sign up for an account with Sprint?

25 A. With a prepaid account, yes.

J. KEEP - DIRECT EXAMINATION BY MR. SHELTON

21

1 Q. Is -- was this a prepaid account?

2 A. It was.

3 Q. And what were -- what are the billing addresses
4 associated with that account?

5 A. There are two billing addresses listed. The first is
6 [REDACTED], Shawnee Mission, Kansas, [REDACTED]. The other
7 is [REDACTED], London, Kentucky, [REDACTED].

8 Q. And do you recognize those mailing addresses?

9 A. I do. Those are both the default mailing address for
10 Sprint prepaid accounts.

11 Q. Okay. So, they're not, they're not the actual address
12 for the subscriber? That address is assigned by the Sprint
13 Corporation?

14 A. Correct.

15 Q. And is that because it's a prepaid account?

16 A. Yes. This is -- if a -- if an address is not entered,
17 we use these default billing addresses so that any mail
18 sent out will just return to us instead of being routed to
19 nowhere.

20 Q. So just to be clear, during the timeframe that was the
21 subject of the search warrant, was this the subscriber
22 associated with that number?

23 A. Yes.

24 Q. A prepaid account to Jarnelle Ladarius Ervin?

25 A. Correct.

B. SCHETTLER - DIRECT EXAMINATION BY MR. SHELTON

22

1 MR. SHELTON: Please answer any questions of the
2 defense.

3 MR. STELTZNER: Defense has no questions.

4 THE COURT: All right, you can step down and be
5 excused. We appreciate your time. Thank you.

6 (THE WITNESS EXITS THE STAND.)

7 MR. SHELTON: Your Honor, next we would call Brian
8 Schettler.

9 THE COURT: Come up and be sworn.

10 BRIAN E. SCHETTLER, BEING DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. SHELTON:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. Could you please state your name?

16 A. Brian Schettler.

17 Q. And what do you do for a job or occupation?

18 A. I'm a special agent for the National Insurance Crime
19 Bureau investigating insurance fraud.

20 Q. And where are you based out of?

21 A. My main area is Charlotte; I also cover down into York
22 County in South Carolina.

23 Q. And can you explain what -- does your corporation go
24 by NICB?

25 A. That's correct.

B. SCHETTLER - DIRECT EXAMINATION BY MR. SHELTON

23

1 Q. Can you explain what y'all do in general?

2 A. Our main purpose is we take referrals that come from
3 the insurance industry. So, if you think of State Farm,
4 Nationwide, anything that they think might be a, a
5 questionable claim that's submitted that might have
6 insurance fraud in it is submitted to us. We're to
7 evaluate and determine whether there have been any criminal
8 offenses that go with that. If so, we investigate it,
9 usually in conjunction with law enforcement and then the
10 prosecutor.

11 Q. And in this, in relation to this particular case, were
12 you asked by the York County Sheriff's Office to, to assist
13 in their investigation?

14 A. That's correct.

15 Q. At the time you were asked, was there any question of
16 any insurance fraud occurring as, as related to the
17 location where, where a possible crime had occurred?

18 A. The only thing that could remotely relate to it is
19 that if there was any damage to the house they file on
20 their, their insurance, you know, for damage to property,
21 things like that. One of our mission statements is to
22 assist law enforcement with any type of case, to give them
23 any kind of assist that they need to help.

24 Q. So, your understanding was that it wasn't that the
25 report was in question itself. It was to assist law

1 enforcement?

2 A. That's correct.

3 Q. And specifically were you asked to help Detective
4 Branham in his investigation?

5 A. That's correct.

6 Q. Can you explain why he called to ask for your
7 assistance and that of, that of the corporation you worked
8 with?

9 A. Sure. So, one of the things we offer law enforcement
10 is the ability to take cell phone data that's captured from
11 Sprint, Verizon. We take that data and then send up to our
12 headquarters where we have analysts go ahead and analyze
13 that data, put it into a format that's easily
14 understandable. So, you kind of think of -- you take a
15 whole bunch of zeros and ones and put into a picture that
16 you can understand.

17 Q. Is there a man that specifically is good at or does
18 that job with NICB?

19 A. There is. There's one person I normally try and use.

20 Q. And what is his name?

21 A. Jeff Emerson.

22 Q. And so were you able to acquire the data that
23 Detective Branham needed assistance with?

24 A. Yes. Detective Branham called me. He emailed me the
25 Sprint files. At that point, I went ahead and -- some of

B. SCHETTLER - DIRECT EXAMINATION BY MR. SHELTON

25

1 the files were big. I went ahead and sent them up to Jeff.
2 Jeff went ahead and did his analytical work on it and sent
3 the files back to me, so I sent them up to Lieutenant
4 Branham.

5 Q. And did you alter the data in those files in any way?

6 A. No.

7 Q. So, you transmitted them to Jeff exactly the way that
8 you received them from Detective Branham?

9 A. That's correct.

10 Q. And on their return, did Jeff analyze the data to your
11 knowledge?

12 A. Yes, he did.

13 Q. Did he forward some work product as a result?

14 A. That's correct. He sent the files back. Some of the
15 files are big, so we can't email them. I met with
16 Detective Branham and transferred the, the data to him.

17 Q. And did you alter or change that data in any way prior
18 to transferring it to Detective Branham?

19 A. No, I did not.

20 Q. And specifically are you aware that the data that was
21 transferred from Detective, Detective Branham to you is
22 contained on this disc?

23 A. That's correct.

24 Q. And is that true and accurate as to what was
25 transmitted between Detective Branham to you and then to

1 Mr. Rasmussen?

2 A.. That is correct.

3 Q. Okay.

4 MR. SHELTON: Please answer any questions the defense
5 may have.

6 WITNESS: Yes, sir.

7 MR. STELTZNER: Defense has no questions.

8 THE COURT: You may step down and be excused.
9 Appreciate your time.

10 WITNESS: Yes, sir.

11 THE COURT: Thank you.

12 (THE WITNESS EXITS THE STAND.)

13 MR. SHELTON: Your Honor, next we would call Mr. Jeff
14 Rasmussen.

15 (DVD MARKED AS STATE'S EXHIBIT NUMBER 69 FOR
16 IDENTIFICATION.)

17 (MAP MARKED AS STATE'S EXHIBIT NUMBER 70 FOR
18 IDENTIFICATION.)

19 JEFFREY A. RASMUSSEN, BEING DULY
20 SWORN, TESTIFIES AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. SHELTON:

22 Q. I'm going to go ahead and hand these exhibits to you,
23 69 and 70 for ID, because I'm going to talk, talk with you
24 with about them in just a second, okay?

25 Would you please state your name?

J. RASMUSSEN - DIRECT EXAMINATION BY MR. SHELTON

27

1 A. Yeah. My name is Jeffrey Allen Rasmussen. Oh, sorry.

2 Q. I was, I was pronouncing it correctly? State your
3 name one more time, please.

4 A. My name is Jeffrey Allen Rasmussen.

5 Q. Okay, and what do you do for a job or occupation?

6 A. I'm a senior tech cell analyst with the National
7 Insurance Crime Bureau.

8 Q. And what you do in that job?

9 A. I mostly prepare court exhibits. We do cell phone
10 analysis, we do run-charts, insurance claim activity, put
11 together analytical reports based on that data.

12 Q. And so what data do you analyze and compile into
13 exhibits?

14 A. Well, for insurance fraud cases, it's typically
15 insurance claim data and then like Brian Schettler
16 mentioned, we do a lot of law enforcement requests, which
17 is typically cell phone analysis.

18 Q. And is there a particular tool you use in an analyzing
19 and preparing these court's exhibits?

20 A. Yes. The software we use is called GeoTime, and
21 there's a software called GeoTime which does the mapping of
22 it, and then there's a software called GeoTime CRT which is
23 short for Call Records Tool which actually processes the
24 data that we receive into a usable format and makes it
25 easily adjusted into the mapping program.

1 Q. And do you use that software in the normal course of
2 your daily activities?

3 A. Yes.

4 Q. And that's specific to your job responsibilities?

5 A. Yes.

6 Q. And you find that tool to be reliable?

7 A. Yes, highly.

8 Q. And so when you receive cell records data, you enter
9 it into that software and then it converts it into a more
10 user-friendly format?

11 A. Yeah. It converts it into a format that's consistent
12 among all the cell phone carriers, so it's a lot easier to
13 import into our mapping software that we use.

14 Q. So, it would be fair to say this is kind of a way of
15 translating the data?

16 A. Yes.

17 Q. And were you asked to assist the York County Sheriff's
18 Office with an investigation they were conducting in the
19 summer of 2016?

20 A. Yes.

21 Q. And as such, did you receive data from Mr. Schettler
22 that he received from the sheriff's department?

23 A. Yes.

24 Q. And in what format was that data received?

25 A. I do believe cell files.

J. RASMUSSEN - DIRECT EXAMINATION BY MR. SHELTON

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1 Q. And did it appear to be consistent with other cell
2 records that you had received in the past?

3 A. Yes.

4 Q. In fact, prior to court today, have you confirmed that
5 the information contained on State's 68, that red disc in
6 front of you -- in front of the court reporter, that that
7 red disc contains ---

8 A. Oh.

9 Q. --- the data that you -- a true and accurate copy of
10 the data that was transferred to you?

11 A. Yes.

12 Q. And that is the data that you put into the GeoTime
13 software to develop and to translate into this map?

14 A. Correct.

15 Q. That brings you here today?

16 A. Yes.

17 Q. And you were able to produce a map?

18 A. Uh-huh.

19 Q. Both in a video format and in a still format, correct?

20 A. Correct.

21 Q. And is that what you hold in your hand right there,
22 State's 69, the video of State's 70, the still format?

23 A. Yes.

24 Q. And would you briefly explain what those items are?

25 A. So for these cases -- and this one is pretty typical

1 -- I create a video file that has the cell phone movements
2 of the activity and then a static map file, and then also
3 an analytical report that sort of summarizes the
4 information that's in the video.

5 Q. And you brought the video on the disc, correct?

6 A. Correct.

7 Q. And the map as well?

8 A. Yes. That's on the disc as well and the report.

9 Q. And are those items true and accurate?

10 A. Yes.

11 MR. SHELTON: Your Honor, I would move to introduce
12 State's Exhibit 69 and 70.

13 THE COURT: Any objection?

14 MR. STELTZNER: Without objection.

15 THE COURT: In without objection.

16 (DVD MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
17 69.)

18 (MAP MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
19 70.)

20 BY MR. SHELTON:

21 Q. Mr. Rasmussen, are you able to tell from data and
22 through your compilation and translation of data who is
23 using a phone connected with a certain number?

24 A. No.

25 Q. What are you able to tell?

J. RASMUSSEN - DIRECT EXAMINATION BY MR. SHELTON

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1 A. We're able to tell the general vicinity of the
2 location, where we receive location data within these
3 records.

4 Q. And how are you able to tell the general location?

5 A. Because we have cell tower ID numbers and we get -- in
6 the case of Sprint, we get a call detail records file which
7 has the ID numbers that are associated with the activity of
8 the phone. And then we have a tower file, which is a
9 reference file, and then I just sort of merge those
10 together, and that's how I'm able to determine the
11 activity.

12 Q. So, you know the fixed point of the cell towers
13 because Sprint has disclosed those locations?

14 A. Yeah, by latitude and longitude.

15 Q. Okay, and then as far as the call detail, that's also
16 in Sprint's records, and all that information just apply to
17 it?

18 A. Yes.

19 Q. Okay.

20 MR. SHELTON: I would like to publish these exhibits,
21 Your Honor. Specifically, I'm going to start with State's
22 Number 69.

23 THE COURT: All right.

24 BY MR. SHELTON:

25 Q. And for the record, this is the video, correct?

1 A. Yes.

2 (A PAUSE.)

3 MR. SHELTON: Your Honor, just -- I think I moved
4 State's 68 in earlier, but if I didn't, I'd, I'd seek to
5 introduce it.

6 THE COURT: Yes, sir.

7 MR. SHELTON: The court reporter is nodding yes, so
8 it's in.

9 BY MR. SHELTON:

10 Q. Mr. Rasmussen, is this the, the video that we -- or
11 that's relevant, is this the one labeled GeoTime video July
12 11, V2?

13 A. V2, correct.

14 Q. And before we begin publishing this, if you could just
15 kind of explain to this jury -- well, we'll publish the
16 still screen at the beginning. Explain to them what
17 they're looking at on this, on this screen.

18 A. So, this is, this is the general area that the phone
19 was located on this specific date of July 11, 2016, and
20 once it starts playing there will be dots that pop up and
21 -- with sectors, and that is the general vicinity of where
22 the phone was located at the time. It's not a GPS, but
23 it's based on a cell tower location; that's as close as we
24 can get.

25 Q. And are you familiar with the ranges of those towers?

J. RASMUSSEN - DIRECT EXAMINATION BY MR. SHELTON

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1 A. Yes.

2 Q. And what are the approximate ranges that the towers
3 can reach?

4 A. So, as, as we heard before, in a highly populated
5 urban area, it's generally 2 miles maximum range, and then
6 in a more rural area it can be up to 10 miles of range.

7 Q. Are you, are you familiar with this area of York
8 County, South Carolina?

9 A. I, I am not.

10 Q. Okay. So, you, you don't know if it's highly
11 populated or not?

12 A. Well, that I can say is it's not.

13 Q. Okay. Very good. Just by looking at the, the map and
14 things like that, you can tell that it's not highly
15 populated?

16 A. Yes. Yeah.

17 Q. Okay, and there appears to be some fixed locations on
18 this screen. Is that correct?

19 A. Correct.

20 Q. And how did you receive that information?

21 A. I received that from Brian Schettler, I believe. I
22 got a copy of the search warrant for the records, and it
23 was contained in that document.

24 Q. So, I'm just going to walk through these a little bit
25 so we make sure this jury can understand what we're looking

1 at, so this -- if you need to come off the stand to get a
2 closer look, you're more than welcome.

3 A. Okay.

4 Q. So, I'm going to try to -- I'm going to attempt to use
5 the laser pointer here to kind of guide us through this
6 conversation.

7 A. Okay.

8 Q. So, I'm just going to start at the top and work down.
9 There is a house icon here that says Lowery home, and was
10 that based on your understanding this is where a man, last
11 name Lowery, was -- you were -- as far as you were aware
12 was where he was living?

13 A. As far as I knew, yes.

14 Q. And this is in the Charlotte metro area?

15 A. Correct.

16 Q. And there's also, there's also an icon for Ervin home?

17 A. Correct.

18 Q. In the same general area, in the Charlotte area?

19 A. Uh-huh. Yes.

20 Q. And then also in York County in the Clover, South
21 Carolina, area there is a different colored house with
22 incident location listed?

23 A. Correct.

24 Q. And again that's based on -- those plots are based on
25 information you had received through our local law

J. RASMUSSEN - DIRECT EXAMINATION BY MR. SHELTON

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1 enforcement via Brian Schettler?

2 A. Yes.

3 Q. Okay. I think we've got the, the context here, so at
4 this point I'm going to go ahead and play this video for
5 the jury to watch, and then we'll talk about the video.

6 A. Okay.

7 Q. You can, you can have a seat.

8 A. Okay.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER 69 IS PLAYED FOR
10 THE COURT. THERE IS NO AUDIO.)

11 MR. SHELTON: If you'll pause that real quick, Mr.
12 Porter?

13 BY MR. SHELTON:

14 Q. So, I just want to be clear. We're seeing some little
15 blue dots pop up. Were these the cell towers that -- with
16 the phone being active in those quadrant as you described?

17 A. Yes.

18 Q. Okay.

19 MR. STELTZNER: Objection. Never mind. I'll address
20 later.

21 THE COURT: All right. Objection withdrawn.

22 Go ahead.

23 MR. SHELTON: Please resume, Mr. Porter.

24 (WHEREUPON, PLAY RESUMES.)

25 BY MR. SHELTON:

1 Q. And on the left-hand side, there is a -- kind of a
2 rolling timeline, correct?

3 A. Yes.

4 Q. The date and time indicating when this movement is
5 occurring?

6 A. Correct.

7 (WHEREUPON, PLAY RESUMES.)

8 BY MR. SHELTON:

9 Q. Okay. So, just to summarize what we're watching, it
10 appears that the activity of the phone in those quadrants
11 as reflected on the records from the cell towers in those
12 quadrants?

13 A. Yes.

14 Q. Had the phone in use in the Charlotte area, then moved
15 southward and then west into York County in the Clover area
16 somewhat northward, possibly into North Carolina, and then
17 back up into the Charlotte area?

18 A. Correct.

19 Q. And were you also -- we have State's Number 70. Is
20 that a map of this -- a still image of this same
21 production?

22 A. Correct.

23 Q. And does that just kind of give a more
24 comprehensive...

25 A. It's just a static view of the same view that we show

J. RASMUSSEN - DIRECT EXAMINATION BY MR. SHELTON

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1 in the video.

2 Q. So, without the rolling time, it's just, it's giving
3 you a -- showing where the activity occurred throughout the
4 time of the video?

5 A. Correct.

6 Q. And are there some parts of that timeline that you had
7 highlighted in this exhibit?

8 A. Yes.

9 Q. And are those specifically the ones that are west of
10 Charlotte?

11 A. Correct.

12 Q. As it was your understanding, those were -- that's
13 activity near the incident location during the relevant
14 timeframe?

15 A. Yes.

16 Q. Again, you can't say who's using the phone. You can
17 simply say that the phone is active in that area during
18 that timeframe?

19 A. Correct.

20 MR. SHELTON: Your Honor, Your Honor, move to publish
21 State's 70.

22 THE COURT: Go ahead.

23 BY MR. SHELTON:

24 Q. So, again this is what we were just talking about
25 showing the activity and that this is more of a

1 comprehensive view, correct?

2 A. Yes.

3 Q. That it's showing -- we have all of these little
4 quadrant blurps with the blue dots in the middle of these.
5 These are the actions we were seeing popping up with
6 scrolling timeline throughout that previous exhibit,
7 throughout the video?

8 A. Yes. Yeah. This is a 2-D version of the, the 3-D
9 video. It's the same data.

10 Q. Okay, and it appears to be that there's some sort of
11 directional marking in these quadrants?

12 A. Yes.

13 Q. And what is that? What, what does that, what does
14 that indicate?

15 A. So, every cell tower, cell antenna has three different
16 sectors, and when those are indicated in the data, they can
17 be mapped. So, if they're pointed in -- if opening this
18 way, then it's a good indication that that cell phone was
19 in that vicinity and facing that specific direction from
20 the tower.

21 Q. So, so, approximately, let's -- I want to start with
22 the event listed as one event, Monday, 11 July 2016,
23 13:43:24.

24 A. Okay.

25 Q. The bottom event in the York County area. Are you

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1 able to approximate how far -- well, let me back up a
2 second. This blue dot, is this the center of the range of
3 the tower?

4 A. It is not the center of the range. See, we generally
5 plot the radius as 1.5 miles. So, the range could actually
6 be much larger than that, but we sort of do a conservative
7 estimate and do it at 1.5 miles. So, it's, it's the center
8 of that estimated range.

9 Q. So, let me just rephrase that. Does the blue dot
10 represent the tower?

11 A. No. The, the blue dot does represent the center of
12 that specific sector.

13 Q. Okay.

14 A. The tower is represented by that point.

15 Q. Okay. I understand, and approximately how far is the
16 tower from the incident location on this 1343 event?

17 A. That one? One second. Approximately 3.9 miles from
18 the incident location.

19 Q. Okay. So, I just, I want to be clear. This is over
20 -- this is a little bit over my head, but the way that this
21 goes out, is this -- so, is this point here the tower then?

22 A. Correct. Yes, it's that point.

23 Q. Okay. So, this would be this event here. The second
24 event above it would be activity occurring, coming from
25 this direction?

1 A. Correct.

2 Q. So, this one activity coming from this direction?

3 A. Correct.

4 Q. And so that -- specifically that second event, the,
5 the Monday, 11 July 2016, 16:12:47, what is the approximate
6 distance between that tower and the incident location?

7 A. It's approximately 3.6 miles from the incident
8 location.

9 Q. And are these times in Eastern time?

10 A. Yes, Eastern time.

11 Q. And then do you know the proximate distance of the
12 towers up here in the North Carolina area just across the
13 border south of Charlotte -- or south of Gastonia, I mean?

14 A. Yes. The one on top, north, is approximately 6.1
15 miles from the incident location.

16 Q. Okay.

17 A. And the one on the bottom is approximately 3.4 miles
18 from the incident location.

19 Q. And the phone is being used in the direction away from
20 the, the kind of triangle point there?

21 A. Yes, correct.

22 Q. Correct? Okay, and then same thing here with the
23 point being the tower and then locating outward?

24 A. Correct.

25 Q. Okay. I just want to make sure I understand all of

J. RASMUSSEN - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 that, and one more question. And so just in your, in your
2 opinion, would this, the point marked incident location
3 would be within the range of this tower right here, given
4 that this is a rural, rural area?

5 A. Yes, it would.

6 Q. And that was at 16:12:47 in military time?

7 A. Correct.

8 Q. Which makes it 4:12 p.m.?

9 A. Yes.

10 Q. Eastern Standard Time?

11 A. Yes.

12 MR. SHELTON: Please answer any questions the
13 defendant may have.

14 CROSS-EXAMINATION BY MR. STELTZNER:

15 Q. Sir, are you aware that, are you aware that the event
16 is alleged to have taken place around, around 3:00 p.m.,
17 not 4:00 p.m. per your, per your chart?

18 A. I was not aware of that.

19 Q. Again, are you aware that, that the, that the Ervin
20 home is actually closer to Lowery home because, because the
21 -- because the -- Mr., Mr. Ervin lives in the same
22 apartment complex that Mr. Lowery lives in?

23 A. I wasn't aware of that. I just plotted ---

24 Q. Okay.

25 A. --- the data that ---

1 Q. All right. So ---

2 A. --- was given.

3 Q. So, just let me -- just for my edification, if I am
4 Mr. Cell Tower right now and you're north, according to the
5 data, you're north, according to the data, I'm facing what
6 is called an azimuth. Can you, can you explain what an
7 azimuth is?

8 A. Yes. An azimuth is -- indicates what the sector is.
9 So, when you're given an azimuth, it's a degree on a 360
10 circle, and you add 60 and subtract 60 from the azimuth and
11 that's how you generate the sector.

12 Q. Okay. So, so, let's say I am a cell tower with
13 azimuth zero because I'm facing north.

14 A. Correct.

15 Q. So, Judge -- the judge is well in my, my range, well,
16 but the prosecutor is not.

17 A. Correct.

18 Q. Would that be correct?

19 A. Yes.

20 Q. In other -- and cell towers can have more than one
21 sector on that. So, if I have another sector right here,
22 he would be in range, but the judge would be out of luck,
23 correct?

24 A. Correct.

25 Q. All right. So, those -- so, see those five -- when

J. RASMUSSEN - CROSS-EXAMINATION BY MR. STELTZNER

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1 you say five events from Monday, July '16, 1549 til Monday
2 July 11, 2016, that's 1603 on the left-hand side of that?

3 A. Yes.

4 Q. Left-hand side there. Are those -- so, those cell
5 towers, those, those cell towers have basically an azimuth
6 pointing toward, pointing toward where the blue dot is. Is
7 that correct?

8 A. Correct.

9 Q. And, and thus their, their cone of possibility is a
10 possible cell -- the cell is basically -- if this were my
11 arm would basically extend all the way as far as the cell
12 tower can range. Would that be correct?

13 A. Yes.

14 Q. All right. So, they don't -- so, the actual cones
15 don't actually show the actual range. It's just, it's just
16 to -- it's just showing the direction of it?

17 A. Yeah. The range isn't provided in the data.

18 Q. Okay, and so, and so, so, in your opinion, if, if a
19 person is at the incident location, could have -- could a
20 -- at 1500, could a -- the -- could a call from the
21 incident location be received specifically by one of those
22 tower -- one of those towers in five events?

23 A. In five? I, I'm sorry. I don't...

24 Q. What I'm saying is basically that -- let's say you're
25 at the incident location.

1 A. Yeah.

2 Q. Incident location at let's say, let's say 3:15 p.m.

3 A. Okay.

4 Q. 3:15 p.m. on the date. Are those cell towers, those
5 -- any of -- either of those cell towers a valid cell tower
6 for those events, for an event that occurred on that -- at
7 that time?

8 A. At that time? I would say no.

9 Q. And what would have been the soonest event that could
10 have occurred had they gotten in range of that, that one
11 cell tower, that one event, Monday, July '16, 16:12:47?
12 Can we safely say approximately, according to -- when it
13 came to your animation, you showed the, you showed the
14 activity going about -- approximately down 320 -- this road
15 called 321. Is that correct?

16 A. Correct.

17 Q. So, approximately about what time would the soonest,
18 soonest possible time had -- would the cell phone be in
19 range of, of that one event?

20 A. I don't really feel like I could answer that question.

21 Q. Okay. Well, let's go ahead and take a look at the
22 animation again, if you don't mind.

23 (WHEREUPON, PLAY OF STATE'S EXHIBIT NUMBER 69 RESUMES.
24 THERE IS NO AUDIO.)

25 Q. You can come up here if you need to see.

J. RASMUSSEN - CROSS-EXAMINATION / REDIRECT EXAMINATION 45

1 So, at approximately, approximately time 1545, that
2 cell phone could not have been in the incident location.

3 Is that correct?

4 A. 1545?

5 Q. According to your animation, at 1545, which is the
6 equivalent of 3:45 p.m. on the incident date, could have
7 the -- could have somebody from the incident location used
8 the cell phone that hit that tower that's lighting up on
9 here near what says Gaston County?

10 A. Probably not.

11 MR. STELTZNER: Thank you. No, no further questions.

12 MR. SHELTON: Real quick reply, Your Honor.

13 REDIRECT EXAMINATION BY MR. SHELTON:

14 Q. So, those events we're talking about here.

15 MR. SHELTON: If we can switch back to State's 70,
16 please?

17 (A PAUSE.)

18 Q. These events right here, given this quadrant, is this
19 within range of Highway 321?

20 A. Yes.

21 Q. And could it be that that phone was being used in a
22 vehicle traveling on High -- Highway 321 during that
23 timeframe?

24 A. Yes, it could.

25 MR. SHELTON: Thank you.

1 THE COURT: All right, you, you can step down and be
2 excused. We appreciate your time.

3 WITNESS: Thank you, sir.

4 THE COURT: Thank you

5 (THE WITNESS EXITS THE STAND.)

6 MR. SHELTON: Your Honor, I would ask Mr. Rasmussen

7 ---

8 THE COURT: He can be excused.

9 MR. SHELTON: Your Honor, can I have just a brief
10 moment to confer with the case agent?

11 THE COURT: Yes.

12 (A PAUSE.)

13 MR. SHELTON: Your Honor, the state rests its case.

14 THE COURT: All right, members of the jury panel, the
15 state is resting. That means it has presented its
16 evidence, so we have to take a break at this point. It
17 won't be a long -- well, we'll take about a fifteen-minute
18 break because we have some legal matters that -- cases are
19 sort of like ball games. They have certain things that
20 happen and then certain things than can only happen after
21 the other thing has already happened, and we're at one of
22 those stages where I have to take up some matters outside
23 your presence. So, we'll take about a ten or
24 fifteen-minute break to get refreshed.

25 We are going to order lunch today. I don't know where

1 we will be as far as the trial and when we'll get the trial
2 in your hands, but I think to move things along, we will do
3 that.

4 And do we have the menus yet?

5 CLERK OF COURT: I do.

6 THE COURT: Okay. Well, you'll be given a menu over
7 this break, and pick.

8 And do you need to go home again today? Okay.

9 JUROR: I'm fine. Thank you.

10 THE COURT: All right. All right. Well, we'll take
11 about a fifteen-minute break, and you can go ahead and
12 order lunch.

13 (THE JURY EXITS AT 10:42 A.M.)

14 THE COURT: Always make sure you get the door closed.
15 Always make sure you get the door closed as soon as the
16 last one's out so we can get to it.

17 All right, anything from the state?

18 MR. SHELTON: Not at this time, Your Honor.

19 THE COURT: Mr. Steltzner?

20 MR. STELTZNER: Yes, Your Honor. We ask for a
21 directed verdict in, in the fact the state has not proven
22 it's case in chief as to all the, all the crimes and all
23 the elements.

24 THE COURT: Well, I deny the motion. Looking at the
25 evidence in the might most favorable to the state, I find

1 that there is sufficient direct evidence and substantial
2 circumstantial evidence from which a jury could -- I'm not
3 saying they will -- conclude that Mr. Ervin was, in fact,
4 involved in this home invasion or this crime as charged,
5 and that the state has presented sufficient evidence as to
6 each element required under the charges set forth in the
7 indictment. Again, I'm not saying they've proven their
8 case beyond a reasonable doubt. That's not my decision,
9 but I find that the motions for directed -- motion for
10 directed verdict is to be denied.

11 Mr. Ervin, can you hear me at this point?

12 DEFENDANT: Yes, sir.

13 THE COURT: Before I ask you any questions, does Mr.
14 Ervin have any impeachable offenses?

15 MR. SHELTON: Yes.

16 THE COURT: All right, Mr. Ervin, what I'm asking for
17 in just a minute, what I'm asking the solicitor, you --
18 we've reached the point in the trial where you have the
19 right to remain silent. That is you do not have to
20 testify. You have an absolute constitutional right to
21 remain silent, and if you exercise that right, I will tell
22 the jury that you have, in fact, exercised that right and
23 that they cannot use that against you in any way
24 whatsoever. I will tell them early in my charge and then
25 again probably tell them and remind them when I talk to

1 them about the exercise of your right to remain silent if
2 you choose to exercise it, that you are presumed innocent.
3 Need not prove your innocence, and the state must prove
4 your guilt beyond a reasonable doubt.

5 Now, you can testify if you wish, and if you wish, the
6 state can ask you about certain criminal charges from the
7 past that we're going to go over in just a minute. The
8 state can ask you these, not to convey to the jury any idea
9 that because you have a prior criminal record that you have
10 committed these offenses, but rather your prior record is
11 allowed solely for the jury's consideration on whether to
12 believe you or not. That is, their -- the prior criminal
13 record is offered to impeach. That is, question your
14 ability to tell the truth. So, I will tell the jury, if
15 you testify and if those offense come in, that they can use
16 those offenses only as to your believability.

17 Now, you have a right to present a defense. You've
18 already put something into evidence, but you have a right
19 to call witnesses and put into evidence anything else that
20 you wish to at this time.

21 So, we've reached the point where you can present a
22 defense. You can call witnesses. You can put in
23 admissible evidence, and you have the right to testify, the
24 right to remain silent, as I've explained it to you. I'm
25 going to ask Mr. Shelton now what criminal record the state

1 contends you may be asked about if you testify.

2 MR. SHELTON: Thank you, Your Honor. There are three
3 qualifying convictions as I read them. They're out of
4 North Carolina, Charlotte-Mecklenburg County. They are,
5 they are case number 13CRS208048, common-law robbery;
6 13CRS208050, attempted common-law robbery; and 13CRS208052,
7 common-law robbery. These are all the same offense date of
8 March 26, 2013.

9 It appears that the first two offenses that I listed
10 out, there was a judgment entered, finding of guilt by a
11 court in North Carolina on January 9, 2014, in Mecklenburg
12 County. We have certified copies of those convictions
13 under seal from their clerk of court, and it appears that
14 his sentence was eight to nineteen months, with 317 days'
15 credit for time served. So, I note that for the record
16 because that would be a qualifying conviction under our
17 rules.

18 Given the similarity between what is alleged here, I
19 would not seek to call it by name. I would simply ask Your
20 Honor to allow me to refer to it as a felony conviction
21 that carried more than a year maximum punishment. I
22 believe I would be entitled to that under our rules.

23 THE COURT: I, I, I agree that you would be entitled
24 to ask about those and ask about them in that fashion.

25 Mr. Steltzner, do you have any comments?

1 MR. STELTZNER: No comments, Your Honor.

2 THE COURT: All right.

3 Mr. Ervin, you, have you reached a -- you don't, you
4 don't have to tell me now because we're going to take a
5 break, and we'll come back and you'll have a chance to talk
6 to Mr. Steltzner over the break, but do you plan to testify
7 or exercise your right to remain silent?

8 DEFENDANT: I'll exercise my right to remain silent.

9 THE COURT: All right. Well, we'll take a break and
10 then when we come back, Mr. Steltzner, you can call -- how
11 many witnesses do you have?

12 MR. STELTZNER: Two witnesses plus we have to -- we
13 need to stipulate as to ---

14 THE COURT: All right. Well, during the break, if
15 you'll take a look at what you need to as far as the
16 stipulation. We'll take a break at this time. Thank you.

17 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
18 NUMBER 10.)

19 (OFF THE RECORD.)

20 THE COURT: Let's come back to order. State ready?

21 MR. SHELTON: Yes, we are, Your Honor.

22 THE COURT: You work out the stipulation?

23 MR. SHELTON: We did. I'll let Mr. Steltzner put that
24 on the record, if it pleases the court.

25 THE COURT: All right.

1 MR. SHELTON: We've agreed to a certain number of
2 pages from the medical records we, we provided that we
3 received pursuant to a search warrant executed by North
4 Carolina officers. So, I'm not 100 percent sure the pages.
5 They're the first ones in a certain range.

6 MR. STELTZNER: I believe it's pages 1 through 14 of
7 the ---

8 MR. SHELTON: That's mine.

9 MR. STELTZNER: Oh, I'm sorry. That's pages 1 through
10 14 of the Carolinas Health Systems, South Park Health
11 Division -- Pavilion, report for Jarnelle L. Ervin.

12 THE COURT: I, I'll tell the jury -- you can publish
13 whatever part you want, whatever you deem appropriate, but
14 I will explain to the jury what a stipulation is and what's
15 being offered, which are fourteen pages from Carolinas
16 Healthcare.

17 MR. STELTZNER: Yes, sir.

18 THE COURT: All right.

19 MR. PORTER: And, Your Honor, regarding State's 51,
20 I've prepared a modified copy. I'd ask the court to review
21 it and approve its submission to the jury since it is an
22 altered copy of Court -- State's 1.

23 (A PAUSE.)

24 MR. PORTER: May I approach, Your Honor?

25 THE COURT: You may.

1 (A PAUSE.)

2 THE COURT: Looks fine to me.

3 MR. PORTER: Thank you, Your Honor.

4 THE COURT: The only cautionary tale is when you look
5 at the exhibits before they go back, make real sure you get
6 the right one going back. Our court reporter will help
7 you, I'm sure.

8 MR. PORTER: Yes, sir. I will place these with the
9 court's exhibits or at least -- thank you, Madame Court
10 Reporter. Thank you very much.

11 (A PAUSE.)

12 THE COURT: Over the break, oh, something about
13 wanting an explanation for the device on the rail in front
14 of the jury. That's the mic, microphone? Is anything in
15 front of the jurors?

16 COURT REPORTER: That's one of my backup recorders.

17 THE COURT: I'll tell them. That's so they -- and
18 we'll make this a Court's Exhibit.

19 Over the break I received a note. Juror 118 needs to
20 go to her car, his car -- I didn't look to see which one it
21 was -- to get something. And juror, I believe, 163 wants
22 to go to their car over lunch and I, of course, agreed on
23 that. And this last note, I'll explain when the jury comes
24 back in.

25 Ready for the jury, state?

1 MR. SHELTON: Yes, sir.

2 THE COURT: Defense?

3 MR. STELTZNER: Yes, Your Honor.

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

5 Go ahead and make that a court's exhibit.

6 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
7 NUMBER 11.)

8 (THE JURY ENTERS AT 11:15 A.M.)

9 THE COURT: As I told you before you went out, the
10 state has rested. So, Mr. Ervin has a right to present
11 witnesses.

12 As to the device on the rail, it's not some sort of
13 stealth device. It's simply a backup audio recorder for
14 the court reporter. So, the other court reporters have
15 been here this week. This is the third one we've had. I
16 told you earlier it's sort of a chess match, chess game
17 with the court reporters at this time. But that's all that
18 is is something -- I've got one up here myself, and so --
19 and there's one right there. So, that, that's what these
20 little devices.

21 All right, Mr. Steltzner.

22 MR. STELTZNER: Yes, Your Honor. First thing is I'd
23 like to go ahead and proffer, proffer this, proffer the
24 medical records of Jarnelle L. Ervin, dated July 11, 2016,
25 from Carolinas Healthcare System as Defense -- I believe

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1 it's going to be Defense Exhibit 2.

2 MR. SHELTON: Your Honor, we stipulate as to their
3 authenticity.

4 THE COURT: All right.

5 MR. STELTZNER: I'd like to go ahead and publish.

6 THE COURT: All right, just one minute. Let's, let's
7 get it marked.

8 (MEDICAL RECORDS MARKED INTO EVIDENCE AS DEFENDANT'S
9 EXHIBIT NUMBER 2.)

10 THE COURT: All right, and let me speak to the jury
11 just a minute.

12 Members of the jury panel, what we have here is what's
13 called a stipulation.

14 Mr. Steltzner, can you...

15 You will be the judges of the facts. I believe I
16 already told you that. You have to decide the
17 believability of the witnesses who testify, review the
18 evidence, and determine what the facts are, facts --- where
19 facts are in dispute.

20 When there are no dispute -- that is, these records
21 are not in dispute. Both sides agree and they've entered
22 what's called -- we call a stipulation that these are, in
23 fact, true copies of the records of Mr. Ervin, pages 1
24 through 14, if I remember correctly, from Carolinas
25 Healthcare Center -- or Health Center. I think it was

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1 formerly CMC, but you don't have to wrestle with whether or
2 not these are genuine documents or accurate documents or --
3 they're not factually in dispute. They're stipulated that
4 they are, in fact, the records from that medical center.

5 You can, you can publish them.

6 MR. STELTZNER: All right. Defense would like to call
7 Cateta Hall to the stand.

8 THE COURT: Hall?

9 MR. STELTZNER: Cateta Hall.

10 MR. SHELTON: Your Honor, may we approach before this
11 witness?

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 THE COURT: Come on up. This here Bible up here; if
14 you'll put your left hand on it and raise your right, this
15 lady will administer an oath.

16 CATETA HALL, BEING DULY SWORN,

17 TESTIFIES AS FOLLOWS:

18 DIRECT EXAMINATION BY MR. STELTZNER:

19 Q. Please state your name for the record.

20 A. Cateta Ervin Hall.

21 Q. Okay, and do you -- and, and what is your home
22 address?

23 A. [REDACTED], Charlotte, North Carolina,

24 [REDACTED]

25 Q. What do you do for a living?

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1 A. I work at Wells Fargo as a operations clerk.

2 Q. Okay, and how long have you held that job?

3 A. Since January the 19th of this year.

4 Q. All right, and, and who are -- and what is your
5 relationship to Jarnelle?

6 A. I'm his mother.

7 Q. Okay, and, and can -- and to the best of your
8 recollection, can you tell us about the offense that took
9 place on, on July 11, 2016?

10 A. I received a phone call around about 1, maybe 2 in the
11 morning stating that Jarnelle was in a lot of pain. He was
12 crying, and he asked me to take him to the ER, and drove
13 over to his house. At that time they were living in Forest
14 Brook Apartments, him and his two brothers, one younger,
15 one older. Picked him up. He wasn't able to walk, so his
16 older brother, which is Javon, had to pick him up and put
17 him inside the car. I drove him to South Park ER, which is
18 located in Charlotte, North Carolina, on Fairview. Took
19 him there. He wasn't able to get out. Security brought a
20 wheelchair. Security guard had to take him out of the car,
21 put him in a wheelchair.

22 We were seen. He was in a lot of pain. They gave him
23 something for the pain while we were there. Stated that
24 both his feet were sprained. That he needed to keep them
25 elevated, and sent him home with crutches. He still wasn't

1 able to get back in the car, so security guard had to pick
2 him up and put him back in the car.

3 I took him home back to Forest Brook. Called his
4 brother so his brother could pick him up and take him back
5 inside the house, which he did. I stayed for a little
6 while to make sure he was settled. Went home. Came back
7 around about 1, maybe 2:30-ish because his younger brother
8 had to go to work. So, I drove the younger brother to
9 work. Went back home. Went back over there again. Not
10 sure about what time that was because it's been a while
11 ago, but I went back over there to make sure he was okay
12 before I went to go pick the brother up. Picked up the
13 brother from work. Dropped the brother off. Stayed for a
14 little while. Left around about midnight. Drove home, but
15 each time I came back and forth, he was there.

16 Q. Okay, and so can you explain to the court why going to
17 the hospital -- what was special about going to the
18 hospital?

19 A. Well, when Jarnelle was born, Jarnelle was born with
20 broke leg and a club foot and from birth up until he was
21 six years old, he had multiple, multiple surgeries. He was
22 allergic to narcotics. So, they would break his leg and
23 ankle every week and recast them, so he's had problems with
24 the leg for years.

25 When he was six, he was falling at school, giving

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1 himself concussions. So, they broke hip, knee, and ankle,
2 put him in a little body cast, and that pretty much fixed
3 everything. But from that ordeal of going through that for
4 so many years, he just does not like the doctor. And he,
5 he just had a lot of medical issues growing up, so he just
6 didn't like the doctor. So, for him to call me and ask me
7 to take him to the ER was a huge deal. So, I woke up and
8 took him.

9 Q. So, between the -- so, can you tell defini -- can you
10 tell me between, between the hours of about -- you said you
11 came around 1 or 2. Is that correct?

12 A. Uh-huh.

13 Q. Can you tell me where he was, let's say, at 3:00?

14 A. Well, I'm not sure if I was there at 3:00, but around
15 about 1 or 2 he was on the couch.

16 Q. Okay, and about what time did you come back home? I
17 want to clarify that. Was it dark or still light out or
18 ---

19 A. Which time?

20 Q. After, after that. Basically you said ---

21 A. After taking one to work and coming back?

22 Q. Yes.

23 A. Donovan had to be at work at 3. So, dropped him off.
24 Where he lived and where he worked was maybe about a
25 twenty-minute drive. So, more than likely I got back to

1 their house at about 3:30-ish, and I was only there for
2 about five to ten minutes. I popped in to check on him,
3 and he was actually sleep, so I went home.

4 Q. Okay, and, and so you saw him later in the day?

5 A. I saw him later on that day went I to go check on him
6 to see if he needed something because I was on that side of
7 town. I checked on him. He was sleep. She was sleep, his
8 girlfriend, his baby mama. They both were on the couch
9 sleep. So -- because I had a key to get in myself in and
10 out of their house. So, I let myself in. They were sleep,
11 so I left.

12 Q. Okay.

13 A. But I went back and I stayed for a little after
14 Donovan got off of work because Donovan got off about
15 11:30. So, I got back to they house -- no, about 11:00.
16 So, I got to they house about 11:30 and stayed until about
17 midnight.

18 Q. Okay, and now, now, what is your -- what is -- can you
19 state to the court your honest belief about -- let me go
20 ahead and rephrase.

21 Have you ever been in trouble with the law yourself?

22 A. Tickets.

23 Q. Okay. Okay. You don't have felonies or misdemeanors?

24 MR. SHELTON: Your Honor, object. He's trying to
25 bolster the witness.

C. HALL - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 THE COURT: I sustain the objection.

2 BY MR. STELTZNER:

3 Q. All right. Okay. So, so, your, your story is that,
4 that, that as far as you know, when you came home at those
5 particular times, about 1 or 2, around 3 and, and, and
6 later on in the evening around 7 or around 11, that he was,
7 that he was, that he was on the couch sleeping, and, and
8 that's where you found him. Is that correct?

9 A. Yes, and that was not my home. That was their home.
10 We didn't live together. The three boys all lived
11 together.

12 Q. Again, they all lived together at one apartment, the
13 Forest ---

14 A. Yes.

15 Q. Forest Brook?

16 A. Yes.

17 MR. STELTZNER: All right, no further questions.

18 Please answer any questions that the state may have.

19 CROSS-EXAMINATION BY MR. SHELTON:

20 Q. So, how long, how long have you lived at [REDACTED]
21 [REDACTED]?

22 A. On and off maybe about seven, eight years, but it's,
23 like, on and off.

24 Q. So, were you living there in the -- July 11th of --
25 July ---

1 A. No ---

2 Q. --- to August 2016?

3 A. I was living at -- I living on Tara Lane. Can't
4 remember with the numerics right now, but I was living on
5 Tara Lane, which was off Sugarcreek in Charlotte, North
6 Carolina.

7 Q. And Jarnelle is your son?

8 A. Yes.

9 Q. You've been knowing him all his life?

10 A. Yes.

11 Q. You care for him?

12 A. Yes.

13 Q. And he, I'm sure, lived with you for a while?

14 A. He's lived with me, yes.

15 Q. And you'd do anything for him?

16 A. No. I mean, do you need me to explain it? Okay.

17 Q. No. Were you aware that he was arrested in August of
18 2016?

19 A. Yes.

20 Q. And when you found that out, you went straight to the
21 police?

22 A. No.

23 Q. So, maybe you waited a couple of days and then you
24 went to the police?

25 A. I didn't go to the police at all.

J. SIMPSON - DIRECT EXAMINATION BY MR. STELTZNER

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1 Q. You never went to the police?

2 A. I never went to the police. He called me to inform me
3 that he had been arrested. I asked him why. He stated
4 why, and I asked him what he going to do. He told me he'd
5 let me know. I told him okay.

6 MR. SHELTON: Okay.

7 THE COURT: Redirect?

8 MR. STELTZNER: Nothing further for this witness.

9 THE COURT: Thank you. We appreciate your time.

10 WITNESS: All right. Thank you, sir.

11 THE COURT: You can be excused.

12 WITNESS: Thank you.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: Call your next witness.

15 MR. STELTZNER: Defense calls Javon Simpson.

16 JAVON SIMPSON, BEING DULY SWORN,

17 TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Be seated right there, please.

19 DIRECT EXAMINATION BY MR. STELTZNER:

20 Q. Please state your name for the record.

21 A. Javon Lewis Simpson.

22 Q. And where do you reside currently?

23 A. I reside in Charlotte, North Carolina. My address, my
24 address is [REDACTED], Charlotte, North Carolina.

25 Q. And what do you do for an occupation?

1 A. Right now I work for Conduit. It's a call center. I
2 work with Sprint and I'm a lab coach, which means I train
3 the new hires.

4 Q. And, and how long have you had that job?

5 A. For two years now.

6 Q. Okay, and, and you, you understand why we're here,
7 correct?

8 A. Correct.

9 Q. And would you be so kind as from your recollection to
10 let the court know about the events that occurred on July
11 11, 2016?

12 A. On, on that day, I got a phone call early in the
13 morning around 1, 2:00 from my mother. She was letting me
14 know that she was on the way to come and get my little
15 brother to take him to the hospital because he was in pain.
16 So, at that time ---

17 Q. Just as clarification, who is your, who is your little
18 brother?

19 A. Jarnelle Ladarius Ervin.

20 Q. Okay. Continue, please.

21 A. Okay. So, I went downstairs and he was crying. My
22 mom was pulled up to the back of the house. So, I had to
23 carry him because he couldn't walk all the way to the car
24 and place him in the backseat. At that time, him, my mom,
25 and his -- at the time his girlfriend went to the hospital.

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1 And then I got another phone call, I want to say around
2 about 6 or 7:00, to come and get him. So, I went back
3 outside to the backseat to get Jarnelle and bring him in
4 the house, and again once again I carried him.

5 Q. Okay, and, and at this time, at this time, where did
6 you, where did you live?

7 A. At that time, we lived in Forest Brook Apartments.

8 Q. And you lived there with Jarnelle?

9 A. Uh-huh, with Jarnelle and my other little brother.

10 Q. Okay, and, and can you, can you tell us what, what
11 occurred after you -- so, you carried him out to the car?

12 A. Uh-huh.

13 Q. And then you -- when he came back from the hospital,
14 you carried him back in the house?

15 A. Right.

16 Q. And then you placed him on, you placed him on the
17 couch?

18 A. Right. Placed him on the couch. Put his feet up, and
19 then I went back upstairs for a little bit, and then around
20 7, I went to the store to get some beer and some cigarettes
21 because that's the time you can buy alcohol in North
22 Carolina. After that, I walked back in the house. He was
23 downstairs sleep. I went upstairs, and then I want to see
24 around about 12:00. I went back downstairs to make a
25 sandwich, get me another beer, and Jarnelle was still

1 downstairs sleep. A little bit after that he called me,
2 and I had to carry him to the bathroom because he still
3 couldn't walk. Then I brought him back to the couch. I
4 went upstairs. Watched anime. Took a little nap, and then
5 around about 2:00, I went to the store again to get some
6 more beer. At that time, Jarnelle still on the couch
7 laying down.

8 Q. Okay, and then, and then after 2:00, do you, do you
9 recall what, if anything, anything that you could say take
10 -- took place?

11 A. My mom came back over to the house to come and pick up
12 my other brother, Donovan, to bring him to work because we
13 don't drive, and that was his transportation to work. Like
14 I said, I went to the store. Then I went back upstairs. I
15 went to sleep. I was there for the majority of the day.
16 And around, like, 7 or 8:00, I went to the store again to
17 get some more beer and cigarettes.

18 Q. Okay, and so, and so is -- do you, do you think it is
19 possible or had it been possible for anyone to, to ---

20 MR. SHELTON: Object to speculation.

21 THE COURT: Yeah.

22 MR. STELTZNER: Okay.

23 THE COURT: Yeah. I find the way that question
24 started calls for speculation. So, I sustain the
25 objection.

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1 MR. STELTZNER: All right, I'll rephrase.

2 BY MR. STELTZNER:

3 Q. How was your house -- how was the apartment
4 configured?

5 A. We had a townhouse. So, we had a back door and a
6 front door, and the back door was underneath the hill, and
7 then the living room in the bottom layer. So, it's from
8 the back door is the kitchen, then the living room, and
9 then the stairway to go upstairs, then the bathroom, my
10 room, and Donovan's room.

11 Q. Okay, and, and were these, were these apartments built
12 very well? Could you hear sound?

13 A. Yeah, you can hear sounds. Like, as far as the back
14 door goes, it was right underneath my room window, so any
15 time the door opened or shut, I'd always hear it or my side
16 of the wall would shake. My bed was on the wall directly
17 beside the window.

18 Q. All right. So, you're saying, you're saying every
19 time you went downstairs in the afternoon, in the afternoon
20 that he -- that, that Jarnelle was on the couch asleep?

21 A. On the couch asleep, or one point in time Kiana, the
22 baby mama, was trying to walk him to the bathroom, and he
23 was hugging on the wall trying to get there. That was the
24 only time that day he was up on his own without me. Well,
25 my mom said, well, maybe Donovan and Donovan was helping

C. HALL - CROSS-EXAMINATION BY MR. SHELTON

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1 him at the time. Like I said, I was in my room, but every
2 time I came downstairs, he was on the couch besides when he
3 went to the bathroom with Kiana.

4 MR. STELTZNER: All right. Thank you. No further
5 questions. Please answer any questions the state may have.

6 WITNESS: Okay.

7 CROSS-EXAMINATION BY MR. SHELTON:

8 Q. So, he's your younger brother?

9 A. Correct.

10 Q. You're the oldest of three?

11 A. It's four of us.

12 Q. Four of you?

13 A. I'm the second oldest.

14 Q. Okay. I gotcha. So, you have an older brother as
15 well?

16 A. Correct.

17 Q. Gotcha. You've known Jarnelle all his life?

18 A. Correct.

19 Q. You care for him?

20 A. Yes.

21 Q. Would you consider him a friend?

22 A. Yes.

23 Q. Y'all live together?

24 A. Yes.

25 Q. And you look out for him?

C. HALL - CROSS-EXAMINATION BY MR. SHELTON

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1 A. I take care of my family, yes.

2 Q. Did you know he was arrested August of 2016?

3 A. I heard that he was arrested, but I was in college.

4 Q. So.

5 A. Oh. Hold on. You said 2016?

6 Q. Yes.

7 A. Yes. I heard about that. I was staying with my mom
8 at the time because we had moved out.

9 Q. In Charlotte?

10 A. Uh-huh.

11 Q. So when you found out, you went straight to the
12 police?

13 A. No. When I found out, I asked why.

14 Q. Okay, but then you went to the police?

15 A. No.

16 Q. So, you waited a couple of days and then you went to
17 the police?

18 A. Never went to the police after he got arrested.

19 Q. You never went to the police after he was arrested?

20 A. Correct.

21 Q. Okay.

22 MR. SHELTON: Nothing further.

23 THE COURT: Recross -- redirect?

24 MR. STELTZNER: Nothing further.

25 THE COURT: All right, you can step and be excused.

1 We appreciate your time. Thank you, sir.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: All right, you have any further witnesses?

4 MR. STELTZNER: No further witnesses, Your Honor.

5 THE COURT: All right. The state have anything in
6 reply?

7 MR. SHELTON: Yes, sir.

8 THE COURT: All right. The defense has presented
9 their case now, but the state has the right to call
10 witnesses in reply to what defense has presented. So, we
11 see what we have.

12 Call your reply witness.

13 MR. SHELTON: Okay. Your Honor, the first witness we
14 will call is Dawn Parker.

15 THE COURT: You're still under oath for purposes of
16 this trial.

17 JESSICA DAWN PARKER, HAVING
18 PREVIOUSLY BEEN SWORN, TESTIFIES AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. SHELTON:

20 Q. Good morning, Ms. Parker.

21 A. Good morning.

22 Q. I'm going to hand to you State's Exhibit Number 53.

23 A. Yes, sir.

24 Q. Do you recognizes this photo?

25 A. Yes, I do.

J.D. PARKER - DIRECT EXAMINATION BY MR. SHELTON

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1 Q. Have you seen it before?

2 A. Yes, sir.

3 Q. When did you first see it?

4 A. The photo I first saw shortly after Jarnelle or -- I
5 mean, Lowery's arrest.

6 Q. So, that's a photograph of ---

7 A. Yes.

8 Q. --- Jermaine Lowery?

9 A. That's Jermaine Lowery, yes, and shortly after his
10 arrest, I received this photo from Detective Branham..

11 THE COURT: Keep your voice level up so the, so the
12 jury can hear you.

13 WITNESS: I apologize.

14 BY MR. SHELTON:

15 A. I got this photo from Detective Branham shortly after
16 Lowery was arrested.

17 Q. Okay, and in that photo, there -- in that exhibit,
18 there are two photos.

19 MR. SHELTON: Can we publish this so the jury knows
20 what we're talking about?

21 Q. And why did Detective ---

22 THE COURT: What, what number is it?

23 MR. SHELTON: Sorry. That's State's 53.

24 BY MR. SHELTON:

25 Q. And, Ms. Parker, why did -- did Detective Branham say

1 why he wanted you to look at this photo?

2 A. He did. He asked if this was the hat we were speaking
3 of when we gave our descriptions of the people. Absolutely
4 it is the hat.

5 Q. So, so, just to be clear, when you, when you were
6 describing this man, he was the tall guy with the red hat?

7 A. Yes.

8 Q. And you told Detective Branham shortly after this man
9 was arrested that this was the hat he was wearing?

10 A. Yes.

11 Q. And you're ---

12 A. Yes, and ---

13 Q. --- certain of that?

14 A. Absolutely.

15 Q. Okay.

16 A. The exact hat, yes.

17 MR. SHELTON: All right, no further questions.

18 THE COURT: All right. Cross?

19 MR. STELTZNER: Nothing further.

20 THE COURT: All right, you can step down. Have a seat
21 back. Just put that over on the table there.

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: Anything else?

24 MR. SHELTON: Yes, sir.

25 THE COURT: Go ahead.

D. PARKER - DIRECT EXAMINATION BY MR. SHELTON

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1 MR. SHELTON: The state would call Danny Parker.

2 THE COURT: All right, Mr. Parker, you also are still
3 under oath.

4 WITNESS: Yes, sir.

5 DANNY P. PARKER, HAVING PREVIOUSLY
6 BEEN SWORN, TESTIFIES AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. SHELTON:

8 Q. Good morning, sir.

9 A. Good morning.

10 Q. I'm going to hand to you what's been admitted as
11 State's Number 53. Have you ever seen that photo before?

12 A. Yes, sir.

13 Q. How do you recognize it?

14 A. It was shortly after his arrest, we saw this photo
15 from -- Detective Branham asked was this the hat we were
16 speaking of.

17 Q. All right, and what did you tell him?

18 A. Yes, it was.

19 Q. Are you positive?

20 A. Oh, yeah.

21 Q. How did you know?

22 A. Got the sticker on it. That's the same name hat. I
23 mean, everything.

24 Q. So, this right here is the sticker you're speaking of?

25 A. Yes, sir.

P. BRANHAM - DIRECT EXAMINATION BY MR. SHELTON

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1 Q. Okay. Any question in your mind that that's the hat
2 Lowery was wearing that day?

3 A. Not a bit.

4 MR. SHELTON: Okay. Thank you. No further questions.

5 THE COURT: Cross?

6 MR. STELTZNER: Nothing of this witness, Your Honor.

7 THE COURT: All right, you can step down. Thank you.

8 WITNESS: Thank you, sir.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: Your Honor, call Detective Pete Branham.

11 THE COURT: Detective, you're still under oath.

12 PETER BRANHAM, HAVING PREVIOUSLY
13 BEEN SWORN, TESTIFIES AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. SHELTON:

15 Q. Detective, how are you?

16 A. Fine, sir.

17 Q. Lieutenant Branham, did you interview Jarnelle
18 Ladarius Ervin the day he was arrested in Charlotte?

19 A. I did. Myself and Lieutenant Fred Moore were notified
20 upon Mr. Ervin's arrest on August 19th of 2016, and he and
21 I both traveled to 61 East Trade Street in Charlotte, North
22 Carolina, where they were holding him at to interview him.

23 Q. And he was at the Charlotte-Mecklenburg Police
24 Department, correct?

25 A. That's correct, yes.

P. BRANHAM - DIRECT EXAMINATION BY MR. SHELTON

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1 Q. And was he in police custody at that time?

2 A. He was.

3 Q. Had he been arrested for a warrant in connected to the
4 July 11, 2016, home invasion of the Parkers' home?

5 A. He was.

6 Q. And did you ask him any questions that day?

7 A. I did.

8 Q. Prior to questioning him, did you advise him of his
9 *Miranda* rights?

10 A. I did.

11 Q. And did you advise him by reading them from a form?

12 A. That's the way our policy proceeds, yes.

13 Q. And did you read those rights verbatim?

14 A. I did.

15 Q. And did he indicate that he understood those rights?

16 A. He did.

17 Q. Did he indicate that he was going to waive those
18 rights and agree to talk with you?

19 A. That is correct.

20 Q. Did he sign for them, indicating those things?

21 A. He did.

22 (MIRANDA FORM MARKED AS STATE'S EXHIBIT NUMBER 71 FOR
23 IDENTIFICATION.)

24 Q. Detective, I'm going to hand to you what's been marked
25 for identification as State's Exhibit 71. You recognize

1 that?

2 A. I do.

3 Q. How do you recognize it?

4 A. It's got my signature on it, and it appears to be a
5 copy of the *Miranda* form that I read to Mr. Ervin on that
6 date, August 19, 2016.

7 Q. Are Ervin's signatures on there as well?

8 A. They are.

9 Q. And is it a true and accurate copy of the original as
10 it appeared?

11 A. It is.

12 Q. Has it been altered in any way?

13 A. It does not appear to be.

14 MR. SHELTON: Your Honor, move this in as State's
15 Exhibit 71.

16 MR. STELTZNER: Without objection.

17 THE COURT: In without objection.

18 (MIRANDA FORM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
19 NUMBER 71.)

20 BY MR. SHELTON:

21 Q. Please read to the jury exactly the *Miranda* rights as
22 you advised them to Mr. Ervin that day.

23 A. Okay.

24 I advise you of your rights. Before I ask you
25 any questions, I want to advise you of your

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1 rights. You have the right to remain silence.
2 Anything you say can and will be used against you
3 in a court of law. You have the right to talk to
4 an attorney and have him or her present with you
5 while you're being questioned. If you cannot
6 afford to hire an attorney, one will be appointed
7 to represent you before any questioning, if you
8 wish. You can decide at any time to exercise
9 these rights and not answer any questions or make
10 any statements. Do you understand each of these
11 rights I explained to you?

12 Q. Okay, and was Ervin threatened in any way?

13 A. He was not.

14 Q. So, you didn't threaten him to get him to waive his
15 rights?

16 A. I did not.

17 Q. And you didn't threaten him to get him to agree to
18 talk with you?

19 A. I did not.

20 Q. What about Detective Moore?

21 A. No.

22 Q. Were you and Detective Moore carrying your service
23 weapons?

24 A. We were.

25 Q. Were your guns pulled or were they holstered?

1 A. They were in a our holster.

2 Q. Did you -- had you identified yourselves as police
3 officers?

4 A. We did.

5 Q. How?

6 A. We had markings who we were, embroidered badges on
7 our, on our chest as well as our badges, and the guns being
8 displayed, and when I walk in, I explain that I am
9 Detective Branham with the York County Sheriff's Office.

10 Q. Did you explain to Mr. Ervin why you wanted to talk to
11 him that day?

12 A. I did.

13 Q. And again, this was a little more than a month after
14 the burglary?

15 A. That's correct.

16 Q. Did you promise him anything if he -- in exchange for
17 waiving his rights and talking with you?

18 A. I did not.

19 Q. Did Detective Moore?

20 A. No, he didn't.

21 Q. Did Mr. Ervin appear to be under the influence of any
22 substances? Drugs, alcohol, anything like that at the
23 time?

24 A. He did not.

25 Q. Did he appear coherent?

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1 A. He did.

2 Q. Did he appear to understand his rights?

3 A. He did.

4 Q. In fact, he said he did?

5 A. He did.

6 Q. Did he appear to understand your questions?

7 A. He did.

8 Q. Did he respond to those questions?

9 A. He did.

10 Q. Did he respond appropriately as in not with something
11 that didn't pertain to the question? It was something
12 related to what you all were ---

13 A. Correct.

14 Q. --- talking about?

15 A. His answers were in response to my questions and
16 nothing off kilter.

17 Q. Did he ask you any questions about his rights?

18 A. No.

19 Q. Did he at any point ask for an attorney?

20 A. He did not.

21 Q. Did he at any point ask to or invoke his right to
22 remain silent?

23 A. He did not.

24 Q. Was this interview video recorded?

25 A. It was.

1 Q. After the fact, did you learn that there was no audio
2 on that recording?

3 A. That is, that is correct.

4 Q. Can you explain that, please?

5 A. We were in a interview room in Charlotte-Mecklenburg
6 Police Department, and I had no control over what the --
7 you know, the facilities or the electronics that were in
8 place. I didn't know where the control panel was to be
9 able to say whether the audio was working or not. We did
10 our standard interview believing that the audio system and
11 the visual system were working at their department, later
12 to find out that the audio -- I, I still don't have the
13 right answer -- was either not working or not turned on.
14 So, we have a visual recording of the interview but not an
15 audible recording of the interview.

16 Q. So, did you verify that with CMPD that it wasn't just
17 your copy that was bad?

18 A. That, that is correct. After we received a copy that
19 day, later on actually Brian Schettler with NICB was at the
20 Trade Street address that day, and I said, hey, while
21 you're there, can you check to see if our recording is
22 still on the system? We may have had a mess up on our
23 recording. We did receive another copy, and then when we
24 reviewed it, again the audible, audible part of it was not
25 recorded.

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1 Q. So, was Schettler just the intermediary?

2 A. He, he was. He's, he's also a reserve deputy with our
3 department, so.

4 Q. I just want to be clear. You specifically -- you just
5 asked him to pick up another copy from them that they had
6 prepared?

7 A. Right. He was already at that location, yes.

8 Q. So, he wasn't asked to acquire the information from
9 their system? Just pick up ---

10 A. Right. Exactly.

11 Q. --- another disc? During the -- well, how long was
12 this interview from start to finish?

13 A. Oh, wow. We were there for -- I'm going to guess --
14 guesstimate, I'm sorry. I, I say that. The interview
15 started at 1:52 in the afternoon, and we took a break
16 around 3:20. Went back in, I'm going to say, for at least
17 another thirty minutes after that, if I recollect, if my
18 recollection is right.

19 Q. And what did you -- what was the purpose of the break?

20 A. We took a break after around a hour twenty, hour
21 thirty minutes to let Mr. Ervin have a smoke and a restroom
22 break.

23 Q. And was he -- did he remain in custody at that time?

24 A. Yes..

25 Q. Did he call anyone during that period of time?

1 A. Yes. He, he was allowed to call his girlfriend.

2 Q. And then after -- how long was the break?

3 A. We broke for about fifteen minutes, twenty minutes.

4 Q. And then after, you resumed the interview after the
5 break?

6 A. Yes.

7 Q. For, I think you said, another thirty minutes?

8 A. Yes.

9 Q. So, roughly two hours total?

10 A. Yes.

11 Q. Plus the break in between?

12 A. That's correct.

13 Q. And, Detective, did you prepare a summary of your
14 interview?

15 A. I did.

16 Q. Just to be clear, did he sign any written statements?

17 A. No, he did not.

18 Q. And if you would, please describe your interview, and
19 specifically the questions that were asked and the
20 responses that were given.

21 A. Yes. We questioned -- after reading his *Miranda*
22 rights and he signed all the waivers and forms -- about the
23 incident that occurred on July 11, 2016, and we had to
24 reference some names, one being Jermaine Lowery due to him
25 being the codefendant in the case. And we also asked him

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1 about had he ever been to the Clover, Lake Wylie area, and
2 which he told us he had never been to Clover or the Lake
3 Wylie area, and the only thing close to that was he had a
4 relative that lived in Rock Hill, South Carolina.

5 We asked him about the day in question, and he
6 remembered the day in question, stating to us that he was
7 looking to commit an armed robbery that day. He actually
8 explained it to us: that he was looking to commit a jug. I
9 didn't know what the reference to jug was, so I actually
10 had him explain it to me that jug is an armed robbery -- or
11 a robbery of a smalltime drug dealer or someone that may or
12 may potentially have some drugs.

13 So, he stated that he was looking to commit a robbery
14 that day and could not find one, but knew that Jermaine
15 Lowery, the codefendant in this case, was looking to do
16 one. He told us that he was at the hotel on South Tryon in
17 the Charlotte area with another person by the name of Deon
18 Boyd, Terry Reed, Shawn Reed, and a white boy that we were
19 able to determine possibly was a gentleman by the name of
20 Andrew Zeiss. He said that the hotel room was in someone
21 else's name other than the people that he was, he was
22 staying with. He also said that Shawn Reed was his cousin.

23 He knew that Jermaine was going to commit a robbery
24 that day and had information of a white boy in Clover who
25 may have had some. He said Lowery did return back to the

1 hotel room with a duffle bag with red on it and said that
2 there was a bag of marijuana that was in, in the bag, and
3 that he wanted to share the marijuana. So, they all smoked
4 it that day.

5 He also said that he aided Jermaine Lowery in burning
6 the clothes and the hat that he wore in that robbery to
7 help keep him from being caught or having to wear the
8 clothes that, you know, he had on to commit that robbery or
9 helped -- needed to get rid of that. He told Jermaine that
10 since Jermaine had committed the robbery, that he needed to
11 get rid of that evidence. So, he helped him burn it.

12 He also told us that day that he was at work. That he
13 thinks he, he worked at the Exxon gas station and that he
14 was possibly at work that day. And he did also bring up
15 the fact that day that he was on crutches that day. That
16 he had injured his legs playing basketball.

17 We asked him about his cell phone because of the cell
18 phone information about calling Jermaine Lowery that day
19 and about some of the cell phone data that we had already
20 received. And at first he told us that, that the
21 information -- at first he told us that there was -- there
22 shouldn't be anything on the phone, and then he told us
23 that he let Jermaine Lowery borrow that phone that day
24 because his phone was out of service. And he also provided
25 us his pass code to the red iPhone that we seized that day