

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of General Sessions

Thomas L. Hughston, Jr., Circuit Court Judge

Appellate Case No. 2018-000561
Lower Court Case No. 2016-GS-10-02883

ORIGINAL

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SC Court of Appeals

The State Respondent,

v.

General T. Little.....Appellant.

RECORD ON APPEAL – VOLUME 1

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of General Sessions
3 _____) Case No. 2016-GS-10-02883
4 STATE OF SOUTH CAROLINA)
5 vs.) Transcript of Record
6 GENERAL THEOPHILUS LITTLE,)
7 Defendant.) DATE: February 12-15, 2018
8 _____)

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10 The Honorable Thomas Hughston

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1 THE COURT: My name is Tommy Hughston. I work as a
2 circuit judge. And I don't really know you. Tell me who
3 you are. You are going to be her assistant?

4 MR. SOWARDS: I am, Judge. My name is Whit
5 Sowards, W-h-i-t, last name is S-o-w-a-r-d-s.

6 MR. WEST: My name is Mason West.

7 MR. SCHWARTZ: Ryan Schwartz, Your Honor.

8 THE COURT: One of the weaknesses of our system is
9 how the trial judge oftentimes is not in the picture, not
10 involved with anything prior to, very shortly before a case
11 may be called for trial. And that is what I find myself
12 with in this situation in the sense that I don't know
13 exactly when it was, I think it was some time last week that
14 I definitely found out that this case was going to be before
15 me. And, of course, I got the file. And all I had in the
16 file was the indictment and the arrest warrant.

17 And then we had a little bit of -- I sent out some
18 e-mails about it and so forth and so on. And when I come in
19 this morning, I find on the computer that I've got 400 pages
20 from y'all in regard to motions, one or more motions, which
21 I had not received before in any shape, form or fashion and
22 all.

23 So it puts me at somewhat of a disadvantage. If
24 it's a serious motion that we need to deal with, we
25 certainly need to deal with it, I think, pretrial and all.

1 So I'm trying to figure out how we are going to proceed as
2 far as this matter is concerned, whether we are actually
3 going to be able to get to the trial of this case this week
4 if we've got a serious motion that has 400 pages that I need
5 to read, study and understand and digest before I rule on
6 the motion.

7 So I'm looking over there at y'all.

8 MR. WEST: Well, Judge, the majority --

9 THE COURT: What are we talking about? You want me
10 to suppress what?

11 MR. WEST: Pretty much the entirety of the case,
12 Your Honor.

13 THE COURT: That's what I thought. How long is it
14 going to take me to hear and possibly understand everything
15 that you want me to hear and understand before I make my
16 decision?

17 MR. WEST: Well, that's one of the reasons in the
18 e-mail that I addressed to you, Judge, where we might need
19 to stay this case.

20 THE COURT: Certainly might appear that way. I
21 don't know.

22 MR. WEST: Majority of the information that was
23 provided was in the form of exhibits. I simply did not want
24 the Court to have the burden of researching all the case law
25 on its own. So I --

1 THE COURT: I appreciate that. I wish -- have you
2 got it printed out already? My secretary is worried about
3 printing out those 400 pages. I don't mean to be trite and
4 everything, but we are worried about printing out those 400
5 pages up there.

6 MR. WEST: I do have everything printed out.

7 THE COURT: Good. That will help.

8 MR. WEST: I can certainly get extra copies for the
9 State and Your Honor as well.

10 THE COURT: Let's get to it. So what is it you
11 want me to suppress?

12 MR. WEST: Well, Your Honor, just to give you --

13 THE COURT: Start at the top.

14 MR. WEST: Sure. To give you a little bit of
15 background --

16 THE COURT: And I have read a little bit. I read
17 her brief that she sent me and everything and all last week
18 also..

19 MR. WEST: Sure. This case started in terms of the
20 investigation of the case with a vehicle that was in the
21 defendant's driveway.

22 THE COURT: Right.

23 MR. WEST: And there was some evidence found in
24 that vehicle that we would be arguing was obtained
25 unlawfully. And because that evidence was obtained

1 unlawfully --

2 THE COURT: I'm sorry, because that evidence?

3 MR. WEST: Because that evidence was obtained
4 unlawfully, the remainder of the evidence would have been
5 fruit of the poisonous tree. That's in summation in one
6 paragraph what I would say. Obviously, at the appropriate
7 time, we can get into the intricacies of the argument,
8 because there are several.

9 THE COURT: Several arguments?

10 MR. WEST: Several arguments for the unlawfulness
11 of the searches and seizures.

12 THE COURT: Well, okay.

13 MR. SCHWARTZ: If I may, I have an anticipated list
14 of motions that is updated late last night if you would
15 like.

16 THE COURT: Let me look at that.

17 MS. BALDWIN: I would also like a copy of that, if
18 you don't mind. I have not seen the updated.

19 MR. WEST: Judge, one of the other reasons why this
20 particular case, I believe, in addition to the voluminous
21 amount of exhibits, it's currently pending before the
22 Supreme Court of the United States, is the direct issue
23 which I believe is in this matter, which is the ability of
24 law enforcement to search a vehicle on a private driveway
25 within the curtilage of the home.

1 The oral arguments before the Supreme Court of the
2 United States were heard in January of 2018. And I believe
3 that if we in this case were to make a ruling that was
4 premature as to the direction of the Supreme Court of the
5 United States, that would be prejudicial to my client. And
6 I don't know that we can ensure the retroactivity of the
7 appropriate rule.

8 THE COURT: All right. I saw you mentioned that in
9 your e-mail or something. I am not completely aware of
10 everything about that situation. Haven't thought about it.
11 But I saw you mentioned that, I believe, in your e-mail or
12 something.

13 MR. WEST: Sure. And if you will reflect on the
14 majority of the attachments, what I did for Your Honor was I
15 simply went to the Supreme Court's website and uploaded all
16 of the briefs and arguments. That way Your Honor could
17 reflect on those just to see how pointed this issue --

18 THE COURT: I haven't read any of that. But as I
19 understand the factual situation, is that, of course, your
20 client, I believe, was the former husband of the deceased.
21 And there was some -- you know, a person of interest or
22 whatever after she was found dead and all.

23 An officer went to the home and was walking by,
24 basically, the car that you are talking about and says that
25 he saw blood in the car and whatever. And thereafter, got a

1 search warrant that revealed the evidence that we are
2 talking about. Right?

3 MR. WEST: I think that's --

4 THE COURT: That's somewhat of a thumbnail
5 recitation of the facts.

6 MR. WEST: I will agree it's thumbnail. I would
7 disagree with a lot of the captioning of how the officer was
8 entitled to the encroachment of things and how he arrived at
9 the house.

10 THE COURT: Okay. I guess that's what we will have
11 to develop factually.

12 MR. WEST: Which is, again, why I think --

13 THE COURT: So what I'm getting around to is, how
14 long do you think it's going to take us for you to put up --
15 for both of y'all to put up everything you need to put up
16 before me for me to decide the suppression issues we are
17 talking about?

18 MR. WEST: Judge, I would put it no less than a
19 full day and a half, if not two days.

20 THE COURT: Well, somebody else told me something
21 like that Friday, is the information I got.

22 MS. BALDWIN: Your Honor, I don't imagine -- and
23 Mr. Sowards is actually going to be handling the search
24 warrant issue, but I will be doing the witnesses. And I
25 don't know that that particular issue should take that long.

1 There aren't a ton of witnesses, at least, from the
2 State's -- Mr. West may have a lot of cross on those
3 witnesses, but there isn't a lot to go into. I would think
4 we would be done this afternoon with testimony.

5 THE COURT: I'm going to need to at least read and
6 try to digest everything you sent me, I guess. But anyway,
7 so sounds like, you know, a good chance of today and
8 tomorrow at least. And that would leave us Wednesday,
9 Thursday and Friday as far as the trial is concerned. What
10 do you think about that?

11 MS. BALDWIN: I mean, I think we have
12 approximately, although our witness list is about 37
13 witnesses, we managed to pare it down to maybe about 20. So
14 several of them should be quick. I think if we could start
15 tomorrow, then we should finish by the end of the week.
16 Truly, I don't know that it would go through tomorrow. And
17 if we can pick a jury maybe today and be set and ready to
18 go --

19 THE COURT: I don't know that I want to pick a jury
20 until I make a decision about these motions.

21 MS. BALDWIN: Yes, sir.

22 MR. WEST: Judge, not to interrupt, but
23 Mr. Schwartz is also going to be arguing a suppression
24 motion on some statements that were given. And the video
25 itself is about four hours. So the time constraints are

1 certainly not fabricated in this.

2 And I think that we are going to have some real
3 issues with the proper digestion of all of the issues that
4 are going to be before us.

5 THE COURT: That's what I'm about to say. It's one
6 of the problems in my system in terms of scheduling and
7 everything.

8 MS. BALDWIN: Your Honor, may I make a suggestion?
9 I also think that maybe the issue could be cured in terms
10 of the length of the trial if we, just during voir dire, ask
11 the jury if anybody has any conflicts for next week as the
12 trial may go into the next week. That could solve that
13 problem.

14 THE COURT: Well, I've got a problem next week.

15 MS. BALDWIN: Yes, sir. Sorry.

16 THE COURT: But I can get that solved whatever.
17 But let me ask you all, if we didn't get this tried this
18 week, the next time I'm available for general sessions here
19 in Charleston is the week of March the 19th. If we did all
20 the stuff we got to do in terms of these motions, and
21 decide, maybe take them under advisement and make a decision
22 about those if I didn't make those this week or whatever,
23 you know, what about the week of March 19th for that, for
24 the trial after I make a decision, assuming there would
25 still be a trial after I make the decisions?

1 MS. BALDWIN: Well, Your Honor, the State's issue
2 with that is I know there are other trials that are set for
3 first-up positions for the week of the 19th.

4 THE COURT: You do?

5 MS. BALDWIN: So we would have a problem with
6 scheduling. This case has been up on the dockets previously
7 and has been continued based on other issues. I am not
8 faulting either side for that. If we can get it done this
9 week, Mr. Schwartz suggested if Your Honor is willing to go
10 into Saturday, we could get the case resolved.

11 THE COURT: I'm willing to do it, but it presents a
12 lot of other problems when we go into Saturdays. You have
13 to have the courthouse open. And you have to have all these
14 other people here and so forth. So it's not a simple
15 matter. It's not like five of us being here.

16 MS. BALDWIN: Would it be possible for you --

17 THE COURT: Anyway --

18 MS. BALDWIN: -- to work late?

19 THE COURT: I work full-time. I start early and I
20 stay late, you know. But I don't want to abuse the jury.
21 And I don't want to abuse other people and everything
22 either, you know. It does get into that kind of situation
23 too.

24 MS. BALDWIN: Would it be possible for us to maybe
25 begin without picking a jury, begin working --

1 THE COURT: I agree. I'm just trying to get a feel
2 for it. So I guess we need to go ahead and get started with
3 the -- with whatever motions we have. And we will see. As
4 we move along, we will see how that goes.

5 MS. BALDWIN: Your Honor, if I may, I've handed
6 copies to defense. There are two briefs motion that the
7 State filed this morning. One is addendum to the search
8 warrant issue. If I may approach.

9 And the other is a brief motion in limine. I can
10 address that quickly if you would like.

11 THE COURT: Let me see what this is. What we are
12 looking at here is the State's motion in limine regarding
13 the defendant's alibi, according to Rule 5E. Anyway, no
14 alibi is what they are wanting. What's your response to
15 that?

16 MR. SCHWARTZ: If it please the Court, we were just
17 given discovery last week. And part of that was the CAD
18 report. We were getting discovery as of last week and we
19 just got the CAD report, which had times on it.

20 THE COURT: Just got the what?

21 MR. SCHWARTZ: CAD report, computer-aided dispatch
22 from the sheriff's office. And we didn't have that prior.
23 And so when we started looking at this, we didn't have an
24 accurate timeline of events what was going on. And that
25 possibly presented an alibi defense.

1 We didn't give 10 days notice because we didn't
2 know about it. As soon as we realized what was on the CAD
3 report, that we might have an alibi defense, I let the
4 Government know we have a possible defense. I have not
5 given them a list of witnesses or time frame yet, but we
6 just got this evidence. So there's no way I could have
7 complied with the ten-day rule of 5E when we just got it.

8 MS. BALDWIN: Your Honor, if I may, just to
9 clarify, they received the majority of the discovery months
10 ahead of time. It is true that they received the CAD report
11 just last week. That's when we received it. They requested
12 it. We asked for it. And we provided it to them as soon as
13 we got it.

14 As far as timeline of events, we were able to
15 construct a timeline without the CAD report. And it's my
16 understanding from Mr. Schwartz's e-mail that what he was
17 relying on is a statement that his client -- just for the
18 record, Your Honor, the client is not present in the
19 courtroom -- that his client apparently made to one of our
20 witnesses. The State's position is that we don't know how
21 that is an alibi defense at all. And also that statement
22 would be hearsay if they were to elicit it.

23 That report that he's relying on, too, was provided
24 months ahead of time. It's Deputy Biggs' supplemental
25 report. I still have no idea what their alibi is.

1 THE COURT: Well, I don't either. Anyway, I am not
2 going to rule out any alibi evidence at this point in time
3 based on what's been presented to me right now and
4 everything. I just have to take it up when it comes up
5 during the course of the trial. If there's something that
6 they want to present. And if you think it, you know, that
7 this rule should keep it out, I will have to decide at that
8 time.

9 MR. SCHWARTZ: May I approach, Your Honor.

10 This is defendant's list of anticipated motions. I
11 think the majority of them are just oral. That's just to
12 make it easy for us. Most of it is oral. Some of it is in
13 limine.

14 THE COURT: Wait a minute.

15 What I'm writing on my copy of the motion in limine
16 in regards to alibis, I am not ruling on it one way or
17 another at this time. It would be during the course of the
18 trial.

19 What's next?

20 By the way, I didn't even think about the fact that
21 the defendant is not here at this time. Do you all want him
22 here?

23 MR. WEST: We are trying to find him.

24 MR. SWCHWARTZ: He was present during jury
25 qualification.

1 THE COURT: Do you want him up here?

2 MR. SCHWARTZ: I would prefer him to be here.

3 THE COURT: So, he's out on bond?

4 MR. SCHWARTZ: Yes, sir.

5 THE COURT: Okay. I didn't know that. Get him
6 here.

7 MS. BALDWIN: This may be a good moment for us to
8 discuss whether he should remain on bond during the course
9 of the trial, Your Honor.

10 THE COURT: I only rule on what's before me. If
11 you want me to rule on something, go ahead.

12 MR. SCHWARTZ: We should get most of the oral stuff
13 out of the way.

14 THE COURT: Get him in here.

15 MR. SCHWARTZ: We are getting him in here.

16 (Whereupon, the defendant is present.)

17 MR. WEST: May I introduce you to my client, Dr.
18 General Little.

19 THE COURT: Are you General T. Little?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Have a seat. We've just
22 been discussing some pretrial matters, really, mostly
23 scheduling up to this point. No decisions have been made
24 regarding what's going to happen as far as the trial is
25 concerned or anything like that. We've just been discussing

1 basically procedural matters up to this point. But I wanted
2 to make sure that you were here also now as we go forward
3 with regard to any of this.

4 So I'm looking over this list now of 20 motions or
5 things that the defendant at this point thinks that they
6 need me to deal with at this point. So I will be glad to
7 start dealing with these at this point, if that's what you
8 all want me to do.

9 MR. SCHWARTZ: Yes, Your Honor. I guess we can
10 just go down the list.

11 THE COURT: First thing you've got on the list is
12 proposed voir dire. And, of course, I have a pretty
13 standard voir dire as far as what I ask the questions of the
14 jury. And I think most of that would be acceptable to you.
15 But there may be something extra that you want me to try to
16 cover in this. And I do expand it, particularly in regard
17 to a case of such seriousness as this.

18 So give me what you want me to consider asking
19 about.

20 MR. SCHWARTZ: I'm sure some of that is on your
21 standard list.

22 THE COURT: All right. Wait just a second. I've
23 looked over the list. And I think, you know, it's not
24 exactly what they are asking in these questions. It's a
25 list of 10 questions and all. I think I would ask pretty

1 much what they've given me.

2 MS. BALDWIN: The only objection we have, Your
3 Honor, is to No. 7 regarding viewing of graphic crime scene
4 and/or autopsy photographs. I believe the Court will be
5 ruling during the course of trial regarding those
6 photographs anyway. I don't know that it's relevant to ask
7 during voir dire, but we have no objection.

8 THE COURT: As I read that, I had also seen where
9 they are asking me to suppress and everything. But, anyway,
10 what came to mind with that is, I don't know if I was
11 sitting out there and heard that question, I don't know how
12 I would try to formulate an answer to it, not having the
13 experience of seeing anything like that.

14 I presume they haven't had any experience with
15 anything like that. I have had some experience dealing with
16 photographs and so forth. So I might be able to deal with
17 that question better. But I don't know whether a jury -- a
18 juror, a brand-new juror out there, how they would answer
19 that.

20 And I am not going to give you any clue about what
21 my feeling is about those kinds of things as far as whether
22 they should come in or not. But, anyway, all right. I see
23 what you've given me. I don't know that I will ask that
24 question directly like that. If you got some other
25 formulation you want to try to persuade me to ask, let me

1 know.

2 Everything else on there, I think I would ask in
3 some shape, form or fashion.

4 MS. BALDWIN: Does Your Honor have the State's voir
5 dire as well? It was in the trial brief I submitted to
6 you.

7 THE COURT: No, I do not. Well, I do if it's in
8 the trial brief.

9 MS. BALDWIN: Yes, sir.

10 THE COURT: Your No. 3 there, I don't ask that
11 question. I assume that the jury is going to follow the
12 law.

13 MS. BALDWIN: Okay.

14 THE COURT: So I don't ask that question.

15 MS. BALDWIN: I do believe the defense had a slight
16 objection to No. 7.

17 THE COURT: I don't ask No. 4 exactly like that,
18 but I think I cover it in another way.

19 MS. BALDWIN: Yes, sir.

20 THE COURT: What about No. 7? They had something
21 similar to that.

22 MR. SCHWARTZ: It's just our objection, it says,
23 "There may be testimony of a contentious family court
24 action."

25 We believe that's a comment on the facts. We just

1 propose to strike the first sentence and have: Have you or
2 your spouse been involved in a contentious family court
3 action?

4 MS. BALDWIN: I would have no objection to it being
5 reworded that way, or you or any of your family members
6 participated in a contentious family court action such that
7 it would affect your ability to be fair and impartial.

8 THE COURT: All right. I think I will be able to
9 craft your voir dieres where you will be satisfied with it
10 and what you got here and what you asked. I think you will
11 get everything you want me to ask, assuming we get that far.

12 All right. What's next?

13 MR. SCHWARTZ: Two, Your Honor, is our motion for
14 sequestration.

15 MS. BALDWIN: We have no objection.

16 THE COURT: All right. Motion for sequestration,
17 what about that?

18 MS. BALDWIN: We have no objection to that, Your
19 Honor.

20 THE COURT: You are going to have all your
21 witnesses -- it cuts both ways then, I guess.

22 MS. BALDWIN: Yes, sir.

23 THE COURT: Everybody is going to have their
24 witnesses out in the hall.

25 All right. What's next?

1 MS. BALDWIN: Just to clarify, Your Honor, we will
2 sequester our witnesses except the ones that are part of the
3 Crime Victim Bill of Rights. And our case agent will be in
4 the courtroom, but I believe that's standard.

5 MR. SCHWARTZ: Yes, I believe they are defined as
6 immediate family.

7 THE COURT: Okay. All right.

8 MR. SCHWARTZ: I believe the State and us are going
9 to do stipulations. We are going to stipulate to a few
10 things to try to -- for judicial economy. We will get a
11 proposed stipulation order hopefully today to you, Your
12 Honor.

13 THE COURT: I'm going to write beside that
14 "coming".

15 MR. SCHWARTZ: That will work. We will make a
16 motion to dismiss or give the appropriate jury instruction
17 for spoliation of evidence. We asked for text messages
18 between law enforcement agents. This plays into Mr. West's
19 motion to suppress search warrants. You can clearly see in
20 the interrogation room they are texting each other and
21 getting information as they are interviewing my client or
22 interrogating my client.

23 We asked for those text messages. We are told we
24 can't get them.

25 Also, CPD was on scene as part of the CAD report.

1 THE COURT: I'm sorry.

2 MR. SCHWARTZ: CPD was on scene at my client's
3 house. They had body cams at that point in time. We have
4 asked for the body cams. We are told there's no in-car
5 video and no body cameras in this case. But we know that
6 Charleston County has had in-car videos for at least 20
7 years, as I was told by their attorney.

8 We would ask for the in-car camera from
9 specifically Patrolman Colburn which we have not been
10 provided. We believe that there might be exculpatory
11 evidence on there, especially when it comes to the
12 suppression of his supposed statement.

13 So we would ask if we can't get that, the case
14 either be dismissed for violation or at least we get a
15 violation -- at least we get spoliation of evidence charge
16 if there's testimony on the record of that at trial, that
17 evidence was not turned over or was lost or destroyed.

18 MS. BALDWIN: Your Honor, I can address each one of
19 those as we go through. But, first of all, I would like to
20 point out for spoliation charge to occur, in the first
21 place, there has to be some sort of evidence that that piece
22 of evidence would be exculpatory. They would have to show
23 it was done in bad faith.

24 THE COURT: It exists to start with --

25 MS. BALDWIN: And whether it exists to start with,

1 those text messages, Your Honor, we don't know what those
2 text messages are about. Both would be referred to --
3 hopefully, Your Honor has had a chance to look at the video
4 of the statement.

5 THE COURT: I haven't looked at it.

6 MS. BALDWIN: During the course of that interview,
7 both detectives that are interviewing the defendant at the
8 beginning are also working other cases. So we don't know if
9 they are texting about the other cases, if they are texting
10 their wives, honey, I will be home soon, or what they are
11 saying. I think a text message is same as a conversation.
12 Hey, Joe, see that body over there, that sort of thing.

13 Of course, they can cross the officers on it when
14 they are on the stand. But I don't think that those text
15 messages were destroyed in bad faith. And I don't think
16 they are exculpatory.

17 As to the CPD officer, I believe that was the
18 second issue --

19 THE COURT: Well, is there anything to prevent them
20 from producing that?

21 MS. BALDWIN: To my knowledge, Your Honor, they
22 don't have those. I mean, this was over two years ago that
23 this incident occurred. I know I don't have my text
24 messages from two years ago.

25 THE COURT: You are talking to somebody that

1 doesn't text.

2 MS. BALDWIN: Yes, sir.

3 THE COURT: Okay. But --

4 MR. SCHWARTZ: This case was investigated over two
5 years ago. They provided discovery. Could have provided
6 that.

7 THE COURT: Of course, they are under an obligation
8 to produce anything that's exculpatory that they have in
9 their control. And that's a constitutional right. So if
10 they haven't done it, then they are supposed to do it. And
11 you have what relief is available to you when you discover
12 it. But if they say that they don't have this stuff and
13 everything, I don't know if there's anything I can do to
14 make them produce it at this time.

15 MS. BALDWIN: And I don't know that there's any
16 evidence that it would be exculpatory.

17 THE COURT: What? But I'm saying if there is, you
18 are supposed to disclose it.

19 MR. WEST: I think then the appropriate way to
20 address the record in this case is proffer some of their
21 testimony about what was being texted.

22 One of the issues with the search warrant is how
23 the probable cause was relayed. It is certainly multiple
24 layers of hearsay. And if this was in a text message how
25 the probable cause was --

1 THE COURT: We will get all that as we go through
2 the pretrial motions. So I just think I have to just leave
3 this one with a question mark beside it and everything. And
4 we will see what happens as I learn more about it.

5 MR. WEST: Sure. And specifically in regards to
6 the City of Charleston's body cameras, I believe that that
7 would be easily accessible with the appropriate motions to
8 compel.

9 MS. BALDWIN: Your Honor, I can address that as
10 well. Mr. Schwartz was actually incorrect in saying that
11 they all had body cameras at the time of the incident. I
12 know several officers in December 2015 -- excuse me -- did
13 not have body cameras at the time. CPD had started to issue
14 it, but they had not issued them to every officer.

15 Furthermore, we don't know the identity of the
16 officer that was there at the scene at the time. I asked
17 Officer Colburn. He doesn't recall. What he has told me is
18 that that officer didn't really even go on the property. He
19 was just there to back him up.

20 Certainly -- and I've had my investigator ask to
21 see if there were any further reports from that officer,
22 anything from CPD from that evening. She's asked twice, she
23 said that there's nothing.

24 MR. WEST: Judge, the identity of the officer, at
25 least one of the individuals is listed by his call number on

1 the CAD report. That would certainly be easily discoverable
2 by the State. And we would ask that they produce his name
3 and any reports that he would have produced, including
4 whether he was in possession of a body camera at that
5 time.

6 MR. SCHWARTZ: And if I may, Your Honor, I believe
7 the record is going to show that I said if they had in-car
8 cameras which were activated with blue lights. And that is
9 true that they had that for about 20 years. I didn't say
10 body cameras. I know that CPD got body cameras phased in
11 about 2015 and sheriff's office was after that.

12 MS. BALDWIN: My understanding from Officer Colburn
13 is that there is no in-car video. And I asked him
14 specifically about that and checked with the County as well.

15 THE COURT: Again, they are under an obligation to
16 reveal and turn over to you anything of an exculpatory
17 nature. So we move on.

18 MR. WEST: If I may, for the record, because I do
19 believe this is important for these particular issues, if we
20 are challenging the right of the State to even be on the
21 property of my client, then how they arrived there and when
22 they arrived there has potential to be exculpatory.

23 THE COURT: How they arrived there and when they
24 arrived there? Don't you know when they arrived there?

25 MR. WEST: Well, that is actually one of the

1 questions that we have in regards to the veracity --

2 THE COURT: I'm not sure what you mean by how they
3 arrived there.

4 MR. WEST: We know they arrived in a motor vehicle,
5 Your Honor, but that is the extent of what we know.

6 THE COURT: Well, I appreciate your position. And
7 maybe I will learn more about it as we go through it. But
8 like I say, all I can say at this time is I think you are
9 entitled to anything that would help your case. But, you
10 know, that's about the best I can do at this point and
11 everything.

12 All right. Next one then is No. 5, motion to keep
13 the State from referring to the deceased as the victim. I
14 think that would be a good thing to do to try to get your
15 witnesses to not use the term "victim", but they can use the
16 term "deceased". That's what the person is, you know. I
17 think that is good designation rather than using the word
18 victim.

19 MS. BALDWIN: I believe that the case law and
20 statutes delineate the fact that victim is merely a label.
21 It's not prejudicial to the defendant.

22 THE COURT: You can show me that. But I think it
23 is, myself. Maybe greater authority than me says no.

24 MS. BALDWIN: I believe it has been litigated and
25 it has been determined that victim is merely a label. It

1 doesn't mean that that person is guilty. Just something
2 that we use to determine who that person is.

3 THE COURT: Anyway, I think it's okay to refer to
4 General Little as the defendant. He is the defendant, you
5 know. There's no question that he is the defendant. And I
6 think that it is okay to refer to him as the defendant. So
7 I deny your motion to not have him referred to as the
8 defendant, if they want to refer to him as that. But we
9 will get back to that. We are not going to take up time
10 there. You can pursue me otherwise that they can talk
11 about victim or whatever. Apparently, she really is a
12 victim. The only question is whether the defendant is
13 responsible for that or not.

14 MS. BALDWIN: Yes, sir.

15 THE COURT: But anyway, motion for production of
16 rap sheets and relying material for testifying witnesses.

17 MS. BALDWIN: I produced for Mr. West, and I
18 believe Mr. Schwartz as well, the criminal histories of the
19 lay witnesses. The only person that had any criminal
20 history at all was the deceased, the victim, Mrs. Little.
21 She had a 1986 fraudulent check. And I don't think it's
22 relevant for this trial.

23 MR. SCHWARTZ: And we are not planning on using
24 that at all.

25 THE COURT: So we don't have any problem with No. 6

1 then, right?

2 MR. WEST: Judge, the only thing I would like to
3 additionally add to the record is, I think Lyle would cover
4 any bad acts that would be testified to in regards to the
5 family court issues in this case.

6 Again, the State's position is that one of the
7 impetuses of the crime was that there was a contentious, in
8 their own words, family court battle going on. Then that
9 evidence or testimony needs to be limited in the way that
10 the testimony is presented.

11 THE COURT: I'm not sure I understand what you are
12 saying. You get to the point about whether or not any
13 evidence is going to come in concerning the family court
14 proceeding as it relates to the deceased and the defendant,
15 right?

16 MR. WEST: That's correct, Your Honor.

17 THE COURT: Well, you know, I will have to rule on
18 that, but I would think -- you know, my inclination now
19 would be that certainly that would come in. Now, how much
20 and the extent of it and all that sort of stuff, I think
21 that would be relevant to the State's case based on what I
22 know at this point and everything. But that type of
23 evidence would come in. So I will deal with it when it
24 comes up.

25 But rap sheets, there's no problem about that.

1 Just whether or not any of the family court evidence is
2 going to come in.

3 MR. WEST: Or the scope thereof.

4 THE COURT: What?

5 MR. WEST: The scope thereof.

6 THE COURT: That's what I said. Something about
7 that is going to come in.

8 All right. Now, Rule 404(b) S-C-R-E-E, what are
9 you talking about there?

10 MR. SCHWARTZ: Your Honor, sorry, this was done
11 late last night, early this morning. I think that's been
12 dealt with in your previous ruling on the Lyle material.

13 THE COURT: Okay. I haven't ruled. I'm just
14 telling you how I feel at this point about that, what my
15 inclination would be.

16 Same thing for No 8 then also?

17 MR. SCHWARTZ: Yes, Your Honor. And No. 9 is
18 Giglio.

19 THE COURT: What is that? I don't know what that
20 is.

21 MR. SCHWARTZ: That is a case that was in front of
22 the Supreme Court, obviously, that the State must turn over
23 any kind of evidence of their testifying witnesses who are
24 with law enforcement as to untruthfulness.

25 They have provided one instance from one of their

1 officers from his HR file where he had gotten suspended for
2 a couple of days for lying. We would ask that the other --
3 we would ask that we be allowed to examine the other files
4 from the other officers who are going to testify. I don't
5 think that the State is hiding anything.

6 But in a duty to represent my client zealously, I
7 believe it's all right under Giglio to review those files.
8 And if there's anything exculpatory in there, something goes
9 forward on truthfulness or discipline, we can have a ruling
10 at that time.

11 If Your Honor is not inclined to have them turn
12 over their employment records, then we would ask that Your
13 Honor be allowed to look at them, and then turn over
14 anything that you may find exculpatory to us.

15 THE COURT: What's your response?

16 MS. BALDWIN: Your Honor, we've provided -- there
17 is one officer that there would be a Giglio issue on. We
18 provided the information regarding that.

19 Regarding the other officers, there just isn't any.
20 I believe the County maintenance records regarding that.
21 They notify our office if there is an issue. That is the
22 only officer we have been notified about. So I think we've
23 complied.

24 MR. SCHWARTZ: Your Honor, I don't disagree that
25 they have complied with the one officer. We are entitled to

1 see --

2 THE COURT: How many officers are you talking
3 about?

4 MR. SCHWARTZ: At least three detectives, Colburn
5 is four.

6 THE COURT: I'm really asking you.

7 MS. BALDWIN: Several all officers, Your Honor. I
8 couldn't count them off the top of my head. I would say
9 five or six, including the officer we already turned the
10 information over on. Let me repeat, if we had any
11 indication -- and I believe the County is actually one of
12 the better agencies regarding this -- if there was any
13 indication that there was any Giglio material, they would
14 have informed us. And we would, of course, inform the
15 defense. But, Your Honor, there isn't any. So I would hate
16 to waste the Court's time for something that just doesn't
17 exist.

18 THE COURT: Okay. At this point all I'm going to
19 ask you to do is to ask your folks to review it one more
20 time as far as any of the officers that you may present in
21 the case to see if there's anything that should be turned
22 over to them under this case.

23 MS. BALDWIN: Yes, sir.

24 THE COURT: Review it one more time and see if
25 there's anything that needs to be turned over to them in

1 this case.

2 MS. BALDWIN: Yes, sir.

3 MR. SCHWARTZ: I believe No. 10 was taken care of.
4 We do have their expert witness's CV. So that's not an
5 issue.

6 No. 11, there's a lot of -- I say a lot. There's
7 written reports where the officers are commenting on my
8 client's demeanor either on the cell phone, on the phone or
9 in person. We would ask that as to when they are testifying
10 in trial, they are not allowed to express their personal
11 opinion as to whether he was not taking it seriously or
12 being arrogant, is what they called him when they are
13 talking to other witnesses. We would ask commentary on his
14 behavior be left for the jury, if they want to play the
15 statement, if it gets in or not. But we would ask they not
16 be allowed to make comments on that.

17 THE COURT: Do you know what he's talking about?

18 MS. BALDWIN: Your Honor, they do say he was calm.
19 I believe that they, the officers, as well as any other lay
20 witness, would be able to comment on their observations
21 regarding the defendant's demeanor at the time. It's a
22 present sense impression. If they do say something
23 regarding -- that Mr. Schwartz thinks is speculation
24 regarding what was going on in the defendant's head, of
25 course, they can make that objection at the appropriate

1 time.

2 THE COURT: Again, I don't know that I can rule on
3 this completely. They're supposed to testify about facts
4 and all, although they can get beyond that to a certain
5 extent and testify about, perhaps -- depends how it comes
6 out and what they are saying as far as, you know, their
7 opinion about his demeanor or manner or anything like that,
8 you know. I think that that possibly can come in. So I
9 would just say I'll have to deal with any testimony and any
10 objections to it as it comes up. Okay?

11 What about -- we talked a little bit about family
12 court stuff, family court records.

13 MR. SCHWARTZ: Yes, Your Honor.

14 THE COURT: Do you need to introduce family court
15 records?

16 MS. BALDWIN: Your Honor, the only family court
17 records that we intend to introduce physically are a rule to
18 show cause that was served on the defendant, a member of the
19 defendant's household the day of the incident, showing that
20 he owed a significant amount of back alimony and the proof
21 of service regarding that. There may be some testimony
22 regarding wage garnishment. We don't intend to go into that
23 in depth. We are not going to produce any records regarding
24 that.

25 And there may be testimony regarding that they were

1 divorced years ago. But I don't plan on introducing, say,
2 their divorce agreement or anything regarding that. As I
3 said, the only physical documents I'm going to introduce are
4 the rule to show cause and proof of service.

5 MR. SCHWARTZ: And I think, Your Honor, our concern
6 was just that I believe there was an affair, which was the
7 cause for the breakup. We just don't want to get into that.
8 We want to limit. We don't think that's necessary. It's
9 prejudicial.

10 MS. BALDWIN: I don't know how prejudicial it is
11 regarding the actual incident, but I don't plan on eliciting
12 a significant amount of testimony regarding that.

13 THE COURT: So I'm dealing with a motion to exclude
14 family court records. Why don't you show him the records
15 you intend to introduce.

16 MR. SCHWARTZ: I've seen them. It's just an
17 affidavit of service and the rule that was generated by the
18 clerk's office.

19 THE COURT: So you don't really contest that?

20 MR. SCHWARTZ: No, sir.

21 THE COURT: Okay. So anything more than that you
22 are going to do?

23 MS. BALDWIN: Not at the time, Your Honor.

24 THE COURT: So if you think of anything else, let
25 us know in advance and let him know so we can deal with it.

1 Okay? But at this point, I think I would let you introduce
2 the rule to show cause and proof of service and that sort of
3 thing. Okay?

4 MR. SCHWARTZ: Are we on No. 14, Your Honor?

5 THE COURT: We are on No. 14.

6 MR. SCHWARTZ: We filed a motion for a *Jackson v.*
7 *Denno* hearing regarding the statement.

8 THE COURT: And I haven't looked at that or heard
9 that or anything. So we will have to deal with that at some
10 point.

11 Let's skip over that one then and go on to cell
12 phone records, triangulation maps and jail calls and
13 visits.

14 MS. BALDWIN: I think Mr. Sowards is going to take
15 this one, Your Honor.

16 THE COURT: Okay.

17 MR. SOWARDS: Your Honor, they obtained -- law
18 enforcement obtained the defendant's cell phone records.
19 They were able to obtain his cell phone number. They
20 obviously had his name and got a search warrant, sent to
21 Verizon to obtain cell data records, which shows tower
22 location, phone calls that were made, the times. And with
23 that information, we have agent with the FBI who will
24 testify as to where the phone was located based on those
25 records.

1 THE COURT: And what does all of this show?

2 MR. SOWARDS: It shows his location. Shows phone
3 calls that he received, phone calls that were made to his
4 phone. It doesn't necessarily show where the defendant was
5 located, but it shows where his phone was located at given
6 times and --

7 THE COURT: One of those locations you think has
8 some relevancy as far as the case is concerned?

9 MR. SOWARDS: We do, Your Honor, particularly
10 because the defendant provided a statement. And during that
11 statement, he provided a written timeline, which we think
12 conflicts with what the cell data records show. And then
13 subsequently, the defendant provided a timeline to police
14 through his attorney. And so we think it's relevant to show
15 deceit, to show his location.

16 THE COURT: Okay. All right.

17 MR. SOWARDS: And I think the defense has an
18 objection to that in part because of the *Denno* issue, which
19 we may want to address the cell phone records after the
20 *Denno*.

21 THE COURT: All right. So anything y'all want to
22 say in response to that at this point?

23 MR. WEST: Yes, Judge. I think that this
24 particular motion morphs into several. I agree with
25 Mr. Sowards that a lot of that testimony is going to be

1 dependent on what is said and admissible under the *Denno*
2 hearing. But also, the search warrants for any of the
3 phones is based on the same probable cause issue that I had
4 for the original search warrants that we've already
5 semi-addressed.

6 Also, there seems to be in the discovery only a
7 partial disclosure of some of the phone records. We know
8 that some of those search warrants were done for Ms.
9 Kimberly Little. And the records, the reports indicate that
10 Kimberly Little's phone was dumped. Her records were not
11 disclosed in the same manner as my client's.

12 I believe we do have Barbara Little's triangulation
13 or location, her phone. But we do not have those records in
14 the same manner and form as those provided for other
15 clients.

16 THE COURT: You think you are entitled to that
17 somehow or another?

18 MR. WEST: I believe that they are going to have an
19 expert testify based on some of the reports, that we need to
20 have full access to all of the reports.

21 MR. SOWARDS: I think specifically to Kimberly
22 Little, law enforcement obtained her cell data records which
23 were disclosed and turned over to the defendant. But her
24 actual phone was not analyzed in the same way that the
25 defendant's was. Typically, what they do is they got to

1 plug it into a device which downloads the contents of the
2 phone. I don't believe that was done with Kim Little's
3 phone. They obtained her records. They do have the cell
4 data dump for Barbara Little, who is the victim.

5 THE COURT: Okay. What about the jail call visits?

6 MR. SOWARDS: Judge, we don't intend to introduce
7 jail call visits, jail call recordings or video.

8 THE COURT: Okay. So that's taken care of. Again,
9 I am not going to suppress the records until I learn more
10 about it and see what the situation is.

11 All right. We will move to No. 16.

12 MS. BALDWIN: I believe we addressed this earlier,
13 Your Honor, regarding the lay witnesses testifying to the
14 defendant's demeanor. It's the same thing with the officer.
15 I'm assuming this is something Your Honor will have to take
16 up as we go through testimony.

17 THE COURT: All right. So what's *Franks v.*
18 *Delaware*? What is that?

19 MR. WEST: I think *Franks v. Delaware* goes into,
20 again, the establishment of probable cause from the
21 beginning and the swearing of the affidavits of law
22 enforcement.

23 THE COURT: All right. Then motion to suppress
24 family and defendant's car and home. Again, that's --

25 MR. WEST: Search warrant issues, Judge.

1 THE COURT: And then --

2 MR. WEST: No. 19, Ms. Baldwin had discussed the
3 ability to potentially proffer the testimony of the
4 pathologist prior to calling her. Rather than dealing with
5 that at pretrial, obviously, we will defer to Your Honor on
6 his preference for this. But we believe as long as she is
7 proffered beforehand, then we would be able to address any
8 of the gruesome photo issues for the autopsy.

9 We would just reserve that right to be able to
10 proffer her testimony prior to her taking the stand. And we
11 would need to schedule accordingly. That way, we wouldn't
12 interrupt the flow of the trial.

13 MS. BALDWIN: I believe we can take it up at the
14 time that we call the witness, Your Honor. I have just
15 provided Mr. West with a copy of the photos overall,
16 including the nongruesome photos that the State plans on
17 introducing during trial. So he can determine which ones he
18 has an objection to and which ones he does not. I believe
19 the pathologist can explain why certain pictures are helpful
20 in her determining the manner and cause of death. And
21 that's what the case law says.

22 I've tried to limit the number of photographs that
23 we have overall. Regarding crime scene photos, there were
24 over 400 taken. I think there are less than 100 of them
25 used. And that's including --

1 THE COURT: I'm going to put down this, that we are
2 going to do this nonjury as far as anything before any
3 photographs come in.

4 MS. BALDWIN: Yes, sir. And at the time when we
5 call our pathologist, I will bring it to the Court's
6 attention.

7 THE COURT: So we will deal with that nonjury
8 first. All right. What's the next one? Motion to suppress
9 testimony from -- you intend to --

10 MS. BALDWIN: No, sir.

11 THE COURT: We are not going to have that?

12 MR. WEST: That takes care of that.

13 THE COURT: Okay. I'm getting a sense of a preview
14 of things anyway. This is good. So I guess we can take a
15 break now and then start dealing with what y'all think I
16 need to deal with as far as hearing the motions to suppress
17 based on bad search. Is that it?

18 MR. WEST: That's correct, Your Honor. And we
19 would just ask for some guidance on what your preferences
20 are on addressing each of these issues. If you believe that
21 it would be more prudent to address the *Denno* issue before
22 the search warrant issues, we can certainly do that.

23 I do realize that there's going to be -- you know,
24 majority of the time spent during that motion will be
25 actually viewing the video itself, unless you want to do

1 that in-camera. Again, with scheduling constrictions here,
2 this is sort of where we probably need to address how to
3 move forward.

4 THE COURT: What do you want to say?

5 MS. BALDWIN: If I may suggest that we actually
6 address the search warrant issue first, because that may --
7 I think depending on how the Court rules, the State may be
8 appealing the case. I don't think it will be an issue
9 personally. But in case it does go that way, we may appeal.
10 So I think that would be a good idea to address that right
11 off the bat. So if Your Honor does agree to suppress it, we
12 can address that.

13 THE COURT: Okay.

14 MR. SCHWARTZ: One thing that did not make it on
15 here, but we did file a motion in our brief, is to suppress
16 the clothing taken after Miranda with no search warrant as
17 well. But I think the suppression hearing for the statement
18 will parley into the suppression issue of the clothing and
19 the ring and the receipt that were found subject to that
20 search.

21 MS. BALDWIN: I do want to clarify regarding that
22 statement, Your Honor. I believe it was mentioned that it
23 was four hours. I believe it's only three. And a lot of
24 that is him sitting in a room by himself. So there's not
25 back and forth between the detectives and him for all of

1 that time, just for Your Honor's information.

2 THE COURT: All right. So now I'm still not clear
3 exactly how we are going to proceed and everything. Y'all
4 tell me how y'all want -- what we are going to do when we
5 start back in 10 or 15 minutes.

6 MR. WEST: Judge, if I may, I believe that we need
7 to secure the availability of some of the witnesses and just
8 double check some of who had --

9 THE COURT: How much time do you want to do that?
10 When do you want to start back?

11 MS. BALDWIN: Your Honor, if we could take a lunch
12 break and start back with testimony regarding the search
13 warrant, I think that would be the most useful.

14 THE COURT: That will give you time to organize,
15 and me to organize my thoughts. That's fine with me. What
16 time do you want to come back?

17 MS. BALDWIN: 1:30.

18 THE COURT: 1:30 is fine with me. I'll get any
19 materials you all want to give me, whatever time you want to
20 give me. Understand I'm starting basically with a clean
21 slate as far as all of this is concerned.

22 MS. BALDWIN: Your Honor, at this time, before we
23 break for lunch, could we address the issue of the defendant
24 remaining out on bond?

25 THE COURT: Yes.

1 MS. BALDWIN: It's the State's position he should
2 not remain out on bond. He's got connections all up and
3 down the East Coast. I believe he's retained at least one
4 lawyer in the past. So he may have the means to flee.

5 He obviously wasn't here at the beginning of this
6 hearing. So we would ask that he be put -- be held during
7 the trial.

8 THE COURT: Okay. I appreciate that.

9 Mr. Little, I want you to understand, I'm going to
10 leave you out. Unless something changes, I'm going to let
11 you stay out on the bond that you've been out on at this
12 point. But if you are not here when we are going to be
13 trying the case, the trial will go on in your absence. Do
14 you understand that?

15 THE DEFENDANT: I understand that, Your Honor.

16 THE COURT: So you have an obligation to be here:
17 And if you are not here, the trial is going to go on in your
18 absence. I could put you in jail, but I am not going to do
19 that on your promise to be here so we can continue with the
20 trial. Do you understand that?

21 THE DEFENDANT: I promise to be here.

22 THE COURT: Good. Thank you very much.

23 MS. BALDWIN: Thank you, Your Honor.

24 MR. SCHWARTZ: Thank you, Your Honor.

25 THE COURT: All right. I appreciate y'all being

1 here. I do try to be on time so I appreciate it when y'all
2 are on time. By the way, we may have some people here, I
3 understand somebody from a class of some sort and
4 everything. We just have been going over pretrial matters
5 this morning. And that's all we are going to be doing this
6 afternoon is dealing with some motions, couple different
7 types of motions, I believe, and everything.

8 So I don't know whether that will be something
9 uplifting or disappointing for you. But, anyway, this is
10 kind of a -- we've got a lot of pretrial matters to deal
11 with in regard to this. The lawyers know and I told him
12 earlier, but I don't know whether the observers know or not,
13 but one of the weaknesses we have -- I say weaknesses in our
14 system -- is oftentimes trial judges in South Carolina don't
15 find out about cases that they are going to have to deal
16 with until -- well, like in this case, the latter part of
17 last week. And, really, all I found out at that time was
18 what's in the warrant and what's in the indictment.

19 And then Friday, about Friday afternoon or so, when
20 I was getting ready to leave, I get an e-mail about pretrial
21 motions and so forth that are involved in this case.

22 So I'm trying to educate myself and the lawyers to
23 help educate me in regards to things that they think I need
24 to take up and decide before we get to the actual trial of
25 the accident. So that's the background that we have now.

1 So I guess, Solicitor, I guess you are going to go
2 first in regard to putting up your witnesses that you think
3 justify or in opposition to the motion. Is that the way we
4 are going to do it?

5 MS. BALDWIN: I believe so, Your Honor. I will be
6 handling the majority of the witnesses. Mr. Sowards is
7 actually going to be arguing it, to bring it to the Court's
8 attention. Also, there was a brief matter on another issue
9 we addressed earlier about the victim being referred to as a
10 victim. I just wanted to refer Your Honor to the Victims'
11 Bill of Rights that defines what a victim is.

12 THE COURT: Let me look at it.

13 MS. BALDWIN: C(2).

14 THE COURT: I agree that the victim is defined in
15 this with that and everything. But I still don't know that
16 speaks directly to the issue that we have. Any prejudice in
17 regard to referring to the deceased in the case as a victim,
18 you know, there's no question -- again, I thought about
19 this, there's no question that -- apparently, there's no
20 question that at least at this point, she was a victim of an
21 unlawful act.

22 The real question in this case, of course, is
23 whether the defendant is the one that's responsible for it
24 or not. And we will certainly make that clear to the jury,
25 that that's what the issue is. So I don't think I can

1 prohibit them using the term "victim" at this point.

2 MR. SCHWARTZ: Your Honor, we just move -- that's
3 fine. We just ask it not be excessive to exacerbate the
4 emotions and so forth.

5 THE COURT: If you think it's getting prejudicial
6 and all, you raise that issue and I will deal with it at
7 that time. But I am not going to prohibit it at this
8 point.

9 MR. SCHWARTZ: Yes, Your Honor.

10 MS. BALDWIN: I don't anticipate it being
11 excessive.

12 THE COURT: All right. Go ahead. Call your first
13 witness.

14 MS. BALDWIN: Thank you, Your Honor. The State
15 calls Officer Matthew Colburn.

16

17 MATTHEW COLBURN

18 having been duly sworn, testifies as follows:

19 THE CLERK: State your name and spell your last,
20 please.

21 THE WITNESS: Matthew C-o-l-b-u-r-n.

22 THE COURT: Spell that again for me.

23 THE WITNESS: C-o-l-b-u-r-n.

24 THE COURT: Okay.

25

1 DIRECT EXAMINATION

2 BY MS. BALDWIN:

3 Q. Good afternoon, Deputy Colburn. Just briefly,
4 where do you work?

5 A. Charleston County Sheriff's Office.

6 Q. In what capacity?

7 A. Deputy sheriff, ma'am.

8 Q. Did you respond to a call at 2317 West Palmer Drive
9 on September 22nd of 2015?

10 A. Yes, ma'am.

11 Q. And what did you do when you got to West Palmer
12 Drive?13 A. Met up with fellow Deputy Hasolet (ph) and a City
14 of Charleston police officer. At that point, we entered the
15 residence to investigate a possible death.

16 THE COURT: Who did you meet there?

17 THE WITNESS: Deputy Hasolet and a City of
18 Charleston Police Department officer.

19 Q. You went into the residence?

20 A. Yes, ma'am.

21 Q. What did you see inside?

22 A. Upon entering the residence, performed a protective
23 sweep to locate any persons. Immediately we observed a
24 large pool of blood on the floor and on the walls of the
25 foyer.

1 Q. And why did you go inside the house?

2 A. It was reported of a possible deceased party.

3 Q. Did you find the deceased party?

4 A. Yes, ma'am.

5 Q. Did you also go to another residence that evening?

6 A. Yes, ma'am.

7 Q. And what other residence did you go to?

8 A. It was 223 Burnham Court in the City of Charleston.

9 Q. And what was your purpose for going there?

10 A. I was instructed to make contact with a gentleman
11 by the name of General Little for the detectives office.

12 Q. And what capacity? When you say for the detective
13 office, what do you mean?

14 A. To make contact with him. The detectives wished to
15 speak with him.

16 Q. So you were just to go to his house and make
17 contact with him?

18 A. Yes, ma'am.

19 Q. What did you do when you arrived at the house?

20 A. Upon my approach, I observed a silver Toyota
21 Sequoia SUV partially parked in the driveway, in the grass,
22 which kind of struck me as odd. I exited my vehicle after
23 parking it to the left side of the residence. Walked up to
24 the driveway and checked the Toyota Sequoia. And there was,
25 I believe, two other vehicles that were in the driveway.

1 Checked them to make sure there were no people inside the
2 vehicle, for officers' safety reasons.

3 Q. And when did you observe the Sequoia and how it was
4 parked?

5 A. Upon my approach of the residence, coming from the
6 right side to the left.

7 Q. You could see it from your car?

8 A. Yes, ma'am.

9 Q. What else did you notice about the Sequoia besides
10 how it was parked?

11 A. I observed the front passenger side window was
12 down.

13 THE COURT: When you say the car was parked in an
14 odd fashion, what do you mean by that?

15 THE WITNESS: It was half in the driveway and half
16 in the yard of the residence, sir.

17 THE COURT: What kind of -- can you describe the
18 driveway? Was it like a concrete -- all concrete? Was it
19 one track over here, one track here with grass in the
20 middle? Tell me what you are talking about as far as a
21 driveway. Do you remember?

22 THE WITNESS: Yes, Your Honor. It was a concrete
23 driveway. It was -- appeared to be wide enough to hold two
24 vehicles at a time.

25 THE COURT: So was it half off the right-hand side

1 or half off the left-hand side?

2 THE WITNESS: The right-hand side facing the
3 residence, sir.

4 THE COURT: And that was the side that was nearest
5 the residence.

6 THE WITNESS: Correct.

7 MS. BALDWIN: And if I could get this marked as a
8 Court's exhibit.

9 (Court's Exh. 1, Photograph, was marked for
10 identification.)

11 BY MS. BALDWIN:

12 Q. I'm showing you Court's Exhibit 1. What is this?

13 A. This is a photograph of the vehicle in question
14 that I observed as I approached the residence.

15 MS. BALDWIN: Your Honor, I can put this up on the
16 screen for you.

17 BY MS. BALDWIN:

18 Q. Deputy Colburn, you can mark -- that's a smart
19 screen, so you can mark on there.

20 Which side did you initially observe the window and
21 the car on; which side of the house were you, or driveway?

22 A. Upon my approach and coming this way, driving
23 through the street, passed the house.

24 Q. Okay. And then where did you park?

25 A. It would be back this way on the side of the

1 driveway.

2 Q. Okay. And so what did you do?

3 THE COURT: You marked it. You first saw it on the
4 passenger's side as you were coming down the street; is that
5 what -- is that a fair statement?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: And then you pulled into the driveway
8 and sort of parked to the left of it?

9 THE WITNESS: I pulled past the driveway. I didn't
10 pull into the driveway itself.

11 THE COURT: You pulled past the driveway and came
12 up on the left-hand side.

13 THE WITNESS: Yes, sir.

14 BY MS. BALDWIN:

15 Q. Okay. Why did it strike you as odd, how it was
16 parked and the window being down?

17 A. It wasn't normal to see a vehicle having a distinct
18 driveway parked the way that it was.

19 Q. And how did you clear it?

20 A. Just approached looking into the windows itself.

21 Q. Did you open any doors?

22 A. No, ma'am.

23 Q. Did you touch anything?

24 A. No, ma'am.

25 Q. And what did you see when you looked in the window?

1 A. I observed on the front passenger's side with the
2 downed window that the center console was lifted up. And it
3 was the type that lifted to the right-hand side. There was
4 a dark stain on there that appeared it could have been dried
5 blood. And there was also a burgundy hand towel on the
6 front passenger seat.

7 Q. Did that towel stick out to you for any reason?

8 A. It did, as there were towels at the crime scene
9 itself that were used to try to clean up the crime scene.

10 Q. And you observed that when you were out there
11 earlier?

12 A. Yes, ma'am.

13 Q. What else did you do?

14 A. As I actually cleared the vehicles, the other
15 vehicles that were there, I was coming back to the Sequioa,
16 clearing that one when I observed those items. And
17 Mr. Little exited my residence. It drew my attention to
18 him. And I made contact with him on the porch.

19 Q. Did you do anything further with the vehicle?

20 A. No, ma'am.

21 Q. What was your interaction with the defendant?

22 A. I made contact with him, advised that I was there
23 as the detectives wished to speak to him at our law
24 enforcement center, and asked if he would come with me.

25 Q. Did you eventually convey the information what you

1 saw in the car to another officer?

2 A. Yes, ma'am.

3 Q. Did you tell the defendant what you saw?

4 A. No, ma'am.

5 MS. BALDWIN: Court's indulgence.

6 I have no further questions. Please answer any of
7 Mr. West's.

8 CROSS-EXAMINATION

9 BY MR. WEST:

10 Q. Officer Colburn, can you tell me a little bit about
11 your work history?

12 A. I've been employed with the Charleston County
13 Sheriff's Office 13 years; nine years of that as a patrol
14 deputy.

15 Q. How about the other?

16 A. Working at the detention center.

17 Q. So you started at the jail?

18 A. Correct, sir.

19 Q. Have you always been with Charleston County?

20 A. Yes.

21 Q. Ever have any agency transfers?

22 A. No, sir.

23 Q. And the reports that you've written in this case,
24 are they true and accurate as the events, how they occurred
25 that night?

1 A. Yes, sir.

2 Q. Are they complete?

3 A. Yes, sir.

4 Q. Would you like to at this time supplement or add
5 anything from those reports from what you would like to
6 testify to today?

7 A. No, sir.

8 Q. Your reports indicate that you initially went to
9 the decedent's home, but you were later instructed to go to
10 223 Burnham Court. Who instructed you?

11 A. It was either my supervisor at the time, Sergeant
12 Newburg or one of the detective supervisors.

13 Q. You think that would be an important piece of
14 information to document in your report?

15 A. No, sir.

16 Q. Why?

17 A. I was instructed to go by a supervisor.

18 Q. Do you know if that supervisor was able to deliver
19 a report as part of the discovery of this case?

20 A. I am not certain.

21 Q. When you went to 223 Burnham Court, my client's
22 address, did you have a search warrant at that time?

23 A. No, sir.

24 Q. At that time, did you consider General Little a
25 suspect in this case?

1 A. No, sir.

2 Q. Was it explained to you why you were being
3 instructed to locate him?

4 A. I believe -- the supervisor, detectives were
5 advised he was supposed to be coming to the crime scene
6 itself to speak with them and he failed to show.

7 Q. So all you know about General Little was that he
8 didn't show up?

9 A. Correct.

10 Q. Did you have any other identifying information
11 about him?

12 A. Only other thing that was provided to me was from
13 Kimberly, was that Mr. Little usually drives a silver Toyota
14 SUV.

15 Q. So Kimberly told you that?

16 A. Correct.

17 Q. Where is that in your report?

18 A. It is on page 3, second line.

19 Q. Okay. When Kimberly told you that he drove a
20 Toyota Sequoia, what was the reasoning for documenting what
21 type of vehicle he had?

22 A. The only reason was to notate that that was the
23 vehicle he drove. And if I was to go to his residence, if
24 that vehicle was there, obviously, he potentially was home.

25 Q. If you had his addresses, why did you need what

1 type of car he drove?

2 A. Double verifications.

3 Q. Double verifications? Can you clarify what you
4 mean by that?

5 A. That if there's a vehicle that a person is known to
6 drive and if it's at that location, there's a good
7 possibility they are there.

8 Q. Do you know if anybody else had access to that
9 vehicle?

10 A. No idea, sir.

11 Q. Is that something you would have investigated as
12 part of your role in this case?

13 A. No, sir.

14 Q. Were you instructed that this was a private
15 residence?

16 A. Was I instructed it was a private residence?

17 Q. Were you aware that this was a private residence
18 that you were going to, 223 Burnham Court, my client's
19 home?

20 A. No. I was only aware that it was your client's
21 residence, yes, sir.

22 Q. Were you under the impression this was private
23 property?

24 A. Obviously, yes, sir.

25 Q. So this is not public property that anybody could

1 just enter?

2 A. Correct.

3 Q. Were you advised when you went to 223 Burnham Court
4 that General Little would be armed and dangerous?

5 A. Don't believe so, no, sir.

6 Q. So you had no information to believe he had a
7 weapon of any kind at that point in time?

8 A. No, sir.

9 Q. You were at the crime scene, correct?

10 A. Correct.

11 Q. And by and through your observations at the crime
12 scene, you realized that this was not a shooting, didn't
13 you?

14 A. No, sir.

15 Q. So did you have any reason to believe that a gun
16 was ever involved?

17 A. Wouldn't know. Didn't know at that time.

18 Q. You say you went into the crime scene and observed
19 the manner of the death. Did you believe that the decedent
20 in this case was shot?

21 A. Couldn't tell you.

22 Q. You couldn't tell?

23 A. No, sir.

24 Q. What did you observe when you walked inside the
25 house? Let's go back to that.

1 A. Large pools of blood on the floor and walls.

2 Q. Did you go in the back?

3 A. Correct.

4 Q. Did you go down the hallway?

5 A. Correct.

6 Q. Did you observe the decedent?

7 A. I did, sir.

8 Q. And your testimony today is you can't tell the
9 difference between a gunshot wound and blunt force trauma?

10 A. No. My testimony is that I did not know the manner
11 of death and would not know until either an autopsy or any
12 other form. However, I don't get that stuff as a patrol
13 deputy.

14 Q. But, again, you had no reason to believe that
15 General Little was armed with a firearm or other weapon of
16 any kind?

17 A. I had no knowledge of it, no, sir. However, come
18 in contact with a lot of people.

19 Q. What do you mean by that?

20 A. Never know if somebody is armed, sir.

21 Q. So your testimony is that you didn't know or you
22 did know or you suspected?

23 A. Did not know.

24 Q. Okay. When you were instructed to go to General
25 Little's house, were you instructed to look for anyone else?

1 A. No, sir.

2 Q. Only him?

3 A. Correct.

4 Q. Would you agree that General Little was a target of
5 your search at that point?

6 A. There was never a search for me. It was just for
7 me to make contact with him to see if he would talk to
8 detectives.

9 Q. By going to look for him, you did not feel you were
10 searching for him?

11 A. No, sir.

12 Q. Were you on the radio that night?

13 A. Yes, sir.

14 Q. Were you listening to radio traffic?

15 A. Charleston County radio traffic, yes, sir.

16 Q. What was being said about General Little, to your
17 knowledge, that night over the radios?

18 A. Nothing that I can recall.

19 Q. Is it your testimony today that there was never any
20 mention of General Little over the radio traffic?

21 A. Not that I'm aware of.

22 Q. So you weren't listening that intently then?

23 A. Sir, there was a lot of things going on, but I do
24 not recall anything about General Little being over the
25 radio, no, sir.

1 Q. If you would have heard something, wouldn't you
2 believe it would be important enough to document in your
3 report?

4 A. If I had heard something, maybe.

5 Q. Were you alone when you were dispatched 223 Burnham
6 Court?

7 A. There was a city officer that met me there as a
8 backup officer.

9 Q. He met you there or he traveled with you?

10 A. Met me there.

11 Q. Where was he coming from?

12 A. I do not know.

13 Q. What was his name?

14 A. I don't know.

15 Q. Were you aware whether he had body cameras at that
16 time?

17 A. I don't know.

18 Q. Were you aware whether his car had an in-car video
19 at that time?

20 A. I do not know.

21 Q. What do you know about this unknown officer that
22 arrived at my client's residence?

23 A. That he provided backup for me.

24 Q. Describe him.

25 A. White male.

1 Q. That's the extent of your description?

2 A. That's all I know.

3 Q. Height, weight? Was he in uniform?

4 A. He was.

5 Q. Did you ever ask him his name?

6 A. I did not.

7 Q. Have you ever worked with him before?

8 A. Not that I believe.

9 Q. Do you know of anybody in this investigation that
10 would know his name?

11 A. Not off the top of my head, no, sir.

12 Q. Do you believe that that's important enough
13 information for the solicitor to have in her case file?

14 A. No, sir.

15 Q. You don't believe that somebody at the scene where
16 you eventually find some evidence should be documented in
17 any type of report?

18 A. He might be documented in the report, but he's not
19 in my report, so I couldn't answer that for you.

20 Q. You made first contact with him though; is that
21 correct?

22 A. With who?

23 Q. The -- this unknown officer that we are discussing.

24 A. Correct, we met at the residence.

25 Q. Who arrived first?

1 A. I do not recall.

2 Q. Would that be important enough information to
3 document in your report?

4 A. No, sir.

5 Q. It would not?

6 A. No.

7 Q. You don't think it's important to document the
8 first contact with law enforcement at a particular scene?

9 A. No, sir.

10 Q. Your testimony here today is that that information
11 is not critical enough to your point of view in order for
12 that to be documented so that people such as myself and
13 Mr. Schwartz would be able to review that later on?

14 A. That's correct, sir. We both arrived there. I
15 don't know who arrived first.

16 Q. Were you familiar with the neighborhood you were
17 entering?

18 A. Not very familiar, no, sir. It was mainly the City
19 of Charleston jurisdiction.

20 Q. It was mainly City of Charleston jurisdiction. Why
21 are you the only one going out there?

22 A. That's why I had backup from a City of Charleston
23 officer.

24 THE COURT: Where is it? Where is it?

25 THE WITNESS: I'm sorry, sir?

1 THE COURT: Where is the location? Give me an idea
2 where it is.

3 THE WITNESS: I believe it's Shadow Moss
4 neighborhood.

5 THE COURT: Out 61?

6 THE WITNESS: Correct.

7 THE COURT: Okay.

8 BY MR. WEST:

9 Q. Describe the neighborhood as you entered it.

10 A. Houses, street signs, streets, typical
11 neighborhood.

12 Q. Typical neighborhood? Anything that you recognize
13 as high-crime or otherwise?

14 A. Not that I'm aware of.

15 Q. So not a high-crime neighborhood. Are the streets
16 well lit?

17 A. I don't recall if there were street lights.

18 THE COURT: What time was it when you went out
19 there? I couldn't tell by that photograph. It looks like
20 it was maybe dark.

21 THE WITNESS: Approximately 23:20 hours, sir,
22 eleven o'clock at night.

23 THE COURT: So it was dark.

24 THE WITNESS: Yes, sir.

25 BY MR. WEST:

1 Q. Again, you don't remember -- is it your testimony
2 today that you don't remember whether the neighborhood was
3 well lit?

4 A. I don't recall if there were street lights, no,
5 sir.

6 Q. When you arrived at the house, in your direct
7 testimony, you indicated one of the first things you saw was
8 the window down in the car; is that correct?

9 A. Upon approach, driving past the residence, yes,
10 sir.

11 Q. When you drove to my client's house, did you notice
12 anybody else's windows down in their driveways?

13 A. No, sir.

14 Q. Was it a possibility that some other windows could
15 be down?

16 A. Could be a possibility.

17 Q. But, again, you were only targeting General
18 Little's house?

19 A. I was going to make contact with General Little,
20 that's correct.

21 Q. Once you arrived at the house, can you describe the
22 house?

23 A. No, sir.

24 Q. Today you cannot describe the house?

25 A. No, sir. If I see a photo, I can describe it.

1 Q. Did you not just see one when you were testifying
2 on direct?

3 A. It was a photograph of the vehicle.

4 Q. Next to the house?

5 A. It was next to the house, correct.

6 Q. Do you remember if porch lights were on?

7 A. I do not recall.

8 Q. Do you remember if there was any light next to the
9 Toyota Sequoia?

10 A. I don't recall at this time, no, sir.

11 Q. Was the general surrounding yard dark?

12 A. I don't remember at this time.

13 Q. Were any of the neighbors' lights on?

14 A. I'm sure they were.

15 Q. I'm sure there were or they were or they were not?

16 A. I'm sure they were.

17 Q. So your testimony is they were on?

18 A. I'm sure that some neighbors' night lights were on,
19 yes, sir.

20 Q. Do you know which ones?

21 A. No, sir.

22 Q. Would that be information important enough to
23 document within your report?

24 A. No.

25 Q. Why not?

1 A. It's not relevant.

2 Q. It's not relevant to the way you can see something?

3 A. Not relevant for a neighbor's residence, no, sir.

4 Q. You don't believe the neighbor's residence would
5 provide light to the area for which you were going to look
6 for a suspect which you just said you were going to look
7 for?

8 A. Wasn't a suspect at the time.

9 Q. Not a suspect at the time. Did you have blue
10 lights on as you were approaching the house?

11 A. No, sir.

12 Q. Did you have your headlights on?

13 A. Headlights on, yes, sir.

14 Q. So when you drove past, you were originally past
15 the house and then turned back around?

16 A. I did not turn around, just past the house and
17 parked toward the left side of the residence.

18 Q. And when you got out of your car, what is the first
19 thing you did?

20 A. I cleared the vehicles that were in the driveway.

21 Q. Were you armed?

22 A. Correct.

23 Q. What other facilities provided by your agency did
24 you have on you? Did you have a radio?

25 A. Correct.

1 Q. Did you have a flashlight?

2 A. Correct.

3 Q. Did this unknown individual, which you didn't care
4 to document, have a weapon and a flashlight as well?

5 A. I'm sure he did, if he's a Charleston city police
6 officer, yes, sir.

7 Q. But you weren't attentive enough to describe
8 whether he was armed and with a flashlight?

9 A. He was armed.

10 Q. So you had two armed officers?

11 A. That's correct.

12 Q. Do you wear glasses or contacts?

13 A. No, sir.

14 Q. How would you describe your vision to the Court?

15 A. Good.

16 Q. What is good? Have you ever had any problems with
17 your eyesight?

18 A. Reading glasses in high school.

19 Q. Do you currently wear reading glasses?

20 A. No, sir.

21 Q. Tell me about your height and weight.

22 A. Approximately six-foot, 285 pounds.

23 Q. How about this unknown officer?

24 A. He was probably my height, probably 220.

25 Q. If he would have had a report, that's something we

1 would know today, wouldn't it?

2 A. It would.

3 Q. What type of physical defensive training do you
4 possess?

5 A. Bi-annual defensive tactics.

6 Q. And, again, you've been in law enforcement for 13
7 years. So at least 26 times you've been trained in physical
8 defense?

9 A. Every two years.

10 Q. Every two years, okay. When you arrived, you had
11 previously testified you did not have a warrant. But you
12 knew what vehicle the defendant drove. That's again your
13 testimony?

14 A. I was provided information of a vehicle that he was
15 known to drive, correct.

16 Q. Did you do any backup checks to determine whether
17 that was accurate information?

18 A. Not at the time, no, sir.

19 Q. Did you have any reason to believe that the vehicle
20 you saw in the driveway was currently running?

21 A. No, sir, it was not running.

22 Q. It was not running?

23 A. No.

24 Q. And it was not on? When you approached the house,
25 you said you knew my client's name. Were you aware that he

1 was a highly educated and well-respected doctor at that
2 time?

3 A. I was not.

4 Q. Were you aware that he was working as a doctor in
5 Beaufort at the time?

6 A. I was not.

7 Q. On a regular schedule, were you aware that he was
8 on a regular schedule as a doctor in Beaufort?

9 A. Don't believe so, no, sir.

10 Q. Were you aware that he was small and frail in
11 stature?

12 A. No, sir.

13 Q. Did you have any physical description of my client
14 at that time?

15 A. I don't believe so, no, sir.

16 Q. Were you aware that he was 71 years old?

17 A. No, sir.

18 Q. Or is currently 71 years old?

19 MS. BALDWIN: Your Honor, I have to object as to
20 relevance regarding this particular hearing.

21 THE COURT: I'm going to allow it. Go ahead.

22 MS. BALDWIN: Thank you.

23 THE COURT: Just trying to get a full picture. let
24 me butt in and ask you a question while I'm thinking about
25 it. You said you had a flashlight. Was the flashlight on?

1 THE WITNESS: To look inside the vehicles to clear,
2 yes, sir, to make sure there were no persons inside.

3 THE COURT: I figured that. And how long did it
4 take you to clear the vehicle?

5 THE WITNESS: The vehicles that were there,
6 approximately minute and a half, two minutes maybe.

7 THE COURT: And so was the silver Toyota, was that
8 the first one that you cleared?

9 THE WITNESS: I believe it was, sir.

10 THE COURT: Okay. And when you say "cleared", tell
11 me what you mean by that. You look in, you said, to see if
12 there were any people in there. How close were you to the
13 window that was down on the passenger's side? Was that
14 where you cleared it from, or from the driver's side? I'm
15 trying to get a full picture what went on there.

16 THE WITNESS: Yes, sir. I believe I walked up the
17 driveway to the left side of the vehicle.

18 THE COURT: That's the driver's side?

19 THE WITNESS: Correct. Initial clearing of that
20 vehicle with a flashlight looking inside the windows to make
21 sure there were no persons or anything inside the vehicle.
22 Moved on to the other vehicles that were there, and then
23 came back around to the passenger side of the silver SUV.

24 THE COURT: And that's when you noticed the dark
25 stuff on the console and the towel?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay.

3 BY MR. WEST:

4 Q. When you were testifying earlier, you had indicated
5 by the same arrows that are on the smart screen, that when
6 you first approached the vehicle, you approached it from the
7 mulch side, where the mulch is toward the house.

8 A. That was driving up, sir.

9 Q. That was driving up?

10 A. Correct.

11 Q. So when you first cleared, your testimony here
12 today is that you went in between all three vehicles?

13 A. I believe so, yes, sir. I am not 100 percent
14 certain on that. I don't remember which side I took to
15 clear the vehicles. However, all the vehicles that were
16 there were cleared.

17 Q. Okay. Do you agree with me that the natural
18 walking path between the three vehicles would be on the left
19 side of the Toyota Sequoia?

20 A. Possibly.

21 Q. When you approached the vehicle, did you see any
22 head lamps on inside the car?

23 A. No, sir, I did not.

24 Q. Did you see any bushes around the garage for a
25 person to hide?

1 A. I want to say there were some trees or bushes to
2 the left side of the driveway.

3 Q. Okay. Were those trees or bushes such that you
4 wouldn't be able to distinguish whether a person was behind
5 them?

6 A. No, sir, they were not, not to my recollection.

7 Q. So if you are approaching the house, in the
8 driveway to the right of the Toyota Sequoia, was there any
9 bushes or shrubbery that would obstruct your view such that
10 a person could hide behind?

11 A. I don't believe so.

12 Q. The mulch that was on the right side of the Toyota,
13 did you make any discernments --

14 THE COURT: How about putting the picture back up
15 there. I don't remember seeing any mulch.

16 BY MR. WEST:

17 Q. The mulch area to the right, this is where I was
18 describing if there was any shrubbery or bushes. And your
19 testimony is this an accurate reflection of the way that
20 that would have been depicted on that day?

21 A. Correct.

22 Q. Did you make any discernments about the
23 wear-and-tear over the mulch or whether that was something
24 that would have been regularly driven over?

25 A. I did not.

1 Q. Did you note that the sidewalk barriers that were
2 along the walkway were even knocked down to suggest that
3 they had previously been driven over several times?

4 A. Did not.

5 Q. That's not noted in your report?

6 A. No, sir. I didn't observe it.

7 Q. When you were approaching the house, did you have
8 any information that would suggest General Little would be
9 hiding in his car?

10 A. No, sir.

11 Q. You would agree with me that there's several paths
12 to approach General Little doorway different than the way
13 which you approached this particular door, wouldn't you
14 agree?

15 A. Other than the driveway and walk through the front
16 yard, is that what you are saying?

17 Q. For example, if I was -- or let's say a Girl Scout
18 was going to deliver cookies, would she take the same path
19 that you took to go to the front door of this house, or
20 would she just simply walk along the walkway?

21 A. A Girl Scout to sell cookies would probably walk
22 along the walkway.

23 Q. But that's not the course you took?

24 A. Correct.

25 Q. How about a postal worker? If a postal worker were

1 to approach this house, would they walk along that walkway,
2 or would they go around the cars as you did?

3 A. They would probably take the walkway.

4 Q. So your testimony here today is that you approached
5 the house differently than somebody that was an average
6 salesman or solicitor?

7 A. That is correct, for officer safety reasons, sir.

8 Q. How far beyond the walkway would you say that you
9 went?

10 A. Far enough to clear the vehicles in the back.

11 Q. If I told you that the concrete that connects to
12 the house by the garage was some 17 feet away from the
13 walkway, would that sound about an accurate statement?

14 THE COURT: I'm not sure I understand what you are
15 talking about. Can you point out where you are talking
16 about?

17 BY MR. WEST:

18 Q. Sure. Deputy, in front of the Toyota Sequoia in
19 this picture, did the concrete continue into the garage of
20 the house?

21 A. I don't recall if it continued into the garage.

22 Q. Did the concrete connect to the house?

23 A. I don't recall if it connected to the house, no,
24 sir.

25 Q. Is it your testimony there's going to be a grassy

1 area between the driveway and the concrete?

2 A. No.

3 THE COURT: He said he doesn't recall; didn't say
4 it was.

5 BY MR. WEST:

6 Q. Reflecting back, does 17 feet sound about right
7 between the walkway and where the concrete connects to the
8 house?

9 A. It could be, sir. I don't know how far it was.

10 Q. We know you at least walked past some amount of
11 distance over 17 feet?

12 A. Yes.

13 Q. And there's a basketball goal at the end of the
14 driveway; is that correct?

15 A. I don't recall.

16 THE COURT: I'm not sure I understand where you are
17 talking about the 17 feet is. Can you point it out on the
18 photo what you are talking about, 17 feet?

19 (Dft. Exh. 1, Photograph, was marked for
20 identification.)

21 BY MR. WEST:

22 Q. Showing you Defendant's Exhibit 1 for the purpose
23 of this hearing only, this curvature on the smart screen
24 from the front passenger tire of the Toyota Sequoia would
25 suggest that the concrete leads into the garage; is that

1 correct?

2 A. Possibly, yes, sir.

3 Q. Again, we are going back to this "possibly". Does
4 it or does it not?

5 A. I couldn't tell you.

6 Q. You don't remember anything about the scene?

7 A. I don't know if the concrete ran into the garage.
8 I do not know.

9 Q. From this picture, does it seem like that is the
10 case?

11 THE COURT: It looks like it.

12 THE WITNESS: Possibly.

13 BY MR. WEST:

14 Q. You are going to have to testify to that.

15 THE COURT: I see it. Looks to me like -- well, go
16 ahead. Are you talking about from there to the garage is 17
17 feet?

18 MR. WEST: From where this curvature flattens out
19 to the walkway we just saw in the previous picture,
20 approximately 17 feet.

21 But you went beyond that all the way to the
22 furthest point of the driveway to secure the --

23 THE COURT: We are talking about two different
24 things there. You are talking about from that point to the
25 garage was 17 feet, or are you talking about from that point

1 to the end of the driveway is 17 feet? Which one are you
2 talking?

3 MR. WEST: Walkway to the garage.

4 THE COURT: So you are not talking from there to
5 the end of the driveway?

6 MR. WEST: That's the point I'm getting to next.
7 There's going to have to be additional length in between
8 where the garage enters and --

9 THE COURT: So 17 feet to the garage doesn't have
10 anything to with it then?

11 MR. WEST: It has a lot to do with it, Judge.

12 THE COURT: It does? Okay. That's what I'm trying
13 to figure out.

14 MR. WEST: All right.

15 BY MR. WEST:

16 Q. I want to give you a hypothetical. If I'm sitting
17 in my living room and I see outside of my blinds somebody
18 shining a flashlight into my car at 11:30 p.m. at night,
19 would you agree with me that that would entitle that person
20 who owns that house to call the police?

21 A. Sure.

22 Q. And you would have a duty to investigate that,
23 wouldn't you?

24 A. Correct.

25 Q. And if you went over to that house, you'd probably

1 investigate that, because that person that was shining the
2 flashlight through the window of the car, presumptively,
3 wouldn't have a right to be there; is that correct?

4 A. Potentially.

5 Q. But the homeowner would be justified in calling law
6 enforcement? That's your testimony?

7 A. Sure.

8 Q. Would you go so far as to say that you would
9 believe that homeowner would consider that particular person
10 shining the light to be trespassing?

11 A. Possibly.

12 Q. Go back to Defendant's Exhibit 1. With your
13 flashlight and this other officer, is it your testimony
14 today that you couldn't see through the front windshield at
15 that time to determine whether an individual was inside that
16 car?

17 A. Could I see through the front windshield?

18 Q. Could you see through the front windshield?

19 A. Yes, sir.

20 Q. You could?

21 A. I could.

22 Q. Your testimony is you approached from the left side
23 and walked around the front of the Toyota Sequoia, and your
24 testimony is that you could have seen through the front
25 windshield?

1 A. I could have seen, yes, sir.

2 Q. When you continued walking around the vehicle to
3 the downed window of the passenger's side, is it your
4 testimony that you were aided by the flashlight that you
5 were currently holding?

6 A. Correct.

7 Q. How close to that window did you approach the car?

8 A. Maybe a foot.

9 Q. You were a foot from the car when you first --

10 A. Yes, sir.

11 Q. And when you went to look inside the back passenger
12 window, as your report indicates, did you get any closer to
13 the vehicle at that point?

14 A. No, sir.

15 Q. Do you know who swore the affidavit for the search
16 warrant in this case?

17 A. I do not, no, sir.

18 Q. You have no knowledge of who actually swore what
19 has become your discovery of probable cause?

20 A. No, sir.

21 Q. Did you ever talk to anybody directly that ended up
22 swearing the search warrant?

23 A. I don't know who swore the search warrant out, sir.

24 Q. No personal knowledge?

25 A. I do not know who swore the search warrant out.

1 Q. Who did you speak to directly?

2 A. Deputy Muirheid came to the scene.

3 Q. Did you talk to anybody else?

4 THE COURT: Who was it that came to the scene?

5 THE WITNESS: Deputy Muirheid.

6 THE COURT: Muirheid?

7 THE WITNESS: Detective Muirheid, yes, sir.

8 THE COURT: And did you tell him about what you did
9 and saw?

10 THE WITNESS: That was after the fact.

11 THE COURT: What do you mean "after the fact"?

12 THE WITNESS: He came after the fact, after it was
13 advised of what I saw, after taking Mr. Little to the law
14 enforcement center.

15 THE COURT: I'm not sure I follow.

16 THE WITNESS: He went back afterwards to secure the
17 residence itself.

18 THE COURT: Well, who did you talk to after the
19 fact, after you were there, whatever?

20 THE WITNESS: After I was there, I transported
21 Mr. Little to our law enforcement center to speak with
22 Detective Turner. And Detective Turner was advised at that
23 time.

24 THE COURT: So you told Turner?

25 THE WITNESS: Correct.

1 BY MR. WEST:

2 Q. Did you ever talk with Sergeant Euper?

3 A. He was my supervisor, yes.

4 Q. So Detective Turner was not the only individual you
5 talked to?

6 A. Sergeant Euper was there the entire time, but not
7 at Mr. Little's house. He was at the original crime
8 scene.

9 Q. Well, I believe what the judge is trying to get to
10 the bottom of, and I as well is, your communication of the
11 probable cause for the search warrant went directly to
12 Muirheid, is your testimony?

13 A. No, sir. It went to Detective Turner after
14 transporting Mr. Little to the law enforcement center.

15 Q. Went from you to Detective Turner?

16 A. Correct.

17 Q. Do you know what happened with that probable cause
18 statement after that?

19 A. He advised his supervisor.

20 Q. What method of communication did you have with
21 Detective Turner?

22 A. Face-to-face.

23 Q. Face-to-face. So did he come to the residence?

24 A. He did not.

25 Q. So this is after you had taken General Little from

1 the residence to where?

2 A. To the law enforcement center, 3691 Leeds Avenue.

3 Q. And what happened with this unknown CPD officer?

4 A. When I left, he left the scene.

5 Q. What was he doing while you were approaching these
6 vehicles?

7 A. I believe he was standing to the right side of the
8 residence.

9 Q. So the right side of the residence?

10 A. Correct.

11 Q. Did he aid you in your visualization of any of this
12 evidence that you later procured?

13 A. No, sir.

14 Q. Do you know if he gave any statements to Detective
15 Turner?

16 A. I do not know.

17 Q. When you spoke with my client, your testimony was
18 he came out of his house?

19 A. Correct.

20 Q. Did you ever go up to the door?

21 A. When he opened the door, approached outside.

22 Q. Did you have to knock?

23 A. No, sir.

24 Q. So he saw you out there?

25 A. I don't know if he saw me or not, sir.

1 Q. Okay. And where did you all meet, on the porch, on
2 the steps, on the walkway?

3 A. On the porch.

4 THE COURT: Let me back up and ask you something.
5 So you told Turner about what you saw and did out there at
6 the law enforcement center when you got to the law
7 enforcement center; is that right?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Who else did you tell, if anybody, at
10 the law enforcement center that night or at any time that
11 you told about what you saw and did out there?

12 THE WITNESS: Detective Turner was the only one.

13 THE COURT: That's the only one?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay.

16 BY MR. WEST:

17 Q. When you had an encounter with General Little, what
18 did you discuss?

19 A. I asked -- obviously, identified myself. Asked if
20 he was Mr. Little. Turner said he was. I advised him I was
21 there to see if he would be willing to go to the law
22 enforcement center to speak with the detectives.

23 Q. And what was his answer?

24 A. He advised me that -- he was cooperative and stated
25 that he knew it was in regards to Barbara's murder.

1 Q. Did he ever indicate to you --

2 THE COURT: I'm sorry. Tell me that again.

3 THE WITNESS: I said Mr. Little was cooperative and
4 even stated he knew it was in regards to Barbara's murder.

5 BY MR. WEST:

6 Q. Did he ever indicate to you that he wished to drive
7 his own vehicle?

8 A. No, sir.

9 Q. So your testimony here today is that he just got in
10 the back of your car without saying anything otherwise?

11 A. He asked if they could come meet him at his
12 residence. And he was advised that there was already a
13 detective awaiting his arrival at the law enforcement
14 center.

15 Q. And when you told him that they were already
16 waiting, did you not give them the option to come to the
17 residence as well?

18 A. They asked me to come pick him up and take him
19 there.

20 Q. And he got into your car after that?

21 A. Correct.

22 MR. WEST: Court's indulgence. No further
23 questions for this witness at this time.

24 THE COURT: Anything on redirect?

25 MS. BALDWIN: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. BALDWIN:

Q. So to your knowledge, approximately how long were you at the residence before the defendant walked outside?

A. Two, maybe three minutes.

Q. Did you walk behind the house?

A. No, ma'am.

Q. And did you know exactly what had happened inside the house on West Palmer Drive?

A. Other than there was a deceased party, no, ma'am.

Q. And there was lots of blood there?

A. Correct.

Q. Did you know about the defendant's current state?

A. No, ma'am.

Q. His well-being?

A. No, ma'am.

Q. Had you ever been to 223 Burnham Court before?

A. No, ma'am.

Q. Were you familiar with how the parking set-up was there?

A. No, ma'am.

Q. Did you observe any no-trespassing signs at the house?

A. I did not, no, ma'am.

Q. You said you told Detective Turner what you saw

1 inside the car.

2 A. That is correct.

3 Q. And who did Detective Turner tell?

4 A. He, in turn, made a phone call to his supervisor.

5 MS. BALDWIN: No further questions.

6 THE COURT: Thank you very much. You may be

7 excused. Go where they want you to go.

8 MR. WEST: Judge, may I approach?

9 THE COURT: Sure.

10 (Whereupon, a bench conference takes place off the
11 record.)

12 THE COURT: Next witness.

13 MS. BALDWIN: The State calls Detective Muirheid.

14 WILLARD MUIRHEID,

15 having been duly sworn, testifies as follows:

16 THE CLERK: State your full name, spelling your
17 last.

18 THE WITNESS: My name is Carl Willard Muirheid. I
19 go by Will. My last name is spelled, M-u-i-r-h-e-i-d.

20 DIRECT EXAMINATION

21 BY MS. BALDWIN:

22 Q. Detective Muirheid, where do you work?

23 A. Charleston County Sheriff's Office.

24 Q. And in what capacity?

25 A. I'm a detective in our Violent Crimes Unit.

1 Q. What was your involvement in this particular case?

2 A. I was the case agent, sir.

3 Q. As part of being a case agent, did you respond to
4 2317 West Palmer Drive on the evening of September 22nd?

5 A. Yes.

6 Q. What did you do there?

7 A. When I arrived there, it was decided I was going to
8 be the case agent. I was briefed on the situation. There
9 was a deceased female in the house, a Ms. Barbara.

10 Kim, Ms. Barbara's youngest daughter, and Mr. A.J.
11 McConnell, Ms. Barbara's brother, were there. I spoke to
12 them.

13 As part of being the case agent, I went briefly
14 into the crime scene. I noticed there was no forced entry
15 to the residence. Significant amount of blood. As part of
16 that, I was also briefed prior to going in there that the
17 defendant was contacted. And I was advised that he would be
18 on his way to the incident location.

19 Q. Did he show to the incident location?

20 A. No, he did not.

21 Q. So what was done as a result of that?

22 A. Deputy Colburn was sent over to the known address
23 of the defendant, which I believe is 223 Burnham Court,
24 probably five minutes away from the location.

25 Q. And was a search warrant executed at 223 Burnham

1 Court that evening?

2 A. Eventually, yes.

3 Q. And what did you do in regards to that search
4 warrant?

5 A. The actual search warrant, I was not present to --
6 at, excuse me. What I did do is, once I was advised to
7 respond over to Burnham Court, I relayed the information
8 necessary to obtain a probable cause search warrant for that
9 residence. And I relayed that information to Detective
10 Bowen.

11 Q. And where did you receive that information from?

12 A. I don't remember exactly. I know that it was
13 channeled -- because on this scene, it was kind of chaotic.
14 There was a lot of people there, a lot of bosses. So
15 through my chain of command, it was sent down to me
16 basically that Deputy Colburn arrived on scene to meet with
17 the defendant. And as part of doing that, he noticed that a
18 vehicle was parked in a suspicious manner, or at least
19 didn't look normal to him. And as part of his duty before
20 he was going to go knock on the door, he wanted to clear the
21 vehicles and make sure that he was safe. And in doing that,
22 saw through an open window of a Toyota Sequoia that -- saw a
23 substance that he thought might be blood and also, like, a
24 towel.

25 Q. And what did you do with that information?

1 THE COURT: Do you remember where you got that
2 information, who told you that?

3 THE WITNESS: It would have come down through the
4 chain of command.

5 THE COURT: I know you said that, but I'm talking
6 about who? Who said that? Who told you that?

7 THE WITNESS: What it says in my report, sir, is
8 Deputy Colburn told Sergeant Euper. So I would assume,
9 through reading that, that I got it through Sergeant Euper
10 who was on scene at the incident location.

11 THE COURT: Sergeant Euper?

12 THE WITNESS: E-u-p-e-r, Euper.

13 THE COURT: Euper.

14 BY MS. BALDWIN:

15 Q. Who did you relay this information to to obtain the
16 search warrant?

17 A. Detective Jason Bowman.

18 Q. And what information did you relay to Detective
19 Bowman?

20 A. Standard stuff that you would need for a search
21 warrant: A description of the residence, the items that
22 were to be sought, which are on the actual search warrant,
23 and the probable cause, which I've explained.

24 (Court's Exh. 2, Search Warrant, was marked for
25 identification.)

1 BY MS. BALDWIN:

2 Q. As case agent, you reviewed the search warrant
3 obtained in this case?

4 A. Yes, ma'am.

5 Q. I show you what's been marked as Court's Exhibit 2.

6 MR. WEST: May I approach? I haven't seen them.

7 BY MS. BALDWIN:

8 Q. And what is this?

9 A. This is a search warrant for 223 Burnham Court.

10 Q. Is that the search warrant that you relayed the
11 information to?

12 A. Yes, it is.

13 Q. To Detective Bowen?

14 A. Yes, it is.

15 Q. Okay. And that's the search warrant Detective
16 Bowen obtained, to the best of your knowledge?

17 A. Yes, it is.

18 Q. What information did you relay to Detective Bowen
19 based on that warrant?

20 A. I can read it to you, if that's fine.

21 Q. That's fine.

22 A. I advised him that on the date of the incident,
23 September 22nd, that the Charleston County Sheriff's Office
24 responded to 2317 West Palmer Drive, which is the incident
25 location, in reference to a deceased person. Prior to

1 deputy's response, the deceased's family was unable to
2 contact her. Family members went to the residence and found
3 the door to be unsecured. They entered the residence and
4 observed bloody towels. The deceased was located in the
5 bathroom with an injury and was unresponsive. Blood was
6 located in several rooms in the victim's residence.

7 The deceased's ex-husband General Little did not
8 show for a dinner meeting with their daughter, who would be
9 Kim on September 22nd, 2015. Deputies responded to
10 Mr. Little's home after locating the deceased to find him.
11 While approaching Mr. Little's home, deputies observed a
12 towel similar to towels from the deceased's residence in a
13 vehicle at Mr. Little's. The towel was observed in plain
14 view through the vehicle window.

15 Deputies also observed in plain view what appeared
16 to be blood in the same vehicle. It is believed the items
17 recovered in the execution of that search warrant would help
18 further their investigation.

19 Q. And that was all information you had received from
20 Deputy Colburn and others at the scene?

21 A. Yes.

22 MS. BALDWIN: Court's indulgence. I have nothing
23 further at this time.

24 CROSS-EXAMINATION

25 BY MR. WEST:

1 Q. How long have you been in law enforcement?

2 A. About 14 years.

3 Q. And what is your rank? Colonel?

4 A. I'm just a detective, deputy.

5 Q. How long have you been an actual detective versus
6 just in the department?

7 A. Little over five years probably.

8 Q. Would you consider yourself a lead detective in
9 this case? You've identified yourself as a case agent,
10 correct?

11 A. Yes.

12 Q. So that means you reviewed everything in its
13 entirety?

14 A. Best I could, yes.

15 Q. Is there anything you would like to add or
16 supplement for your reports at this time?

17 A. No.

18 Q. So your reports are true and accurate and a
19 complete description of everything that you did and your
20 involvement in this case?

21 A. They are as complete as I can remember, yes.

22 Q. It's your testimony today that you have gathered
23 and collected every piece of evidence that you thought would
24 be necessary in the prosecution of this case?

25 A. As far as gathering evidence, me personally, I

1 haven't gathered every piece of evidence.

2 Q. Your department; you believe that your department
3 has gathered everything that they could have?

4 THE COURT: You might remember this is not a jury
5 at this point, and it's kind of focused.

6 MR. WEST: I understand, Judge.

7 THE WITNESS: The best we could.

8 BY MR. WEST:

9 Q. Okay. You were working on September the 22nd of
10 2015. How did you become involved in this case?

11 A. I received a phone call to respond to the scene.
12 It was after hours.

13 Q. Who called you?

14 A. Sergeant Mark Ryan.

15 Q. And what was his involvement in the case?

16 A. He's my supervisor.

17 Q. What did he tell you to do?

18 A. He didn't. He didn't really tell me what to do.

19 In a situation like that, when we come on scene as the
20 detective, we start figuring out what's going on. He's
21 basically there just to help us get some stuff done.

22 Q. So you arrived at Miss Little's house. And then
23 you later go to the defendant's house; is that correct?

24 A. That's correct.

25 Q. You would agree with me that the probable cause in

1 the affidavit you've just shown are based on the testimony
2 and descriptions of probable cause as testified to by
3 Colburn, Deputy Colburn in this case; is that correct?

4 A. That's part of it, yes.

5 Q. Part of it?

6 A. Yeah.

7 Q. Okay. In the search warrant affidavit that you
8 just read -- do you still have it?

9 A. No, I do not.

10 Q. I'm showing the witness what has been marked as
11 State's 2. One of the descriptors you put in your probable
12 cause affidavit is this towel that was seen in the window;
13 is that correct?

14 A. Yes.

15 Q. You would agree with me that if you put that in
16 there, you thought it was an important piece of evidence at
17 one point in time?

18 A. Yes.

19 Q. Okay. And this substance that appears to be blood,
20 you would agree that that's important?

21 A. Yes.

22 Q. Your reports indicate that Colburn was instructed
23 to locate General Little at his residence. Do you know why
24 he was taxed with that versus anybody else?

25 A. He's probably the available person.

1 Q. Do you know what was told to him?

2 A. Specifically?

3 Q. Yes.

4 A. No. It was just passed down to me that he was told
5 to locate General Little, go by his house, see if he's
6 there.

7 Q. Your testimony earlier was that you were basing
8 your knowledge of how probable cause was relayed based on
9 your report; is that correct?

10 A. I'm having a hard time understanding your
11 question.

12 Q. That's okay. I can rephrase. Just ask me to
13 rephrase.

14 A. Rephrase, please.

15 Q. I will be happy to.

16 You said in your earlier testimony that probable
17 cause would relay to you through the chain somehow, but from
18 Colburn to you?

19 A. The way that it exactly happened, as I remember, is
20 while -- after I did what I could do there at the scene to
21 my capacity as a detective and not specializing in
22 forensics, essentially waiting around for the defendant to
23 come to the scene. It was relayed to me that Deputy Colburn
24 was going to go to the scene. He went to the scene, I'm
25 assuming, obviously. Picked up the defendant. Took him

1 back to CID headquarters.

2 After he did that, he had an opportunity to relay
3 what he saw, I believe to -- you would have to go back to
4 Deputy Colburn's testimony, but to Sergeant Euper what he
5 saw. That information was relayed to me.

6 In response, I immediately left where I was at on
7 West Palmer, and I went to 223 Burnham Court to secure that
8 area. While securing the area, I saw the same thing in
9 plain view. Deputy Colburn arrived there to act as a
10 back-up deputy for me. So there were at least two of us on
11 scene.

12 During that time, that information that I had was
13 relayed on to Deputy Bowen who was also or had also already
14 obtained a search warrant for the 2317 West Palmer incident
15 location.

16 Does that answer your question, sir?

17 Q. For the most part, but it begs several other
18 questions.

19 A. Okay.

20 Q. Which is why we are here, to answer some questions.

21 So your testimony is that you went to 223 Burnham
22 at some point in time that night, right?

23 A. That is correct.

24 Q. Do you know what time that was?

25 A. I do not know the exact time.

1 Q. But your testimony is it was prior to the
2 signatures on the search warrant; is that correct?

3 A. Yes. It would have to be, I would think.

4 Q. So you went onto the defendant's private property
5 prior to getting a search warrant?

6 A. I secured the defendant's property because I knew a
7 search warrant was imminent and it was evident. And it was
8 going to happen, so I secured it.

9 THE COURT: When you say you secured it, what do
10 you mean?

11 THE WITNESS: I did not manipulate anything.

12 THE COURT: Just tell me. You pulled up. You
13 parked on the street?

14 THE WITNESS: I pulled up. Parked on the street.
15 Went to the area where the vehicle was parked right there.
16 Looked inside the vehicle. In plain view, saw what I saw.
17 And then at that time, made contact with the defendant's
18 wife, Ms. Carla Little.

19 BY MR. WEST:

20 Q. So you approached the vehicle and you looked inside
21 of it?

22 A. Yes.

23 Q. Without a search warrant?

24 A. I was securing it. I was making sure that
25 everything was the way that it was described.

1 Q. Just answer the question.

2 A. Yes.

3 Q. You did look in the car without a search warrant?

4 A. I looked into the car without a search warrant.

5 Q. You looked into the car. Did you have a
6 flashlight?

7 A. I don't think I needed one. Because I think maybe
8 because of the way it was parked, might have been ambient
9 light from the house.

10 Q. So the car was well lit?

11 A. I don't remember having a flashlight.

12 Q. Okay. You don't remember having a flashlight.
13 Could you see inside the car?

14 A. Well enough to see a towel in the same spot that
15 Deputy Colburn had described.

16 Q. When you first approached, where did you park your
17 car?

18 A. It was on the curb.

19 Q. And you walked into the driveway. When is the
20 first instance where that you could say you could see inside
21 of the car?

22 A. The way the car was parked, if the house is over
23 here and I'm looking at -- the house is to the right, the
24 driveway is to the left, the car is the first car that I
25 could come in contact with on the right closest to the

1 house.

2 Q. This is State's Exhibit 1 for the purpose of this
3 hearing. You can use that as demonstrative.

4 A. Okay. Passenger side over here on the right,
5 closest to the garage door, was the area that I looked into
6 that window. After I looked into that window, the porch is
7 over to the right. And that's when I made contact with Ms.
8 Carla.

9 Q. Is it your testimony that because of the lighting
10 of the driveway and the house, that you could see inside the
11 car prior to getting to the car?

12 A. My testimony is I don't remember having a
13 flashlight. So I believe that there was probably some other
14 ambient light source that would allow me to see into that
15 car. I don't know for sure.

16 Q. Would that have been something that you feel needed
17 to be documented in a report?

18 A. Whether I had a flashlight or not?

19 Q. No. Whether you could see inside the car.

20 A. I did document that I saw inside the car. I mean,
21 obviously, I saw into the car. So it was implied that I
22 would be able to see what I documented.

23 Q. Okay. Now, you also conducted a second search
24 warrant for this particular car; is that correct?

25 A. I was part of a search warrant, yes. There was

1 another search warrant conducted on the car at a later date,
2 separate.

3 Q. You say you were part of it. What part of that
4 search warrant were you?

5 A. What will happen is, generally, and in this case,
6 it's no different, our forensics team will actually execute
7 the search warrant processing the vehicle. I was in and out
8 during that procedure. But I was there for some of the
9 things that were recovered.

10 MR. WEST: Court's indulgence.

11 (Dft. Exh. 2, search warrant for Toyota Sequoia,
12 was marked for identification.)

13 BY MR. WEST:

14 Q. I'm showing the witness what's been marked as
15 Defendant's Exhibit 2. Do you recognize that document?

16 A. Yes, sir, I do. This is a search warrant for the
17 Toyota Sequoia.

18 Q. And you are the signatory on that search warrant;
19 is that correct?

20 A. Yes, sir.

21 Q. So it would have been your duty to the court to
22 swear to that probable cause which is contained in the
23 affidavit of that warrant?

24 A. Yes.

25 Q. Would you agree with me that in the third paragraph

1 of your probable cause affidavit, that there is no mention
2 of a red towel?

3 A. There's no mention of a red towel.

4 Q. Okay. Earlier you testified that everything you
5 would have put in one of these documents would have been
6 important; is that correct?

7 A. That is correct.

8 Q. So the omission of that red towel in your probable
9 cause affidavit versus the original affidavit in the prior
10 search warrant, what is the reasoning for not including that
11 towel in this Defendant's No. 2?

12 A. Well, the first thing would be, it would just be an
13 error on my part. The fact that it's not in here at this
14 point does not mean that it's not important.

15 Q. Does it mean that you didn't swear to that
16 particular fact to the judge?

17 A. I swore to whatever was in here.

18 Q. Okay. When you executed the original search
19 warrant that the State introduced seconds ago, did you
20 actually draft the returns for that particular one?

21 A. Do you mind if I look?

22 Q. Sure.

23 THE COURT: Let me back up and clear up something.
24 You were not the affiant? You were not the person that
25 swore to the facts in the first search warrant, were you?

1 Didn't I understand that Detective Bowen was there?

2 THE WITNESS: That is correct, sir.

3 THE COURT: So you didn't leave out the towel? I
4 mean, you didn't put the towel in the first one? Bowen put
5 the towel in the first one, based on what he was told?

6 THE WITNESS: Yes.

7 THE COURT: I just wanted to make sure I understood
8 that.

9 THE WITNESS: No. This is -- so we are clear, on
10 the original search warrant for the house, that is not my
11 signature for the return.

12 BY MR. WEST:

13 Q. Okay. Would that be a detective?

14 A. I'm not sure.

15 Q. You are the case agent, right?

16 A. Right. I can't read everybody's signature though.

17 Q. Would that be Detective Thompson?

18 A. Detective Thompson was there. You would have to
19 ask him to be perfectly sure. I think he's available.

20 MR. WEST: Court's indulgence.

21 BY MR. WEST:

22 Q. Just to clarify, the information that was relayed
23 to you somehow for the initial warrant was the blood spot
24 and the towel?

25 A. That was -- yes, that was part of it. But like I

1 explained, after receiving that information, I went to the
2 location to secure it, observed it myself. And I relayed
3 that information on to Detective Bowen.

4 MR. WEST: Okay. No further questions for this
5 witness.

6 REDIRECT EXAMINATION

7 BY MS. BALDWIN:

8 Q. Just quickly. When you said you went to the scene
9 and you glanced in the car, did you touch the car?

10 A. No.

11 Q. Did you open the door to the car?

12 A. No.

13 Q. What was the probable cause for the search warrant
14 based on, what Colburn told you or what you saw?

15 A. Yes, the reason I went over there --

16 Q. Yes? I said two things. Was it based on what
17 Colburn told you or what you saw?

18 A. It's based on both, but Colburn -- what Deputy
19 Colburn said is the catalyst to get me over there to secure
20 it. Put it this way, if I didn't even go there and I would
21 have got the information, whether I was at the house or not,
22 I'm still calling the same information that's been relayed
23 to me, whether I saw it or not. Does that make sense?

24 Q. I believe so. So if you were still at 2317 West
25 Palmer Drive and received the information about what Colburn

1 saw, would have still have called Detective Bowen?

2 A. Yes.

3 Q. And what else was in there besides the burgundy
4 towel and the possible bloodstain, in the affidavit?

5 A. Oh, the fact that the defendant didn't show up for
6 a pre-arranged meeting.

7 Q. Okay. And while you were at the Burnham Court, you
8 said you made contact with the defendant's wife Carla
9 Little?

10 A. Yes.

11 Q. What was her response?

12 A. To me being there?

13 Q. Yes.

14 A. I explained to her the reason I was there. She was
15 very cooperative. In fact, she even let me go in the house
16 and look around.

17 MS. BALDWIN: Court's indulgence. Nothing
18 further.

19 THE COURT: Thank you very much. You can step
20 down.

21 Do you got something else?

22 RECROSS-EXAMINATION

23 BY MR. WEST:

24 Q. Tell me the timing of when you were at the
25 interrogation room.

1 A. I was at the interview room. I don't know the
2 exact time. But if we went into -- it would have been after
3 I was relieved by Detective Thompson at the scene. I
4 couldn't leave the scene unattended. So when Detective
5 Thompson came, I was then able to leave and go and attempt
6 to interview the defendant. I don't know the exact time.
7 It might be time stamped on the report.

8 Q. You went to 223 Burnham prior to going to the
9 interview room?

10 A. Yes.

11 Q. Okay. Knowing that the defendant had already been
12 transported to the interview room?

13 A. Yes.

14 MR. WEST: No further questions.

15 THE COURT: Let me ask you. Okay. So you found
16 out -- you heard what Colburn said he saw at this place --

17 THE WITNESS: Yes, sir.

18 THE COURT: -- we are talking about?

19 THE WITNESS: Yes, sir.

20 THE COURT: And you say you went there to secure
21 the scene?

22 THE WITNESS: Yes.

23 THE COURT: Is that what you said?

24 THE WITNESS: That is correct.

25 THE COURT: And when you went there to secure the

1 scene, did you know that Mr. Little had already left and
2 gone to the law enforcement center?

3 THE WITNESS: Yes. I knew that Deputy Colburn took
4 the defendant from that location. And then I replaced --
5 after realizing that, then I went over there to hold the
6 scene.

7 THE COURT: And when you say you went over there to
8 hold the scene, what do you mean by that?

9 THE WITNESS: I want to make sure that nothing is
10 tampered with, nothing changes, nothing is manipulated by me
11 or the defendant's family or anyone.

12 THE COURT: Okay. So how long were you there
13 holding the scene?

14 THE WITNESS: Until Detective Thompson got there.

15 THE COURT: And how long was that?

16 THE WITNESS: Your Honor, I would have to estimate.
17 I'm sure we could get down to brass tacks. 45 minutes, 45
18 minutes.

19 THE COURT: I am not trying to pin you down to a
20 minute or two or anything like that. But you said 45
21 minutes or so?

22 THE WITNESS: Yeah, I would estimate that.

23 THE COURT: And then so Detective Thompson, did you
24 say?

25 THE WITNESS: Yes. He relieved me. And I left.

1 And that's when I went to the interview room to meet with
2 the defendant.

3 THE COURT: So when Detective Thompson got there,
4 you, more or less, turned the scene over to him?

5 THE WITNESS: That's correct, sir.

6 THE COURT: And you went to the law enforcement
7 center, whatever, to do whatever you did there?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Did that prompt any
10 questions from anybody else out there? Just trying to get a
11 clear picture.

12 MS. BALDWIN: I don't think so, Your Honor.

13 MR. WEST: Nothing from us, sir.

14 THE COURT: Thank you very much. We will let you
15 step down.

16 And we will take a short break at this point and
17 come back in five to ten minutes.

18 MS. BALDWIN: Thank you, Your Honor.

19 (Whereupon, a recess transpired.)

20 THE COURT: Call your next witness.

21 MR. SOWARDS: The State calls Detective Jason
22 Bowen.

23

24

25

1 JASON BOWEN,

2 having been duly sworn, testifies as follows:

3 THE CLERK: State your first name and spell your
4 last name.

5 THE WITNESS: Detective Jason Bowen, B-o-w-e-n.

6 DIRECT EXAMINATION

7 BY MR. SOWARDS:

8 Q. Thank you, Detective Bowen. Where do you currently
9 work?

10 A. For the Charleston County Sheriff's Office.

11 Q. And what capacity do you work there?

12 A. I'm currently a detective in the detective unit.

13 Q. And was that the case on September the 22nd, 2015?

14 A. Yes.

15 Q. And did you on that date become involved in this
16 case, State v. General Little?

17 A. I did.

18 Q. And on that date, did you first obtain a search
19 warrant for the victim's residence, 2317 West Palmer Drive?

20 A. I did.

21 Q. And what did you do after that?

22 A. After we obtained the search warrant, we delivered
23 it to the scene, which is what I did in this case. I
24 delivered it to the scene so that a copy of the search
25 warrant would be on scene.

1 Q. And did you obtain search warrants or any
2 additional search warrants in this case?

3 A. I did. Once I delivered that one to the scene, I
4 was notified that new information was going to require a
5 second search warrant for an additional residence.

6 MR. SOWARDS: May I approach the witness, Your
7 Honor?

8 THE COURT: Sure.

9 BY MR. SOWARDS:

10 Q. Detective Bowen, I will show you what has been
11 previously identified as Court's Exhibit 2. Do you
12 recognize that?

13 A. I do. It's the search warrant I obtained for that
14 second residence.

15 Q. And does that have your signature on it?

16 A. Yes, it does.

17 Q. So just walk me through the process of compiling
18 that search warrant application.

19 A. Right. So typically what we do, and as I remember,
20 that's what I did in this case, whenever we are called out
21 for a call, one of us will be dispatched to obtain a search
22 warrant, if it's necessary. And in this case, that was me.
23 We are oftentimes given information for both the description
24 of the premises to be searched as well as the probable cause
25 that leads to that search. And so we type up the search

1 warrant and take it to whomever the on-call or available
2 judge is to have it signed.

3 Q. And who provided you with the information, that you
4 used to compile the probable cause affidavit?

5 A. Detective Muirheid.

6 THE COURT: Detective who?

7 THE WITNESS: Muirheid.

8 BY MR. SOWARDS:

9 Q. That's Detective Will Muirheid?

10 A. Yes.

11 Q. And do you know, was that search warrant executed?

12 A. Yes, it was.

13 Q. And how do you know that?

14 A. I delivered it to the scene and stood by while it
15 was executed.

16 Q. Do you know whether a return was executed on that
17 search warrant?

18 A. From looking --

19 Q. Looking at that one right there?

20 A. Yes, there was a return executed, yes.

21 Q. And what is the date on that?

22 A. The return date showing the date of the execution
23 was September 23rd, 2015. The return was signed, sworn
24 before a judge September 24th, 2015.

25 Q. And I want to kind of go back to just the process

1 of obtaining a search warrant. So once you have compiled
2 the search warrant application, you then took it to a
3 judge?

4 A. That's correct.

5 Q. And what did you do when you took it to the judge?

6 A. Basically, give them the search warrant. They
7 usually ask -- sometimes they will ask what it's about. And
8 in this case, I think we would have said a death
9 investigation. And, generally, the judge will read it. If
10 there's any questions, they will ask. Other than that, they
11 will sign it.

12 MR. SOWARDS: Beg the Court's indulgence. I asked
13 you about the first return. Were there any additional
14 returns executed with this search warrant?

15 THE WITNESS: It appears --

16 BY MR. SOWARDS:

17 Q. I will hand this document back to you.

18 A. It appears there was a second page. I didn't
19 execute the return on this search warrant. But looking at
20 the document, yeah, it appears there is a second return as a
21 part of this search warrant.

22 Q. What is the date on that?

23 A. The date on that second return shows that it was
24 executed September 23rd, 2015. And it was sworn before a
25 judge September 30th, 2015.

1 MR. SOWARDS: Thank you, Detective Bowen. Please
2 answer any questions the defense may have.

3 CROSS-EXAMINATION

4 BY MR. WEST:

5 Q. Detective, your reports indicate your initial
6 involvement began in this case when you were dispatched to
7 complete a search warrant for the incident location.
8 Describe to me how you were dispatched.

9 A. Typically, I don't remember specifically this one,
10 but typically, a supervisor calls and says -- tells me what
11 they need me to do.

12 Q. Do you remember which supervisor called you in this
13 case?

14 A. Not if it's not noted in the report.

15 Q. Do you think that's something that would be
16 important for prosecution of this case?

17 A. No. It could be any number of -- we have at least
18 two sergeants, a lieutenant and a captain. Sometimes they
19 are all involved in investigation. So it could be any one
20 of them.

21 Q. Tell me about the specific relay of information to
22 you for the probable cause that you developed at the initial
23 location, 2317 West Palmer Drive?

24 THE COURT: I'm not sure I understand what you are
25 talking about. Are you talking about the -- I guess you are

1 talking about the second warrant?

2 MR. WEST: There's a warrant for 2317, the crime
3 scene.

4 THE COURT: I don't know. Apparently, there's two
5 search warrants; isn't that right?

6 MR. WEST: There's a search warrant for the crime
7 scene. There's a search warrant for 223 Burnham, my
8 client's residence. And then there's a search warrant for
9 the car itself.

10 BY MR. WEST:

11 Q. My question right now is, how was the information
12 relayed for the search warrant for 2317? How did you gather
13 the information? I think it's important to understand how
14 information was relayed to you, as you are the person that's
15 swearing the reports out?

16 A. Typically, it's relayed to me by a person on scene
17 over the phone.

18 Q. So it's a phone call?

19 A. Yes.

20 Q. And but you don't remember who called you in this
21 particular case?

22 A. I don't.

23 Q. Would there have been any writing to you as a
24 descriptor for that probable cause of 2317 West Palmer
25 Drive?

1 A. No. Typically, when a detective or supervisor is
2 on the phone with me, I'm making notes or typing in notes of
3 whatever description they are giving me.

4 Q. So who actually formulates the language for the
5 affidavit?

6 A. I do, based on the information that they have given
7 me for probable cause, depending on my knowledge of the
8 investigation.

9 Q. Okay. So if that information is inaccurate, then
10 your probable cause affidavit will likewise be inaccurate?

11 A. I'm sorry. I don't understand.

12 THE COURT: If they have information that they told
13 you is inaccurate, what you put down based on what they told
14 you is inaccurate, right?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: But I'm still confused about it. The
17 first search warrant that was obtained, as I understand it,
18 was that just related to the car?

19 MS. BALDWIN: The first search warrant, the one
20 that Mr. West is speaking about now --

21 THE COURT: No, no. There was a first search
22 warrant, right?

23 MS. BALDWIN: For 223 Burnham Court, that also
24 included vehicles on the property. So it was for the car,
25 the house, the property.

1 THE COURT: All right. And this guy didn't have
2 anything to do with that?

3 MS. BALDWIN: He did have something to do with
4 that. He did obtain that search warrant based on the
5 information he was given, Your Honor. There are multiple
6 search warrants in this case. I believe the one being
7 challenged is for 223 Burnham Court.

8 THE COURT: That's not what my notes said.

9 MS. BALDWIN: The one that's been made a court's
10 exhibits is for 223 Burnham Court.

11 MR. WEST: That's right. I'm simply trying to get
12 to the procedures for the relay of information at this
13 point. Fair enough?

14 THE COURT: Go ahead.

15 BY MR. WEST:

16 Q. Okay. Did the procedure for the relay of
17 information for the search warrant for 2317 West Palmer
18 Drive differ in any manner from the way that information was
19 conveyed to you for 223 Burnham Court?

20 A. Not that I remember.

21 Q. Was it a different detective?

22 A. Oh, well, yes. You asked the relay of information.
23 I believe it was relayed by a different person.

24 Q. Okay. So when you went to my client's house prior
25 to getting the search warrant, tell the Court what you saw

1 in the car.

2 A. I'm sorry? I didn't go to your client's house
3 prior to getting the search warrant.

4 Q. So you have no first-hand knowledge of anything
5 about where the car was located or how this evidence or
6 potential evidence was discovered?

7 A. That's correct.

8 Q. When you were drafting the affidavit of the search
9 warrant, tell me how the positioning of the car was
10 described to you.

11 A. I don't remember anything of note being relayed
12 about the positioning of the car.

13 Q. I show you some pictures that were taken at the
14 scene. First is going to be.

15 (Defendant's Exh. 3, Photograph, was marked for
16 identification.)

17 (Defendant's Exh. 4, Photograph, was marked for
18 identification.)

19 (Defendant's Exh. 5, Photograph, was marked for
20 identification.)

21 (Defendant's Exh. 6, Photograph, was marked for
22 identification.)

23 BY MR. WEST:

24 Q. I show you Defendant's Exhibit 3. Do you recognize
25 that photograph?

1 A. Yes. That appears to be the defendant's residence
2 that night.

3 Q. How do you recognize that?

4 A. As best I remember, I remember it was a white house
5 in Shadow Moss with a gray SUV.

6 Q. Did you take a picture of it, or did you map it out
7 before you drew this affidavit, or when did you actually see
8 what the residence looked like?

9 A. After I obtained the search warrant and delivered
10 it.

11 Q. So your knowledge of how the car was positioned and
12 the home itself was because of your firsthand observation
13 after you delivered the search warrant?

14 A. That's correct.

15 Q. Okay. Defendant's Exhibit 4, do you recognize
16 that?

17 A. Appears to be same location, different angle.

18 Q. And Defendant's Exhibit 5?

19 A. It appears to be the car that's parked in the
20 driveway here.

21 Q. Defendant's Exhibit 6?

22 A. Different angle of the car at the window.

23 Q. Okay. Did you physically looking into the car or
24 anything like that when you were there?

25 A. Not in particular. I remember noticing it as I

1 walked by, because, obviously, it was a subject of the
2 search warrant.

3 Q. Sure. Can you tell me the timing of when the
4 information was relayed to you for the search warrant?

5 A. Roughly. As mentioned in my incident report, I
6 think I documented that I was told once I delivered the
7 first search warrant that a second one would be needed. I
8 don't remember how long after that to the time I actually
9 got the information for description of probable cause went
10 by.

11 Q. Do you have any recollection of when Detective
12 Muirheid would have called you with the description of
13 probable cause?

14 A. The search warrant has a time signed by the judge
15 of 1:55 a.m. So without seeing the second search warrant, I
16 mean, not more than -- and this is total estimate -- not
17 more than two hours before that. So that would be about
18 11:55 p.m.

19 Q. Was when the phone call was placed to you?

20 A. Approximately. It could have been any time within
21 that two hours. I had to drive back to the office. And
22 then get on the phone with him when I was ready to receive
23 that information and also when he was in a position to be
24 able to relay it to me. It could have been any time within
25 that time frame. It usually takes me anywhere from 30

1 minutes to a little over an hour to draft the search
2 warrant, depending on how detailed.

3 Q. Did you have any back and forth with Detective
4 Muirheid when y'all were on the phone about what the
5 language of the search warrant would contain?

6 A. No.

7 Q. Or was it all dictated to you and you just took
8 down what he said, or did you have sort of a conversation
9 about what should be said?

10 A. I don't remember specifically this incident. The
11 way it usually occurs is, a detective will give me what
12 their probable cause is. And, obviously, they don't dictate
13 it as you would, say, a court reporter or in paragraph
14 format. They just tell me what they have. And I take the
15 facts and format them in such a way that it makes sense.

16 Q. So you are the drafter of the document then?

17 A. That's correct.

18 Q. Okay. So the way that you decide to phrase things
19 is how it is transferred or relayed to the actual magistrate
20 who you're swearing the probable cause?

21 A. Yes.

22 Q. Okay. In your report, you also indicate you were
23 informed that this was the residence of the suspect. Tell
24 me how you were informed and who informed you of that.

25 A. At the time I wrote that report, it would have come

1 after -- and I apologize, you have the date on the report --
2 but up to several days after I've already written a search
3 warrant and it's been executed. So to have said that it was
4 the residence of the suspect, at that point in the
5 investigation, I believe he would have already been looked
6 at as the suspect.

7 Q. But you specifically used the term "suspect"?

8 A. Yes, as we often do in investigations.

9 Q. You also indicate in your report that you and other
10 deputies waited for investigators. Who else waited with
11 you?

12 A. I don't specifically recall. There were a lot of
13 people involved in this particular investigation.

14 Q. Do you remember anybody from the Charleston City
15 Police Department?

16 A. Not particularly.

17 Q. Was anybody from Charleston City there?

18 A. I don't remember. I don't remember.

19 Q. Okay.

20 A. It's Shadow Moss, a lot of it is in the city of
21 Charleston. Some of it is not. Some of the houses are not
22 in the incorporated area. So it would not have been
23 unreasonable for them to have been there.

24 Q. Tell me about the actual service of the search
25 warrant. Are you the detective who would actually go up to

1 the owner of the residence and give them a copy? How does
2 that work?

3 A. No. Particularly not in this case, I wasn't what
4 would be considered the lead or even secondary detective. I
5 will usually hand it off to either that detective or the
6 crime scene personnel so that they can take photos of it.
7 And then that lead detective will usually deliver the copy.

8 Q. Did you ever talk to Sergeant Euper in this case?

9 A. I don't remember specifically about this case. I'm
10 not sure he was a sergeant at the time, actually.

11 Q. Did you talk to Turner in this case?

12 A. Which Turner? There are two, and they are
13 married.

14 Q. Interesting.

15 A. And they've both been detectives at some point.

16 Q. Did you talk to either of them about the relay of
17 probable cause in this case?

18 A. Not that I remember. However, Detective Dustin
19 Turner is currently in the detective office. And I don't
20 remember if he was out on this one or not.

21 Q. Okay. But your testimony is that the relay of
22 information was limited to only Will Muirheid?

23 A. As best I remember, yes.

24 Q. When you were with the magistrate, did you
25 supplement any of the affidavit? Did he or she ask you any

1 questions?

2 A. No. And the reason is, if they would have, that
3 would have been of note, so I would have made some notes or
4 added that to my report.

5 Q. So no questions were asked at all?

6 A. No. And, generally, it's, hey, what do you guys
7 have? Sometimes they often know ahead of time already
8 before we get there. And I hand them the report. And they
9 read it and if they are satisfied, there's no questions
10 asked.

11 Q. Okay. And so your testimony today is that the only
12 thing that the magistrate had, was what was relayed in that
13 typed affidavit; nothing else was said?

14 A. That's correct.

15 MR. WEST: Okay. No further questions at this
16 time.

17 THE WITNESS: Nothing further from the State, Your
18 Honor.

19 THE COURT: Thank you very much. You can step
20 down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right. What's next?

23 MS. BALDWIN: We have no further witnesses, Your
24 Honor.

25 THE COURT: All right. Anyone want to present

1 anything?

2 MR. WEST: We are going to call Detective Thompson.

3 MIKE THOMPSON,

4 having been duly sworn, testifies as follows:

5 THE CLERK: State your full name and spell your
6 last name.

7 THE WITNESS: Mike Thompson, T-h-o-m-p-s-o-n.

8 DIRECT EXAMINATION

9 BY MR. WEST:

10 Q. Detective Thompson, where do you work?

11 A. Charleston County Sheriff's Office.

12 Q. And how long have you worked there?

13 A. Since '98.

14 Q. And in what capacity?

15 A. I was a patrolman from '98 to 2000. I was court
16 security deputy from 2000 to 2005. I was a patrolman from
17 2005 to 2010 or '11. I was a detective in 2011.

18 Q. Okay. And do you recall the particular incident
19 that brings us here today?

20 A. Yes, sir.

21 Q. When did you first become involved?

22 A. Sergeant Bryant contacted me at my house and asked
23 me to respond to the crime scene at West Palmer Drive and
24 help with some interviews of people.

25 Q. Your first involvement was through interviews?

1 A. Yes, sir.

2 Q. And that was at 2317 West Palmer Drive?

3 A. Yes, sir.

4 Q. And after you interviewed those individuals, what
5 was your next assignment?

6 A. To go to a location on Burnham to stand by while we
7 waited for a search warrant to get signed.

8 Q. And who went with you?

9 A. Who went with me? I went by myself over there.

10 Q. You went by yourself to 223 Burnham?

11 A. I drove myself in my car to Burnham.

12 Q. Who else was at 223 Burnham?

13 A. Will was there.

14 Q. Can you be a little more specific?

15 A. Oh, Detective Muirheid.

16 Q. All right. And who was there before him? Do you
17 know?

18 A. Oh, I don't know, sir.

19 Q. So all you know is Sergeant Bryant sent you to 223
20 Burnham?

21 A. Yes, sir.

22 Q. With Detective Will Muirheid?

23 A. I drove myself there.

24 Q. Y'all arrived about the same time?

25 A. I went there. He was there.

1 Q. And do you have a timeline for when you would have
2 arrived?

3 A. Not an exact time, no, sir.

4 Q. Approximation?

5 A. No, sir. I don't know if it's in my report or not
6 or something, but I don't have exact time.

7 Q. When you first approached 223 Burnham Court, what
8 did you do?

9 A. I knocked on the door and introduced myself to
10 Mrs. Little. Told her who I was and what I was there for.

11 Q. And who was with you at the front door when you did
12 that?

13 A. Me and Ms. Little.

14 Q. That's it?

15 A. Yes, sir.

16 Q. I'm sorry. This may be my fault, but I'm having a
17 hard time understanding if you arrived with Detective Will
18 Muirheid, the timeline of who was at the house and when.

19 A. I was directed to go there. And I drove myself
20 there. And when I got there, he was there. And I guess you
21 could say in terms, I relieved him. I don't know what took
22 place before I got there. But I introduced myself to
23 Mrs. Little and explained what I was there for, and we
24 waited.

25 Q. Was Detective Muirheid the only person at the

1 residence when you arrived other than Carla Little?

2 A. I don't remember. I know I spoke to Ms. Little and
3 told her who I was and what I was there for.

4 Q. Did you see any other officers there?

5 A. I don't remember. I spoke to Will briefly. And
6 then I told her who I was and I waited with her.

7 Q. Your job was just to wait with Ms. Little?

8 A. Yes, sir. Just, you know, just -- she has some
9 children that were sleeping. She had an adult child that
10 had been in and out of bed. And I didn't want to wake the
11 small children. And I wanted to be as kind to her as I
12 could. I know we were waiting on a search warrant. So
13 didn't want anything to get disorder or messed up or
14 anything change or anything. So we didn't mess anything,
15 just me and her dog. And we sat there while we waited for a
16 search warrant to get signed.

17 Q. And you were inside the house?

18 A. Yes, sir, in the living room. I sat on the couch
19 and she sat on the other couch.

20 Q. Once the search warrant was executed, was it your
21 job to also document the return of the search warrant?

22 A. It usually is, yes, sir, whoever concluded it, you
23 know. Search warrants are carried out by the FSU. That's
24 our policy. So Erin Meyer would have conducted the search.
25 And then a warrant -- return gets drawn up. And whoever

1 witnesses whatever was taken will sign it.

2 Q. Let's make this a little easier. You are like
3 pulling teeth right now, buddy.

4 A. I'm sorry, sir. I'm just trying to be as -- just
5 answering your questions best I can.

6 Q. This has been marked as State's Exhibit 2. This is
7 the search warrant of 223 Burnham Court. Do you recognize
8 this document?

9 A. Prepared by Jason Bowen. There's a return that I
10 signed right there.

11 Q. Okay. That's your signature at the bottom of the
12 first page of the return?

13 A. Yes, sir.

14 Q. Now, there's an additional return.

15 A. Right.

16 Q. Tell me how that happened.

17 A. This is just -- this is something we prepared at
18 the scene. And when Erin gets back to her office, she
19 prepares another one with her computer. And she signs. She
20 prepared this one. I signed both of them.

21 Q. So your testimony is Erin -- what's her last name?

22 A. Meyer.

23 Q. -- Meyer, prepared the second return, but you
24 signed for it?

25 A. Yeah, because I helped her with the search of it.

1 Q. Now, in the first return --

2 A. This one?

3 Q. Correct.

4 A. -- tell the Court what it is that you documented
5 you took from the house?

6 A. Well, I didn't take anything. It was taken as
7 evidence. So Erin probably took it, but it was found by
8 both of us. Men's shoes -- is that leather?

9 Q. You wrote it.

10 A. Okay, and digital photographs.

11 Q. All right. And that return is a complete
12 reflection of everything that was documented as evidence
13 because of the search warrant that you just talked about?

14 A. That's what's written on there.

15 Q. Obviously, there's some differences between the
16 second page of that return, and I want to know why.

17 A. I don't know.

18 Q. You don't have an answer as to why --

19 A. I know we towed the car from there.

20 THE COURT: I'm sorry?

21 THE WITNESS: I know that we towed the car away
22 from the residence. You know, it's not on the first one,
23 but it's on the second one. And second one says, DNA blood
24 swabs.

25 THE COURT: Says what?

1 THE WITNESS: DNA blood swabs.

2 BY MR. WEST:

3 Q. So the first page of the return does not mention
4 the Toyota Sequoia that was taken from the house?

5 A. No, it's not on here.

6 Q. Look at the bottom of that return and read with me:
7 I swear that this inventory is true and detailed account of
8 all property taken by me on this warrant.

9 A. Yes, sir.

10 Q. That's what you swore to a judge?

11 A. Yes, sir.

12 Q. Okay. But that's inaccurate?

13 A. Well, this one is more accurate. Second is more
14 accurate than the first one.

15 Q. So if you were the lead on this case, you are
16 telling me you would rely on the second affidavit rather
17 than the first one, because it's more complete?

18 A. I would rely on both of them.

19 Q. But they are different?

20 A. They are.

21 Q. And you swore to the judge two different things?

22 A. Well, yeah, I guess, if you are going by my
23 signature and what this is. But one's got some things and
24 one's got some other things on them.

25 Q. The point is, when you go in front of a judge and

1 you say, this is all of the evidence that I took, now it's
2 your testimony that that is not all of the evidence that you
3 took.

4 A. Well, one paper got a couple of things listed on it
5 and the other has some other things. Not ill-intended.
6 Maybe something was an oversight.

7 Q. But it's not true.

8 A. What's not true? We took these things and we took
9 these things.

10 THE COURT: Let me ask it this way.

11 THE WITNESS: Yes, sir.

12 THE COURT: What's listed on the first return?
13 Give him back the first return.

14 THE WITNESS: The pictures and the shoes.

15 THE COURT: Were you there when those items were
16 taken?

17 THE WITNESS: Oh, yes, sir.

18 THE COURT: Okay. All right. Now, did some time
19 go by between when those items were taken pursuant to the
20 search warrant and when the car and the DNA blood swabs were
21 taken pursuant to the search warrant?

22 THE WITNESS: No, sir. This is all taken the same
23 evening.

24 THE COURT: I understand all taken the same evening
25 and all. But it's got some listed one time and then some

1 listed a second time.

2 THE WITNESS: Right.

3 THE COURT: Why was there two returns?

4 THE WITNESS: I can't explain it other than maybe
5 they realized that they didn't add the other two things on
6 this paper and they just wanted to make a better
7 recollection on the second page.

8 THE COURT: Okay.

9 BY MR. WEST:

10 Q. And just for the Court's edification, this first
11 return is dated September 24th.

12 A. Yes, sir.

13 Q. Second return is dated September 30th.

14 A. Right.

15 Q. Did either of the returns you mentioned describe a
16 towel that was taken?

17 A. No. There was no towel written on those papers.

18 Q. Was there ever any description of a swab taken from
19 the center console of the Toyota Sequoia?

20 A. Other than the second paper says blood swabs, but I
21 think whoever did it doesn't designate where they came
22 from.

23 Q. Do you know where they came from?

24 A. Oh, I don't know.

25 MR. WEST: No further questions of this witness.

1 THE COURT: Anything else?

2 MS. BALDWIN: Real quick, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. BALDWIN:

5 Q. So the second return was dated September 30th,
6 2015?

7 A. Yes, ma'am.

8 Q. Is that within 10 days of September 23rd, 2015?

9 A. Yes, ma'am.

10 MS. BALDWIN: Thank you. No further questions.

11 THE COURT: You may step down.

12 MR. WEST: I would like to call Officer Biggs.

13 THE COURT: You are calling Officer Biggs?

14 MR. WEST: That's right.

15 THE COURT: What is the purpose of your calling
16 Officer Biggs?

17 MR. WEST: I'm going to establish a timeline of how
18 he was involved and when he was involved and going to the
19 house and the location of my client.

20 THE COURT: I'm not sure I understand that. How
21 does it relate to anything that I've got to decide?

22 MR. WEST: It relates to what you have to decide
23 because Officer Biggs in the CAD report --

24 THE COURT: The what?

25 MR. WEST: -- CAD report, the radio traffic that

1 comes in and is recorded by the dispatcher, talks about when
2 he identifies General Little as a suspect, the timeline,
3 which has briefly been a lot of the testimony that's been
4 here today, the description of his car, where he first sees
5 them, what he does in reaction to first seeing him, and his
6 involvement at the scene.

7 THE COURT: All right. The issue that I'm dealing
8 with at this point, at least I think I am dealing with, is
9 whether to suppress the evidence, the items or whatever we
10 are going to call it, that was gotten by them through the
11 search warrant. Right?

12 MR. WEST: That's correct. But how they arrived to
13 the house has always been one of the fundamental issues of
14 the search warrant and the suppression motions.

15 THE COURT: I'm not sure I understand that.

16 MR. WEST: This officer I expect to testify --
17 again, I've never been able to talk to him -- according to
18 the CAD report, identifies my client as a suspect some 15
19 minutes after the initial 911 call. And they give a
20 description of him, his birth date, the car he was driving.
21 He actually calls out that he sees him driving on Highway
22 61. And the testimony has been all along that they didn't
23 know anything about my client until they got to the house.
24 And that he only first made contact when he came out of the
25 house. And that's simply not the case. The CAD report

1 clearly demonstrates that they saw my client driving and
2 that they later ended up at his house, knowing what his
3 location was. And the timing of that is particularly
4 important, and who he was with and what he called out and
5 relayed -- what information he relayed to other officers as
6 well.

7 THE COURT: But how does that have anything to do
8 with the facts that were in the affidavit that got the
9 search warrants?

10 MR. WEST: Well, Your Honor, the motion for
11 suppression is not based exclusively on the writing within
12 the search warrant. There is also, within my brief
13 description of us wanting to suppress the initial intrusion
14 on to my client's property, and I believe the case law and
15 my position is going to show that that initial intrusion was
16 unlawful. And that case law is very --

17 THE COURT: Why is that? Why was it unlawful?

18 MR. WEST: Judge, we are going to get to that when
19 all of the testimony is established.

20 THE COURT: Okay. Call your next witness.

21 MR. WEST: Thank you. Officer Biggs.
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RICKIE BIGGS,

having been duly sworn, testifies as follows:

The clerk: State your full name and spell your last?

THE WITNESS: Rickie Biggs, B-i-g-g-s.

DIRECT EXAMINATION

BY MR. WEST:

Q. Can you tell the Court where you work?

A. Where I work?

Q. That's the easiest question you are going to get today.

A. Charleston County Sheriff's Office.

Q. How long have you work there?

A. Since 2012.

Q. In what capacity?

A. I was a deputy, deputy sheriff. I was patrol deputy. And now I'm in Metro.

THE COURT: Now you are what?

THE WITNESS: Metro, a detective in Metro.

BY MR. WEST:

Q. So you do narcotics now?

A. Yes.

Q. Lots of issues with search warrants then?

A. No issues, but lots of search warrants.

Q. You were involved in the case we are here for

1 today, weren't you?

2 A. Yes.

3 Q. And how did you first become involved?

4 A. We received a call and I showed up on scene.

5 Q. I need you to be a little more specific. You
6 received a call from who?

7 A. Dispatch sent us to the residence.

8 Q. The residence of what?

9 A. Where the incident occurred.

10 Q. So do you remember the address of that?

11 A. I don't.

12 Q. Would 2317 West Palmer Drive sound about right?

13 A. I don't know. I don't remember.

14 Q. What did you see when you got there?

15 A. I stayed outside. And I saw the daughter of the
16 victim. I spoke with her.

17 THE COURT: I'm sorry. You stayed outside and
18 what?

19 THE WITNESS: The residence, I was standing outside
20 and saw the daughter of the victim. I spoke with her. And
21 then I went inside for a brief period. And then I came back
22 out again.

23 Q. Okay. So you took a statement from the daughter of
24 the victim?

25 A. I didn't take a statement, but I did speak with her

1 briefly.

2 Q. What's the difference?

3 A. Well, statement, it's written or recorded. I
4 didn't do that. I just spoke with her face-to-face.

5 THE COURT: You need to keep your voice up.

6 THE WITNESS: Oh, sorry.

7 Q. All right. So you talked to -- what was her name?

8 A. I don't remember.

9 Q. But you talked to her. What did you do next?

10 A. I spoke with her. And then I went inside for a few
11 minutes. One of the deputies showed me what was going on
12 there. And then I came back outside and stood with her some
13 more and waited for the detectives to show up. Just kept
14 the scene secure.

15 Q. Did you start a crime scene log?

16 THE COURT: I'm sorry. What did you ask?

17 Q. Did you start a crime scene log?

18 A. Yes, I did, yes.

19 Q. And after you started the crime scene log, what did
20 you do next?

21 A. I mean, I don't remember. I was just on scene
22 making sure no one was going onto the crime scene that
23 wasn't supposed to be there.

24 Q. And once you left the crime scene, what did you do?

25 A. I don't remember what I did after I left.

1 Q. Would that have been something you put into the
2 form of a report?

3 A. What I did after I left the scene?

4 Q. Yes.

5 A. No.

6 Q. You wouldn't have reported what you did after you
7 left the scene?

8 A. No.

9 Q. Did you have any further involvement in this case
10 other than what you did on scene?

11 A. Not that I believe, no.

12 Q. Okay. And if you would have, you would have
13 documented it in the report; is that correct?

14 A. If I did anything with the case?

15 Q. Did anything other than the crime scene and taking
16 the statement, or nonstatement as you called it, you went to
17 the scene, you talked to some people, you did the crime
18 scene log and you left, that's the extent of your
19 involvement in this case?

20 A. Yes.

21 Q. Okay. And nothing else you want to add or
22 supplement to your report?

23 A. No. What's in my report is what I remember, so ...

24 Q. Do you remember trying to gather information about
25 my client?

1 A. In what way? I don't understand the question.

2 Q. Well, that's something I would like you to testify
3 about.

4 A. Yeah, I don't understand.

5 THE COURT: Do you remember anybody telling you
6 anything about Mr. Little, whatever, the defendant over
7 there?

8 THE WITNESS: The daughter told me she was trying
9 to -- I guess they were supposed to meet and he didn't show
10 up. She called him. He made a comment about having
11 disciplinary issues and he would be on his way. And then he
12 just never showed up. And she thought that was odd.

13 BY MR. WEST:

14 Q. Do you remember running his name through the
15 central dispatch system?

16 A. I don't remember.

17 Q. Do you remember trying to identify what type of
18 vehicle he drove?

19 A. Yeah, I do remember that, yes.

20 Q. Do you remember when that was?

21 A. I don't remember when. That would have been that
22 night.

23 Q. Okay. Do you remember going out on the road and
24 doing anything else?

25 A. I don't remember, no.

1 Q. So your testimony is you didn't do anything else,
2 right?

3 A. Not that I remember, no.

4 Q. Did you ever view the defendant?

5 A. I did not.

6 Q. Did you ever see him driving anywhere?

7 A. No.

8 Q. So if the CAD report were to say that the subject
9 is possibly en route back to location, what does that mean?

10 A. I don't know. I don't remember.

11 Q. But if you would have called that in, that's
12 something you would have said over the central dispatch
13 system?

14 A. I don't remember. I don't remember. I don't know
15 how to answer that.

16 Q. Do you know what your call number is?

17 A. 8-7.

18 Q. Would it refresh your recollection to look at it?

19 A. Probably.

20 MR. WEST: I'm going to have this marked as
21 Defendant's Exhibit 7.

22 (Defendant's Exh. 7, Call record, was marked for
23 identification.)

24 Q. If I can get you to take a look at Defendant's
25 Exhibit 7. Can you identify what your call number was based

1 on this document?

2 A. 8-7. Oh, you want me to look at it? Right here.

3 Q. What time does that say that you initially became
4 involved?

5 A. It's up here as well.

6 THE COURT: Anything you say I need to hear.

7 MS. BALDWIN: Talk into the mic.

8 THE WITNESS: Oh, just starting on page 5, the
9 first time I see my number is going to be at 22:04.

10 BY MR. WEST:

11 Q. From there, what did you do?

12 A. The next time I see my number, it looks like 22:15.
13 It shows my number with his -- says General P. Little,

14 [REDACTED]

15 Q. What does that mean?

16 A. I'm assuming that's his birthday, but I don't know.
17 But that's probably me calling in his name with his
18 birthday.

19 Q. What next?

20 A. This doesn't say my number, but you have
21 highlighted silver Toyota Sequoia.

22 Q. Okay.

23 A. And then it says backed up 8-7, which is me, with,
24 it looks like chaplain.

25 Q. Can you please identify who that is?

1 A. I don't know who the chaplain was, just a chaplain.
2 I'm not sure which one showed up. And then says 8-7,
3 possibly en route back to location. The only thing I could
4 think of is, I'm speaking with the daughter, and she was
5 trying to get ahold of her father. So that was probably --
6 I don't want to speculate. But any information I would have
7 gotten I got from the daughter.

8 Q. Okay. But that's you calling that out?

9 A. Yes. I don't know about the car, because it
10 doesn't say who called that out. But that definitely was --
11 shows me calling out his name and date of birth.

12 Q. Okay. And after that, where did you go?

13 A. That just says backed up, which just means that
14 sheriff's office 40 was on the way to the scene at 2222.
15 Doesn't mean I went anywhere. Am I supposed to be reading
16 all the highlighted stuff?

17 Q. No.

18 A. Where it says backed up, that just means that
19 sheriff's office 40 was coming onto the scene. That's how
20 our dispatch does it. Every time it says "backed up with",
21 it's just saying second number is coming onto the scene. I
22 think I may have gone and gotten burgers for everyone, but
23 I'm not sure. Other than that, I would have been on scene
24 until CID was done, since I had the crime scene log.

25 Q. You do not check out when you leave a scene or

1 anything like that?

2 A. Yeah, I mean, usually. Sometimes we forget. That
3 was a long night. We were on the scene for a long time. I
4 think it might have been until the end of the shift, which I
5 just would have gone home, or I might have gone to the LEC
6 to do paperwork. Sometimes dispatch doesn't put everything
7 in the notes either.

8 MR. WEST: No further questions.

9 MS. BALDWIN: Nothing from the State, Your Honor.

10 THE COURT: All right. Thank you very much. You
11 can leave or do whatever.

12 Any other witnesses?

13 MR. WEST: Court's indulgence, Your Honor.

14 THE COURT: Sure.

15 MR. WEST: No other witnesses, Judge.

16 THE COURT: So that's it as far as your motion to
17 suppress anything that was taken by the search warrants? Is
18 that it?

19 MR. WEST: That's all the witnesses at this time,
20 Judge.

21 THE COURT: So what do we want to go to next?

22 MR. WEST: Arguments?

23 THE COURT: What do you want to go to next?

24 MR. WEST: Do we --

25 THE COURT: I don't know as far as -- I'm going to

1 have to take the matter under advisement and study about it
2 at least for a while, think about it and read through memos
3 and anything. If you want to go ahead and make your
4 argument now, I will be glad to hear from you now. I think
5 I've just received the State's response to your motion to
6 suppress and everything. Did you give me anything in
7 writing as to why you think it should be suppressed?

8 MR. WEST: I've given you a brief that was e-mailed
9 to you.

10 THE COURT: Is that what's on the e-mail I haven't
11 read yet?

12 MR. WEST: That's correct.

13 THE COURT: Well, I'm going to have to read that
14 then.

15 MR. WEST: Would you rather take the time to study
16 those and then have arguments in the morning?

17 THE COURT: Well, that may be the best thing to do,
18 if that's what y'all think. I will be guided by you. If
19 that's what you think is the best way to proceed, that's
20 what I will do.

21 MS. BALDWIN: So I think the best course, Your
22 Honor, would be to allow you to review the defense's memo as
23 well as our response this evening, as well, if Your Honor
24 has time, the defendant's statement which the State
25 submitted to you.

1 THE COURT: I'm sorry?

2 MS. BALDWIN: As well, if Your Honor has time, the
3 defendant's statement, which the State submitted to you last
4 Friday morning, it's a CD. Yes, sir. If we could recess
5 early this is evening and that would provide you the time so
6 we can continue tomorrow morning with the pretrial.

7 THE COURT: All right. Let's do that then. Now,
8 the 400 pages that you sent to me, do you have copies of
9 that?

10 MR. WEST: I can give you hard copies, Judge.

11 THE COURT: That's what I want.

12 MR. WEST: And I would just like to note for the
13 record that we will be incorporating everything in that
14 package into our argument. And we will be having oral
15 arguments in the morning, if I understand correctly.

16 THE COURT: Sure, sure, sure.

17 MS. BALDWIN: As far as the jury goes, could we
18 bring them back tomorrow in anticipation of us finishing?

19 THE COURT: What else have we got to do after I
20 make a decision about this?

21 MS. BALDWIN: The two main ones are the search
22 warrant and *Jackson v. Denno* regarding the defendant's
23 statement. I don't anticipate that being as long as this
24 one, as the search warrant, Your Honor. And I hope the
25 defense agrees with me on that one.

1 MR. SCHWARTZ: Assuming Your Honor is able to watch
2 the four-hour video.

3 MS. BALDWIN: There's a lot of downtime on that
4 video.

5 MR. SOWARDS: There is. You can fast-forward
6 through some of it.

7 THE COURT: We are going to have to do that. I'm
8 going to watch that with y'all and everything. So I don't
9 know how long that's going to take. I am not going to watch
10 this video by myself. I'm going to watch it with y'all. So
11 however long that takes.

12 MS. BALDWIN: We have no objection if you would
13 like to watch it on your own.

14 THE COURT: I am not going to do that.

15 MR. SCHWARTZ: It's probably around two hours.

16 THE COURT: So the earliest would be tomorrow
17 afternoon, I would say, at the earliest.

18 MS. BALDWIN: Yes, sir.

19 THE COURT: Do you know when the jury is coming
20 back?

21 THE CLERK: Your Honor, it's up to you.

22 THE COURT: You don't have them coming back
23 otherwise.

24 THE CLERK: Otherwise, you are the next person they
25 are coming back for.

1 MR. SCHWARTZ: Judge, why don't we pick them in the
2 morning, finish up motions tomorrow, start Wednesday, finish
3 Friday at 5.

4 THE COURT: I think we will start Wednesday, but
5 not picking in the morning, no. I would rather go ahead and
6 get rid of pretrial matters before I pick the jury myself.
7 So I'm going to try to get rid of any pretrial matters
8 before we pick the jury.

9 So let's ask the jury to be back -- assuming we are
10 going to need them, let's ask the jury to be back at two
11 o'clock tomorrow.

12 MS. BALDWIN: For the Court's information, I have
13 reviewed my witness list again. I do think we can finish on
14 Friday, assuming we can finish up tomorrow.

15 THE COURT: Okay. All right. Thank you very much
16 then. I will see y'all tomorrow morning at 9:30.

17 (Whereupon proceedings adjourn for the day.)

18 THE COURT: Appreciate y'all being here on time.
19 Okay. I have read everything that has been submitted to me
20 in this case. But now I guess I will be glad to hear from
21 you as far as your statement or position or oral arguments
22 or whatever you want, however you want to phrase it in terms
23 of what you think I ought to do and why.

24 MR. WEST: Thank you, Your Honor. May it please
25 the Court. I believe the search in this case starts with

1 the ability of law enforcement to enter the private property
2 of my client. In order to first determine that, you have to
3 first evaluate what the doctrine is for the ability of law
4 enforcement to enter, in this case, what is, I believe,
5 undeniably the curtilage of the defendant's home.

6 Here we have a case where my client's car is parked
7 in his driveway. A positioning of the car that is so
8 closely connected to the house, I believe it would most
9 definitely fall within the curtilage doctrine of the Fourth
10 Amendment.

11 Recently, we have had a decision in the case of
12 *State v. Bash*. I was actually a prosecutor at that time and
13 was at the live testimony of that particular case. And what
14 was testified to in that case was an instance where law
15 enforcement received an anonymous tip. They went to a home
16 that was in a more rural part of Berkeley County. And when
17 they went to the home, they actually entered into the area
18 surrounding the house, saw individuals in the backyard
19 around this grill area. Cocaine was thrown into the air.
20 And several directions were chased from different
21 individuals that were at that particular house. And the
22 ruling in the court in that case was that officers were not
23 entitled to enter the curtilage of the home to see this
24 cocaine in plain view because they had no reasonable
25 suspicion other than this anonymous tip.

1 In this case, the testimony of Officer Colburn was
2 limited to the knowledge that he had that my client only
3 missed a dinner date with his daughter. That's the
4 testimony that he elicited yesterday. And with that
5 information alone, I don't believe that the reasonable
6 suspicion standard has been met. I asked him specifically
7 on cross-examination whether he had any additional
8 information about my client. And his answer was no. He had
9 no ability to specifically articulate whether my client was
10 armed and dangerous. I inquired several times about whether
11 a gun was used in this instance, whether any other weapons
12 used in this instance. He was at the crime scene prior to
13 going there. And he didn't even know what type of weapon
14 was used.

15 And if you remember from his testimony, he sort of
16 went back and forth and waffled on what type of weapon could
17 have been used. But it was unequivocally described that
18 this was not an instance where a firearm was used, which
19 leads into several other topics of discussion that I will
20 get to. But I believe the first topic needed to be the
21 ability of Officer Colburn to enter the curtilage of my
22 client's home without a search warrant.

23 Unquestionably, he had no search warrant.
24 Unquestionably, he had no reasonable suspicion to do
25 anything to enter into the curtilage of my client's home.

1 And because of that, and in reliance on the *Bash* decision of
2 the impermissible and unlawful search that happened similar
3 to the *Bash* case, I believe that the evidence that was
4 unlawfully obtained should be suppressed by the Court.

5 Your Honor, we would like to address some of the
6 other topics, if we can.

7 THE COURT: I want to hear from you fully.

8 MR. WEST: Fully?

9 THE COURT: Yeah, anything you want to say.

10 MR. WEST: So if Your Honor is disinclined to
11 believe that the officers were, in fact, entitled to enter
12 into the curtilage of my client's home without a warrant,
13 then the next question becomes what right did they have to
14 search the premises. The testimony was that Officer Colburn
15 approached the vehicle from the left side when it was parked
16 in the driveway and that he conducted what he has called a
17 protective sweep. If he is relying on the protective
18 sweep --

19 THE COURT: Let me interrupt you there and ask the
20 State. Do you agree that he testified that he approached
21 the vehicle from the left side?

22 MR. SOWARDS: I would agree that is what he
23 testified to.

24 THE COURT: Okay. All right.

25 MR. WEST: His testimony was that he approached the

1 vehicle from the left side and that he could immediately
2 tell that there was nobody in the car. One of his -- one of
3 my questions was directly on point to that topic, as I asked
4 him, as he was coming around the left side of the vehicle,
5 he shined into the vehicle from the left side, and could see
6 that there was nobody in the vehicle. He went on to the
7 other cars in the front of the Toyota Sequoia, and was able
8 to tell that there was nobody in there. And then proceeded
9 to come back to the Toyota Sequoia, could clearly see within
10 the windshield of the Toyota Sequoia, and determined that
11 there was nobody inside the vehicle. Yet, he still
12 continued around to what would be the passenger side of the
13 Toyota Sequoia, with the assistance of a flashlight. And he
14 continued to look inside the windows of my client's car.

15 That in itself is a search of the car. That, in my
16 opinion, is an unlawful search, because there was no exigent
17 circumstance at the time that he searched. If it was his
18 position that this was a protective sweep, and that the only
19 reason he was searching the car was to determine if there
20 was somebody inside the car, that question had been answered
21 immediately when he approached the left side of the vehicle.

22 Not only would it have been answered when he
23 approached the left side of the vehicle, it would have been
24 further confirmed when he looked through the windshield. He
25 could tell that there was not an individual in the front of

1 the car. Yet, he decided to continue to the left side and
2 he peered through the windows. This was a deliberate
3 attempt to collect evidence, not to determine whether there
4 was a person inside.

5 His stance was that he was looking inside the
6 vehicle to determine whether there was a person. And,
7 again, I reiterate that that that question had been
8 undoubtedly resolved by the time he approached the passenger
9 window.

10 I can address several other -- what the State has
11 in their briefs relied on as other exigent circumstances for
12 this case, but I believe the testimony would be limited to
13 that protective sweep doctrine. But to clarify for the
14 record, I think we do need to address some of the other
15 things that they have said.

16 THE COURT: Well, maybe it would be best for us to
17 stop at this point and let me tell you the way I see what
18 we've been talking about up to this point and everything. I
19 will be glad to hear from you in regard -- whoever wants to
20 argue.

21 MS. BALDWIN: Mr. Sowards is arguing the search
22 warrant.

23 THE COURT: I've got to get your name right,
24 S-o-w-a-r-d-s.

25 MR. SOWARDS: That's correct, sir. I think it's

1 important at first to clarify, or at least to address some
2 of the facts that defense counsel talked about. My
3 recollection is that Deputy Colburn testified that he
4 approached the house from the front, heading towards the
5 driveway, and observed the vehicle parked in a strange
6 manner with its window down. So he had already seen that.
7 And got out of his car and he approached. And he went in
8 between the cars and viewed their interiors, and was on his
9 way back to make contact with the homeowner.

10 But defense counsel said he had a flashlight. But
11 my recollection of his testimony is that he wasn't sure if
12 he had his flashlight. He either had a flashlight --

13 THE COURT: I thought he did.

14 MR. SOWARDS: In any event, it was at 11:30 at
15 night. And I think it's very important to this case to
16 point out why he was there in the first place. He went over
17 there at the behest of his supervisors to make contact with
18 this person. It could have been -- they didn't know where
19 he was. He was supposed to show up for dinner with his
20 daughter. And it could have been something happened to him,
21 a welfare check, any number of things.

22 And when he arrived there, he noticed this car
23 parked in a strange manner. And to preserve his safety,
24 like the officer did in the Herring case, which I've
25 provided to Your Honor, he peered through the vehicles and

1 executed what I think is a very de minimis search, a very de
2 minimis intrusion.

3 Defense has talked about protective sweep cases.
4 But in protective sweep cases, that usually occurs incident
5 to an arrest where an officer is arresting a suspect and
6 does a sweep of his person or sweep of the premises to
7 ensure there are no weapons. That's not what happened here.
8 It was solely out of concern for his safety.

9 And the Supreme Court in the *Herring* case made
10 particular note of the fact that after he reviewed the
11 interior of the garage, and proceeded to make contact with
12 the defendant. There was no testimony from anyone that
13 Deputy Colburn was sent to the house to search for evidence.
14 And I think it was described as this sort of long foray
15 driveway. But Deputy Colburn himself said it took him a
16 minute and a half to two minutes for him to review the
17 interiors of the house. And then he went on his way.

18 THE COURT: All right. Anything you want to say in
19 response to that?

20 MR. WEST: Please, Your Honor. The last sentence
21 Mr. Sowards said I think is very telling about the
22 description of what this detective, or Deputy Colburn, did.
23 The solicitor in this case just said he reviewed the car.
24 The review of the car in itself suggests that there was more
25 of a search than there was anything that was cursory in

1 nature. The protective sweep doctrine, I do believe, are
2 important in this case.

3 And particularly, I have relied in my brief on the
4 case of *Maryland v. Buie*. In that case, one of the first
5 components of what needs to be done is the fact that these
6 protective sweeps need to be incident to arrest. And I
7 believe the solicitor has acknowledged that that element in
8 itself has failed under the protective sweep doctrine.

9 So then the question becomes, do we equate this to
10 a knock and talk? Do we equate this to a welfare check? Do
11 we equate this to anything that can be described other than
12 a protective sweep? And I believe that the testimony has
13 indicated and the language in itself in the search warrant
14 is going to be contradictory as to this.

15 If you look at the second search warrant in this
16 case for the car, Detective Muirheid specifically lists this
17 as a protective sweep of the car. If they are going to rely
18 on the doctrine of protective sweep, then they need to meet
19 all the elements of what a protective sweep is. And if it
20 fails at the very first element, then they don't get to
21 utilize the exceptions to the warrant part.

22 Then you go back to the first warrant that was
23 issued in this case, which covered the car and the home.
24 And I think this is particularly important, because the
25 language in the first warrant specifically refers to the

1 fact that Deputy Colburn, while approaching the home, saw
2 the vehicle in plain view, which means the magistrate had to
3 rely on the language that was contained in the affidavit.
4 And that is clearly not what the testimony has been.

5 THE COURT: Well, now you are going on to the
6 warrant here or are we still dealing with --

7 MR. WEST: I think it is an argument that is
8 certainly commingled. And I believe that if we need to
9 address what the particular exceptions to the warrant
10 requirements are, then we need to address some of these in
11 full. Because, again, Your Honor, we have to remember the
12 fact that this is a search, which clearly has been a search
13 due to the fact they had looked into the car. And in order
14 to have a search, you either have to have a warrant or you
15 have to have an exception. And in order to get an
16 exception, there has to be an exigent circumstance.

17 The exigent circumstance in this case has not been
18 testified to. All that has been testified to was the fact
19 that he went over there and he knew he didn't show up for
20 dinner. He knew he wasn't dangerous. He said they had no
21 reason to believe he was dangerous. In fact, he had this
22 cop back him up. How dangerous could the situation have
23 been?

24 We never have even identified this second
25 individual, which I believe we are fully entitled to know

1 who that was to determine what that individual did and what
2 that individual saw Deputy Colburn do. But we have not been
3 given that privilege because the State has failed to
4 disclose the identity of the CPD officer, which I think is
5 particularly important when we are describing the conduct of
6 the officer. And if the conduct of the officer is what we
7 need to determine, then there should be some sort of
8 corroborating evidence other than this loan officer out
9 there meandering through the driveway with my client.

10 That has not been presented in this case. And I
11 don't think the State ever could because they never did
12 identify who that CPD officer was.

13 THE COURT: All right. Well, I appreciate that.
14 Well, I consider the totality of the circumstances in
15 determining whether or not I think that the officer's
16 action, search that he conducted, was an unreasonable search
17 under all the circumstances and/or invasion of the privacy
18 under the South Carolina Constitution. And I'm glad to see
19 that y'all have raised the South Carolina Constitution
20 issue. Because I think that there perhaps is a difference
21 between the unreasonable search in the federal constitution
22 and the privacy protection in the South Carolina
23 Constitution.

24 But under either, I conclude that it was not an
25 unreasonable search. And it was not an invasion of privacy

1 protected by the South Carolina Constitution, under all of
2 the circumstances. I will go ahead and tell you how I see
3 the facts with some trepidation as far as reciting it. But
4 anyway, as I understand it, the officer had the information
5 that was given to him about that he was asked to go to this
6 location to see the defendant who was a former husband of
7 the deceased. And that they wanted to find out, by talking
8 with him about his whereabouts, because he was supposed to
9 have been meeting the daughter, I believe it was, and didn't
10 show up on a couple of occasions, and anyway, as far as that
11 testimony is concerned.

12 When he got to this house, he noticed the car
13 parked in the driveway. And he noticed the passenger window
14 was down. He parked just beyond the driveway. Got out and
15 walked up the driveway. And on his way to the house, he was
16 going the logical way, given where he parked and everything,
17 to get to the house to see if he could talk to the person he
18 was wanting to talk to at the house. He testified that he
19 did look in the vehicles to see if there was anybody in the
20 vehicles. And I think that was reasonable for him to do
21 under all of the circumstances. And the fact that, like I
22 said, I think it aroused his suspicion, if you want to call
23 it that and all, to see the car parked in the manner that it
24 was parked and with the passenger window down.

25 Didn't go into any great detail why that attracted

1 his attention. But I can tell you why that would have
2 attracted my attention under the circumstances and why i
3 would be reasonable for him to look further and so forth.
4 It's unusual for a car to be parked even in the driveway at
5 Shadow Moss. I'd say Shadow Moss is an upper middle-class
6 neighborhood, suburban in Charleston; not Kiawah, but
7 certainly an upper middle-class neighborhood. And we have
8 crimes involving cars being broken into at night and all by
9 neighborhood kids and other people and so forth. And one of
10 the things involved is where it's unlocked and where a
11 window is open or whatever. So I think that that factor
12 would certainly enter into his mind and say, I will look at
13 this a little further.

14 So he went around the vehicle. And he looked in
15 the vehicle from the side where the window was open. And he
16 saw the towel. And he saw what he thought could have been
17 blood on the console which was open, as I understand it. So
18 considering all the totality of the circumstances, I don't
19 think it was an unreasonable search for him to look into
20 that vehicle under those circumstances and to see what he
21 saw. And it was not an unreasonable and it was not
22 unconstitutional invasion of the privacy of the person who
23 owned the car, who lived there, for him to do that.

24 So under the totality of the circumstances, I think
25 the officer acted reasonably in the way that he proceeded to

1 check it out. Like I said again, as a footnote, it's
2 unusual to have a car parked like that with the window down
3 at that time. I know in my own circumstances, any time I
4 leave my window down in my car -- sometimes I do. Sometimes
5 I do it on purpose. And sometimes I do it not on purpose.
6 But even in the secure garage here at the Charleston County
7 courthouse, when I leave my window down, it's not unusual
8 for the officer that sees that or another judge who sees
9 that or whatever to come to report to me, you know, your
10 window is down. So I think he certainly had reason to look
11 to see what's going on as far as that window being down
12 under those circumstances.

13 So considering all of the circumstances of what was
14 going on that night, I think he acted in a reasonable manner
15 in looking in that car and seeing what he saw. And that was
16 not an unreasonable search and not an unconstitutional
17 invasion of the privacy of a person. So that's my ruling in
18 regard to that.

19 MR. WEST: Thank you, Judge. I would like to
20 address the sufficiency of the search warrants at this time,
21 if you please.

22 THE COURT: All right.

23 MR. WEST: In my previous discussions, I indicated
24 to you that I believed there was some deficiencies in the
25 actual affidavit themselves of the search warrant. Again,

1 if you refer to the language in the affidavit for the
2 original search warrant of the car and the home, the relay
3 of information is itself a concern for my client, as well as
4 what information was actually contained in the affidavit.

5 I would like to start with the way that Officer
6 Colburn first testified that he relayed the actual
7 information. He said that he relayed the information to
8 Detective Turner. Detective Turner did not testify. And
9 Detective Muirheid said that that is not how he recalls
10 receiving the information. And then Detective Muirheid also
11 said that he was not quite sure how things were passed on.
12 But he later contacted Detective Bowen, Detective Bowen
13 being the affiant of the warrant.

14 Now, the importance of Detective Bowen
15 communicating with Detective Muirheid and being able to
16 swear to what actually happened is particularly important
17 for the magistrate's determination of probable cause. The
18 language contained in the affidavit itself says that this
19 was seen while he was approaching the house in plain view.

20 Again, I understand Your Honor has just ruled on
21 the ability to investigate further into the driveway. But
22 that's not the way it was described in the affidavit of the
23 actual warrant. If the magistrate is to rely on nothing but
24 the affidavit itself, then the language would suggest that
25 this was the normal walking path that would lead to the

1 house. When, again, we have already established that was
2 not the normal walking path. I believe that the testimony
3 specifically elicited by Deputy Colburn was that this is not
4 the walking path that a postman would take. This is not the
5 walking path that a Girl Scout would take. And the reason
6 that particular language is important is because that is the
7 specific language used in the *Bash* decision.

8 Would somebody be able to walk that specific path
9 as an average salesman or solicitor of some materials to a
10 home be able to get to where he got? And the question is
11 undoubtedly no.

12 THE COURT: I hear you, but I think it was a
13 reasonable path for him to take under the circumstances.

14 MR. WEST: And I understand Your Honor's ruling.
15 But what I'm saying is, that that is not the information
16 that was conveyed to the magistrate. The magistrate was
17 given differing information. And it was different because
18 the affidavit to the original warrant does not contain the
19 same probable cause statements as the second affidavit in
20 the affidavit for the car.

21 In the affidavit for the car that was executed on a
22 separate date, it specifically lists the protective sweep
23 doctrine. If the protective sweep doctrine is listed in the
24 second affidavit, then that is undoubtedly different than
25 what is said in the first one. Okay? So if the magistrate

1 at the time -- again, this is 1:55 at night. They are
2 relying on the truthfulness of the officers that are coming
3 before them. It is their job to determine the truthfulness
4 of that. And what it says is that this officer was just
5 casually walking by. Then the magistrate has no reason to
6 question the officer that's before her or him that night,
7 because it seems like an everyday occurrence.

8 But that, in fact, was not the case. And we have
9 heard from the testimony that nothing was supplemented. In
10 fact, Detective Bowen said that the affidavit was just
11 presented and it was signed. It was basically a rubber
12 stamp procedure. And, again, I believe that that in itself
13 is the problem in the way the probable cause was relayed to
14 the magistrate and the way it was specifically written
15 within the warrant.

16 I believe those affidavits do not give rise to the
17 probable cause that is necessary to search what they have
18 searched in this case for several reasons, the deficiencies
19 in the way the affidavits are written, the discrepancies in
20 the way that probable cause was sworn to the magistrates, in
21 addition to the fact that the warrant itself was overbroad
22 in the way that it described things, as well as not specific
23 enough to what was actually being sought. Okay?

24 So the overbroad language in the warrant would
25 start with the fact that the warrant contains information

1 that is being sought. Court's indulgence. Look for
2 description of property sought, on the original warrant that
3 was entered for this. The first thing is clearly a catchall
4 statement: Any and all evidence of a death investigation.

5 That's clearly overbroad. If they would have left
6 it at that, I believe Your Honor would certainly agree.

7 But then they go on to include: But not limited to
8 firearms, ammunition, spent ammunition casings, projectiles,
9 firearms, accessories.

10 These are clearly pieces of evidence that were not
11 necessary for the description of property sought. And this
12 is -- the testimony has been that there was no such thing as
13 a firearm ever present in this case. Why is that important?
14 Because it goes to show that the way this warrant was
15 drafted was simply a cut-and-paste. If a cut and paste is
16 the way that this warrant was drafted, then I don't believe
17 that the officers got specific enough in order to be able to
18 justify what property was actually sought.

19 Then they try to save themselves by, at the end of
20 the affidavit, just saying: Any and all other items that
21 are or may be associated with or have caused the death and
22 that may reveal any motive or means of the death.

23 Again, they are not describing what was
24 particularly sought, which is what the requirements of this
25 specificity of the warrant requirements are. They are

1 simply trying to catch every one.

2 THE COURT: What was it that they got with this
3 warrant that you don't want in?

4 MR. WEST: Well, that is actually something that
5 was addressed yesterday as well. The returns that came back
6 with this warrant are completely different. Detective
7 Thompson specifically testified in his return that the
8 handwritten return, all they took from the house was men's
9 shoes and digital photographs. And, again, this goes to the
10 credibility of the witness when he swears before a
11 magistrate that this is all he took, when we know, in fact,
12 that is not all he took. Because Detective Muirheid later
13 drafted a second return. The second return only says:
14 Digital photographs, 2005 Toyota Sequoia and DNA blood
15 swabs. Never mentions the shoes. Okay? So --

16 THE COURT: So we are talking about shoes, photos
17 and blood swabs, is that it?

18 MR. WEST: Shoes, photos, blood swab and car.

19 THE COURT: And what?

20 MR. WEST: The 2005 Toyota Sequoia.

21 THE COURT: It was seized by the warrant also, the
22 whole car?

23 MR. WEST: That's correct. That's correct. But if
24 the second warrant, the second return, its purpose is to
25 clarify or fix some clerical error that was done in the

1 handwritten return, then the second return doesn't include
2 the shoes. If the first return is what they were relying on
3 for what should be introduced, then it doesn't include the
4 car. And I don't believe that there's a way for this
5 officer to specifically testify that this is all he took,
6 but not be able to include everything on one form. I
7 believe that goes to the credibility of the officer. And if
8 he is swearing under oath that he has done everything that
9 he was supposed to do, then that is clearly a falsity based
10 on the way these returns are written.

11 I would like to address some other issues where the
12 actual affidavit of the search warrant itself --

13 THE COURT: Go right ahead.

14 MR. WEST: So the search warrant's affidavit, the
15 probable cause for the search of my client's entire premises
16 is the fact that this evidence is located in a car in the
17 driveway. There is zero nexus between what is located in
18 the house in this warrant affidavit and what was located in
19 the car. The affidavit to the probable cause statement
20 should say, we believe there's going to be evidence located
21 in the house because we have this reason, this reason and
22 this reason. There's no statement whatsoever about what
23 could be included in the house in this warrant. It is
24 specifically relegated to only the car.

25 If only the car is sworn for probable cause, then

1 take the car. But you've got to come back and get a
2 separate warrant for the house based on how you feel
3 probable cause would lead you to believe that there was
4 actually evidence within the house. Our jurisprudence
5 specifically designates a car separate from a house. If a
6 man's home is his castle, then the search warrant should
7 actually delineate what probable cause there is to go inside
8 the house.

9 If a car is a separate readily mobile item that
10 there's an entire litany of case law about, then there needs
11 to be some connection between the two. This officer
12 couldn't even testify that the cement went into the garage.
13 How is there a connection between the car and the house if
14 he won't even admit the fact that the concrete goes into the
15 garage?

16 That in itself is further examples of how much this
17 officer, Officer Colburn, didn't really grasp what he was
18 doing when he was doing it. And if we are to rely on what
19 Officer Colburn did for everything in this case, then that
20 needs to be properly relayed up the chain of command, if
21 they can identify what that chain of command is, which they
22 did not. And then that affidavit needs to be properly sworn
23 and properly executed in a manner that says what they
24 specifically want to find, where they want to find it,
25 because they have probable cause of specific reasons. That.

1 was never done in this initial search warrant.

2 So you don't even have anything to connect the
3 house and the cars. And then you have these errors with the
4 returns. This is a jumbled mess, Judge. This officer
5 clearly did not live up to the standards that my client
6 needs to expect with the protections of the Fourth Amendment
7 and our privacy statutes for the State of South Carolina.

8 I believe that the evidence sought as a result of
9 this needs to be suppressed because of the overbroad
10 language, the lack of nexus, the sloppiness of the entire
11 procedures, the way that the officers handled things through
12 their chain of command. They can't even testify how any of
13 the information was relayed, who it was relayed to, when it
14 was relayed to, the copy and paste function of their
15 specificity in the description of property sought. The list
16 goes on and on of things that officers could have very well
17 done in a specific manner that would have ensured the
18 protections of the Fourth Amendment for my client. And they
19 neglected to do so. In fact, they failed to do so.

20 And some of it is even suggestive that this was
21 deliberate in the way that they actually swore testimony
22 before a magistrate. And I believe that, as such,
23 everything that was located within that car and that house
24 needs to be suppressed. And if Your Honor does feel that
25 that ruling is appropriate because of your prior ruling of

1 the reasonableness of looking into the car, then I think
2 Your Honor needs to examine what was actually found in the
3 house. Because if they had actually gotten a search warrant
4 for the house based on some probable cause, which they never
5 swore to, then this idea that this car and the house are
6 separate wouldn't have ever been an issue. But they made it
7 an issue. Not only did they make it an issue by the
8 sloppiness of their investigation, but things could have
9 easily have been corrected and done the right way.

10 THE COURT: All right. I will switch to the other
11 side. What would you like to say in response to all that?

12 MR. SOWARDS: Thank you, Your Honor. I think it's
13 important to note at the outset sort of the standard of
14 review we are operating under here. The inquiry here is to
15 determine whether the magistrate has substantial basis to
16 determine probable cause. When we look back at his
17 assessment, we examine the totality of the circumstances and
18 whether there's a fair probability that contraband or
19 evidence of a crime will be found in a particular place.
20 And this Court should give great deference to that
21 magistrate's determination.

22 When I read the probable cause affidavit, this is
23 what, to me, it told the magistrate. It told the magistrate
24 that: This is a death investigation; that the door was
25 unsecured and her body was found inside; that there were

1 bloody towels found inside; and that there was blood in
2 multiple rooms; there was a significant amount of blood on
3 scene; that the deceased and the defendant were at one time
4 married, establishing a connection between the two; that the
5 defendant didn't show up to a dinner date with his daughter;
6 that deputies went to his house after the deceased was
7 discovered; and that while approaching his home, they found
8 a towel that looked like the ones found on scene, observed
9 in plain view, and also they found what they thought was
10 blood.

11 That car was parked on the defendant's property.
12 There's your nexus. They knew that's where he lived. And
13 they knew that's what his car was. And they knew that at
14 that time, they likely had a bloody towel and a spot of
15 blood inside the vehicle.

16 Your Honor, as far as the second search warrant
17 versus this one, I am not really sure what to make of that,
18 because they are challenging the search warrant of his home
19 and his vehicle. I think we should focus on what was sworn
20 to in this one by this officer, and not what was sworn to in
21 a separate warrant obtained by a separate officer who swore
22 to that.

23 I think when you read the description of the
24 property sought in light of the probable cause affidavit, it
25 was focused on finding a potential weapon, potential DNA

1 evidence, and other items, such as electronic media and
2 phones that might further their investigation.

3 As far as the return, Your Honor, the State would
4 submit that this is a nonissue, that the statute requires
5 that a search warrant be executed within 10 days, and that a
6 return be executed and delivered to the magistrate within 10
7 days of the search warrant being executed. And the South
8 Carolina Supreme Court has held in a case where no return
9 was even submitted, that that's okay. It's defendant's
10 obligation to show that somehow the failure to execute a
11 return or to execute incomplete return somehow prejudices
12 his rights. And I think in this case, the argument just
13 seems to be, we have to read two pieces of paper instead of
14 one.

15 There's been no allegation that, read in their
16 totality, that they exclude items that were recovered from
17 the car or the home, or that they mentioned item that
18 weren't actually recovered. So I think the search warrant
19 return issue is an absolute nonissue, Your Honor.

20 And, finally, I would like to bring your attention
21 to just something that was briefed in the State's argument.
22 And that is the good faith exception. And United States
23 Supreme Court in its *Leon* decision and subsequently adopted
24 by the South Carolina Supreme Court has held that when
25 officers obtain a search warrant in good faith, and then in

1 reliance on that search warrant, search a premises, that
2 suppression of the evidence is not required.

3 And the reason why that's the case is because the
4 exclusionary rule is a judicial remedy. It's rooted in the
5 Fourth Amendment in Article 1, Section 10. But it's a court
6 crafted rule to deter law enforcement from conducting
7 improper searches. That doesn't exist when law enforcement
8 goes to a magistrate, because a magistrate is not driven by
9 the same sort of style that has a competitive enterprise of
10 criminal investigation, that the magistrate reviewed it,
11 signed it and it wasn't until then that they searched the
12 house. And, therefore, at a minimum, the good faith
13 exception should apply in this case. Thank you.

14 THE COURT: Anything you want to say in response to
15 that?

16 MR. WEST: Please, Your Honor. I disagree that we
17 can just completely forget about the second warrant.

18 THE COURT: About what?

19 MR. WEST: The second warrant.

20 THE COURT: Let me ask you. I'm looking at it.
21 The first warrant was for the premises?

22 MR. WEST: That's correct, Judge.

23 THE COURT: All right. I just want to make sure I
24 understood the sequence of events. So after what happened
25 happened and everything, they got this warrant to search the

1 house?

2 MR. WEST: That's correct.

3 THE COURT: And got what they got from the house?

4 MR. SOWARDS: And it was for the premises and any
5 vehicles found thereon.

6 THE COURT: Yeah. But then later on, there was a
7 second warrant that specifically called for the search of
8 the vehicle, which was already at the law enforcement
9 center. Anyway.

10 MR. WEST: That's correct. And why do you need a
11 second warrant if your first one was sufficient enough?

12 The affidavit in the second warrant completely
13 disregards the towel that was located. I believe that that
14 is a specific issue that if it was such an important matter
15 for probable cause, it would have been included in the
16 second warrant, but it was not.

17 One of the things that you are going to discover
18 throughout this case too is that this mystery spot on the
19 center console was never tested. The very probable cause
20 that they have for the entirety of this case, they didn't
21 even bother to check whether it was actually blood or who it
22 actually belonged to. This substance could have very well
23 been coffee, soda, any number of things. It was on the
24 center console. And that could have easily been determined
25 had they just tested the object, but they didn't. They

1 failed to.

2 And I believe that should be taken into
3 consideration if we are evaluating things under the totality
4 of the circumstances. Here, Judge, I do believe that the
5 warrants are insufficient the way they are drafted. I
6 believe there needs to be a nexus between the home and the
7 car. I believe that the officers could have and should have
8 and my client deserves better conduct by law enforcement
9 than what has been presented in this case. And I would
10 respectfully request Your Honor to consider these arguments
11 in total, along with all of the briefs and exhibits that
12 have been submitted to Your Honor, and respectfully request
13 the suppression of the evidence.

14 THE COURT: I appreciate your position, but I deny
15 your request motion to suppress the evidence, the things
16 that were gathered as a result of the search warrants that
17 were issued.

18 All right. What's next?

19 MR. WEST: I believe we need to address *Jackson v.*
20 *Denno*, Judge.

21 MS. BALDWIN: I know you want to watch the video.
22 We do have one witness in that case who has a death in the
23 family and would like to leave town. So I would like to
24 call him while he's here.

25 Your Honor, that witness apparently is not here

1 yet. So we will just play the video, I believe. Does Your
2 Honor have a copy? Make it a Court's exhibit, if I may
3 approach.

4 (Court's Exh. 3, CD interview of the defendant,
5 was marked for identification.)

6 MS. BALDWIN: Actually, Your Honor, we are going to
7 call another witness first. The State calls Detective
8 Colburn or Officer Colburn.

9 MATTHEW COLBURN,
10 having been duly sworn, testifies as follows:

11 THE CLERK: State your full name and spell your
12 last, please.

13 THE WITNESS: Matthew Colburn, C-o-l-b-u-r-n.

14 (continued) REDIRECT EXAMINATION

15 BY MS. BALDWIN:

16 Q. Good morning, Deputy Colburn.

17 A. Good morning, ma'am.

18 Q. We heard a bit from you yesterday, but we will move
19 into a second issue. You did mention this yesterday when
20 you testified, but what was the purpose of you going to 223
21 Burnham Court?

22 A. Responding in reference of possibly deceased
23 party.

24 Q. To 223 Burnham Court?

25 A. Oh, I apologize, ma'am. To locate a General

1 Little.

2 Q. Okay. And we went through this yesterday, but if
3 you could briefly tell us what you did when you arrived.

4 A. Basically, arrived, parked my vehicle to the left
5 of the residence, walked up the driveway, and cleared some
6 vehicles that were in the driveway. Noticed a silver Toyota
7 SUV that I was told Mr. Little usually drives. Noticed that
8 it was a little odd that it was parked kind of in the
9 driveway and in the yard of the residence. And the front
10 passenger window was rolled down.

11 Q. As you were clearing the car, what happened?

12 A. I observed through the front passenger window that
13 the center console was lifted up. There was a dark stain on
14 it that appeared to be possible dried blood. And there was
15 a burgundy hand towel in the front seat.

16 Q. And what happened next?

17 A. As I was doing that, there was a subject that came
18 out of the residence. Went, made contact with him,
19 identified myself. And I identified him as Mr. Little.

20 Q. How did you identify him as Mr. Little?

21 A. Asked him if he was Mr. Little.

22 Q. Okay. And what did he say to you?

23 A. He advised that he was Mr. Little. And I advised
24 him that Charleston County detectives wished to him speak to
25 him at the law enforcement center.

1 Q. Did he say anything to you as regards -- regarding
2 his knowledge as to why you were there?

3 A. Yes, ma'am. He was very cooperative and advised
4 that he knew it was in regards to Barbara's murder.

5 Q. Did you have a gun drawn on him while you were
6 talking to him?

7 A. No, ma'am.

8 Q. Was it just you that was talking to him?

9 A. Yes, ma'am.

10 Q. And so you asked him to come talk to detectives?

11 A. Correct.

12 Q. Where was that?

13 A. At the law enforcement center at 3691 Leeds
14 Avenue.

15 Q. And what was his response?

16 A. He agreed to go with me. He asked if he could
17 leave his cash and cell phone with his wife, which was
18 allowed.

19 Q. You said, okay to leave your cash and cell phone
20 with your wife?

21 A. Yes, ma'am. I advised him he might need it later
22 on to either come back home or call somebody to get him;
23 however, he wished to leave it there.

24 Q. Before he asked about his cell phone and his keys,
25 did he ask any on the questions?

1 A. He advised -- asked if detectives could come to his
2 residence to speak with him.

3 THE COURT: I'm sorry, I didn't understand you.

4 THE WITNESS: He advised if detectives could come
5 to his residence to speak to him.

6 Q. And what was your response?

7 A. That they were already awaiting his arrival at the
8 law enforcement center.

9 Q. What was his response to that?

10 A. He agreed to go voluntarily with me.

11 Q. Did you handcuff him when you took him in there --

12 A. No, ma'am.

13 Q. -- took him down there? He left his keys with his
14 wife?

15 A. I am not certain about keys. It was a cell phone
16 and cash that I remember.

17 Q. So did you use your blue lights when you took him
18 down there?

19 A. No, ma'am.

20 Q. Did you talk to him during the course of the drive?

21 A. No, ma'am. He was quiet.

22 Q. Did he talk to you at all?

23 A. No, ma'am.

24 Q. Did he ever refuse to come with you?

25 A. No, ma'am.

1 Q. Did he ask you for a lawyer?

2 A. No, ma'am.

3 Q. Did he say he didn't want to talk to anybody?

4 A. No, ma'am, not to me.

5 Q. What was his demeanor?

6 A. He was very quiet and calm.

7 Q. Was he under arrest?

8 A. No, ma'am.

9 Q. Did he ever indicate that he thought he had to go
10 with you and couldn't stay at the house?

11 A. I'm sorry, ma'am?

12 Q. Did he ever indicate that he had to go with you?

13 A. No, ma'am.

14 Q. What would you have done if he said, I don't want
15 to go with you?

16 A. He would have stayed at the residence. And I would
17 have advised the detectives that he was not willing to go
18 with me.

19 Q. What did you do when you got to the police station?

20 A. When I arrived, Detective Turner was already
21 awaiting our arrival. I got out, spoke to Detective Turner,
22 advised him what I observed at the residence. And then
23 turned Mr. Little over to Detective Turner.

24 Q. And when you say you turned him over, what do you
25 mean by that?

1 A. Opened up my car and said, Mr. Little, this
2 Detective Turner who wants to speak with you. And they
3 walked inside law enforcement center.

4 MS. BALDWIN: Okay. Court's indulgence. I have no
5 further questions, Officer Colburn.

6 (continued) RECROSS-EXAMINATION

7 BY MR. SCHWARTZ:

8 Q. Deputy Colburn, you got a call on the radio
9 approximately 11:20 that night of this incident, correct?

10 A. Not -- I was advised by a supervisor, whether it
11 was my direct supervisor or detective supervisor, to respond
12 to Burnham Court.

13 Q. Okay. And you eventually learned that was my
14 client's house, correct?

15 A. Correct.

16 Q. And you coordinated with CPD to meet, I believe it
17 was at Drayton Hall Elementary School prior to that?

18 A. It may have been. I am not certain, sir.

19 Q. Okay. And they told you to go to my client's house
20 and make contact with him, right?

21 A. Correct.

22 Q. And when you went to 223 Burnham Court, CPD was
23 there as well?

24 A. They were -- I don't remember if we met at Drayton
25 Hall. If we met at Drayton Hall, we arrived at the same

1 time. If not, they would have been there and gotten shortly
2 after I arrived.

3 Q. So there were actually two police officers at my
4 client's house?

5 A. Correct.

6 Q. And I believe it was your testimony yesterday that
7 the CPD officer was actually on the right side of the
8 house?

9 A. Correct.

10 Q. Was he near the door or was he guarding the
11 backyard?

12 A. He might have been in between, like, the middle of
13 the house, just to watch kind of back door and the front as
14 well.

15 Q. Okay. Did you use blue lights when you arrived at
16 my client's house?

17 A. No, sir.

18 Q. Did CPD have their lights on?

19 A. I don't believe so, no, sir.

20 Q. And you testified yesterday that before you made
21 contact with my client, that you walked up to his vehicle
22 and were doing a sweep of the vehicles, correct?

23 A. Correct.

24 Q. And then at some point during that time, when you
25 finished that up, he had come out of the house?

1 A. That's correct.

2 Q. And is that the point that you identified
3 yourself?

4 A. Correct.

5 Q. Did you tell him your name or just told him, I'm a
6 deputy with the sheriff's office or --

7 A. Probably advised him I'm a patrolman with the
8 sheriff's office.

9 Q. I presume you were wearing the same uniform that
10 night or similar one that you are wearing today in court?

11 A. Correct.

12 Q. Just for the record, we can all see, it's a gray
13 uniform, right?

14 A. Correct.

15 Q. Has badges on it that say sheriff's department?

16 A. Correct.

17 Q. You've got a gun, state-issued firearm?

18 A. Yes, sir.

19 Q. I'm assuming you have handcuffs?

20 A. Correct.

21 Q. I don't know if you carry an ASP or not, but
22 assuming you might?

23 A. Yes, sir.

24 Q. Do you care a Taser or mace?

25 A. Yes.

1 Q. You've got a nice, thick black belt on that holds
2 all these things together?

3 A. Correct.

4 Q. You wear boots?

5 A. Correct.

6 Q. So, clearly, when you present, somebody doesn't
7 know who you are, they recognize that you have the authority
8 of the sheriff's department?

9 A. That is correct.

10 Q. Would you agree with me that that uniform commands
11 a certain type of authority beyond what I would be wearing
12 right now, a suit?

13 A. Hopefully, yes, sir.

14 Q. Because that's the point, right?

15 A. Yes, sir.

16 Q. Because you don't want somebody like me to go up to
17 somebody and put them under arrest when I don't have the
18 authority to do that, right?

19 A. Correct.

20 Q. And when you asked my client, you told him --
21 excuse me. You told him detectives' wanted to speak with
22 him?

23 A. Correct.

24 Q. And he asked if they could come speak with him at
25 his house?

1 A. Correct.

2 Q. And you told him that detectives were waiting for
3 him at the law enforcement center?

4 A. That is correct, sir.

5 Q. And you said he said, okay, I'm just going to come
6 with you?

7 A. Correct.

8 Q. Did he ride in the front of your police car?

9 A. In the rear.

10 Q. In the rear. . Let's talk about that for a second.
11 Patrol car, do you have video camera in that car?

12 A. There is, yes, sir.

13 Q. You do DUIs or have done DUI?

14 A. Correct.

15 Q. And you know there's a video requirement for
16 that?

17 A. Correct.

18 Q. How long have you been a police officer, 13 years?

19 A. 10 years as a patrol deputy.

20 Q. During your time as a patrol deputy, have you
21 always had a video camera in that car?

22 A. No, sir.

23 Q. When did you get video camera in that car, to the
24 best of your recollection?

25 A. The car I was driving that night? I always had

1 video in that one.

2 Q. Always had video. Did it have video that faced
3 forward?

4 A. Correct.

5 Q. What about the rear?

6 A. Had a small rear camera as well.

7 Q. Was it working that night?

8 A. Yes, sir.

9 Q. Did you ever turn over any video evidence of my
10 client sitting in the backseat at the time you were
11 escorting him?

12 A. There was no video.

13 Q. No video evidence? Why was that?

14 A. It wasn't recording at the time.

15 Q. Okay. Why was it not recording, just curious?

16 A. There's no questions being asked. There was
17 nothing. I was driving to the law enforcement center,
18 that's it.

19 Q. So if my client would have admitted to a crime, you
20 wouldn't have had a recording of that?

21 A. Correct.

22 Q. I want to talk about the police car. I assume it's
23 a Crown Vic or Charger or whatever, says sheriff real big on
24 the side?

25 A. Correct.

1 Q. Blue lights on top?

2 A. Correct.

3 Q. Does it have a cage in the back, protecting you
4 from people you put in the backseat?

5 A. Yes, sir.

6 Q. Does it lock -- can you get out from the back if
7 you are stuck in the back?

8 A. No.

9 Q. So once you are closed in, you can't move?

10 A. Correct.

11 Q. Now, you drove my client to the law enforcement
12 center. We know that.

13 A. Correct.

14 Q. When you got to law enforcement center, where did
15 you park?

16 A. Right outside the detective office.

17 Q. Was detective outside waiting for you when you got
18 there, or did you have to walk my client in?

19 A. He was outside.

20 Q. He was outside waiting.

21 THE COURT: Who was that?

22 THE WITNESS: Detective Turner, Your Honor.

23 THE COURT: Turner?

24 THE WITNESS: Yes.

25 THE COURT: Okay. I didn't understand the name.

1 BY MR. SCHWARTZ:

2 Q. So Detective Turner meets y'all both outside?

3 A. Correct.

4 Q. And then you open the locked door for my client to
5 get out?

6 A. I spoke to Detective Turner first, told him what I
7 observed at the residence.

8 Q. At some point, you opened the door and let General
9 out?

10 A. That's correct.

11 Q. And do you walk in with General Little and
12 Detective Turner into law enforcement center?

13 A. I believe I may have walked in the building with
14 both of them into the detective office.

15 Q. So my client got two police officers with him into
16 the building?

17 A. Correct.

18 Q. Right? Would you agree with me that y'all were
19 escorting him into law enforcement center?

20 A. I assume escort because he didn't know where we
21 would be going.

22 Q. But you can't just walk into the law enforcement
23 center, right?

24 A. Not that portion.

25 MR. SCHWARTZ: Court's indulgence, Your Honor.

1 BY MR. SCHWARTZ:

2 Q. That parking lot of law enforcement center, is it
3 well lit or dark at night?

4 A. There are lights.

5 MR. SCHWARTZ: No further questions for Detective
6 Colburn.

7 MS. BALDWIN: Nothing from the State, Your Honor.

8 THE COURT: Thank you very much. You can step
9 down.

10 THE WITNESS: Thank you, Your Honor.

11 MS. BALDWIN: At this time, we call Detective
12 Downing.

13 MATTHEW DOWNING,

14 having been duly sworn, testifies as follows:

15 THE CLERK: State your full name and spell your
16 last.

17 THE WITNESS: Matthew Downing, D-o-w-n-i-n-g.

18 DIRECT EXAMINATION

19 BY MS. BALDWIN:

20 Q. Detective Downing, where did you work in September
21 of 2015?

22 A. I was a detective with the Charleston County
23 Sheriff's Office.

24 Q. Are you still working there?

25 A. No, ma'am, I am not.

1 Q. Where do you work?

2 A. I work for the Berkeley County Sheriff's Office.

3 Q. And how did you become involved in this case?

4 A. I was on call. I received a phone call asking to
5 assist Detective Muirheid and Detective Turner.

6 THE COURT: Keep your voice up, please.

7 THE WITNESS: I'm sorry, Your Honor.

8 BY MS. BALDWIN:

9 Q. Was that the only case you were working that night?

10 A. No, ma'am. I was actually working another shooting
11 and was at the office.

12 Q. What was at the office? You were at the office?

13 A. I was at the office, yes, following up on my
14 paperwork.

15 Q. That was your own case?

16 A. Yes, ma'am.

17 Q. Okay. Was this case your case?

18 A. No, ma'am.

19 Q. Did you know the particulars of it?

20 A. No, ma'am, I did not.

21 Q. What was sort of your purpose in getting involved
22 in it?

23 A. Was asked to assist Detective Turner in speaking
24 with Mr. Little.

25 Q. Is that usual with the sheriff's office, usual

1 policy?

2 A. Yes, ma'am.

3 Q. At the time you met with the defendant, you said
4 you didn't know much about it, much about the case?

5 A. No, ma'am, I did not.

6 Q. Was the defendant in custody at the time?

7 A. No, ma'am.

8 Q. Was he in handcuffs when you all met with him?

9 A. No, ma'am.

10 Q. Was he under arrest when you all met with him?

11 A. No, ma'am.

12 Q. What was his demeanor?

13 A. He seemed comfortable, almost -- almost a little on
14 the smug side, like he had gotten away with something.

15 Q. Did he appear nervous?

16 A. Not to my knowledge.

17 Q. Was he crying?

18 A. No, ma'am.

19 Q. Was he shaking violently?

20 A. No.

21 Q. What was the tone of your conversation with him?

22 A. It was pretty casual.

23 Q. Were you accusatory?

24 A. I don't recall.

25 Q. Did he ever indicate to you that he wanted to leave

1 the interview room?

2 A. No, ma'am, he did not.

3 MS. BALDWIN: Court's indulgence. I have no
4 further questions.

5 CROSS-EXAMINATION

6 BY MR. SCHWARTZ:

7 Q. Detective Downing, had you ever met my client prior
8 to that night of -- I guess it was in the morning on the
9 23rd of September?

10 A. No, I did not.

11 Q. You never had any prior dealings with him
12 personally?

13 A. No.

14 Q. You don't know how he would react in this
15 situation, right?

16 A. No, sir.

17 Q. So what you perceived as smug arguably could be
18 nervousness?

19 A. It's possible.

20 Q. I believe you were one of the first detectives to
21 say question my client that night; is that right?

22 A. I spoke with him, yes, sir.

23 Q. We know that it was recorded in an interrogation
24 room, audio and video?

25 A. It's an interview room, yes, sir.

1 Q. Interrogation room, interview room, semantics. We
2 can all agree he was placed in the room, right?

3 A. Yes, sir.

4 Q. His back was against the wall?

5 A. Yes, sir.

6 Q. There's, I guess, like a round table in there?

7 A. I don't recall the layout of the room, but, yes,
8 sir.

9 THE COURT: I'm sorry?

10 THE WITNESS: I don't recall the layout of the
11 room.

12 Q. And then there was a chair for you and a chair for
13 I believe it was Detective Turner?

14 A. Yes, sir.

15 Q. When you came in to the room, we can see on video
16 you closed the door behind you, right?

17 A. Yes, sir.

18 Q. When you first had contact with my client, you
19 didn't inform him he could leave, right?

20 A. Repeat the question.

21 Q. You did not tell him that he could leave?

22 A. I don't recall if I did or not.

23 Q. We have video, so --

24 A. Okay.

25 Q. Okay. You didn't tell him he didn't have to be

1 there?

2 A. Okay. Yes, sir.

3 Q. Right? You didn't tell him that he had the right
4 to remain silent?

5 A. No, I didn't go over Miranda rights.

6 Q. Did not give Miranda rights. And you definitely
7 didn't tell him he had rights to an attorney?

8 A. No, sir.

9 Q. Did you tell him he could stop answering your
10 questions or Detective Turner's questions at any point in
11 time?

12 A. I don't recall.

13 Q. But we do know from watching the video that you had
14 prior knowledge of his alimony payments that he owed his
15 ex-wife, correct?

16 A. Between conversation with him, yes, sir, and
17 information from the field, yes.

18 Q. Okay. But you directly asked him questions about
19 his alimony payments?

20 A. Yes, sir.

21 Q. And you had prior knowledge of that prior to
22 speaking with him?

23 A. I don't recall when I got that information.

24 Q. Okay. Do you know who gave you that information
25 about his alimony payments?

1 A. I don't recall.

2 Q. Don't recall? Okay. You did ask him questions
3 about his whereabouts that night?

4 A. Yes, sir.

5 Q. You asked him what he did and where he was going?

6 A. Yes, sir.

7 Q. You definitely asked him financial questions,
8 because you knew he was under financial stress?

9 A. Yes, sir.

10 Q. Y'all talked about how much money he made, right?

11 A. Yes, sir.

12 Q. You asked him about what kind of car does he and
13 his current wife drive?

14 A. Yes.

15 Q. You asked him about supporting six kids?

16 A. Yes, sir.

17 Q. And how tough that was?

18 A. Yes, sir.

19 Q. You also knew he had bad credit at that point?

20 A. I don't recall.

21 Q. You all pulled his credit report?

22 A. It's possible, yes, sir.

23 Q. And you can agree with me that he was living
24 paycheck to paycheck?

25 A. Yes, sir.

1 Q. Even though he was a high-income earner?

2 A. Yes, sir.

3 Q. Would you agree with me that during that time, you
4 were attempting to establish a motive for him to have
5 possibly killed Barbara Little?

6 A. Yes, sir, and figure out what happened.

7 Q. Would you agree with me that motive was financial?

8 A. I would agree, yes, sir.

9 MR. SCHWARTZ: Court's indulgence, Your Honor.
10 Your Honor, at this time, we would like to move the video
11 through Detective Downing.

12 MS. BALDWIN: Only reason why I would object to it,
13 we do have one more witness. Might be easier to do it at
14 that point for efficiency's sake.

15 MR. SCHWARTZ: If there's something we need to
16 impeach him on, we need to have the video queued up and he
17 have an opportunity to see it. The issues come back and
18 forth --

19 THE COURT: Who is your other witness?

20 MS. BALDWIN: Detective Turner, the other gentlemen
21 in the room that morning.

22 MR. SCHWARTZ: I guess if you are going to put it
23 in through Turner, we can make argument what's on the stand
24 versus what's on video.

25 MS. BALDWIN: Yeah.

1 (Whereupon, audio is played.)

2 MS. BALDWIN: The State has a transcript. I
3 provided one to the defense.

4 MR. SCHWARTZ: We made a motion to sequester. I
5 believe there might be potential witnesses.

6 MS. BALDWIN: Just family members.

7 MR. SCHWARTZ: Okay.

8 THE COURT: Go ahead.

9 (Whereupon, audio is played.)

10 MS. BALDWIN: Your Honor, he's sitting by himself
11 for about five minutes. If it's okay, we can
12 fast-forward.

13 MR. SCHWARTZ: That is fine.

14 (Video playing.)

15 THE COURT: Everybody agree we can fast-forward
16 until he starts talking again?

17 MR. SCHWARTZ: No objection to that.

18 THE COURT: Let's take a break.

19 (Whereupon, a recess transpired.)

20 THE COURT: Go ahead.

21 (Video playing.)

22 MR. SCHWARTZ: May I proceed, Your Honor.

23 THE COURT: I don't remember exactly where we were.
24 Were you talking to him?

25 MR. SCHWARTZ: I was. I was entering the video

1 through him.

2 THE COURT: I forgot where I was.

3 MR. SCHWARTZ: Defense moves for the purpose of
4 this hearing, I believe it's marked -- it's a court's
5 exhibit. What is it? 3.

6 BY MR. SCHWARTZ:

7 Q. Just a few more follow-up questions. Would you
8 agree that the video started 12:17 that morning?

9 A. Yes, sir.

10 Q. And he had gotten a ride with y'all around 11:50,
11 the prior night, or I guess it would be the same night, the
12 22nd?

13 A. I don't know exactly what time, but that sounds
14 about right.

15 Q. Okay. You would agree with me that the video ended
16 around 3:45 a.m.?

17 A. Yes, sir.

18 Q. Okay. You would agree with me that he had told you
19 that prior to being ruled into family court, that he was
20 already having his wages garnished months prior?

21 A. Yes, sir.

22 Q. He had asked -- would you agree with me he had
23 asked you if he could bring the timeline out of the room,
24 and you told him no, to hold on to it in there?

25 A. I'm not sure if it was me or Detective Turner, but

1 told him to have a seat.

2 Q. Last question. Why didn't y'all Mirandize him when
3 you first got there?

4 A. I'm not sure if it was my assumption that he was
5 already advised or he volunteered to come down there. I'm
6 in the middle of working another case. I get the, hey, can
7 you help me with this? Not a problem. They jump in. They
8 start. I walk in there. It's a mistake I made to not
9 follow-up on that.

10 Q. But you would agree with me that y'all were asking
11 him questions to elicit an answer from him without being
12 Mirandized?

13 A. Correct, but he was not in custody either.

14 MR. SCHWARTZ: No further questions.

15 MS. BALDWIN: Nothing from the State.

16 THE COURT: All right. Thank you very much. I
17 will excuse you.

18 MS. BALDWIN: One last witness.

19 THE COURT: What's the situation? What are y'all
20 asking me to do and why? You are asking me to do what and
21 why?

22 MR. SCHWART: This is our motion to suppress the --
23 not only the oral statements, but also the written timeline
24 that he was given or that he gave prior to Miranda. And I
25 can move into my argument or they have another witness, but

1 we've --

2 THE COURT: Do you have any more thing you want to
3 put in?

4 MS. BALDWIN: We do have Detective Turner who was
5 in the room, but if you found the video sufficient for what
6 his participation was, we can go into arguments. It's up to
7 you.

8 THE COURT: Well, I'm not quite sure I understand
9 what I'm being asked to do and why. You are asking me to
10 keep the video out, right?

11 MR. SCHWARTZ: The video and the timeline that the
12 state is going to --

13 THE COURT: I haven't seen the timeline. But I
14 assume you've got something that he wrote down as the
15 timeline.

16 MS. BALDWIN: Yes, sir. During the course of that
17 interview, he writes a timeline.

18 THE COURT: I don't think there's anything on there
19 that's relevant as far as the situation is concerned at this
20 point, unless it's connected up somehow with some other
21 evidence, is what I would say. You know, that is the way it
22 strikes me. And it doesn't prove anything one way or the
23 other, unless it's connected up somehow later on with some
24 more evidence. So I'm looking to you to tell me why
25 anything I saw or heard during the course of that is

1 relevant.

2 MS. BALDWIN: As I stated in my brief, Your
3 Honor --

4 THE COURT: I don't remember that.

5 MS. BALDWIN: We don't plan on introducing his --
6 the video of the statement. We do plan on --

7 THE COURT: You want it in?

8 MS. BALDWIN: He wants to keep it out.

9 THE COURT: That's what I'm trying to figure out.
10 At this point, like I say, I don't see anything on there
11 that is relevant unless there's something that connects it
12 that doesn't make it relevant.

13 MS. BALDWIN: The main issue is, the State wants to
14 move in his written timeline that he does during the course
15 of the statement. They want to keep that out. And if we
16 decide to offer his statement, they don't want us to be able
17 to do so; however --

18 THE COURT: It's the timeline you are talking
19 about?

20 MR. SCHWARTZ: Timeline, but also, this parts lays
21 into taking of the clothes after his Miranda without a
22 search warrant.

23 THE COURT: I don't know. What's going to happen
24 as far as the closing is concerned?

25 MS. BALDWIN: I'm not sure I understand your

1 question.

2 THE COURT: Y'all going to introduce the clothes
3 into evidence, anything --

4 MS. BALDWIN: Your Honor, the clothes -- when the
5 clothes are inventoried later on, there is a receipt to
6 Walmart dated that evening that has -- shows the defendant
7 having purchased two bottles of rubbing alcohol, a burgundy
8 towel that was earlier mentioned, and some antacid. That
9 defendant never mention during the course of his timeline or
10 to the officers that he went to Walmart that evening.

11 Also found in his pockets is his wedding band,
12 which he is not wearing during the interview. And that
13 wedding band has blood on it. It's tested by SLED. There's
14 not enough DNA on it for them to develop a profile, but
15 there is blood found on the wedding ring.

16 But I do believe his statement -- the timeline
17 also -- there are other incidents, other than -- there's
18 other evidence that counteracts what he gives in his
19 timeline. So we would like to put in his timeline to show
20 that he was lying to police, at least to some extent.

21 I can argue the reasons why we think it comes in
22 and why the timelines comes in, or if you would like to hear
23 from the defense first because it's their motion, you can do
24 that.

25 THE COURT: I'm just trying to get my mind around

1 everything that we are detailing with and why and
2 everything. As I said, subject to being connected up
3 through other evidence that's admitted during the trial and
4 everything, I would let it in. I would let the video in
5 and --

6 MR. SCHWARTZ: Just for the record, may I express
7 my objection and give the reasons why?

8 THE COURT: Go ahead.

9 MR. SCHWARTZ: We are going to rely on our brief.

10 THE COURT: Tell me what that is, because I don't
11 remember what you are talking about, as far as this part is
12 concerned.

13 MS. BALDWIN: I'm sorry to interrupt. May this
14 witness be excused?

15 THE COURT: As far as I'm concerned.

16 MS. BALDWIN: He has to leave the state for a
17 funeral.

18 MR. SCHWARTZ: He's coming back this week?

19 THE WITNESS: I will be back Sunday.

20 MS. BALDWIN: They don't have him under subpoena,
21 Your Honor. He's subject to our subpoena.

22 THE COURT: Well, I am not going to worry about
23 that. If they want him here, we are going to have to have
24 him here. Y'all talk.

25 MS. BALDWIN: Your Honor, you are not going to

1 release him from our subpoena, correct?

2 THE COURT: Not at this point, if they say they may
3 want him.

4 MR. SCHWARTZ: You want me to continue with the
5 motion for the record?

6 THE COURT: Yes.

7 MR. SCHWARTZ: Outlining my memorandum, which I'm
8 going to move to add for the purpose of the record, put in
9 evidence for this hearing, the case law on this is pretty
10 specific in South Carolina. I'm looking at *Evans* and I'm
11 looking at *Navy*, which I outlined in my brief. The judge
12 has instructed the litigant the totality of the
13 circumstances, it's not just one piece or the other. It's
14 not what he says in the statement that is important or he
15 doesn't say. It's the situation surrounding it. And the
16 courts prior to this looked at whether the defendant has
17 been escorted to law enforcement center or not.

18 THE COURT: What are you saying? You want me to
19 keep it out because he was under arrest --

20 MR. SCHWARTZ: Correct. He was in custody. He
21 wasn't in handcuffs, Your Honor. He was in custody.

22 THE COURT: Okay. I'm just trying to get to the
23 point. You got -- you want me to keep it out because you
24 say they didn't do what they should have done prior to
25 talking with him and getting all of this information in?

1 MR. SCHWARTZ: Correct. They didn't Mirandize him
2 until well into the interrogation. They had elicited
3 information --

4 THE COURT: It's clear, my recollection of the law
5 is that as far as Miranda stuff is concerned, that comes
6 into play when the person is under arrest.

7 MR. SCHWARTZ: Correct. But the issue is whether
8 he was under arrest or not. And the courts have said on
9 numerous occasions, simply being in handcuffs doesn't
10 mean -- that's not going to identify whether you are
11 arrested or not. You have to look at the totality of the
12 circumstances. One of them is whether he was escorted to
13 the law enforcement center or not, which in this case
14 clearly he was.

15 Another big determining factor the courts have
16 suppressed statements is how long the interview was. And I
17 believe the case is *Williams* that I've cited, that defendant
18 only talked to law enforcement 25 to 30 minutes. His
19 statement was not suppressed. However, in *Evans* and *Navy*,
20 where they talked to law enforcement for two hours, that was
21 a factor. Here he talks to them for almost three hours and
22 45 minutes, not including the time it took when he got to
23 his house to law enforcement center. So we are talking
24 close to four hours.

25 Whether he was -- other factors that they looked at

1 are, you know, one of the purposes of the interview was to
2 interview him as a witness or a suspect. They clearly said
3 on the video and in testimony that he was a suspect. They
4 suspected him, that they suspected him of doing it and they
5 had a motive. And the motive was financial. That's why I
6 asked Detective Downing those questions. They had prior
7 information about the alimony payments and were trying to
8 elicit a motive out of him.

9 Where the interview took place, clearly, it took
10 place at law enforcement center in a small room, no windows,
11 no phone. He didn't have a cell phone on him. No clock, he
12 didn't even know what time it was. They never informed him
13 that he was under arrest and in custody. They never told
14 him that he could leave at any time. They never told him he
15 was free to go. They never told him he didn't have to talk
16 to him.

17 They Mirandize him I think two and a half hours
18 after that. He didn't know that. I think it's important
19 for Your Honor to note that when he is asked, do you know
20 your rights, by Detective Muirheid, he said no. And he's
21 told then. Then he said, I want a lawyer here. And he
22 stops answering questions. And prior to that, he's not
23 informed that and they elicit information out of him that
24 the Government plans to use to show that he was not truthful
25 or that he did not tell them the whole story, whichever it

1 is.

2 They definitely -- another factor is that there's
3 three police officers that interviewed him, plus Colburn
4 that escorted him there. And then two police officers
5 escorted him from the police car from the parking lot into
6 the center. That's another factor that should be
7 considered. I believe that *Evans* and *Navy* both touch on
8 that and say that was one of the factors the courts found
9 for the suppression.

10 Another factor is whether they were aggressive or
11 confrontational or accusatory. I don't think they were
12 aggressive in nature. They weren't pounding the desk or
13 anything. But they were definitely accusatory and
14 confrontational when he was saying money was tight, but I
15 wasn't under stress. They were saying, well, you just got a
16 \$26,000-a-year raise.

17 They put him in a jumpsuit prior to *Miranda* that
18 said Charleston County Detention Center. I don't know how
19 much more, besides being put into handcuffs, you want
20 somebody to think they are not free to leave. If he were to
21 walk out of law enforcement center and walk out of Leeds
22 Avenue, they are going to arrest him. Somebody is going to
23 call the cops on him.

24 These factors looked at all together are well
25 beyond the factors that were used in *Navy* and *Evans*, which

1 are South Carolina cases, where the statements were
2 suppressed. And, you know, we are moving to suppress not
3 only the oral statements, but also the written statements
4 which the State has obviously told us they plan to use
5 against him.

6 He was definitely in custody. You look at the
7 totality of the circumstances. And the case law is clear
8 that he doesn't have to be in handcuffs. So that's the
9 reason we move to suppress any statement, written or oral,
10 from our client. I don't know if you want to respond to
11 that.

12 MS. BALDWIN: Thank you, Your Honor, if I may.
13 First of all, I think it's important that we distinguish
14 what his statements were prior to Miranda and what they were
15 post-Miranda. Because, obviously, there's some issues
16 post-Miranda. He did invoke his rights. However, he did
17 not, pre-Miranda, he was not in custody.

18 And I will go through the same factors that
19 Mr. Schwartz detailed in *State v. Williams*, which, for the
20 record, is 747 --

21 THE COURT: Don't give me citation. Tell me what
22 the case is.

23 MS. BALDWIN: *State v. Williams*, I believe I also
24 cited in my brief. I do want to clarify one of the facts
25 that Mr. Schwartz states. He stated he was in the jumpsuit

1 pre-Miranda --

2 THE COURT: Wait. Wait. Wait. When I saw that
3 going on, I said, I am not letting that in.

4 MS. BALDWIN: Of course not.

5 THE COURT: I'm going to stop it before they put
6 him in the jumpsuit.

7 MS. BALDWIN: I would not argue with that at all,
8 Your Honor.

9 As I stated, we are merely trying to get in just
10 his written statement, the written timeline. We are not
11 even trying at this time to go into the video itself.
12 However, when we go through the factors in *Williams*, I can
13 tell you our side of things. While it is true that he was
14 driven to the police station by law enforcement, you heard
15 Deputy Colburn said, hey, do you mind coming with us? Sure.
16 Can the detectives come here? No, they are at the police
17 station. Okay, I'll come with you. Can I give my wife my
18 cash and my phone? Sure, no problem. He allowed him to do
19 that. He was not handcuffed. There were no blue lights.

20 The detectives who interviewed him, both when they
21 interviewed him at the time, they weren't sure whether he
22 was a witness or a suspect initially. They were both
23 working other cases. You heard Detective Downing say, I
24 didn't really know what was going on.

25 The number one suspect language, if Your Honor will

1 recall, actually initially came from the defendant. He said
2 that he told his wife, hey, you know, of course, they are
3 going to want to talk to me, I'm the ex-husband, I'm the
4 number one suspect. And Detective Downing said, oh, yeah,
5 yeah, yeah, you are.

6 And he was, I think, aware, if you look at the
7 factors of *Williams*, it's whether the police informed the
8 person that they could leave at any time or whether the
9 person's conduct indicated an awareness. Here he leaves the
10 room on several occasions. He walks out. He says he needs
11 to use the bathroom. He asks for the air to be turned down.
12 So he doesn't think that he's not free to leave the room.
13 The only reason why he didn't leave the station is because
14 he didn't have a ride. And then officers do offer him a
15 ride and say, we are just working, got a search warrant
16 going on, we want to keep you safe, we will get you a ride
17 home as soon as we can. And as soon as they can, they do.
18 You saw Detective Turner at the end say, come on, I will
19 give you a ride home.

20 Another factor is whether or not there were
21 restrictions on the defendant's movement. Yes, the door was
22 shut, but as you noted, it was not locked. And we saw the
23 defendant leave several times on his own accord.

24 They do consider the length of the interview,
25 however, you notice that we did fast-forward through several

1 parts of that interview. The actual time they are talking
2 to him is about an hour and a half, which is less than it is
3 in *State v. Evans*, which is one of the cases that
4 Mr. Schwartz cited.

5 Mr. Schwartz keeps mentioning there were three
6 officers. There weren't three officers there the entire
7 time. There were off and on two, and sometimes one, coming
8 in and out of the room constantly. They are not both up in
9 his face, pointing the finger at him, telling him he's the
10 one that did it. One was sitting at the back of the room
11 the majority of the time. You saw Detective Downing during
12 a lot of that messing around on his phone, seemingly not
13 even paying attention to what was going on.

14 Another factor to consider is whether or not the
15 officers dominated the interview. And I would submit to you
16 that they did not. The officers asked him questions. He
17 asks questions back. They ask him at one point if he has
18 any questions for them. He interrupts them several times
19 during the course of the interview.

20 I believe I heard at one point when they are
21 talking about his iPhone and that it's a 4S, defendant says
22 to Detective Downing, look, son, and he's explaining things
23 to him as an older man to a younger man.

24 And another factor to consider is whether or not
25 the officers manifested a belief that the person was

1 culpable and that they had the evidence. And I do think
2 that generally they talk about the ex-husband being a
3 suspect. But they don't specifically address a lot of
4 evidence. In fact, they say, we are not really sure what
5 happened. She was murdered. She's dead. But they do not
6 point the finger at him and say, we have this evidence
7 against you, you are the one that did it, you are our number
8 one suspect.

9 And I believe Mr. Schwartz addressed this, that
10 another factor is whether or not they were conversational or
11 accusatory during the interview. I submit to you that it
12 was a very casual conversation. They were asking him some
13 questions, biographical facts, asking him about his
14 relationship with the victim. But it was not accusatory in
15 any sense. They are laughing together at one point, talking
16 about the victim and how the reasons why he moved on to his
17 new wife.

18 And another factor, and very important factor to
19 consider whether or not he was in custody, is whether or not
20 he was arrested. And he was not arrested.

21 THE COURT: That's the whole thing.

22 MS. BALDWIN: That is what *Williams* states. That's
23 a factor to consider. He was not arrested that evening. He
24 wasn't arrested until October 14th. This took place on
25 September 23rd. So I submit to you he was not in custody

1 during the entirety of that interview pre-Miranda.

2 MR. SCHWARTZ: Brief response, Your Honor. He was
3 brought to law enforcement center in the back of a locked
4 police car. There's testimony that he was not able to get
5 out. It wasn't a limo. It wasn't an Uber.. It wasn't his
6 choice.

7 I believe the testimony is clear they told him he
8 was a suspect prior to Miranda. Downing testified to that.
9 He said, we didn't Mirandize him, it was my fault, and I did
10 try to elicit testimony from him..

11 THE COURT: I don't know -- that's what he said,
12 but I don't know whether it was any fault or not. As I
13 understand it, as I said, maybe I'm wrong, but as I
14 understand it, it is a question of whether or not he was
15 under arrest. Any time the person is under arrest, then you
16 are supposed to Mirandize them before you ask them any
17 further questions or anything else. Right?

18 MR. SCHWARTZ: Well, that's what we are trying to
19 get at here.

20 THE COURT: I know. I know. But that's the whole
21 thing is, whether you say, okay, you are under arrest, you
22 know, or whether all the facts and circumstances say it's
23 under arrest whether you said he's under arrest or not.

24 MR. SCHWARTZ: Well, Your Honor, I would submit
25 we're looking at whether it's custody, not arrest. Those

1 are two different things.

2 THE COURT: What's the difference?

3 MR. SCHWARTZ: Well, I would agree, I think he was
4 under custody. And I think the totality of the
5 circumstances and testimony we've elicited so far with the
6 video would have shown he was absolutely in custody. This
7 is way beyond Navy. This is way beyond *Evans*. And both of
8 those were suppressed.

9 And, you know, I did cite *Williams* in my brief
10 because I think that this is way beyond -- in that instance,
11 his statement did come in. And those were the reasons.

12 But I do want to respond to the time. The time of
13 this, he was at law enforcement center for, I believe, 12:17
14 to 3:45. They don't get to cherry pick, well, this is a
15 good time, this is not a good time because the detectives
16 aren't in there. He's still in the law enforcement center.

17 THE COURT: I agree with you, it was a long
18 questioning, you know. But I would characterize it as
19 being, you know, not antagonistic, not, you know, aggressive
20 questioning, but rather basically a back-and-forth, kind of
21 a friendly, you know, exchange between the three gentlemen
22 that were involved with it at that point and everything.

23 So I appreciate your position, but I don't think
24 that he was under arrest, that he was entitled to under the
25 Constitution and laws of this state and of the United

1 States, to be mirandized prior to anything that he said or
2 did during the course of that video that we just watched.

3 So that's my conclusion, is that it's admissible.
4 And the timeline given to be admissible, again, providing
5 somehow it's relevant by other testimony that's going to be
6 presented.

7 MR. SCHWARTZ: Just for the record, Your Honor, to
8 protect myself and my client --

9 THE COURT: I appreciate you doing what you are
10 doing on behalf of your client. It's a tough situation.

11 MR. SCHWARTZ: Just one last thing for the record
12 and I will sit down and be quiet. It's clear that Turner
13 had knowledge that he got from Colburn from testimony there
14 was blood in the car, which, again, goes to the totality of
15 the circumstances of him having prior knowledge and using
16 that against him and interrogating a suspect that was in
17 custody. And that's our position.

18 THE COURT: I appreciate your position. And like I
19 said, you are doing a good job on behalf of your client and
20 all. But I am not going to suppress video and suppress the
21 timeline that he gave, again, providing it's connected up in
22 some fashion with other evidence that makes it relevant in
23 this case.

24 MS. BALDWIN: Yes, sir.

25 MR. SCHWARTZ: Thank you, Your Honor.

1 THE COURT: Looking at it's 5 after 1, do we want
2 to stop and come back? What else do we have? Let's talk
3 about planning this out and everything and all. What else
4 do we have pretrial?

5 MR. WEST: We need to address the issue of the
6 confiscation of the defendant's clothing.

7 THE COURT: That's another issue. I don't know how
8 long that's going to take.

9 MR. WEST: We will defer to Your Honor for advice
10 on scheduling, but I do believe that's an issue that needs
11 to be taken up with the Court.

12 THE COURT: Okay. Do you have any idea how long
13 you are going to --

14 MR. WEST: Well, we already watched the video. And
15 you understand the background of everything. So I don't
16 think it's going to take too long. The main objection is,
17 obviously, they took his clothes without his consent,
18 without a search warrant. And then later discovered
19 evidence from it. And the State is going to try to
20 introduce evidence that they discovered without ever
21 obtaining a search warrant. Not only did they tell him he's
22 going to obtain a search warrant, they never did. So they
23 took his clothes off of his back, made him strip down --

24 THE COURT: I've got a problem with that.

25 MR. WEST: And there's going to be a Walmart --

1 THE COURT: I've got a problem with that. I got a
2 problem with that. I can tell you that. But, anyway, all
3 right. I don't think we are going to be able to pick a jury
4 today and all. I don't know how much we are going to be
5 able to do as far as trying this case the rest of the week
6 is concerned. But, anyway, we need to deal with these
7 things. They are important issues. And I'm going to give
8 as much time to deal with them as we need to deal with them.
9 I am not in any hurry to do anything. I want to deal with
10 everything as it should be dealt with as we go along. But I
11 got real serious questions about whether we are going to be
12 able to try this case to a jury to a conclusion this week.

13 All right. So we are going to stop now and be back
14 at 2:30.

15 (Whereupon, recess transpired.)

16 THE COURT: Again, I appreciate you being on time.
17 All right. Who wants to say something?

18 MR. WEST: Judge, I believe that the State has
19 informed me they would like to call Detective Muirheid back
20 to the stand to address this issue of the search of my
21 client's clothing.

22 THE COURT: Okay.

23 MS. BALDWIN: Yes, Your Honor. Just to make you
24 aware, I believe that the defense is challenging the
25 validity of the search and seizure of the defendant's

1 clothing during the course of that interview. As I stated
2 earlier, they did find in the pockets a receipt to Walmart
3 and the defendant's wedding ring that turned out to have
4 blood on it, which I believe is what they are trying to keep
5 out.

6 So the State calls Detective Muirheid.

7 WILLARD MUIRHEID,

8 having been duly sworn, testifies as follows:

9 THE CLERK: State your full name and spell your
10 last.

11 THE WITNESS: My name is Will Muirheid. My last
12 name is spelled M-u-i-r-h-e-i-d.

13 REDIRECT EXAMINATION

14 BY MS. BALDWIN:

15 Q. Detective, we did watch the video of the
16 defendant's interview earlier today. And in that, we saw
17 you collect some clothing from him.

18 A. Yes, ma'am.

19 Q. And what was your -- during the course of that, why
20 did you collect the clothes?

21 A. Based on the fact that I had already been to the
22 incident location and knew that there was blood throughout
23 the house and there was what appeared to possibly be blood
24 in a vehicle that the defendant was potentially driving, I
25 thought it was quite possible that there may be transfer

1 evidence or even blood on that clothing.

2 Q. And why did you have to collect the clothes then if
3 there was blood on that clothing?

4 A. It was time sensitive. The deterioration of the
5 material as far as if there was blood, the clothing could
6 have been washed. It would have been evidence that was
7 lost.

8 Q. Did you have probable cause to arrest the defendant
9 that night in your mind?

10 A. Yes.

11 Q. Why didn't you arrest him that night?

12 A. I wanted to make sure beyond a reasonable doubt
13 that I had the correct person. I did not want to arrest the
14 wrong person.

15 Q. We also saw in that video that when you asked him
16 for his clothing -- to which he said okay when you told him
17 you needed it, correct?

18 A. Correct.

19 Q. You gave him a jail jumpsuit to change into. Why
20 did you do that?

21 A. That was all that I had available. And, obviously,
22 I did not want to leave the defendant without any
23 clothing.

24 MS. BALDWIN: Court's indulgence. No further
25 questions.

RECROSS-EXAMINATION

BY MR. WEST:

Q. Detective Muirheid, by the time that you took my client's clothes, you had already obtained a search warrant for his house; is that correct?

A. I believe that is correct, sir.

Q. So what prevented you from getting an additional search warrant for his clothing?

A. I wanted to get it right then and there.

Q. But you had already previously acquired a search warrant for his house, correct?

A. Correct.

Q. Okay. So would there have been some additional troubles to you or your squad that would have prevented you from swearing that same probable cause to get a search warrant for his clothing?

A. It wasn't -- it wasn't a question of the amount of trouble. Obviously, we were already thin as far as manpower went. I made the decision that the quickest thing to do and the easiest thing to do would be to obtain that clothing right then and there. I did not feel that, based on the way the investigation was going, that I would have time, any other time to obtain that search warrant. So, no, I didn't feel like we had time to obtain the search warrant.

Q. The prior testimony that you've given indicated

1 that you had probable cause for an arrest. You were here
2 during my partner and earlier the *Jackson v. Denno* hearing
3 where the ruling was that he was, in fact, not under arrest.
4 Is it your testimony today that he was not under arrest at
5 that particular time?

6 A. He was not under arrest.

7 Q. So if he was not under arrest, you would agree with
8 me that your search of his clothing was not incident to
9 arrest?

10 A. No. I do agree with you, it was not incident to
11 arrest.

12 Q. And it wasn't in his automobile; is that correct?

13 A. His clothing?

14 Q. Right.

15 A. No, sir.

16 Q. And you weren't in hot pursuit of him? You weren't
17 chasing him anywhere, were you?

18 A. No, sir.

19 Q. And his clothing to you, in your observation of it,
20 was there anything in plain view on that clothing that would
21 give you the impression that there was no need to get a
22 search warrant because you had immediately recognized
23 evidence of contraband or another crime?

24 A. I did not see blood on his clothing or trace
25 evidence with my naked eye.

1 Q. So nothing was in plain view?

2 A. No, no, sir.

3 Q. Detective, as you saw in the *Jackson v. Denno*
4 hearing --

5 THE COURT: I'm not sure what you are talking about
6 as far as the hearing is concerned. I don't believe I made
7 any ruling. I'm not sure what you are talking about that.

8 MR. WEST: Judge, you had already indicated that
9 the statement was coming in because he was not under
10 arrest.

11 THE COURT: Okay. Okay. Up to a certain point, as
12 far as that's concerned. I just want to make sure what you
13 are saying, up to a certain point that he wasn't under
14 arrest. That doesn't include everything as far as getting
15 the clothes and everything is concerned.

16 MR. WEST: I agree. But the question that I'm
17 posing is, at the time that he took his clothes, was he
18 under arrest.

19 Q. And the answer has been no; is that correct,
20 Detective Muirheid?

21 THE COURT: That's not necessarily my answer.

22 MR. WEST: I understand, Judge. I'm sorry to put
23 words in your mouth. I will direct everything to Detective
24 Muirheid.

25 BY MR. WEST:

1 Q. He was not under arrest at the time?

2 A. No.

3 Q. In fact, he had no way to leave the interrogation
4 room at the time, because y'all drove him there?

5 A. He was given a ride, yes.

6 Q. So he couldn't have gone anywhere even if he wanted
7 to?

8 A. We offered him a ride to leave when we had the
9 ability to do so.

10 Q. But you could have made him wait some additional
11 time to procure the search warrant; is that correct?

12 A. Didn't want to do that. He wasn't under arrest. I
13 didn't want to hold him up any more than was necessary.

14 Q. Could you have called the search warrant in over
15 the phone?

16 A. Could I? No, not -- what would have happened is, I
17 would have wrote the search warrant, and then I would have
18 gone out there.

19 Q. What's the difference between you between the four
20 hours that you did have him at the law enforcement center
21 and the additional 20 or 30 minutes that it would have taken
22 to get the search warrant?

23 A. I personally didn't even know the time -- I didn't
24 know what time frame we were dealing with, meaning I didn't
25 know he was there for four hours, three hours, two hours. I

1 just knew at some point when I was waiting over at his
2 residence, that he was there at the location. The reason we
3 waited then is I needed another person to come over there
4 and relieve me so that I could then go and interview the
5 defendant.

6 So the reason that it took that long was because of
7 manpower. So in that time, we obtained that search warrant.
8 I did not think that, based on us being there and securing
9 the scene, that there was any way that anything was going to
10 be manipulated with the vehicle or the home. So we had that
11 time.

12 I knew that we were coming in -- I didn't know
13 exactly at the time, but I knew that I was not arresting him
14 that night. So that being said, I didn't want to hold him
15 up any longer than I had to. That's why we didn't get the
16 search warrant. I got the clothes as quick as I could. And
17 I put those into an evidence bag -- or had him put them into
18 an evidence bag.

19 Q. You would agree with me that you gave him the
20 directive to put his clothes into the bag; is that correct?

21 A. Yes, I told him to, which he didn't object.

22 Q. But you didn't give him the option. In fact, he
23 asked why you needed his clothes taken?

24 A. I don't remember exactly what he asked, but I know
25 there was a question and my response was that him and I

1 could not -- no longer speak based on the fact that he asked
2 to have a lawyer present.

3 Q. But it's not your testimony here today that him
4 delivering the clothes to you was consensual, was it?

5 A. I felt it was consensual. I felt by the fact that
6 he did not deny that directive, that it was implied.

7 Q. You believe that that is an accurate representation
8 of the way my client questioned your ability to take his
9 clothes?

10 A. He didn't -- I don't really even recall him
11 questioning that ability. I just remember there was a
12 question that began to be asked, and I started to try to
13 answer in some way, but then realized that there was to be
14 no conversation between us any longer because he invoked his
15 right for an attorney.

16 Q. Okay. Was there any physical impediment to you
17 getting a search warrant?

18 A. I'm not sure. If you could rephrase that.

19 Q. Sure. Was there anything because of the way
20 computers were working that night or anything otherwise that
21 would have prevented you from getting on the phone, relaying
22 to Detective Bowen the probable cause to take his clothes,
23 as you did with the house and the car?

24 A. Detective Bowen wasn't even there. That's not even
25 what would have happened. I would have typed the search

1 warrant at that time. Because we normally, and on that
2 night this was so, we would type our search warrants while
3 we were there at the law enforcement center, which is where
4 we all were. So I would have typed that.

5 Based on the fact, the amount of time he had
6 already been there, he was not under arrest, I made the
7 decision that, and based on the exigent and the delicateness
8 of the evidence, to take it there without a search warrant.

9 Q. Did you get any other search warrants after you
10 took his clothes?

11 A. In regards to his clothes?

12 Q. In regards to the clothes or anything else in the
13 case?

14 A. Yes.

15 Q. You took his cell phone that night, didn't you?

16 A. His cell phone was given to me, yes.

17 Q. And you got a search warrant for that?

18 A. Yes.

19 Q. Okay. What is the difference between getting a
20 search warrant for his cell phone and getting a search
21 warrant for his clothes?

22 A. The content that I would have been looking for on
23 the cell phone was going to be on the cell phone. And there
24 was no way for it to be manipulated once I had that phone
25 and the battery removed.

1 The clothing could have been washed. If I allowed
2 him to leave with that clothing, it could have been washed.
3 And all of the evidence that potentially was on that
4 clothing would have been destroyed, potentially.

5 MR. WEST: No further questions for this witness at
6 this time.

7 MS. BALDWIN: Court's indulgence.

8 REDIRECT EXAMINATION

9 BY MS. BALDWIN:

10 Q. Detective, Mr. West mentioned you getting a search
11 warrant for the defendant's cell phone.

12 A. Yes.

13 Q. Do you recall what time you got that and what day?

14 A. Not off the top of my head, if I could review.

15 Q. If I showed you a copy of it. If I may approach,
16 Your Honor.

17 A. This was for September 24th, 1:50 p.m. for his cell
18 phone.

19 Q. Okay. So September 24th at 1:50 p.m.?

20 A. Yes, ma'am.

21 Q. After the defendant had left the station?

22 A. Yes.

23 Q. But you had the defendant's phone at that time?

24 A. Yes, ma'am.

25 Q. Would you have worried if the defendant -- if the

1 phone was not in your custody at the time?

2 A. Yes.

3 Q. Why is that?

4 A. Because he could have manipulated however he wanted
5 to leave things that potentially could have been evidence.

6 MS. BALDWIN: Thank you. No further questions.

7 MR. WEST: Nothing from this witness.

8 THE COURT: Thank you very much. You can step
9 down.

10 MS. BALDWIN: I have no further witnesses, Your
11 Honor. I believe it's Mr. West's argument.

12 THE COURT: All right.

13 MR. WEST: Judge, our Constitution and our laws of
14 jurisprudence in this country only allow for the search of
15 particular items without a warrant under certain delineated
16 exceptions. We have specifically elicited testimony to each
17 of those exceptions, none of which the witness has testified
18 to. It's clearly not an automobile exception. Clearly not
19 a plain view exception. And none of the other exceptions
20 for hot pursuit or otherwise would apply to it. This is
21 clearly a search of the defendant.

22 There was no physical impediment to actually
23 obtaining the search warrant. In fact, they had obtained
24 the search warrant to the house and the car prior to getting
25 this search warrant. The ease of which for getting an

1 additional search warrant would have been very nominal.
2 There would have been no disruption in the investigation of
3 the case. There would have been simply no reason not to get
4 a search warrant other than oversight or overlooking what
5 should have been done properly in this case.

6 I don't believe that any of the exceptions
7 delineated in our case law apply in this instance. And we
8 would respectfully request that the clothes that were
9 obtained unlawfully be suppressed, and any fruits thereof,
10 including the ring and the Walmart receipt and any
11 discoveries after this unlawful search.

12 MS. BALDWIN: Thank you, Your Honor. Actually, I
13 believe that there are several exceptions that would allow
14 Detective Muirheid to seize the clothing in this particular
15 circumstance. First of all, I would argue consent. He said
16 he comes in says, hey, I need to get your clothes. Asks
17 why. Says, I can't talk, I need your clothes. He says
18 okay. He doesn't say, I am not going to give them to you.
19 Just says okay.

20 If Your Honor does not believe that there was
21 consent involved, I do believe that this is exigent
22 circumstances. You heard Detective Muirheid testify that he
23 didn't know if there were some item of evidence on that
24 piece of clothing. There was a lot of blood at the crime
25 scene. The defendant was wearing black clothing. There

1 could have been clothing that Detective Muirheid didn't see.
2 That was his purpose in trying to get the piece of clothing,
3 is to preserve that possible piece of evidence. He wanted
4 to make sure that the defendant didn't do that.

5 Quite frankly, Your Honor, if he was under arrest,
6 if the defendant had been arrested that night, Detective
7 Muirheid would have been well within his rights taking the
8 clothing and searching it under our case law. Instead, he
9 was trying to go above and beyond, and not deprive this
10 defendant of his liberty that evening, he wanted to make
11 sure darn sure this was the guy they were looking at.

12 So instead of holding him there, and holding him
13 inevitably until they got DNA back, he actually did let him
14 go home that evening, to preserve possible evidence. And it
15 would be a shame to punish officers who are trying to do the
16 right thing, that are trying to make sure that they don't
17 deprive somebody of their liberty and they wanted to make
18 sure they have the right person.

19 As to that, Your Honor did indicate that he thought
20 that maybe the defendant was under arrest at that point.
21 And if that's the case, I would argue it's well within the
22 search incident to arrest exception.

23 This is also similar when it gets to the exigent
24 circumstances issue similar to GSR. Courts have found that
25 GSR can be taken during a warrantless search because it can

1 disappear very easily, because it can be washed off the
2 hands or rubbed on the clothing and off the hands. Here
3 Detective Muirheid was worried those clothes would be
4 washed. And there goes any evidence that they could
5 possibly get.

6 THE COURT: That may be it. I will tell you the
7 way I look at it. I'm prepared to rule that he was not
8 under arrest up to and through the time that he gave the
9 timeline to them. That was voluntarily given by him.

10 Then when Detective Muirheid comes back in, starts
11 questioning him further and Mirandizes him and he says, I
12 don't want to talk with you anymore, exercises his right not
13 to talk any further, and then I think he does place him
14 under arrest at that point and demanding that he give him
15 his clothes at that point. I don't think that he
16 voluntarily gave him his clothes.

17 So, you know, kind of sounds funny to say, but they
18 didn't place him under arrest, but that's the way I analyze
19 it, is at that point, when they start telling him, you've
20 got to give us your clothes, they are telling him things
21 that he has to do, compelling him to give them his clothes,
22 when I don't think they had the right to do that.

23 MS. BALDWIN: Your Honor, if I may. If you are
24 saying that he's under arrest, the case -- they can't seize
25 his clothing at that point.

1 THE COURT: It's kind of circuitous argument in a
2 way, whatever you want to call it. But when he exercised to
3 tell him in effect, you are under arrest and you don't have
4 to cooperate with us, you don't have to do anything further
5 and everything, and they turn around and tell him, you've
6 got to give us your clothes --

7 MS. BALDWIN: I understand what you are saying,
8 Your Honor, but my point is that, the case law is very clear
9 that that's actually an exception to a search warrant, is a
10 search warrant incident to arrest. So if they are saying he
11 is under arrest, they can, in fact, taking his clothing.

12 THE COURT: But then they don't arrest. Then they
13 let him go. It's only for the purpose of getting his
14 clothes they arrest him and then they let him go.

15 MS. BALDWIN: That's the reason I'm arguing the
16 exigency of the circumstances, that he could have gone and
17 destroyed that.

18 THE COURT: Like I say, my impression of it is, I'm
19 prepared to let in the timeline that he was giving them.
20 But once they Mirandized him and, in effect, told him he was
21 under arrest and then ordered that he give them his clothes,
22 you know, he didn't have any choice but to do that. And I
23 don't think they had the right to do that under all the
24 circumstances. I could be wrong, but that's my impression
25 of the facts and the law.

1 So I would suppress the taking the clothes and what
2 was in the clothes and so forth at this point.

3 MS. BALDWIN: Thank you, Your Honor. For your
4 ruling, there may be one more piece of evidence besides the
5 receipt and the ring that we need to address in; regard; to;
6 your ruling. The police did obtain a video from Walmart
7 that shoes the defendant there at the Walmart that evening.
8 I'm assuming -- I'm not sure what defense's position is
9 regarding the video, but I want to be clear for the record.

10 MR. WEST: I believe that's fruit of the poisonous
11 tree. If the only reason they went to Walmart is because
12 they got the receipt and the receipt indicated that he was
13 at Walmart, so they went to Walmart to get the video, had it
14 not been for the receipt that was unlawfully obtained, they
15 would have never gotten the video. So I believe that
16 anything from the point Your Honor ruled on needs to be
17 suppressed.

18 MS. BALDWIN: My argument that -- I assumed that
19 would be the defense's argument, Your Honor. And my counter
20 point to that would be the fact that while I respect your
21 ruling, there would also be inevitable discovery because of
22 the fact that there were several Walmart bags. Let me start
23 over. The shoes that -- bloody shoes they found in the
24 house was in a Walmart bag. They found a Walmart bag in the
25 cupholder of the defendant's car. The defendant's cell

1 phone pingz off of a cell phone tower that's right near that
2 Walmart. The defendant's cell phone records, once again,
3 pings off of that.

4 So I believe that they would have eventually have
5 come around to finding him. Also, his bank records, they
6 peruse his bank records. There are several times that he
7 visits that particular Walmart in order to get gas,
8 actually, in order to get several other things. So it
9 wouldn't be unusual for them to go look at that Walmart. In
10 fact, that evening, they did go to that Walmart to search
11 the trash bins to see if there had been any weapons or
12 clothing disposed of at that Walmart. So it wouldn't have
13 been unheard of to see if he was anywhere else, especially
14 once they reviewed the cell phone tower records and seen he
15 was in that vicinity.

16 MR. WEST: Judge, I believe that the argument is
17 they are going to rely on the cell phone tower records,
18 their own expert is going to tell you and this jury that
19 they are not going to be able to specify what exact location
20 that cell phone is, but only to a certain radius.

21 THE COURT: I understand that.

22 MR. WEST: I think it is unreasonable to depend on
23 that and a Walmart bag being at somebody's house, it's
24 something that is out of the ordinary for anybody even in
25 this courtroom today.

1 The reason they went to Walmart is because of that
2 receipt. They depended on that receipt to get to Walmart
3 and to get that video. And without that receipt, they would
4 not have that piece of evidence. That is the definition of
5 fruit of the poisonous tree. And it needs to be suppressed.

6 THE COURT: Well, I appreciate that, but I am not
7 going to rule that out at this point. I am not going to
8 rule that out. I will let the testimony be produced. And I
9 will rule as it comes along. But I am not going to rule
10 that out at this point.

11 MS. BALDWIN: Thank you, Your Honor.

12 THE COURT: All right.

13 MS. BALDWIN: I don't believe the defense has any
14 other motions. I would like for them to say it.

15 MR. SCHWARTZ: Nothing from the defense further as
16 far as pretrial.

17 MS. BALDWIN: No pretrial from the State.

18 THE COURT: So where does that leave us in terms
19 of -- it's three o'clock this afternoon. I don't know
20 whether -- how do you all see us proceeding?

21 MR. WEST: My intent would be to work on whatever
22 agreements the State and defense could come to in regards to
23 potential pictures and the like, pieces of evidence that we
24 could all stipulate to. And that way, we can have a clear
25 record before we actually begin openings as to what's coming

1 in, what's going to be contested.

2 THE COURT: And how long do you all see this going
3 this week?

4 MR. WEST: I think we can finish by Friday, Judge,
5 now that we've had these rulings. It's going to limit the
6 witness list.

7 THE COURT: We are going to pick the jury tomorrow
8 and do everything, you think we can finish by Friday?

9 MS. BALDWIN: Yes, sir.

10 THE COURT: If not, we will carry over into next
11 week, I guess. All right. So if there's nothing further
12 today, we will be back tomorrow morning at 9:30.

13 THE CLERK: 9, 9:30.

14 THE COURT: Let's try to get the jury here at 9.

15 THE CLERK: I will tell them 9, but probably won't
16 be until 9:30.

17 THE COURT: I understand. Try to get the jury down
18 here by nine o'clock. And we will pick a jury after that.

19 MR. SCHWARTZ: We would like to move the motions
20 and the briefs into the record tomorrow morning.

21 THE COURT: As far as I'm concerned, you can put
22 anything into the record.

23 MR. SCHWARTZ: We'll do that tomorrow morning.

24 THE COURT: I want to make sure you understand,
25 when I let you go and everything and all, if you are not

1 back, the trial will go on in your absence. Do you
2 understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Thank you very much.

5 (Court's Exh. 4, Defendant's motion to compel,
6 was marked for identification.)

7 (Court's Exh. 5, Motion for in-camera hearing to
8 determine admissibility of Rule 404(b), SCRE evidence, was
9 marked for identification.)

10 (Court's Exh. 6, Defendant's motion to suppress
11 introduction of evidence discovered during a warrantless
12 search, was marked for identification.)

13 (Court's Exh. 7, Memorandum of law in support of
14 defendant issues motion to suppress oral and written
15 statements pursuant to *Jackson v. Denno* was marked for
16 identification.)

17 (Court's Exh. 8, Motion for in-camera hearing to
18 determine admissibility of defendant's statements prior to
19 *Miranda*, was marked for identification.)

20 (Whereupon, proceedings are adjourned for the day.)

21 (Whereupon, the proceedings continue on February
22 14, 2018.)

23 THE COURT: I'm really concerned about, you know,
24 scheduling is concerned and everything and all. Now, of
25 course, I am not asking the defense to tell me what you are

1 going to do as far as anything, but I want to know from the
2 prosecution. Can you tell me how your case is going to
3 proceed at this point, what you are going to do next?

4 MS. BALDWIN: We've pared down our witness list
5 quite a bit. Barring anything crazy, I think we can finish
6 by Friday.

7 THE COURT: I know you say that, but tell me what
8 you are going to do, if you don't mind.

9 MS. BALDWIN: Regarding our order of witnesses?

10 THE COURT: Yeah. What the witnesses are going to
11 do.

12 MS. BALDWIN: There will be the uncle who found
13 her, the brother, a first responder.

14 THE COURT: What I want -- what I'm getting at is,
15 are we going to have any more protracted suppression
16 hearings that you foresee?

17 MS. BALDWIN: Not that I foresee, Your Honor. That
18 would be more up to the defense.

19 THE COURT: I know that. But, I mean, what
20 evidence are you going to want to introduce? I'm thinking
21 down the line that -- I don't know what physical evidence
22 you are going to introduce that might be subject to some
23 suppression motions.

24 MS. BALDWIN: I don't think that most of it will
25 be. We've sort of gone over things. We went over it

1 yesterday afternoon.

2 THE COURT: What evidence are you going to put in?

3 MS. BALDWIN: The swabs that's been recovered at
4 the scene from the defendant's car, the blood swabs. That's
5 already been decided by Your Honor, and from the house, from
6 the search warrant from the house.

7 THE COURT: So nothing as far as the clothes or
8 anything like that?

9 MS. BALDWIN: I am not trying to go into the
10 clothes or anything like that.

11 THE COURT: And the shoes?

12 MS. BALDWIN: There were shoes recovered from his
13 house that were separate from the clothing that was taken
14 from him --

15 THE COURT: That's out?

16 MS. BALDWIN: You said that was out. Your Honor, I
17 will say if the testimony changes, we may bring it up again,
18 but --

19 THE COURT: Okay. That's what -- I just wanted to
20 be sure. But you also talked about some stuff as far as
21 that -- I don't know whether you are going to try to
22 introduce or not, something about in his clothes that were
23 seized and everything. There was some receipts found
24 relative to some purchase at Walmart, so forth of that and
25 everything. You are going to want to try to put that in?

1 MS. BALDWIN: As far as the ring and the Walmart
2 receipt, Your Honor, barring some change in the testimony,
3 we may need to revisit it. As of right now, I don't plan on
4 going into it based on Your Honor's ruling yesterday.

5 THE COURT: Good.

6 MS. BALDWIN: As far as the Walmart video goes, I
7 think you left out -- you did leave that open to see how the
8 testimony develops.

9 THE COURT: I will see about that.

10 MS. BALDWIN: Regarding --

11 THE COURT: I have to think what potential nonjury
12 hearings we've got and everything and all, because I just --
13 I can easily see we are going to have to deal with a whole
14 lot more nonjury suppression hearings and everything,
15 including my thinking about it and everything and all,
16 making decisions on it. That would occupy another half a
17 day and everything like that. That's why I was concerned
18 and then thinking about going into Saturday and Sunday and
19 so forth. And Monday is a state holiday. Anyway, I just am
20 trying to look down the road.

21 MR. WEST: Obviously, we are going to have to renew
22 our objections for the record as things could rest in the
23 trial.

24 THE COURT: Sure. Issues may come up and we may
25 not do it. If we don't, we have to get the court reporter

1 to give us a day.

2 MS. BALDWIN: The only other thing we would have to
3 pause for is when we go to introduce the autopsy photos.
4 But I don't imagine that will take too long, just based on
5 it would be proffering testimony from the pathologist,
6 hopefully.

7 THE COURT: We will see what it says for that,
8 balancing and so forth and so on. We will deal with that
9 when it comes up.

10 MR. SCHWARTZ: There was something we found late
11 last night that we are getting copies of, is the *Giglio*
12 issue that we found about Sergeant Euper.

13 THE COURT: You have to tell me what that is.

14 MR. SCHWARTZ: *Giglio* is the case where the State
15 is supposed to turn over evidence of police officers or law
16 enforcement's HR records where they have incidents of
17 untruthfulness. And we found out that late last night that
18 Sergeant Euper, through a Google search, was actually
19 suspended for six months for not following procedure. And
20 he was --

21 THE COURT: Who are you talking about?

22 MR. SCHWARTZ: Sergeant Euper. He was part of the
23 search warrant issue. And our contention is that --

24 THE COURT: I don't even see his name on here.

25 MS. BALDWIN: Because he wasn't called, Your Honor.

1 MR. SCHWARTZ: Giglio doesn't say whoever the State
2 wants to call. What if we want to call him? And that's a
3 violation. We asked for it. We compelled it. They told
4 us --

5 THE COURT: You got it now. Okay.

6 MR. SCHWARTZ: Well, I don't have his file. I only
7 have the News 5 report.

8 THE COURT: Get what you can.

9 MS. BALDWIN: I will ask him for it.

10 MR. WEST: Judge, where that becomes particularly
11 important is, he was part of the relay of the probable cause
12 for the search warrant. His truthfulness has been put into
13 question.

14 THE COURT: Okay. I agree with that.

15 MS. BALDWIN: My counterpart, obviously, there was
16 some --

17 THE COURT: Get him here. Get the records.

18 MS. BALDWIN: I don't think we need him necessarily
19 for his truthfulness. I don't know what you are talking
20 about. We will get the file.

21 MR. SCHWARTZ: We don't have access to the file.

22 MS. BALDWIN: I am getting it right now.

23 MR. SCHWARTZ: But you were ordered to get it two
24 days ago when we had the pretrial.

25 MS. BALDWIN: I didn't know about it.

1 THE COURT: Take a deep breath. Get him here and
2 get the file.

3 MS. BALDWIN: You can tell me what I'm supposed to
4 do.

5 MR. SCHWARTZ: Goes back to the search warrants,
6 Your Honor. We had the suppression motions with Sergeant
7 Euper's name being dropped by one or more detectives who
8 said that he was part of the relay for the search warrants.
9 And if he doesn't follow procedure, per his suspension, then
10 that's an issue with the search warrant, in our position.
11 And I think we have a right to ask for a mistrial or we
12 have --

13 THE COURT: If you want to move forward, I will
14 move on it. You can move on it. You move and I will
15 rule.

16 MR. SCHWARTZ: Sure.

17 MS. BALDWIN: Your Honor, I would like to at least
18 get the file to see if it has any bearing before we start
19 talking about a mistrial.

20 THE COURT: Sure. I am not making any ruling. I
21 said, get it all here, put it on the record, and I will
22 rule.

23 Did you all give me a request for voir dire?

24 MR. WEST: We did, Judge. And we went over that in
25 some of the earlier --

1 THE COURT: I think I put everything on there but
2 I'm trying to find my copy now. Give me a few minutes. I
3 got it.

4 I asked the question, how would y'all like to voir
5 dire the jury. And I'm considering allowing each side to
6 ask five questions.

7 MS. BALDWIN: I would prefer to leave it up to Your
8 Honor.

9 THE COURT: Well, I'm giving you a chance.

10 MR. WEST: Judge, this is a once-in-a-lifetime
11 opportunity. We want to take full advantage of it.

12 THE COURT: Well, you know, it's provided for in
13 the next case up. And in this case, it's practically the
14 same thing in some respects. So I will allow each side to
15 have five questions to the jury panel, if you want it.

16 MS. BALDWIN: Yes, sir.

17 MR. WEST: Obviously, one of the motions we made
18 earlier in the case was a motion to compel the in-car
19 videos. The State did not produce that. We had sent a FOIA
20 request to the County attorney. And, subsequently, he has
21 produced three videos to the in-cars. So that apparently is
22 ready for us to view. And we just have to pick it up.

23 MS. BALDWIN: Or our office can provide a copy.

24 THE COURT: Get it here. Y'all decide how you want
25 to do that. Get it here as soon as you can.

1 closed. Any challenge to the jury as it's presently
2 constituted, from the State?

3 MS. BALDWIN: No, sir.

4 THE COURT: From the defense?

5 MR. WEST: None from the defense.

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

7 Now, as far as the instructions to the balance of
8 the jury out there --

9 THE CLERK: They are to call back at 6 this
10 evening. Y'all are free to go. Call back at 6 this evening
11 to the jury hotline.

12 THE COURT: He just told you what I was going to
13 tell you. You are free to go. Glad to have you stay with
14 us if you want to. Call in after six o'clock.

15 (Whereupon, the venire leaves.)

16 MS. BALDWIN: Actually, Your Honor, we do have that
17 issue with Sergeant Euper you wanted to address. I have one
18 memo. There's something from 2002. I looked it over. I
19 can hand it up to Your Honor. I don't think it has any
20 bearing on his truth and credibility.

21 And then the incident that they were referring to,
22 the county attorney sending the same memo over, he said
23 there's nothing Brady or bearing on his credibility there
24 either.

25 MR. WEST: Judge, we would like time to review that

1 with our client.

2 THE COURT: Go right ahead.

3 MR. WEST: There's also been disclosure of the
4 three videos that we need to be able to watch and prepare.
5 I have no idea how long they are going to be. Obviously, as
6 you've heard, this was a very long crime scene. And if it
7 takes us six hours to watch all of the videos, then we need
8 six hours.

9 THE COURT: You will get it.

10 MS. BALDWIN: Thank you, Your Honor. So would we
11 like to break now and maybe come back at one o'clock and see
12 where we are at. I don't think that the videos will take
13 that long, honestly.

14 THE COURT: Are they here yet?

15 MS. BALDWIN: They are. I've got a copy of them
16 right here for you.

17 MR. SCHWARTZ: At this point, we are going to have
18 to ask for a continuance. We just got Brady information,
19 you know, two days into this thing. We don't know what's on
20 it. We would ask for a continuance.

21 THE COURT: You are talking about a video?

22 MS. BALDWIN: Your Honor, to my knowledge, there's
23 no Brady information on there.

24 THE COURT: We are going to take it one step at a
25 time. And I am not going to be rushing as far as this is

1 concerned. And we will give you adequate time, within
2 reason, to review what you want to review and everything.
3 So it's 11:17 now. If you want to stop now, I will be glad
4 to -- have you all got the ability to now look at the video
5 or whatever?

6 MR. SCHWARTZ: We have the CD. It's one of two.

7 THE COURT: Let's get started with this. I'm going
8 to break now. What time do you want to come back, 1, 1:30?

9 MR. WEST: We could do a status conference.

10 THE COURT: That is a long afternoon with 1:30, but
11 we will do it.

12 MR. WEST: Judge, again, depending on what's on the
13 videos --

14 THE COURT: I agree. We will find out.

15 MR. WEST: Thank you, Judge.

16 THE COURT: So bring the jury back in. I am not
17 going to swear them yet.

18 I don't require that you stand for the jury when
19 they come in and everything and all. If you want to, you
20 can, but I don't require that. It's up to you.

21 (Whereupon, the jury returns to open court at 11:17
22 a.m.)

23 THE COURT: We reserved those two seats there for
24 the alternates, wherever they are. That is [REDACTED] and
25 [REDACTED], I believe. That's the two of you all. Those are

1 the seats we reserve for the alternate jurors. The rest of
2 you are free to sit wherever you would like in the jury box
3 as you come and go from the courtroom. But if you would let
4 the two alternates sit back there on the back row, last
5 seats as you come in on the second row.

6 Now, you've been selected as the jury in this case.
7 As I told you earlier, the State claims, makes the charge,
8 against the defendant, General T. Little. And I'm so poor
9 on pronouncing the names much beyond Smith or Brown or Jones
10 or something like that. I'm just going to use his middle
11 initial of T, General T. Little, Dr. Little. Accuses him of
12 committing a murder on Barbara Little on September 22, 2015,
13 in violation of the laws of this state. To that charge, Dr.
14 Little has said, I'm not guilty. And that places the burden
15 of proving him guilty on the State.

16 A person who is charge is never required to prove
17 himself or herself innocent. The burden of proof is on the
18 State throughout the trial until you the jury have reached
19 the conclusion in the jury room, after hearing all the
20 testimony, all the evidence and my instructions to you on
21 the law. Until you've reached a decision that the State has
22 proven him guilty beyond a reasonable doubt, he's entitled
23 to be presumed innocent. And that is a real presumption of
24 innocence as much as anything, any fact that may be involved
25 in the trial of this case. The State has to remove that

1 presumption by evidence presented to you.

2 You are the sole judges of the facts of this case.
3 I don't have anything to do with the facts. My job during
4 the trial is to make sure that the parties follow the rules.
5 We have certain rules of evidence and rules of procedure
6 that the parties are supposed to follow in presenting the
7 facts through the witnesses to you. My job is to make sure
8 that they follow those rules. Your job is to decide what
9 the facts are based on what you hear and see presented here
10 in court.

11 Keep in mind what your job is going to be. Perhaps
12 during the trial, one or more of the lawyers will get up and
13 say something like, Your Honor, I object, and hopefully have
14 some reason as to why he or she objects to a question that's
15 been asked or an answer that's been given. When the lawyers
16 do that, they are talking to me. They are not talking to
17 you. They are talking to me. They are calling a possible
18 violation of one of the rules to my attention. Don't you
19 concern yourselves with those objections, whether I overrule
20 it, sustain it, whatever, because it has absolutely nothing
21 to do with your job in the case, which is to be the finders
22 or the judges of the facts of this case.

23 Perhaps, unless the answer to their question, so to
24 speak, is obvious, when one of those objections comes, I
25 probably will send you from the courtroom to the jury room.

1 I am not trying to hide anything from you doing that. We
2 found over the years that's the easiest and best way for me
3 and the lawyers to discuss the rule. Let me make a
4 decision, bring you back in, go on with the case. So I am
5 not trying to hide anything from you by doing that. It's
6 just we found that that's the best way, easiest way, most
7 economical way for me and the lawyers to discuss the rule.
8 Let me make a decision and bring you back in and go on with
9 the trial of this case.

10 Now, how are we going to go about learning about
11 the case? First of all, I'm going to allow each side to
12 make an opening statement. These are not arguments.
13 Arguments will come at the conclusion of the case. But I do
14 allow each side to introduce themselves a little further,
15 the claim that the State makes in this case against Dr.
16 Little, and any response to that claim by Dr. Little.

17 After those opening statements, they will have the
18 presentation of testimony and evidence. The State will call
19 witnesses that it wishes you to hear from. And then the
20 defendant has the opportunity, if he so desires, to call any
21 witnesses that he wishes you to hear from.

22 After both sides have had an opportunity to present
23 all the testimony, all the evidence that they want you to
24 consider, then we will have summations and arguments from
25 the attorneys. And after that, I will discuss with you more

1 fully what your duties and responsibilities are as a jury in
2 this case and the law applied that you may apply in this
3 case. And then you will go to the jury room and deliberate.
4 And you will answer that question, has the State met the
5 burden of proof of proving Dr. Little guilty of this crime
6 beyond a reasonable doubt?

7 Keep in mind what your job is going to be at the
8 conclusion of this case.

9 Now, actually, we are going to stop at this point
10 right now, because the lawyers and I have a little more
11 pretrial work that we have to do to get things on track, so
12 to speak, as far as presentation of everything to you today
13 and tomorrow and the next day. But so we are going to have
14 to stop right now. And I'm going to let you take a little
15 early lunch break. Be back at 1:30.

16 Let me give you another instruction, and this goes
17 throughout the trial. You cannot discuss the case even
18 amongst yourselves, not while you are back there in the jury
19 room, not when you go home and talk with your family,
20 friends or anyone else. Don't talk about the case. The
21 only time you are to discuss this case is when you are
22 together at the conclusion of the trial, when you've heard
23 everything, seen everything, heard the arguments, heard my
24 instructions to you on what you do and how you go about
25 doing it. That's when you will discuss the case back there

1 in the privacy of the jury room. So do not discuss the case
2 even amongst yourselves, and certainly not with family,
3 friends or anyone else.

4 And if anybody contacts you, wants to talk to you
5 about this, discuss it with you in any way, you find out who
6 they are, if you don't already know, come and let me know
7 about it. And I will take care of it after that. No one
8 should influence you except for what goes on in this
9 courtroom. So keep that in mind throughout the trial.

10 Now, one other thing I want you to do before you
11 come back at 1:30 -- maybe I should ask you to be back at
12 1:15, because I want you to select a foreperson. Sometimes
13 I appoint the foreperson of the jury. Other times I let the
14 jury decide. And in this case, I'm going to let you decide
15 who you want to be your spokesperson in this case. The
16 spokesperson, the foreperson, his or her vote doesn't count
17 any more than anybody else's vote in deciding this case.
18 The foreperson just gets -- sort of presides over the
19 deliberations, gets the discussion going, keeps it on track
20 and reports to us when you've reached a verdict.

21 Also, if there's any need for you as a jury to
22 communicate with me about any matter during the course of
23 the trial, that foreperson would be the person who would
24 speak for you here in court for that purpose. So before you
25 come back at 1:30, if you would, decide, talk it over,

1 decide who you want to be your presiding officer in this
2 case.

3 So with that, I will let you go. And come back and
4 be back at 1:30. Have a nice break.

5 (Whereupon, the jury leaves open court at 11:25
6 a.m.)

7 THE COURT: Y'all wait a few minutes. Make sure
8 that the jury has cleared the courthouse before any of y'all
9 go out.

10 (Luncheon recess was taken.)

11 THE COURT: Bring the jury in.

12 MR. WEST: Just we have a matter of law to
13 discuss.

14 THE COURT: All right.

15 MR. WEST: Judge, as you know, immediately before
16 the break, the State relinquished some videos that we had
17 been requesting in both our discovery motions and our
18 particular motion to compel. Those videos consist of
19 footage that is well beyond the time that we have had to
20 review, much less time to review with my client. The
21 failure to comply with Rule 5 has specific remedies that I
22 believe need to be addressed by this Court. First, we are
23 going to be moving --

24 THE COURT: Let's see. Let me get to the rules.
25 I'm looking at Rule 5.

1 MR. WEST: Specifically Rule 5(d)(2).

2 THE COURT: Wait a minute, (d)?

3 MR. WEST: Regulates the failure to comply with
4 discovery request.

5 THE COURT: Wait. Wait. Wait. Rule 5(d), as in
6 delta?

7 MR. WEST: (2).

8 THE COURT: Information not subject to disclosure?

9 MR. WEST: No, Judge. I have it pulled up as
10 failure to comply with discovery request.

11 THE COURT: Well, that's over in -- I mean, that's
12 what I think is a different numbers section. I see what you
13 are talking about. But what is it? I mean, what is it that
14 you think you are entitled to have gotten under the rules
15 that you haven't gotten? I'm looking under documents and
16 tangible objects. And it says, upon request of the
17 defendant, blah, blah, blah, and everything. Look at that
18 to start with to see if you are entitled to get it.

19 MR. WEST: That's correct.

20 THE COURT: Look at it. Look at it.

21 MR. WEST: Documents, intangible objects would
22 include --

23 THE COURT: Documents, so forth, so forth, and
24 which material to the preparation of his defense or are
25 intended for use by the prosecution as evidence in chief at

1 the trial, or were obtained from or belong to the defendant.

2 MR. WEST: Judge, this particular evidence is
3 clearly material to the defense because --

4 THE COURT: Well, what is it we are talking about?

5 MR. WEST: Videos. Well, we've only had time to
6 review only two of the videos that were disclosed.

7 THE COURT: What are the videos?

8 MR. WEST: They are in-car videos of the officers
9 that responded to the scene and other locations throughout
10 the course of this investigation. That is particularly
11 materially important. And it has audio recording in some of
12 them where witnesses are discussing with officers important
13 aspects of the case.

14 As you know, there's discussion at the scene about
15 the location of the decedent, things inside the house, the
16 direction for Officer Colburn to go to my client's house.
17 Statements by other witnesses are on these videos. Judge,
18 there is just a litany of things I could go through about
19 the importance of the videos that we've only watched.
20 Again, we haven't had time to watch all of them.

21 THE COURT: So what do you want to do? You want to
22 delay?

23 MR. WEST: No, Judge.

24 THE COURT: No, no, no. I am not going to rule it
25 out. I am not going to throw the case out at this point. I

1 can tell you that. So if you want to delay and everything
2 to have a chance to review them and get ready to use them or
3 not to use them, I will be glad to do that.

4 MR. WEST: Judge, I think if your ruling is that
5 you are not going to grant a mistrial or exclusion of the
6 evidence provided by the rules, then we are obligated by the
7 necessity to protect my client to request a continuance at
8 this point.

9 THE COURT: What do you want to say in response to
10 that?

11 MS. BALDWIN: Thank you, Your Honor. As Your Honor
12 mentioned, we are looking at Rule 5, I guess (a)(1)(C),
13 which is documents and tangible objects. I would argue that
14 these videos are not material to the preparation of the
15 case.

16 THE COURT: I don't know.

17 MS. BALDWIN: I have reviewed the video as well,
18 what Mr. West is referring to. I reviewed it over the lunch
19 break as well. And, basically, everything that's contained
20 in that video, as far as I can tell, is what has come out
21 during cross-examination of the witnesses, what has been put
22 forth in the reports, what Deputy Colburn testified to that
23 he was sent over to the house. So there's no new
24 information there. It's all contained within the reports.

25 THE COURT: Well, I appreciate that. And I think

1 very well that may be the case. I am not excusing you in
2 any way saying that. I think you should have a chance to
3 review it and make a good, timely decision about what --
4 whether there's something in there that's valuable to you or
5 not. So, you know, you've got it now. And so how much time
6 do you think you want to review the videos? The rest of the
7 day?

8 MR. WEST: Judge, we are going to need well more
9 than the rest of the day. In the videos, we even have a
10 screenshot of the officers wearing body cameras. And the
11 State has repeatedly said that no body cameras were on the
12 scene. There's a body camera on this officer's shoulder
13 from the screenshot of the video of the car.

14 If that has been deliberately purged, then that's
15 something we need to address and we need to have. We are
16 entitled to that. These officers went into the crime scene.
17 They went into the house. And they had cameras on them when
18 they did it. And the State, this entire time, has been
19 saying they are not in possession of body cameras and didn't
20 have the video. And that is patently false based on the way
21 that these videos were disclosed to us today.

22 MS. BALDWIN: I do want to make the record clear
23 that the State was not aware of any of these videos, quite
24 frankly, based on the information. I understand about it
25 being in custody and control. But I want to make sure that

1 there's no -- that he's not insinuating that we lied to the
2 Court or to the defense, for that matter.

3 MR. WEST: Judge, what I'm saying is, the State has
4 a duty, a duty to this Court and to my client to ensure his
5 protections under the Constitution.

6 THE COURT: Are any exculpatory materials or
7 whatever, is what it is, and under the execution, under the
8 rule, as I said, you know, whether it's material to the
9 preparation of his defense, and y'all are going -- y'all
10 have to look at that and make a decision about it to start
11 with. And then if I have to decide, you know, I can decide
12 that and everything. But I think that you are entitled to a
13 reasonable opportunity to look at it and make a
14 determination.

15 But you are not entitled under the rules to just
16 anything and everything that's out there. You are entitled
17 to what's in the rule.

18 MR. WEST: I agree.

19 THE COURT: Okay. Well, then I will give you this
20 afternoon then to review it and tell me whether you are
21 ready to go or not.

22 MR. WEST: Judge, I would like to put on the record
23 that we are specifically requesting an order for the body
24 cameras. If these videos were only turned over --

25 MS. BALDWIN: I will ask again, Your Honor.

1 MR. WEST: Judge, it's more than asking.

2 THE COURT: Tell him that I'm ordering them to let
3 you know if there were body cameras and if there's videos
4 available for them.

5 MS. BALDWIN: Yes, sir.

6 THE COURT: But that's my order.

7 MS. BALDWIN: Thank you, Your Honor.

8 MR. WEST: That includes the Charleston County
9 Sheriff's Office as well as the City of Charleston, whose
10 officers are on the camera that we've been describing.

11 THE COURT: Okay.

12 MR. WEST: And anybody else that was on scene, I
13 think that we are entitled to those, inspection of those.

14 THE COURT: Okay.

15 MS. BALDWIN: And if Your Honor would be willing to
16 restatus this case at 4:30 this afternoon, so we can see.
17 By then, we should have an answer about what's in existence
18 and what is not.

19 THE COURT: Let's try to get it done.

20 MS. BALDWIN: We can even do a conference call so
21 Mr. West and Mr. Schwartz don't have to come back here to
22 court.

23 THE COURT: I will leave that -- if you want -- do
24 you have facilities here for you where you can start to
25 review?

1 MR. SCHWARTZ: We are using my office in West
2 Ashley, Your Honor. It's ten minutes away. So we have to
3 head back there to use the computer.

4 THE COURT: You are convenient and everything,
5 fairly convenient for that. Okay. Good. First good thing
6 I heard since I got out here.

7 All right. So let me bring the jury in and tell
8 them then. Bring the jury in.

9 (Whereupon, the jury returns to open court at 1:42
10 p.m.)

11 THE COURT: We do have the jury with us and the
12 parties are present, along with the attorneys. I thought we
13 were ready to start with the testimony and evidence when I
14 sent you to lunch, but some things have arisen since then
15 that are going to delay the start of the trial in terms of
16 the evidence being presented to you until tomorrow morning.
17 So I'm going to send you home and again remind you not to
18 discuss the case, not to talk about it any at all.

19 If anybody wants to know what you are doing, you
20 tell them that you are involved in the trial of the case.
21 You've actually been picked and are on the jury that is
22 going to be hearing the case, hearing the case, and that the
23 judge -- blame it on me if you want to -- the judge
24 specifically told you not to discuss it, not to talk about
25 it, anything whatsoever. You can tell them all about it

1 once it's over, but until it is over, do not discuss the
2 case.

3 I would ask you also to avoid reading the local
4 newspaper. I don't know whether there's going to be
5 anything written about this case in the news or not. I
6 haven't seen anybody from the newspaper here. But sometimes
7 they get something from somebody whether they are here or
8 not. And that is not criticism of the newspaper, by the
9 way, but they do do that on occasion and all.

10 And so I'm going to ask you while you are on this
11 jury to avoid reading the Charleston paper and any local
12 news, that sort of thing, while you are on the jury that
13 might have something to report insofar as this case is
14 concerned.

15 I apologize for the inconvenience of it, but I am
16 not always sure about how these thing are going to proceed.
17 It's something that I didn't anticipate has come up that me
18 and the lawyers need to work on over the afternoon. And so
19 we are not going to be able to get started with the actual
20 testimony until tomorrow morning, as I said.

21 Can everybody be here tomorrow morning at nine
22 o'clock? Anybody on the jury have a problem in regard to
23 being here at nine o'clock? We will get started at 9, if
24 you can. I don't see anybody shaking their head.

25 So I would ask you to be back in the jury room at

1 nine o'clock tomorrow morning. We will get started just as
2 soon as we can after that. We will have coffee available
3 for you at that time and soft drinks, if you would rather
4 have a soft drink or anything like that. Have a nice
5 evening. Be back at nine o'clock tomorrow morning.

6 (Whereupon, the jury leaves open court at 1:45
7 p.m.)

8 THE COURT: All right. Let the jury have a chance
9 to clear the courthouse before y'all go out and y'all
10 coordinate. I will be here in my office. You want to get
11 back together at 4:30; is that right?

12 MS. BALDWIN: Yes, sir.

13 THE COURT: See what you can do.

14 MR. WEST: We will do our best, Judge.

15 (Whereupon, recess transpired.)

16 THE COURT: All right. Mr. West, what would you
17 like to report?

18 MR. WEST: I would like to report a few things,
19 Your Honor. I have printed off and would like to make a
20 Court's exhibit something that has been turned over to the
21 prosecutor, what has been labeled from the video as the
22 media chain of custody report.

23 (Court's Exhibit 9, Media chain of custody
24 report, was marked for identification.)

25 MR. WEST: The significance of this exhibit, Judge,

1 is a few things. One of the first things you can see that's
2 immediately apparent from the records --

3 THE COURT: Don't assume anything is immediately
4 apparent to me.

5 MR. WEST: Judge, if you look at the time of the
6 downloads of these videos, the date that is printed on these
7 reports, for the first video that's listed is September 25th
8 of 2015. That is when this video was uploaded into the
9 Charleston County system. Okay? That's three days after
10 this incident. And we have been requesting these videos as
11 soon as I got on the case. And we even had to file a motion
12 to compel.

13 The mere fact that this video was uploaded into the
14 system so quickly and has not been disclosed to us until the
15 jury walks into the courtroom is inherently unfair to my
16 client. And I'm going to give you just one blurb of one of
17 the quotes from the first video, when the prosecutor keeps
18 saying things like, this is not exculpatory evidence. This
19 is a quote from one of the witnesses that shows up on to the
20 scene: I can tell you who broke into the house.

21 And the officer responds: Who?

22 And her response is: You have to let me inside so
23 that I can see.

24 If she is saying that she knows who broke into the
25 house, then that's something that could be potentially

1 exculpatory. And since we have not had the opportunity to
2 fully review all of these videos, which if you can see from
3 the court's exhibit, totals some number just under four
4 hours. We need the full ability to review everything that
5 is said within these videos. We simply have not had that
6 time, Judge. We were given about two hours over lunch and
7 the break that we had this afternoon.

8 THE COURT: Anything else that you did review that

9 --

10 MR. WEST: We watched as much as we could, Judge.
11 We had three attorneys working on this case.

12 THE COURT: I understand. I'm asking you a direct
13 question. Anything else that struck you as being relevant
14 that you think you should have gotten to your defense that
15 you saw in the time that you did, other than that which you
16 just told me? That's enough.

17 MR. WEST: Well, the quote I think is important.

18 THE COURT: I agree.

19 MR. WEST: The fact that we could see that the
20 officers have body cameras on their shoulders I think is
21 very important.

22 THE COURT: Depends on what it shows.

23 MR. WEST: We will never know what it shows because
24 it's been deleted.

25 THE COURT: I'm asking you, have you looked at

1 anything, seen anything that you think helps your case that
2 you haven't gotten before other than that?

3 MR. WEST: I have not had the opportunity to fully
4 review all of the evidence, Judge. I believe that's one of
5 the biggest concerns for myself and my client.

6 THE COURT: That first statement is about enough,
7 you know, would certainly seem to me enough for me to give
8 you certainly more time to investigate it, find out what's
9 going on as far as that's concerned.

10 MR. WEST: I agree, Judge. I agree. We have
11 also -- I directly contacted the City of Charleston Police
12 Department's attorney. I spoke with him. I advised him of
13 your order to disclose to us the body cameras and
14 in-car-cameras and the like. He instructed me that that
15 would either require a subpoena or an instruction from the
16 solicitor's office. I copied the solicitor on that e-mail.
17 She has provided to us a two-page report of someone named
18 William --

19 MS. BALDWIN: Corshane (ph.), Your Honor. He's
20 been mentioned throughout.

21 MR. WEST: No videos have been produced. And one
22 of the other things that I requested in that particular
23 e-mail was the policies of the City of Charleston Police
24 Department for when videos are particularly supposed to be
25 flagged and when they are particularly purged. Again, I

1 think that's very important for the defense of this case as
2 one of -- as we have seen today that there hasn't been
3 complete disclosure of the things that we believe that we
4 are entitled to. That attorney has not responded directly
5 to me. All I know for certain is that Ms. Baldwin has
6 provided us this two-page report.

7 MS. BALDWIN: If I may, Your Honor.

8 THE COURT: Sure.

9 MS. BALDWIN: We will start off with the city
10 police department. I do want to make clear that we asked
11 them twice for any reports that they had. I'm not sure why
12 they did not provide it, but it is a report. The bulk of
13 the report is about a paragraph long. Officer Corshane (ph)
14 was identified. And, obviously, had we known about this
15 report, we would have turned it over right away.

16 As far as the body-worn cameras go, the city police
17 department, we have checked with them. And, obviously, they
18 looked into it pursuant to Mr. West's request. They sent
19 over that Officer Corshane did not record any body camera
20 that night. They sent over a listing of the body cams that
21 they had for that day, both deleted and undeleted. And
22 there is nothing regarding that location pursuant to what
23 they have sent us and pursuant to what they have told us.

24 As to body-worn cameras for the sheriff's office,
25 which was the picture that Mr. West was referring to, that

1 is actually not a body cam. That was actually the mic from
2 the deputy's in-car video.

3 THE COURT: If there's anything -- let's do it this
4 way. Let's approach it this way. I'm taking him as an
5 officer of the court to tell me what he told me he heard,
6 saw on the video. That is enough for me, is enough to grant
7 a continuance of the case for him to fully investigate
8 that.

9 MS. BALDWIN: I understand, Your Honor. I just
10 want to make it clear. And I don't think it was Mr. West
11 trying to mislead the Court. He didn't know what it was.

12 THE COURT: The next step is, then I'm going to do
13 an order, sign the order requiring any videos that are in
14 the possession of you or the police, sheriff, whoever, to
15 turn them over.

16 MS. BALDWIN: Yes, sir.

17 THE COURT: Okay?

18 MS. BALDWIN: I will.

19 THE COURT: So y'all coordinate in regard to that,
20 if you would. Give me an order to do that.

21 MS. BALDWIN: I do want to make it clear to the
22 Court, pursuant to what I received from the sheriff's
23 office, they did not have body-worn cameras until April of
24 2016. And I do have an e-mail, if Your Honor would like to
25 see it.

1 THE COURT: You are telling me that you have
2 something that says that there were body cameras on this
3 occasion?

4 MR. WEST: I cannot say that with 100 percent
5 certainty, Judge. What I can say is that the videos show
6 some sort of mechanical device on the shoulder of the police
7 officers. And there's mechanical devices on the chest of
8 the police officers. At this time, we know that the county
9 police department and the City of Charleston Police
10 Department most likely had body cameras at that time. And
11 so we were led to believe that those were body cams.

12 THE COURT: They may not. But once and for all, we
13 have to find out under penalty of contempt.

14 MS. BALDWIN: I'm sure an order would help flesh it
15 out.

16 THE COURT: Okay. All right.

17 MR. WEST: Judge, if I may, with the continuance
18 and this further investigation, I believe the record needs
19 to reflect that it is our opinion that if there are certain
20 matters that need to be addressed in the previous pretrial
21 rulings, we certainly be allowed to address those and
22 rebrief the Court as it relates to any of the prior
23 rulings.

24 THE COURT: Sure. Sure. Nothing is over until
25 it's over completely. I am not being cute, but that's fine.

1 But just trying to figure out the best way to proceed.

2 All right. I guess since I am familiar with the
3 case and since I have made the rulings that I've made in
4 regard to the case, my suggestion is that -- there actually
5 hasn't been a trial started yet. The jury hasn't even been
6 sworn and all. So anyway, whatever the correct terminology
7 is for terminating it, you know, the case at this point, we
8 are not going to go forward with the case. And this is not
9 going to be the jury that, in my opinion, it's not going to
10 be the jury that we are going to use in the case.

11 We are going to dismiss the jury. And we are going
12 to reschedule this case for another trial, next time I
13 regularly schedule the whole general sessions court here,
14 which is in March.

15 I know I've already got another murder trial
16 scheduled. I'm informed we will just have to rearrange the
17 schedule. I think it would be best for me to retain
18 jurisdiction of the case since I've already been educated in
19 regard to it and made the rulings that I have. And so
20 between now and then, any other pretrial matters that come
21 up, y'all let me know and I will deal with it with the
22 consent of the chief administrative judge. I'm looking over
23 here at the clerk and so forth to see if there's any --

24 THE CLERK: March 19th is good.

25 THE COURT: March 19. So I think it would be

1 nice -- I'm -- I don't think we can notify the jury, or can
2 you?

3 THE CLERK: Absolutely, Judge. I will call them
4 when I leave here. I will call all of them and leave
5 messages and make sure they all get the message.

6 THE COURT: Just tell them that the case had to be
7 continued and that they won't be needed to serve. Just
8 phrase it that way. Okay? The case had to be continued and
9 they will not be required to serve in regard to it. And
10 they are through, unless they have to come for some other
11 case.

12 THE CLERK: They are done.

13 THE COURT: Anything else?

14 MS. BALDWIN: Nothing from the State.

15 MR. WEST: No, thank you, Judge.

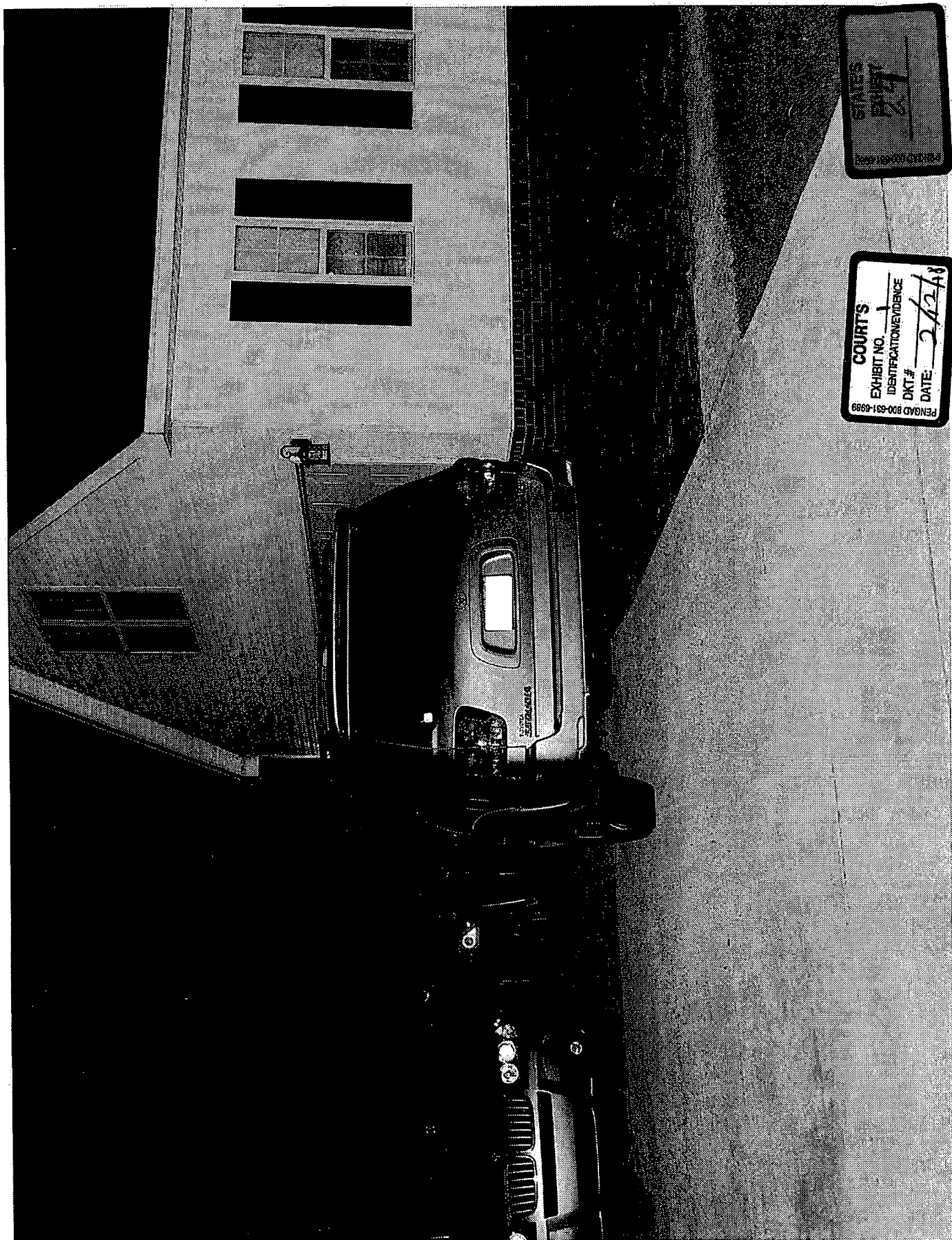
16 (Whereupon, proceedings are adjourned.)
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter



ROA 273

STATE OF SOUTH CAROLINA

County of Charleston

SEARCH WARRANT

2015-015387

Det. J. Bowen

ROA 274

SCCA 513
(3-1978)

PENAD 800-081-6093	DEFENDANT'S EXHIBIT	COURT'S
	39	EXHIBIT NO. 2
	3/21/18	IDENTIFICATION EVIDENCE
		DKT.#
		DATE: 2/2/18

RETURN

I, DET. THOMPSON
have executed it as follows:

received the attached Search Warrant on 9/23/15 and

On 9/23/15 at 430 o'clock AM I searched 223 BURNHAM CT or the premise located at which is described
in the warrant. RESIDENCE

I left a copy of the warrant with RESIDENCE together with a copy of this receipt for the items seized.
(Name of person searched or the location of premises searched)

The following is an inventory of property taken pursuant to the warrant:

BY WHOMITEM SEIZEDLOCATIONMEMens Shoes, leather1st Floor
EntrwayEMDigital PhotographsRoom

This inventory was made in the presence of DET. THOMPSON, INV. MEYER

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this the 24

day of Sept

2014

[Signature]
(Signature of Officer Executing Warrant)

Form Approved by
S. C. Attorney General
Section 17-13-160
March 15, 1978



SEARCH WARRANT RETURN

Charleston County Sheriff's Office Forensic Services
3691 Leeds Ave, N. Charleston, SC 29405

OCA: 2015-015387

I received the attached search warrant on September 23, 2015, and have executed it as follows:

On September 23, 2015 at 2:34 am, I searched (the person, place or thing) described in the search warrant
and (the premises):

The residence at 223 Burnham Ct., in Charleston, SC;
to include any vehicles within the boundaries of the residence's property / yard or garage.

I left a copy of the search warrant with the residence, together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- Digital photographs
- 2005 Toyota Sequoia, [REDACTED] - from residence driveway
- (2) DNA blood swabs - from interior side of driver door and front passenger seat

This inventory was made in the presence of Inv E Meyer

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

30 day of September, 2015

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

[Signature]
Detective M Thompson
(Signature of Officer Executing Warrant)

CCSO-113
12/10/98

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appeared before me, one Detective J. Bowen, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of S.C. Code Ann. § 17-13-140, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all evidence of a death investigation, to include but not limited to Firearms, ammunition, spent ammunition casings, projectiles, firearm accessories, photographs, blood splatter, DNA swabs, fibers, clothing, linens, hairs, paperwork pertaining to firearms or ammunition, personal documents, cell phones, electronic storage media of any type, fingerprints, any and all other items that are, or may be, associated with, or have caused, the death and that may reveal any motive for, or means of, the death.

DESCRIPTION OF PREMISES (PERSON OR THING)
TO BE SEARCHED:

The residence to be searched is located at 223 Burnham Ct., Charleston, SC 29414. The residence can be reached by turning from Bees Ferry Rd. onto Shadowmoss Parkway to enter the Shadowmoss subdivision. From Shadowmoss Parkway turn left onto Burnham Ct. The residence will be the 2nd home on the right. The numbers "223" are on a white mailbox at the end of the driveway. The numbers "223" are painted on the curb in front of the mailbox. The residence is described as a single family, detached, 2-story home. It has a white in color vinyl exterior with a shingled roof that is black in color. It has a side entry garage on the left end of the residence (as facing from Burnham Ct.). A covered front porch is supported by 6 posts. There are 3 dormer windows on the top of the second story roof. Also to be searched: any storage building, container, or other appurtenance, and any vehicles within the boundaries of the residence's property / yard or garage.

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

On September 22, 2015, Charleston County Deputies responded to 2317 W. Palmer Dr., Charleston in reference to a deceased person. Prior to deputies response, the deceased's family was unable to contact her. Family members went to the residence and found the door to be unsecured. They entered the residence and observed bloody towels. The deceased was located in the bathroom with an injury and was unresponsive. Blood was located in several rooms in the victim's residence. The deceased's ex-husband, General Little, did not show for a dinner meeting with their daughter on 9/22/2015. Deputies responded to Mr. Little's home, after locating the deceased, to locate him. While approaching Mr. Little's home Deputies observed a towel similar to towels from the deceased's residence in a vehicle at Mr. Little's. The towel was observed in plain view through the vehicle window. Deputies also observed, in plain view, what appeared to be blood in the same vehicle. It is believed items recovered in the execution of this search warrant will further the investigation of the death.

Sworn to and Subscribed before me

23 day of Sept, 2015

Signature of Judge

Affiant

Address

3691 Leeds Ave.

North Charleston, SC 29405

Phone

(843) 554-2475

SCCA 513

(3-1978)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

SEARCH WARRANT

Form Approved by
SC Attorney General
Section 19-13-160
March 15, 1978

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

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

DESCRIPTION OF PREMISES (PERSON OR THING)

TO BE SEARCHED

SEE ATTACHED AFFIDAVIT

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

DESCRIPTION OF PROPERTY

SEE ATTACHED AFFIDAVIT

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

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

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

Charleston, South Carolina

[Signature]
Signature of Judge

Dated: 23 Sept 2015

SCCA 513

(3-1978)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

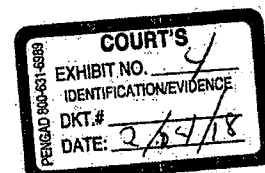
WARRANT/TICKET/
INDICTMENT #'s

2016GS1002883

STATE OF SOUTH CAROLINA

General Little
DEFENDANT

Solicitor: <u>J. Bullock</u>	Bar No.:	Defendant's Attorney: <u>R. Schwartz</u>	Bar No.:
Address:		Address:	
Phone:		Phone:	
E-mail:		E-mail:	
☐ MOTION HEARING REQUESTED ☐ FORM MOTION, NO HEARING REQUESTED			
SECTION I: Hearing Information			
Nature of Motion: <u>Motion to Compel</u>			
Estimated Time Needed: <u>30 min</u>		Court Reporter Needed: ☐ YES ☐ NO	
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order			
I hereby move for relief of action by the court as set forth in the attached proposed order.			
Signature of ☐ Solicitor ☐ Attorney for Defendant		Date submitted	



THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE STATE

vs.

GENERAL T. LITTLE,
Defendant.

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Warrant No.: 2016GS1002883

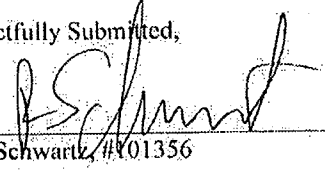
DEFENDANT'S MOTION TO COMPEL

COMES NOW the Defendant, General T. Little, by and through his undersigned attorneys, and respectfully requests the Court compel the State to produce following materials, documents, and/or information:

1. All text messages between Augustus J. McConnell and law enforcement.
2. All text messages between all law enforcement agents between each other from September 22, 2015 until September 23, 2015.
3. CAD report from the night of the incident.
4. Chain of custody for items seized, tested, or otherwise subject to Rule 6 of the South Carolina Rules of Criminal Procedure.
5. Cleaning company records, notes, etc. not included in the report.
6. Rap sheet of the Defendant and any other potential witness.
7. Any material subject to the holding in *Giglio v. United States*, 405 U.S. 150 (1972).
8. Any other discoverable material not listed.

IT IS SO MOVED.

Respectfully Submitted,

By: 

Ryan Schwartz, #101356

6a Carriage Lane

Charleston, SC 29407

(843) 571-4604 (843) 571-4602 (fax)

ryan@lowcountrylawyersSC.com

Page 1 of 2

ROA 280

Co-Counsel for General T. Little

By SI MW
E. Mason West, #100788
West Law Firm
207 Carolina Ave
Moncks Corner, SC 29461
(843) 761-5626 (843) 761-5627 (fax)
mason@westlawfirmsc.com
Co-counsel for General T. Little

February 9, 2018
Charleston, South Carolina.

FILED
FEB -9 PM 1:29
CLERK
COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

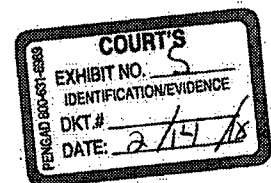
Genal Little
DEFENDANT

IN THE COURT OF GENERAL SESSIONS
MOTION COVER SHEET

WARRANT/TICKET/
INDICTMENT #s

2016GS 100288-3

Solicitor: _____, Bar No. _____	Defendant's Attorney: <i>R. Schwarz</i> , Bar No. <i>101356</i>
Address: _____	Address: _____
Phone: _____	Phone: _____
E-mail: _____	E-mail: _____
☒ MOTION HEARING REQUESTED ☐ FORM MOTION, NO HEARING REQUESTED	
SECTION I: Hearing Information	
Nature of Motion: <i>Rule 40(c) Motion</i>	Court Reporter Needed: ☒ YES / ☐ NO
Estimated Time Needed: _____	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
<i>R. Schwarz</i> Signature of ☐ Solicitor ☐ Attorney for Defendant	<i>2-9-18</i> Date submitted



THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
THE STATE	)	Warrant No.: 2016GS1002883
vs.	)	
GENERAL T. LITTLE,	)	MOTION FOR IN CAMERA HEARING
Defendant.	)	TO DETERMINE ADMISSIBILITY OF
	)	RULE 404(b), SCRE EVIDENCE

The Defendant moves the Court for an in-camera hearing to determine the admissibility of Rule 404(b), SCRE evidence. Rule 404(b) provides, "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."

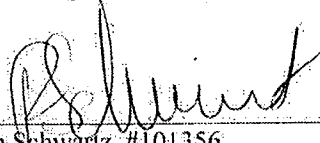
Based on the State's production of video recorded statements of witnesses as well as Investigation Reports provided by Officer Thompson and other officers involved in this trial the Defendant is concerned the State may try to introduce evidence of other crimes, wrongs or bad acts that are part of the indictment in this case. "To be admissible, other crimes that are not the subject of conviction must be proved by clear and convincing evidence." State v. Wilson, 345 S.C. 1, 5, 545, S.E.2d 827, 829 (2001). See also Rule 403, SCRE.

If the Court determines the evidence to be admissible as an exception to Rule 404(b), "it must be excluded if it's probative value is substantially outweighed by the danger of unfair prejudice to the Defendant. The determination of the prejudicial effect of prior bad act evidence must be based on the entire record and the result will generally turn on the facts of each case." State v. Brooks, 341, S.C. 57, 62, 533, S.E.2d 325, 328 (2000).

In order to satisfy the clear and convincing standard and to weigh the probative value of the evidence against the danger of unfair prejudice, live testimony is required. The Defendant

requests the Court to inquire of the State whether the State intends to introduce evidence of other crimes, wrongs, or bad acts. If so, then the Defendant requests an in-camera hearing where the Court can take testimony, hearing the arguments of counsel, and make the appropriate rulings

Respectfully Submitted,

By: 

Ryan Schwartz, #101356

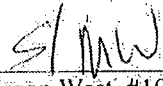
6a Carriage Lane

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(843) 571-4604 (843) 571-4602 (fax)

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Co-Counsel for General T. Little

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mason@westlawfirmSC.com

Co-counsel for General T. Little

February 6, 2018

Charleston, South Carolina.

FILED
FEB -9 PM 4:28
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

General Little
DEFENDANT

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

WARRANT/TICKET/
INDICTMENT #s

2016G, SKC/2883

Solicitor: <i>Sessie Belcher</i>	Bar No. _____	Defendant's Attorney: <i>Ryan Schwant</i>	Bar No. <i>101356</i>
Address: _____		Address: <i>611 Carnegie Ln</i>	
Phone: _____		Phone: <i>571-4664</i>	
E-mail: _____		E-mail: <i>Ryan@charlottesville.org</i>	
☐ MOTION HEARING REQUESTED ☐ FORM MOTION, NO HEARING REQUESTED			
SECTION I: Hearing Information			
Nature of Motion: <i>Motion to Suppress</i>		Court Reporter Needed: ☒ YES / ☐ NO	
Estimated Time Needed: <i>2 hrs</i>			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
<i>[Signature]</i>		<i>2-9-18</i>	
Signature of ☐ Solicitor ☒ Attorney for Defendant		Date submitted	

FILED
FEB - 9 2018
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

PENGAD 800-631-6339	COURT'S
	EXHIBIT NO. <i>6</i>
	IDENTIFICATION/EVIDENCE
	DATE: <i>2/14/18</i>

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
THE STATE OF SOUTH CAROLINA	)	Warrant No.'s: 2016SS 1006823
vs.	)	
GENERAL T. LITTLE,	)	DEFENDANT'S MOTION TO
Defendant.	)	SUPPRESS INTRODUCTION OF
	)	EVIDENCE DISCOVERED DURING A
	)	WARRANTLESS SEARCH

NOW COMES DEFENDANT, General T. Little, in the above captioned case, by and through his undersigned attorneys, moves this Court pursuant to the Fourth and Fourteenth Amendments of the United States Constitution and South Carolina Constitution Article I, §10 for an order suppressing all evidence obtained from the warrantless search and seizure of the defendant in the early hours of September 23, 2015.

ISSUE

Should evidence of General's clothing, a Wal-Mart receipt and his wedding ring, which had unidentified blood on it, discovered incident to a warrantless search, be suppressed or does the evidence fall under one of the seven warrantless search exceptions?

FACTS

General Little (herein referred to as General) was escorted by the police down to the Sheriff's Law Enforcement Center to speak with detectives after his ex-wife had been found dead under suspicious circumstances. Prior to being read his *Miranda* Rights and after nearly three hours of interrogation and looking over General and pulling up his shirt to look for scratches and evidence of a struggle the Detectives had, over his objection, him remove his shirt, pants, socks and shoes and place them in an evidence bag. Not one officer nor the the three detectives who were interviewing him for almost four hours ever noticed any blood or traces of

blood or any other possible evidence on General or his clothing. Not one mention was ever made of any probable cause for General to turn over his clothes. Almost three hours after interrogation a Detective demands that he remove his clothes and put them in an evidence bag. When General objects, they ask him to consent or else they will "get a warrant" and General tells the Detective to "get a warrant then." The detective never got a warrant for his clothing. His wedding ring was in his pants pocket and was subsequently found and tested for blood and came back positive though it could not be matched to any known DNA. The entire encounter was video taped with audio.

RULE

The Supreme Court of the United States stresses the importance of warrants and has repeatedly referred to searches without warrants as "exceptional." See e.g., *Johnson v. United States*, 333 U.S. 10, 14 (1948); *McDonald v. United States*, 335 U.S. 451, 453 (1948); *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967). The Court frequently asserts that "the most basic constitutional rule in this area is that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specially established and well-delineated exceptions." *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)); *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 352-53, 358 (1977).

Exceptions to warrant requirements are said to be "jealously and carefully drawn" *Jones v. United States*, 357 U.S. 493, 499 (1958), and there must be "a showing by those who seek exemption... that the exigencies of the situation made that course imperative." *McDonald v. United States*, 335 U.S. 451, 456 (1948).

The Fourth Amendment also provides a remedy to any violation of the Fourth Amendment and it provides that any evidence seized in violation of the Fourth Amendment

must be excluded. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); *State v. Sachs*, 264 S.C. 541, 560, 216 S.E.2d 501, 511 (1975).

It is well established that warrantless searches and seizures by the police are per se unreasonable, unless they fall within one of several recognized exceptions. *State v. Weaver*, 361 S.C. 73, 80-81, 602 S.E.2d 786, 790 (Ct. App. 2004). These exceptions include: (1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception; (5) plain view doctrine; (6) consent; and (7) abandonment. *Id.*

This search clearly does not fall in the hot pursuit, stop and frisk, automobile, or abandonment exceptions because the search was performed in the interrogation room of the Sheriff's Department so this motion will only focus on the search incident to a lawful arrest and plain view exceptions. The consent exception does not apply because when General is asked for his consent to take his clothes and ring he tells them "to get a warrant" and clearly does not consent to the search and seizure of his clothing and ring.

Under the search incident to arrest exception, if the arrest is supported by probable cause, police officers may search an arrestee's person and the area within his or her immediate control for weapons and destructible evidence without first obtaining a search warrant. *State v. Ferrell*, 274 S.C. 401, 405, 266 S.E.2d 869, 871 (1980). The burden of establishing the existence of circumstances constitution an exception to the general prohibition against warrantless searches is upon the State. *Weaver*, 361 S.C. at 81, 602 S.E.2d at 790.

Under the plain view doctrine, any object falling within the plain view of a law enforcement officer who is lawfully in a position to view the object is subject to lawful seizure. *Brown*, 289 S.C. at 588, 347 S.E.2d at 885. The plain view exception to the warrant requirement requires that "(1) the initial intrusion which afforded the authorities the plain view

was lawful; (2) the discovery of the evidence was inadvertent; and (3) the incriminating [nature of the] evidence was immediately apparent to the seizing authorities." State v. Culbreath, 300 S.C. 232, 237, 387 S.E.2d 255, 257 (1990).

ANALYSIS

It is anticipated that the State will argue that both the search incident to arrest and plain view doctrine applies and therefore the detectives did not need a warrant to seize and then search General's clothing. The entire exchange between the Detective and General is video and audio taped and cannot be disputed. Under the search incident to arrest exception there must be an arrest supported by probable cause. General was not arrested or charged that night so there was no formal arrest to support the need for the police to search his person for weapons or other contraband. In fact, the Detective took his clothes and forced him to change into a detention center jumpsuit issued to detainees. The Officer is also heard asking for consent from General which is denied and he replies "if you don't consent I'll get a warrant" and General tells the Detective "then get a warrant." It is anticipated that the State will argue that the officer was preserving destructible evidence and there was no need for a warrant. General argues that the Detectives had already gained warrants for his home and vehicle during his four hours at the LEC and that he was never formally placed under arrest so the search of his clothing could not be incident to his arrest. No warrant for the clothes was ever obtained. Because General was not under arrest and he had been speaking with detectives for hours and the detectives had plenty of time and opportunity to obtain a search warrant for the clothes he was wearing and because there was no probable cause to arrest him that night, there was no exception to search his person for weapons or destructible evidence without obtaining a warrant.

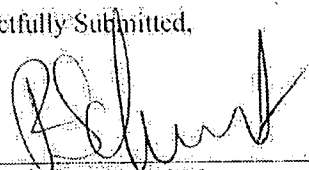
Lastly, the plain view exception does not apply because the ring with the blood on it was not found until after the clothes were taken from General. The ring was found in the pants pocket and was not in plain view of any detectives. Furthermore, neither the officer who escorted General to the Law Enforcement Center nor the three detectives who interrogated him ever once mentioned seeing any evidence of blood or a struggle on his clothes in the nearly four hours of interrogating him and therefore there clearly was no evidence in plain view for any officer to see. The ring was only discovered after the clothes were seized from General without a warrant.

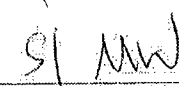
CONCLUSION

Because no warrantless exception applies to these facts and the discovery of the ring with blood on it was fruit of the poisonous tree the evidence must be excluded from trial.

IT IS SO MOVED.

Respectfully Submitted,

By: 
Ryan Schwartz, #101356
6a Carriage Lane
Charleston, SC 29407
(843) 571-4604 (843) 571-4602 (fax)
ryan@lowcountrylawyersSC.com
Co-Counsel for General T. Little

By: 
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West Law Firm
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February 8, 2018

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE STATE OF SOUTH CAROLINA

vs.

GENERAL T. LITTLE,
Defendant.

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

) Warrant No.: 2016GS1002883

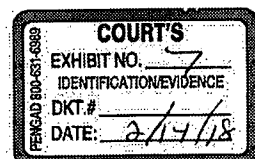
) MEMORANDUM OF LAW IN
) SUPPORT OF DEFENDANT'S MOTION
) TO SUPPRESS ORAL AND WRITTEN
) STATEMENTS PURSUANT TO
) JACKSON v. DENNO

ISSUE

- Should the Defendant's (herein referred to as General) statement to law enforcement, prior to being read his Miranda Rights, be suppressed when law enforcement initiated contact with him, forced him to go to the Law Enforcement Center (LEC) in the back of a patrol car when he asked if they could speak to him at his house, interrogated him for hours, kept him in an interrogation room with a closed door and when he left he was escorted back, was never told he was under arrest or in custody, was never told he could stop the interview until he was read his Miranda Rights several hours into the interrogation, was interrogated using the Reid Technique by three detectives who dominated the questioning, told General he was suspect number one, denied him the ability to leave when he asked to go home and was forced to change in to inmate clothing prior to going back home and then when he was read his Miranda Rights he invoked his right to remain silent and right to an attorney and was then promptly arrested?

FACTS

On or about September 22, 2015 Brenda Little, the General's ex-wife of almost twenty years, was murdered inside the doorway of her home. Law enforcement arrived after the deceased's brother found her dead in her home and began an immediate investigation. Law enforcement



discovered that General had been served with a Rule to Show Cause in Family Court for failing to pay court ordered alimony. Law enforcement immediately went to General's home to speak with him. After making contact with General around midnight he was told he needed to go to the LEC to speak with detectives. When he asked them to speak to him at his home he was told it had to be at the LEC and was driven there in the back of a patrol vehicle. The interrogation began approximately 12:17 a.m. on September 23, 2015 and lasted until approximately 3:49 a.m. on September 24th, 2015. Three detectives interrogated General, told him he was their number one suspect and asked questions clearly to elicit responses that would give General a motive to kill his ex-wife. During this nearly four-hour span the detectives move in and out of the room and closed the door behind them. When General walks out of the room several times he is told to go back in the room and they will be back with him in a minute. It is not until 2:15 a.m. that General was read his Miranda Rights which he invoked immediately and questioning stopped. At 2:27 a.m. a detective without a search warrant or probable cause, forces General to change out of his clothes and in to a county jail inmate jump suit and sandals and informs him that he will not be getting his clothes back. He was not given a choice. At approximately 3:00 a.m. General asks "can't I go home now" and the detective responds "give us twenty minutes." At 3:37 a.m. General is told for the first time "you are not under arrest." Throughout this entire time frame three detectives are asking pointed and directed questions and even name General as their number one suspect. General was not arrested but was held for another hour and forty-five minutes before being driven home by law enforcement.

RULES

The Fifth Amendment guarantees that "[n]o person...shall be compelled in any criminal

case to be a witness against himself." U.S. Const. Amend. V; S.C. Const. Art. I, §12. This provision governs state as well as federal criminal proceedings. *Malloy v. Hogan*, 378 U.S. 1, 8 (1964); *Brown v. State*, 340 S.C. 590, 594, n.1, 533 S.E.2d 308, 310, n.1 (2000). The Fifth Amendment itself does not prohibit all incriminating admissions; "[a]bsent some officially coerced self-accusation, the Fifth Amendment privilege is not violated even by the most damning admissions. *U.S. v. Washington*, 431 U.S. 181, 187, (1977). In *Miranda v. Arizona*, 384 U.S. 436 (1966), however, the United States Supreme Court presumed that interrogation in certain custodial circumstances is inherently coercive and held that statements made under those circumstances are inadmissible unless the suspect is specifically informed of his *Miranda* rights and freely decides to forgo those rights. The *Miranda* warnings, therefore, are "not themselves right protected by the Constitution, but [are] instead measures to insure that the right against compulsory self-incrimination [is] protected." *Michigan v. Tucker*, 417, U.S. 433, 444 (1974).

In the years since its decision in *Miranda*, the court has frequently reaffirmed the central principle established by that case: if the police take a suspect into custody and then asked him questions without informing him of his *Miranda* rights, his responses cannot be introduced into evidence to establish his guilt. See, e.g., *Estelle v. Smith*, 451 U.S. 454, 466-467 (1981); *Rhode Island v. Innis*, 446 U.S. 291, 297-298 (1980); *Orozco v. Texas*, 394 U.S. 324, 326-327 (1969); *Mathis v. United States*, 391 U.S. 1, 3-5 (1968). See also, *Lemon v. South Carolina*, 2009 WL 764418, *12 (D.S.C. 2009). ("in determining whether a person is 'in custody,' the question is whether, examining the totality of circumstances, a reasonable person in the defendant's position would have felt 'at liberty to terminate the interrogation and leave;'" (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995))

Courts have consistently stated that the "in custody" determination is governed by an

objective test. In *Stansbury v. California*, 511 U.S. 318 (1994), the United States Supreme Court held the courts must examine "all of the circumstances surrounding the interrogation" and determine "how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action." *Id.* At 322. Similarly, in *Thompson v. Keohane*, 516 U.S. 99 (1995). The Court offered the following description of the *Miranda* custody test:

Two discrete inquiries are essential to the determination first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. *Id.* at 112. (internal quotations marks and footnote omitted) see also, *State v. Easler*, 327 S.C. 121, 128, 489 S.E.2d 617, 621 (1997) (holding that the custody determination "depends on the objective circumstances of the interrogations, not the subjective views harbored by either the interrogating officers or the person being questioned"); *Bradley v. State*, 316 S.C. 255, 257, 449 S.E.2d 492, 493-494 (1994) (holding that the custodial determination is an objective analysis based on whether a reasonable person would have concluded that he was in police custody).

In South Carolina there are two recent cases which govern the admission of pre-Miranda statements. In *State v. Evans*, 354 S.C. 579, 584, 582 S.E.2d 407, 410 (2003), the South Carolina Supreme Court reversed the lower court's determination that Evans was not in custody when she confessed to setting her trailer home on fire and killing her three small children. 354 S.C. S.C. at 584, 582 S.E.2d at 410. After the fire, an arson investigator from the South Carolina Law Enforcement Division (SLED) sought to contact Evans at her cousin's home where she had been staying. *Id.* at 581, 582 S.E.2d at 408. Evan's cousin drove her to the police station later that day where two male SLED agents questioned her in a small, back office for approximately two hours. *Id.* Family members who had accompanied Evans to the station asked to come with her into the

interrogation room, but SLED agents refused. *Id.*

During the interviews, Evans gave several reasons for how the fire may have started, but the officers insisted that they did not believe any of her explanations. *Id.* Evans was upset and sobbing and repeatedly asked the SLED agents to help her. *Id.* Eventually, the agents suggested that a third, female SLED agent speak with Evans, Jennifer Edwards, of the child fatality unit, spoke with Evans alone for approximately forty-five minutes to an hour. *Id.* at 582, 582 S.E.2d at 410. Twice Edwards accompanied Evans to the bathroom and stood outside the door because, according to Edwards, she was afraid that Evans would try to harm herself. Evans continued to plead for help. Edwards responded: "I don't know what kind of help you need until you tell me." Evans then whispered, "I dropped a lit piece on paper on the floor... I walked next door and waited until somebody saw the fire." *Id.* Edwards then summoned the two male SLED agents, and the three of them obtained a more detailed confession from Evans.

The South Carolina Supreme court held that there was ample evidence to support the trial judge's determination that Evans was in police custody at the time of her statement. *Evans*, 354 S.C. at 584, 582 S.E.2d at 410. First, the trial judge found that Evans was not free to leave because agent Edwards accompanied her to the bathroom and because the agents would not permit her family members to go back to the interview room. *Id.* Second, the place where the agents interviewed Evans concerned the trial judge in that it was a back office in the police station. *Id.* Third, the judge noted that the interview was lengthy, as it lasted three hours. *Id.* Finally, the judge was most concerned with the agent's purpose, saying that once the officers began challenging Evan's story, the circumstances changed from "just a routine inquiry" to something more. *Id.* The Court held these facts, viewed together, were sufficient to place Evans in a custodial setting which warranted a recitation of her *Miranda* rights. *Id.*

Similarly, in *State v. Navy*, 370 S.C. 398, 635 S.E.2d 549 (S.C. App. 2006), the South Carolina Court of Appeals held that the trial court erred in finding Navy was not in custody at the time of his oral inculpatory statement. *Id.* at 408, 635 S.E.2d at 554. The court found that the totality of circumstances present in *Navy* was substantially similar to *Evans*. *Id.* In particular, the court noted that although Navy willingly accompanied police officers to the Sheriff's Department for questioning, he was transported there in the backseat of a patrol car, rendering him unable to return him on his own. Moreover, the officers told Navy that questioning could not wait until after the victim's funeral, which one could reasonably interpret as a mandate to accompany the officers. Further, Navy was repeatedly questioned for approximately 2 ¼ hours, and he was accompanied by an officer for smoke breaks. Finally, the court noted that the officers were familiar with the victim's autopsy report, which suggested traumatic injury, before they began questioning Navy, indicating that the purpose of their questioning was to obtain an inculpatory statement. *Id.* at 408-409, 635 S.E.2d at 554.

However, in *State v. Williams*, 405 S.C. 263, 747 S.E. 2d 194 (S.C. App., 2013) the Court of Appeals upheld the trial court's ruling that the defendant was not in custody before he was given his *Miranda* warnings. Williams was charged with and convicted of criminal sexual conduct with a minor and unlawful conduct towards a child for which he was sentenced to twenty-five years in prison. On appeal Williams argued that the statements he had given prior to being read his *Miranda* Rights were improperly admitted before a jury. The Court of Appeals confirmed his conviction on the basis that Williams was not in custody at the time of his admissions, that he came to the police department voluntarily; his mother and young daughter were waiting for him; he wanted to get the matter taken care of before he left the state for a wedding the following day; he talked with detectives about the injuries to the victim for fifteen to twenty minutes before he was given *Miranda*

warnings; he never asked if he could leave or asked for anything; and the conversation leading to his incriminating statements included information about where he was from and his background and therefore the conviction was upheld. *Williams*, 405 S.C. at 278, 747 S.E.2d 194 (S.C. App., 2013).

It is anticipated that the State will argue that General at the case at bar should be held to a higher standard than a reasonable person standard when looking at the totality of the circumstances because of his age, experience and education level. The United States Supreme Court has never clearly indicated whether or not some specific characteristics- such as age or mental impairments- should be considered in the analysis. In *Yarborough v. Alvarado*, 541 U.S. 652 (2004), the Court held that the state court's failure to consider Alvarado's age and prior experience with law enforcement was not an unreasonable application of clearly established federal law under Antiterrorism and Effective Death Penalty Act of 1996 because "our Court has not stated that a suspect's age or experience is relevant to the *Miranda* custody analysis, and counsel for Alvarado did not press the importance of either factor on direct appeal or in habeas proceedings. *Id.* at 666.

Lastly, in determining whether an interrogation was "custodial" within the meaning of *Miranda*, courts have considered the following factors: (1) whether the contact with law enforcement was initiated by police or the person interrogated, and if by the police, whether the person voluntarily agreed to interview; (2) whether the express purpose of the interview was to question the person as a witness or suspect; (3) where the interview took place; (4) whether the police informed the person he or she was under arrest or in custody; (5) whether they informed the person he or she could terminate the interview and leave at any time or whether the person's conduct indicated an awareness of such freedom; (6) whether there were restrictions on the person's freedom of movement during the interview; (7) how many police officers participated; (8) whether they dominated and controlled the course of the interrogation; (9) whether they manifested a belief

that the person was culpable and they had the evidence to prove it; (11) whether the police were aggressive, confrontational or accusatory; (12) whether the Police used interrogation techniques to pressure the suspect; and (13) whether the person was arrested at the end of the interrogation.

George L. Blum, Annotation, What Constitutes "Custodial Interrogation" of Adult by Police Officer within Rule of *Miranda v. Arizona* Requiring that Suspect Be Informed of Federal Constitutional Rights Before Custodial Interrogation: At police Station or Sheriff's Office, Where Defendant Voluntarily Appears or Appears at Request of Law enforcement Personnel, or Where Unspecified as to Circumstances Upon Which Defendant is Present, 29 A.L.R6th 1, § 2 (2007).

ANALYSIS

In looking at the case at bar and in order to make a decision based on the totality of the circumstances to determine whether General was in custody prior to being read his *Miranda* rights it is important to apply the facts to the law. The facts are as follows: (1) General was approached at his home by law enforcement (2) When asked if law enforcement could meet with him at his home he was told that detectives were waiting at the LEC and he needed to go to that location (3) General's keys to his vehicle were taken and he was not allowed to take any of his other two vehicle (4) General was driven in the back seat to the police station by M. Colburn in a marked police car, (5) M. Colburn escorted General from the police car to the floor he was to be interviewed on (6) The interview began at 12:17 a.m. on September 23, 2015 and lasted until approximately 3:59 a.m., (7) That General had been up for approximately 18 hours at the time the interrogation began (8) That when General began giving answers the Detectives began challenging General's answers about alimony and stress of paying alimony (9) It is clear from the video that General is overly exhausted and was continued to be interrogated and told the detectives he's been up for almost twenty-four hours (10) That General is significantly smaller in stature than all three detectives interviewing him.

(11) The interview was done in an interrogation room with the door closed and the detective(s) were closest to the door (12) The interview room had only one way in and one way out with no windows or ability to contact the outside world (13) General was interrogated by detectives armed with firearms (14) General was interrogated about his relationship of his ex-wife and about the stresses of alimony payments he owed her as well as other questions attempting to elicit a response using the Reid interrogation method (15) General was told numerous times he was a suspect (16) General was instructed to give a written timeline prior to *Miranda* (17) General was interviewed by three different detectives over the course of almost four (4) hours. (18) General had his clothes taken against his consent and without a search warrant and was put in an inmate jump suit from Charleston County Detention Center (19) When General would walk out of the room on numerous occasions he was told to go back in the room and even escorted on several occasions back to the room (20) that prior to any search warrant and with no probable cause General's clothes and wedding ring were taken over his objections (21) When General is asked if he knows his rights he responded "no" (22) when he asked if he could leave he was told to "wait twenty minutes and we will get you a ride." (23) The interrogation was only stopped when General was finally read his *Miranda* rights and he invoked them but he was still kept in the interrogation room even after he requested to leave.

It is clear from precedent caselaw that the question is whether there had been a formal arrest or whether the suspect's freedom of movement has been restricted in any significant step. General first relies on *State v. Williams*. In this instance the South Carolina Court of Appeals upheld the admission of the statements made prior to *Miranda* Rights being read. The court found, that after looking at the totality of the circumstances, that because the Defendant drove himself to the police station, that he had family members waiting for him leave at the police station, and that he spoke to

detectives for no more than twenty minutes that he was not in custody and therefore he was not in custody requiring a reading of his *Miranda* Rights. It is abundantly clear that the case at bar arises significantly beyond the facts in *Williams*.

The case at bar is well beyond the level of custody found by the trial court in *Williams*. In comparing this case to *Williams* General had his keys taken at his home, was told that law enforcement would not speak with him at his house and was driven to the police station in a marked police car while in the back of the police car. A stark contrast to *Williams*. Also contrary to *Williams* General was interrogated for nearly four (4) hours as opposed to the twenty minutes or less in *Williams*. Lastly, none of General's family members were brought with him to the police station. It is clear that the case at bar is less like *Williams* and more factually similar to *Navy and Evans*.

The statements, video and timeline provided by General prior to *Miranda* should be suppressed because the facts of this case are actually beyond the reasoning in both *Evans and Navy* and both the statements in those cases were suppressed.

In *Evans* the defendant was driven by her cousin to the police station, in this instance General had his keys taken, was told the detectives would not meet him there and he had to go the LEC. Exactly like *Evans*, General was interrogated by three detectives in a small interrogation room which was a factor for suppression. In *Evans* the court took note she was interrogated for about two hours, in the case at bar General was interrogated for four hours, nearly double the time. Similar to *Evans*, General was escorted to the room by officer Colburn and as noted in *Evans* specifically the trial judge was most concerned with the agent's challenging of her story. It is adamantly clear that the three detectives interrogating General in this case are absolutely challenging the responses General is giving them, specifically saying "oh, come on it wasn't stressful to pay that much in alimony" and "you living beyond your means causes you stress" and

"you just got a twenty-six thousand dollar a year raise!" when he responds that the alimony payments didn't really anger or worry him enough to kill his ex-wife.

Also, this case follows the facts of *Navy*. The court in *Navy* was concerned that even though he went voluntarily to the police station that he was driven in the back seat of a patrol car which rendered him unable to return home, that *Navy* was told questioning could not wait and that one could reasonably interpret as a mandate to accompany the officers to the sheriff's department, that *Navy* was repeatedly questioned for over two and a half (2 ½) hours, and he was accompanied by officers on a smoke break. *Navy*, at 408-409, 635 S.E.2d at 554. Also noted by the court was that the officers already had an autopsy report before questioning *Navy*, indicating that the purpose of their questioning was to obtain an inculpatory statement. *Id.* The case at bar is nearly factually exactly like those in *Navy* but in the case at bar the facts and totality of the circumstances are far worse and far beyond the threshold to suppress found in the facts of *Navy*.

Exactly like in *Navy*, General was escorted to the LEC in the back of a marked police car to the police station, even after he asked them to speak with him at his home. General even had his keys and wallet taken prior to being escorted to the LEC, facts that are even more extreme than those in *Navy*. *Navy* was questioned for two and a half (2 ½) hours, General was questioned for nearly four hours. *Navy* was questioned in a small room, General was questioned in a small room. *Navy* was escorted during his smoke breaks, General was escorted to the interrogation room. Most importantly, just like in *Navy* when they detectives had the autopsy report prior to asking questions, detectives had the Rule to Show Cause that was filed against General and served on him prior to them asking questions and they began challenging his responses, clearly indicating that the purpose of their questioning was to obtain an inculpatory statement by General.

It is abundantly clear that the courts in *Navy* and *Evans* suppressed the statements given by

the respective defendants because of the totality of the circumstances of how the defendants arrived at the police station, the length of time they were interrogated prior to being read their *Miranda* Rights, the interrogation techniques used by the officers proved that a reasonable. In the case at bar General Little meets and exceeds the reasoning behind the Court's assessment of totality of circumstances found in both *Navy* and *Evans*.

CONCLUSION

Because the facts in this case are nearly identical to those in *Navy* and *Evans* and arguably the totality of circumstances of the facts surrounding the interrogation of General prior to being read his *Miranda* Rights are greater than those found in these cases where the statements were suppressed, the entire statement, both oral and written, of General should be suppressed as well as the clothing and wedding ring should be suppressed as fruit of the poisonous tree as he was in custody while giving his statement and was never advised of his *Miranda* Rights.

WHEREFORE PREMISES CONSIDERED, Defendant respectfully prays that this Honorable Court will grant an evidentiary hearing outside the presence of the jury and, thereafter, will suppress from evidence any oral and written statements which may have been made to police officers.

Respectfully submitted,

By: 

Ryan Schwartz, #101356

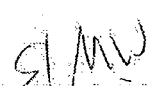
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February 6, 2018.
Charleston, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

Genel Little
DEFENDANT

IN THE COURT OF GENERAL SESSIONS
MOTION COVER SHEET

WARRANT/TICKET/
INDICTMENT #

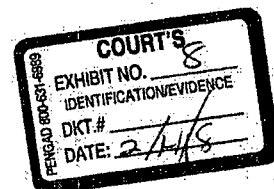
2016-51002003

Solicitor: <i>S. Bullock</i>	Bar No. _____	Defendant's Attorney: <i>P. Schumacher</i>	Bar No. <i>11356</i>
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E-mail: _____		E-mail: _____	
☒ MOTION HEARING REQUESTED ☐ FORM MOTION, NO HEARING REQUESTED			
SECTION I: Hearing Information			
Nature of Motion: _____		Court Reporter Needed: ☐ YES/ ☐ NO	
Estimated Time Needed: _____			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of ☐ Solicitor ☐ Attorney for Defendant		Date submitted: _____	

FILED

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JULIE J. ARMSTRONG
CLERK, C.P. & G.S.



THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
THE STATE OF SOUTH CAROLINA	)	Indictment No.: 2016GS1002883
vs.,	)	
GENERAL T. LITTLE,	)	MOTION FOR IN CAMERA HEARING
Defendant.	)	TO DETERMINE ADMISSIBILITY OF
	)	DEFENDANT'S STATEMENTS PRIOR
	)	TO MIRANDA

**JACKSON V. DENNO MOTION FOR HEARING ON VOLUNTARINESS
OF ANY ADMISSION OR CONFESSION WHETHER WRITTEN OR ORAL**

TO THE HONORABLE JUDGE OF SAID COURT:

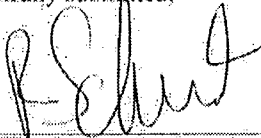
NOW COMES DEFENDANT, General T. Little, in the above captioned case, by and through his undersigned attorneys, moves this Court pursuant to the Fifth and Fourteenth Amendments of the United States Constitution and South Carolina Constitution Article I, §12 for an order suppressing all statements given to law enforcement in the early morning hours of September 22 and 23, 2015.

The defendant further requests this Honorable Court to instruct the Government and it's witnesses to ask no questions in the presence of the jury concerning admissions and/or statements, whether oral or written, or whether incriminatory or exculpatory, until a *Jackson v. Denno* hearing has been afforded to the Defendant with findings of fact and conclusions of law by the Court.

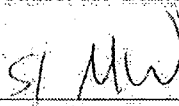
The Defendant further alleges that, at the time of various conversations with a number of police officers and detectives, Defendant was under arrest or otherwise substantially deprived of freedom by the conduct of the officers and the surrounding circumstances; and that the restraint was neither pursuant to a warrant, nor probable cause.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that this Honorable Court will grant an evidentiary hearing outside the presence of the jury and, thereafter, will suppress from evidence any oral and written statements which may have been made to police officers.

Respectfully submitted,



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February 6, 2018.
Charleston, South Carolina.

FILED
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CLERK OF DISTRICT

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
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COUNTY OF CHARLESTON	)	DOCKET NO. 2016-GS-10-2883
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	
	)	
GENERAL THEOPHILUS LITTLE	)	
	)	
Defendant	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

March 19, 2018
Charleston, South Carolina

Volume 1 (of 5)

B E F O R E:

THE HONORABLE THOMAS L. HUGHSTON, JR., JUDGE

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[All exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

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75	Photo	
76	Photo	
77	Photo	

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<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
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81	Photo	
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107	Defendant's handwritten timeline		
108	Kangaroo Video		
109	Walmart Video		
110	Defendant's typed timeline		
111	Report from Defendant's iPhone		
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115	Victim's blood spot from autopsy		
116	Blood swab front porch		
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120	Men's wedding ring		
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136	Shoes	
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138	Photo-satellite image	
139	Documents-Kim's husband's whereabouts . (I.D. only)	
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<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
25	Photo	
26	Photo	
27	Photo	
28	Photo	
29	Photo	
30	Photo	
31	Photo	
32	Photo	
33	Photo	
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35	Photo	
36	Photo	
37	Video-interview	
38	Search warrant	
39	Search warrant	
40	(withdrawn)	
41	Photo	
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50	Photo	
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52	Photo	
53	Photo	
54	Photo	
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56	Photo	
57	Photo	
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74	Photo	
75	Photo	
76	Photo	
77	Photo	
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79	Photo	
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98	Photo	
99	Photo	
100	Crime scene log	
101	Gun	
102	Alarm system log	
103	SLED lab report	
104	Cell phone log report	
105	Photo	
106	Photo	
107	Photo	
108	(withdrawn)	
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110	(withdrawn)	
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112	Document-items from autopsy	
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115	Hair-autopsy	
116	Oral swab-autopsy	
117	Nail clippings-autopsy	

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PROCEEDINGS

THE COURT: Thank you. Anything before we bring
the jury in from the hallway?

[Whereupon, no response from anyone]

THE COURT: Bring them in.

[Whereupon, the jury panel enters at 11:43 a.m.]

THE COURT: Thank you for being here. My name is
Tommy Hughston. I work as a Circuit Judge for the state
of South Carolina and I've been assigned by the Chief
Justice of the Supreme Court of South Carolina to preside
over a term of General Sessions or what we normally think
of as criminal court here in Charleston.

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1 THE COURT: Anything before we bring the jury in?

2 MS. BALDWIN: Yes sir, just briefly. There has
3 been some indication from the defense that they may be
4 arguing third party guilt so I'd like to address that
5 particularly if it is going to be addressed in opening
6 statements. I may have an objection to what they are
7 bringing up in their opening.

8 THE COURT: You want to give me a preview or do you
9 want to just...

10 MS. BALDWIN: Well, I'm not exactly sure everything
11 that they are going to argue. I know one statement is
12 something that the State learned on Friday. The
13 defendant's daughter Kim Little witnessed -- she states
14 that the day of the incident earlier in the day she saw a
15 car pull up in front of her house. It had dark tinted
16 windows and it was tan in color.

17 She then saw the car pull into a cul-de-sac, pause
18 in the cul-de-sac and then turn around and drive off. So
19 obviously they would try to argue that that is some
20 phantom person that could have been the culprit here. I
21 just don't think that that rises ---

22 THE COURT: --- what do you all say in response to
23 that?

24 MS. ZMROCZEK: Thank you, Your Honor. Correctly
25 they did turn over that statement from a witness. We

1 think that Holmes v South Carolina we're certainly
2 entitled to raise any legitimate defense and we're
3 constitutionally bound to I think to our client to ---

4 THE COURT: --- I think it's okay.

5 MS. BALDWIN: Okay. That simplifies that. Thank
6 you.

7 THE COURT: Bring them in.

8 [Whereupon, the jury enters at 2:15 p.m.]

9 THE COURT: There are no reserved seats, just come
10 on in. Let's see the two alternates we do reserve seats
11 for them. That's [REDACTED]; that's you and [REDACTED]
12 [REDACTED]; that's you. Those are the two seats we
13 reserve for the alternate jurors. So sit in those seats
14 at all time during the trial if you would.

15 Then I am going to ask y'all to elect a Foreperson
16 spokesperson for the jury. And whoever that is will
17 occupy that first seat down there that the young lady
18 there is occupying now. So those are the only reserved
19 seats during the trial.

20 You're free to sit anywhere you like in the jury box
21 as such time as you come and go from the courtroom. But
22 if you would let the two alternates sit back there and
23 then the Foreperson whoever that is when you select it
24 when you get a chance when you go back in the jury room
25 later on and make that selection that's where the

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1 Foreperson or the Chairman of the Board as I like to say
2 will sit during the trial. Pass those notepads and pens
3 out to the jurors please. Everybody gets a notepad and a
4 pen.

5 [Whereupon, the jurors are provided with notepads
6 and pens]

7 THE COURT: Thank you. Everybody's got a notepad
8 and pen. The first thing put your name or your initials
9 or some identifying mark on the cover there if you've got
10 room. I do allow jurors to take notes during the trial.
11 Some people don't think that's a good idea. They think
12 it may distract you from what is actually being said and
13 done during the presentation of testimony and the
14 evidence to you.

15 If you do take notes do not allow your note taking
16 to distract you. Notes are to be used only as memory
17 aids. Notes are not entitled to any greater weight than
18 the recollection or the impression of each juror as to
19 what the testimony or evidence actually was.

20 Those are your notes and your notes only. No one
21 will be checking on them looking to see what you wrote
22 down, what you didn't write down or anything of that
23 sort. At the conclusion of the trial I'll ask you to
24 tear any notes you may have made take them with you, tear
25 them up; whatever you want to do. When you leave court

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1 at the end of the day or lunch break or whatever I'll ask
2 you to leave your notepads with the bailiffs. They'll
3 give them to the Clerk, we'll lock them up and keep them
4 private as I've said and give them back to you when you
5 come back for the continuation of the trial. So that's
6 the way we will handle those notepads during the course
7 of the trial. I think we can swear the jury now.

8 CLERK OF COURT: Yes, Your Honor. Would the
9 defendant please stand and the jury please stand and
10 raise your right hands.

11 [Whereupon, the defendant and the jurors stand]

12 CLERK OF COURT: Do you swear or affirm that you
13 shall well and truly try and a true deliverance make
14 between the State of South Carolina and the defendant at
15 the bar whom you shall have in charge and a true verdict
16 render according to the evidence and the law so help you
17 God? Please indicate by saying I do and having a seat.

18 [Whereupon, all jurors answer I do and are seated]

19 CLERK OF COURT: Your Honor let the record reflect
20 the jury has been sworn.

21 THE COURT: Thank you. The oath that you just
22 took was an oath whereby you swore you would decide this
23 case based on the testimony and the evidence that will
24 come to you from that witness chair and my instructions
25 to you on the law. I really don't know much more about

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1 this case at this point in time than you do. All I know
2 is what I told you earlier. The State of South Carolina
3 claims that the defendant General -- Doctor General T.
4 Little did commit the crime of murder here in Charleston
5 County, the alleged victim being Barbara Little and that
6 this occurred on September 22, 2015. Those are the
7 formal charges that the State has made against the
8 defendant.

9 He has said I'm not guilty of that charge. And as I
10 mentioned earlier I believe that places the burden of
11 proving him guilty on the State. A person who is charged
12 is never required to prove himself or herself innocent.
13 The burden of proof remains on the State throughout the
14 trial throughout any arguments until you, the jury, have
15 in the jury room reached the conclusion that under the
16 law the State has proven him guilty by the facts
17 presented here in court beyond a reasonable doubt.

18 Really the question that you will answer at the
19 conclusion of the trial when you are deliberating in the
20 privacy of the jury room is just that; has the State met
21 the burden of proof of proving the defendant guilty
22 beyond a reasonable doubt. Now how are we going to go
23 about learning about this case? First of all I'm going
24 to allow each side to make a brief opening statement to
25 you. These are not arguments. Arguments will come at

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1 the conclusion of the case. But I do allow each side to
2 introduce themselves a little further, tell you a little
3 bit more about what the State claims as far as this
4 alleged crime is concerned. Then we'll switch and Doctor
5 Little will have the opportunity to explain to you what
6 his position is in response to that claim being made
7 against him.

8 After that we have the presentation of testimony and
9 the evidence. The State will go first and call the
10 witnesses to sit in that chair [indicates] and tell you
11 what they know about this, tell you the facts that they
12 know about this. The State goes first and then the
13 defendant has the opportunity to present witnesses if he
14 wants to on his side of the case.

15 After both sides have had a full and fair
16 opportunity to present the facts to you we'll have
17 closing arguments from the attorneys. And after that
18 I'll explain to you more fully what your duties and
19 responsibilities are as the jury in this case and the law
20 that you may apply in this case and then you go to the
21 jury room and you'll deliberate and you'll answer that
22 question has the State met the burden of proof.

23 Keep in mind you are the sole judges of the facts of
24 this case. That's what you are dealing with during the
25 trial. When you go back in the jury room you take those

1 facts, you apply them under the law and you answer the
2 question has the State met the burden of proof. Keep in
3 mind what your job is going to be. Solicitor?

4 MS. BALDWIN: Thank you, Your Honor.
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Opening Statements-Remarks by Ms. Baldwin
March 19, 2018

OPENING STATEMENTS

BY MS. BALDWIN:

Good afternoon. I just want to say I really appreciate all of you being here today. You heard Judge Dennis' speech and I can definitely echo that sentiment. I know that the Little family appreciates you being here as well because on September 22, 2015 this defendant destroyed his family. That is the day that he murdered his ex-wife, Barbara Little.

And through the course of the next several days you will hear how he lured their daughter, Kim; their adult daughter Kim out of the house that she was sharing with his mother and he went over to Barbara's house and he beat her to death. Then after killing her he tried to cover his tracks.

I should mention Barbara had been divorced from the defendant; they had been divorced since about 1997. They had three children together; all of them were adults at the time of the murder. The defendant had been ordered to pay Barbara alimony about 2,500 dollars a month and he wouldn't always pay if he paid it at all. It actually got so bad that Barbara's children tried to help their Mom. Their son Chris helped Barbara with getting the defendant's wages garnished because Barbara had no other income. That situation did come to a head on September

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1 22nd of 2015. That day the defendant was served with a
2 Rule to Show Cause for failure to pay the alimony. He
3 owed 68,000 dollars at that time and 17,000 dollars was
4 due immediately or he could go to jail. But he didn't
5 have the money and that service of that Rule to Show
6 Cause sent the defendant on a path of vengeance and its
7 conclusion with Barbara's death.

8 He decided that he had to get rid of his problem
9 that day. So in the evening of September 22nd the
10 defendant called Kim and asked her to meet him over at
11 the IHop in West Ashley for dinner. I don't know if
12 you're familiar with West Ashley that IHOP just recently
13 closed. Kim would go to dinner with the defendant on
14 occasion so it wasn't unusual for her to get that phone
15 call. And as she left Barbara locked the door behind
16 her. Barbara always locked the door.

17 And Kim went to IHOP and she waited, she waited and
18 the defendant never showed. She sat at the restaurant
19 for about an hour waiting for him. She called him,
20 texted him several times wondering where he was. She got
21 no answer from him.

22 She tried calling her mother to check in and see how
23 things were going there; got no answer from Barbara. And
24 Kim began to get worried so she called her sister
25 Adrienne. Adrienne said okay, well you know A.J., Uncle

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1 A.J. Barbara's brother lives right nearby so why don't
2 you have him go check on Mom just in case. And so Kim
3 did do that and all the while she kept calling and
4 texting her Dad and still couldn't get a hold of him.

5 He finally did call her back and she told him that
6 she had gotten some food to go for him at the IHOP. The
7 IHOP was closing at 10 o'clock so she had to get it to
8 go. He said well okay go meet me at the Waffle House
9 nearby.

10 And she thought that was strange. He didn't show
11 and now she told him she had gotten him food but yet he
12 was telling her to go to another restaurant but she
13 started going to meet him anyway. However, before she
14 got to her father A.J. called her. See A.J. had found
15 Barbara. Barbara was dead on the floor of her bathroom.

16 He saw bloody towels in the foyer of her house as if
17 somebody had tried to clean up in a hurry and you will
18 see the pictures. Barbara had been hit in the head
19 multiple times and was dead when A.J. arrived. We'll
20 hear from the pathologist who will tell you more about
21 her injuries. Barbara's nightgown was soaked in blood
22 from those injuries.

23 And of course A.J. called the police and they came
24 to the scene and began their investigation. And it
25 became clear pretty quick that they were dealing with a

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1 murder so they wanted to talk to all parties that could
2 have been involved. They spoke to Kim that night. They
3 spoke to A.J. and they wanted to make contact with the
4 defendant. And he said okay I'll come to Barbara's
5 house.

6 But once again he never showed so they sent a
7 deputy, Deputy Colburn over to the defendant's home to
8 try to make contact with him. However, Colburn came
9 across something before he even made contact with the
10 defendant.

11 When he came up on the defendant's house he glanced
12 into the defendant's car. The passenger side window was
13 down which looked odd to him and he saw what he thought
14 was blood on the console of the defendant's car. So of
15 course crime scene gets called out and the car is swabbed
16 for blood. They found it in a couple of places in the
17 defendant's car. They also got a search warrant for the
18 defendant's house. And in his house they found a pair of
19 men's shoes that also had blood on them.

20 They went and looked in the master bathroom. That
21 master bathroom smelled like bleach as if it had been
22 recently cleaned. So they send the blood off to get DNA
23 tested and continued their investigation because they did
24 want to make sure that they had the right person. They
25 didn't want to jump to conclusions but the defendant was

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1 the one that was guilty at this juncture. They did some
2 more investigation into the defendant's whereabouts that
3 evening and discovered things weren't quite right with
4 that. And then finally on October 14th of 2015 the DNA
5 results from the blood in the defendant's car and from
6 the shoes came back; and that blood belonged to Barbara.

7 See when the defendant found out about that Rule to
8 Show Cause he came up with a plan. He decided that he
9 was going to solve his money problem once and for all.
10 He lured Kim out of the house so that he could get rid of
11 the witness. And while Kim was waiting for her father to
12 show to dinner he killed her mother. He went to
13 Barbara's house, got her to open the door and pounced on
14 her brutally murdering her. And you will hear how he
15 then tried to cover his tracks.

16 But fortunately for Barbara he didn't have time and
17 that blood was found. So when you hear from the
18 testimony of the witnesses, when you see the pictures and
19 the DNA evidence I'm confident that you will see what the
20 defendant did to Barbara Little on September 22nd of 2015
21 and you will find him guilty. Thank you.

22 THE COURT: Mr. West or Mr. Schwartz.

23 MR. SCHWARTZ: Yes, sir. Thank you, Your Honor.
24 May it please the court?
25

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March 19, 2018

OPENING STATEMENTS

BY MR. SCHWARZ:

On September 22, 2015 members of the Charleston County Sheriff's Office arrived at Barbara Little's house. What they walked into was a violent, gruesome, bloody crime scene. It was horrendous. There was blood on the porch. There was blood on the walkway into the house. There was blood in the hallway. There was blood on the walls. There was blood on the ceilings. There was blood everywhere.

They walked to the back of the house, they walk into her bathroom and there she is in a pool of blood. She had been murdered. Almost instantaneously the criminal investigation division shows up to process the scene. They take pictures and they're collecting evidence. They want to find out who did it.

They are looking for clues and they found several. They found fingerprints on the storm door. They knew that Barbara had fought her attacker. They took fingernail scrapings from under her fingernails. They found hair. They did a vaginal swab. They found white fluid inside her vagina. Ladies and gentlemen of the jury things are not always as they seem. Meanwhile while this crime scene is being processed Doctor Little is at a Kangaroo gas station filling up his Toyota. He pays cash

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March 19, 2018

1 for the gas and he walks in and he talks to the cashier
2 and then he uses the restroom where he talks to another
3 employee in the gas station while he uses the restroom.
4 Nobody says he's covered in blood, nobody says that he's
5 got bruises on him. Nobody calls 911 to report somebody
6 who looks like he just brutally murdered somebody.
7 Things are not always as they seem.

8 Now it is true that earlier that day Doctor Little
9 had been served with paperwork from the Charleston County
10 Family Court for his failure to pay some alimony. The
11 detectives find that paperwork almost immediately when
12 they walk into Barbara's house and determine he is behind
13 about 70,000 dollars. And they decide in that instant
14 that they've got their man and that money is the motive.
15 They made no attempt to look outside that box.

16 And what the State didn't tell you is that although
17 he was behind almost 70,000 dollars he had paid her
18 almost half a million dollars since 1996. He was paying;
19 he just wasn't paying the total. Again, things are not
20 always as they seem. And the State would like you to
21 believe that Doctor Little killed his ex-wife over money.
22 What the State didn't tell you -- well, they did tell you
23 they were divorced for almost 20 years. But what they
24 didn't tell you is that the evidence is going to show
25 that Barbara and Doctor Little maintained a civil and

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1 courteous relationship even after their divorce. What
2 they didn't tell you was this isn't the first time he has
3 been ruled in. He's been ruled in numerous times over
4 the almost 20 years they've been divorced for failing to
5 pay. And every time they have worked it out. He hasn't
6 spent one day in jail for failing to pay.

7 The evidence and the testimony is going to show that
8 he was not afraid of going to jail that night. The State
9 didn't tell you that months prior to being served with
10 this paperwork his wages were already being garnished
11 from his job at the VA Hospital in Beaufort. This wasn't
12 anything new to him.

13 Now what the State also didn't tell you was those
14 fingerprints they found didn't match Barbara and didn't
15 match General. What the State didn't tell you is that
16 those fingernail scrapings that they took that night they
17 didn't even bother testing them for DNA. What else they
18 didn't tell you that white fluid that was found inside
19 her vagina they didn't bother to test that for DNA
20 either.

21 They had their man within an hour and that's all
22 they looked at. Ladies and gentlemen things are not
23 always as they seem and we believe the evidence and the
24 testimony is going to show another story. The testimony
25 is also going to show that night there was a suspicious

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1 car that had driven by the house, pulled into the
2 driveway, exited quickly. They didn't tell you that.
3 Now the State brought it up and we have concerns about
4 this too and we're going to be honest and upfront about
5 it. Why was her blood in his car? Why was her blood on
6 his shoe? I know y'all are asking the same questions
7 yourself.

8 But I'm convinced that after you see everything in
9 this case, all the information you're going to understand
10 why. And I'm going to tell you a little personal story
11 and I'm going to sit down, okay. A couple of years ago I
12 was engaged. I think this story is relevant and you'll
13 see why. I was engaged to a girl and she was a little
14 older than me and she had a child from a previous
15 marriage. And we lived together and we had a German
16 Sheppard puppy who was about six months old.

17 We went on a vacation down to Savannah for a couple
18 of days and our neighbor watched our dog. So we brought
19 back some saltwater taffy as a thank you to our neighbor
20 for watching our dog. We get back on Sunday night, put
21 the saltwater taffy in the pantry; don't think anything
22 of it.

23 The next day we went to go to the neighbor's house
24 to thank him for watching our dog and give him the
25 saltwater taffy and it was gone. And our first reaction

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1 was it was obviously our puppy Fritz because he had a
2 sweet tooth and he would get into anything and he would
3 eat the entire bag plastic and all. So we bought a crate
4 that night and every day that we were gone for work we
5 put him in a crate because we thought he was getting to
6 the point that he was getting too aggressive with the
7 food and things were disappearing.

8 Well, come to find out about three or four months
9 later we're moving out to a new spot, a new house and
10 what do we find under her son's bed? About 50 saltwater
11 taffy wrappers. We had punished the dog because we
12 didn't go look for the additional information. And when
13 we asked her son about it he said well at least I didn't
14 eat them all at once, which I thought was funny.

15 But the moral of the story is that we made a
16 judgment call without going to seek the information and
17 that's exactly what the State wants you to do here today.
18 So at the end of this week when we're done and all the
19 evidence is presented and all the testimony has been
20 heard we're going to ask you to find Doctor Little not
21 guilty of murdering Barbara Little. Thank you.

22 THE COURT: Call your first witness.
23
24
25

1 MR. SOWARDS: The State calls A.J. McConnell.

2 [Whereupon, Mr. McConnell comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Speak into the microphone state
6 your full name for the record spelling your last name for
7 us.

8 THE WITNESS: Augustus McConnell, M-C-C-O-N-N-E-L-L.

9

- - - - -
10 A.J. MCCONNELL,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SOWARDS:

15 Q. Good afternoon Mr. McConnell, may I call you A.J.?

16 A. Yes, you may.

17 Q. A.J. do you know the defendant?

18 A. Yes, I do.

19 Q. And how do you know the defendant?

20 A. He's my former brother-in-law.

21 Q. So he was married to your sister?

22 A. My sister, Barbara.

23 Q. Was she your older sister or your younger sister?

24 A. She was my only sister and she was older.

25 Q. Tell me about Barbara. What was she like?

1 A. Barbara was a caring person. She took care of her
2 family. She took care of me as we were growing up. She
3 was giving, she was gentle. To me she was the ideal
4 sister.

5 Sometimes when she had difficulties she wouldn't
6 necessarily come to me. She would try to work them out
7 herself. But then there were times when she couldn't
8 handle it. For instance the hot water heater; I got it
9 replaced for her. So we worked together, each of us.

10 Q. Now I'm not asking you specifically where you live
11 but generally where do you currently live?

12 A. In relation to her house I would imagine it is a
13 little bit more than a quarter mile.

14 Q. So could you walk there?

15 A. Yes.

16 Q. And had you been over to her house a good bit?

17 A. Yes.

18 Q. What was her house like?

19 A. The house is a two car garage, living room, dining
20 room, kitchen, breakfast area, den, four bedrooms, two
21 baths.

22 Q. Now did Barbara live by herself?

23 A. No, she lived with her daughter Kimberly.

24 Q. So it was Barbara and Kimberly in that house?

25 A. Correct.

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1 Q. Did Barbara keep her doors locked as far as you
2 know?

3 A. Yes, she did.

4 Q. Would you expect Barbara to open the door for a
5 stranger at night?

6 A. No.

7 Q. A.J., I want to move to what I know is a difficult
8 subject to talk about. I want to address the evening and
9 night of September 22, 2015 and just kind of start from
10 the beginning of that evening and work our way through
11 it. Where were you that night?

12 A. I met some friends from my former job at the Buffalo
13 Wild Wings up in Summerville. We usually get together
14 once a month or so and talk about old times, laugh, talk,
15 have a couple of brews, eat some chicken; that's about
16 it.

17 Q. You mentioned your former job. What was your former
18 job?

19 A. I was a public safety officer for the Medical
20 University of South Carolina.

21 Q. And is that the only job you ever had? What did you
22 do prior to that?

23 A. Prior to that I was a truck driver for seven years.
24 Prior to that I was in the United States Navy and served
25 21 years. Prior to that I worked for the City of

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1 Charleston Police Department. Before that I worked for
2 the Department of Youth Services out of Columbia and
3 Florence, South Carolina.

4 Q. Now going back to that night you were at Buffalo
5 Wild Wings with some of your ex co-workers and buddies.
6 Where did you go when you left Buffalo Wild Wings?

7 A. When I left Buffalo Wild Wings I went home.

8 Q. And do you remember what time that was?

9 A. Gosh, it was two and half years ago. I'm thinking
10 it was closer to 9 or about 9:30 something like that I'm
11 pretty sure. I'm thinking that's what it was.

12 Q. And what did you do when you got home?

13 A. Well, when I got home I usually back my vehicle up
14 into the yard. So as I pulled up to the house the phone
15 rang and it was Kim. So she and I held a conversation as
16 I backed into the yard.

17 She says I called home trying to get in touch with
18 Mom and I can't get her. Could you go around there and
19 check on her? And I told her I would.

20 Q. And did you?

21 A. Yes, I did.

22 Q. And what did you do when you got to Barbara's house?

23 A. Well, I pulled into the yard and Kim and I were
24 still talking on the phone. I went to the front door and
25 rang the doorbell as usual. No answer. And knowing my

1 sister I never thought about trying the glass door
2 because that would be locked at that time. I said Kim I
3 can't get in touch with Barbara. Nobody is answering the
4 door.

5 So I walked around to a bedroom window which is if
6 you're facing the house it's to the right. So I beat on
7 that door -- on that window. I said she's not answering.
8 Kim said well, look on the back porch. She's probably
9 out there smoking.

10 So I walked around to the left side of the house to
11 the back yard and I said no Kim, the back porch is dark.
12 She said what about the garage? I looked inside the
13 garage and it's locked.

14 So we continually talking and I'm not thinking
15 anything is really afoot but my concern level starts to
16 increase. I go back up to the glass door and pulled on
17 it and it came open. I said this isn't right and I
18 pushed the thought that I had to myself.

19 And I saw a pink towel lying there. So I asked Kim
20 I said Kim why is there a pink towel between the glass
21 door and the metal door? She says there shouldn't be a
22 towel there.

23 So I knew something was weird then. I tried the
24 door and it opened and I went in. The first thing I saw
25 in the foyer and entryway was blood everywhere. I knew

1 something was wrong. I followed the blood trail around
2 down the hall and it led me to the bathroom. That's
3 where I found her. She was posed in an obscene way.

4 I reached down and touched her and I felt that she
5 was cool. And I told Kim I can't talk anymore so I hung
6 up the phone and called 911.

7 Q. And you did call 911?

8 A. Yes I did.

9 Q. And what did you do after you called 911?

10 A. When I called 911 I got on the phone with the
11 dispatcher and told her what was happening. And I told
12 her I'm going out to my truck and I'm going to get my
13 weapon and I'm going to come back in and I'm going to
14 clear the house. And if I catch this son of a bitch in
15 there I'm going to kill him.

16 She said no, I don't want you to do that. I said I
17 don't give a damn what you want. I did just that. I got
18 my weapon and cleared the house. No suspect, no one was
19 there. I returned my weapon to the truck and waited
20 outside for the officers.

21 Q. So it sounds like your law enforcement training
22 kicked in there. You testified that you noticed quite a
23 bit of blood throughout the front part of the house.
24 Were you careful as you walked in?

25 A. I tried to be as careful as I could not to

1 contaminate the crime scene. But at the same time that's
2 my sister's house. My main concern at that time was her.
3 Once I ascertained that she was no longer here because
4 her body was cool that's when I went into real brother
5 mode.

6 The only thing I wanted to do was eradicate what was
7 done to her. But I took my time in clearing the house
8 and as I said I tried to maintain the integrity of the
9 crime scene as best I could.

10 Q. And I think you've already addressed this but was
11 anybody else in the house when you arrived?

12 A. No.

13 Q. Was Kim there?

14 A. No.

15 Q. And you were talking to her on the phone?

16 A. Correct.

17 Q. Did police eventually arrive?

18 A. Yes.

19 Q. And did you give a statement to the police?

20 A. I think I used words like she's in the bathroom;
21 there's blood everywhere. I'm pretty sure that's
22 probably what I said.

23 Q. And did Kim ultimately arrive at the house, at
24 Barbara's house?

25 A. Yes, she did.

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1 Q. And what was her reaction when she arrived?
2 A. She was hysterical. She wanted to go in because her
3 Mom needed her but I wouldn't let her.
4 Q. After that evening did the defendant ever try to
5 contact you?
6 A. Yes, he did. My nephew and Kim and I were at my
7 house. Detective Goldstein was there as well. And he
8 called. First he called Christopher, put it on speaker.
9 He asked Chris a couple of ---
10 MR. WEST: --- objection, Your Honor.
11 THE COURT: Are you hearing what is being said or
12 is somebody repeating that to you?
13 THE WITNESS: No, sir. The phone was put on
14 speaker so we could all hear it ---
15 THE COURT: --- you were actually hearing it?
16 THE WITNESS: I was hearing his voice.
17 THE COURT: Go ahead.
18 A. He wanted to get some information and my thinking
19 was he was trying to set his timeline. He said yes ---
20 MR. SCHWARTZ: --- Your Honor, I'm going to object
21 to that as speculation.
22 THE COURT: I sustain that. Ask another question.
23 Q. [Mr. Sowards] Just what did the defendant say?
24 A. He said they think I killed your Momma ha, ha. Then
25 they hung up. Then he called me. A.J.? G.T., about

1 what time did you find Barbara's body? I think I told
2 him something; I can't remember exactly what I told him
3 at the time. And he said what's Kim's number? I want to
4 talk to her. I said I don't think Kim wants to talk to
5 you right now. And that was the end of the conversation
6 and we hung up.

7 Q. Prior to that phone call, phone conversation with
8 the defendant when was the last time that you had spoken
9 to him? When was the last time you called him?

10 A. Was the last time I called him?

11 Q. He called you?

12 A. As far as I know that was the only time. I can't
13 remember any other time that he called.

14 MR. SOWARDS: Beg the court's indulgence.

15 [Whereupon, Ms. Baldwin and Mr. Sowards confer]

16 Q. [Mr. Sowards] You testified that when you found your
17 sister Barbara's body that it was posed or I can't
18 remember the exact way you stated it, in an obscene way.
19 What do you mean by that?

20 A. She was nude from the waist down. I think perhaps
21 she was in the process of taking a bath because the
22 outfit that she had on is something that she wears in the
23 house; it's like a house dress. But I'm not certain
24 about that part. But I know that's what she had on.

25 MR. SOWARDS: Beg the court's indulgence.

1 [Whereupon, Ms. Baldwin and Mr. Sowards confer]
2 MR. SOWARDS: I don't have any further questions.
3 Please answer any the defendant may have.
4 THE COURT: Cross-Examination? By the way members
5 of the jury I want to tell you I get up and move around
6 sometimes during the course of the trial. It doesn't
7 indicate anything I feel about one thing or another or
8 questions of who's going on or what's going on.
9 It's just that I'm old and it helps me to get up and
10 move around from time to time. So if any of y'all are in
11 that category and you want to stand up at any time and
12 move around a little bit go ahead and do so, okay. Thank
13 you.
14 MR. SCHWARTZ: Your Honor?
15 THE COURT: Go right ahead.
16 MR. SCHWARTZ: Thank you, sir.
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CROSS-EXAMINATION

BY MR. SCHWARTZ:

Q. Mr. McConnell, you were the first person on scene that night, correct?

A. Yes.

Q. And you lived right around the corner from Barbara at that time; about a mile?

A. Less than a mile.

Q. Okay. So would you agree with me that it takes about a minute or so to get from your house to her house?

A. Yes.

Q. Okay. You had testified that you had gone to Summerville and had some food with some friends and had come back and then you got a call from your niece Kim.

A. Yes.

Q. That something wasn't right.

A. Yes.

Q. And that's why you went over to Barbara's house.

A. Yes.

Q. Okay. And when you got there it was dark outside.

A. Yes.

Q. Okay. There were no porch lights on or anything like that, do you recall?

A. I think there was a porch light that was on.

Q. Okay.

1 A. There are street lights in that area, not that many
2 but there are some street lights that illuminated the
3 area to a point.
4 Q. Okay. You knocked on the door and nobody answered.
5 A. No, I rang the doorbell ---
6 Q. --- rang the doorbell; nobody answered?
7 A. Correct.
8 Q. You went to the back of the house.
9 A. I went to the side window ---
10 Q. --- first?
11 A. Yes.
12 Q. Looked in the bedroom; nothing.
13 A. No, knocked on the bedroom window.
14 Q. Okay. Nothing?
15 A. Correct.
16 Q. And then at some point proceeded to the back?
17 A. Correct.
18 Q. Still nothing.
19 A. Correct.
20 Q. And then you go back to the front of the house,
21 correct?
22 A. Correct.
23 Q. And I think you testified this is the point where
24 you start to get a little concerned.
25 A. I was always concerned but my alertness went up a

1 little bit.

2 Q. Okay. So at some point you're on the phone with
3 Kim and you go back to the front of the house and you see
4 a towel that is pink and that's out of place from what
5 you understand?

6 A. I'm sorry; say that again please.

7 Q. You go back to the front of the house to the front
8 door.

9 A. Correct.

10 Q. And you see I think a pink towel, correct?

11 A. Correct.

12 Q. And at that point you opened the door.

13 A. No. The glass door was not secure. It normally
14 would be at night.

15 Q. Okay.

16 A. That's when I noticed the pink towel ---

17 Q. --- okay ---

18 A. --- between the glass door and the metal door; the
19 interior door.

20 Q. Was the towel keeping both doors open or the glass
21 door open when it would usually be shut I guess is what
22 I'm asking?

23 A. I think the towel was keeping the glass door from
24 latching but it was closed.

25 Q. Okay. And then so after you picked up the towel you

1 went into the house, correct?

2 A. I picked the towel up and I asked Kim what is this
3 towel doing here and she told me. I put it back and I
4 tried the knob and that's when I entered.

5 Q. Okay. And then you went into the house and saw your
6 sister. I hate to say it but she was deceased.

7 A. Yes.

8 Q. Okay. Then you came back out of the house and you
9 called 911?

10 A. No, I called 911 while I was inside ---

11 Q. --- inside the house, okay.

12 MR. SCHWARTZ: At this time Your Honor we'd like to
13 enter the 911 call and publish it to the jury through Mr.
14 McConnell.

15 THE COURT: Any objection?

16 MS. BALDWIN: I don't have any objections to it
17 being admitted, Your Honor.

18 THE COURT REPORTER: Could I ask what number that
19 is?

20 MR. SCHWARTZ: That's exhibit 1, ma'am.

21 THE COURT: All right. Before you start that let
22 me say something to the jury about procedural matters.
23 Probably during the course of the trial one or more of
24 the lawyers are going to get up and say something like
25 Your Honor I object and hope they have some reason as to

1 why he or she objects to a question that has been asked
2 or an answer that has been given. When the lawyers do
3 that they're talking to me; they're not talking to you.
4 They're talking to me. They're calling a possible
5 violation of one of the rules to my attention.

6 Don't you concern yourself with those objections or
7 how I may rule on those objections whether I overrule it,
8 sustain it, or whatever because it has absolutely nothing
9 to do with your job in the case which is to be the
10 finders or the judges of the facts of this case.

11 Perhaps I'll send you out of the courtroom while I
12 discuss the rule and its application with the lawyers.
13 I'm not trying to hide anything from you by doing that.
14 It's just we've found over the years that's the best way
15 for me as a lawyer to discuss the rule, let me make a
16 decision, bring you back in and go on with the trial
17 along with the evidence.

18 I meant to tell you that earlier but now seemed like
19 a good time to tell you so that's what I'm doing. That's
20 the way we'll handle these objections if and when they
21 come during the course of the trial. Go ahead.

22 MR. SCHWARTZ: Thank you, Your Honor.

23 [Whereupon, the 911 call plays]

24 [Whereupon, the 911 call ends]

25 [Not taken down]

1 Q. [Mr. Schwartz] Mr. McConnell is that your voice on
2 that recording?

3 A. Yes.

4 Q. Is that a true and accurate representation of the
5 call from that night to the 911 dispatch?

6 A. Yes.

7 MR. SCHWARTZ: Defendant moves defense exhibit 1
8 into evidence but it's already in evidence.

9 THE COURT: Any objection?

10 MS. BALDWIN: No objection.

11 THE COURT: Without objection. Bring it up.

12 [Whereupon, defendant's exhibit number 1 is entered
13 into evidence by the court]

14 Q. [Mr. Schwartz] So Mr. McConnell while you're on the
15 phone with 911 you're giving them kind of a play by play
16 of what you're seeing in the house, correct?

17 A. Yes.

18 Q. And you tell them that there is blood everywhere in
19 the house.

20 A. Yes.

21 Q. You tell them that she has been attacked.

22 A. Yes.

23 Q. You tell the lady dispatcher that you believe that
24 somebody broke into the house; that's what it appeared to
25 you initially, correct?

1 A. Knowing my sister would not open the door for anyone
2 that she did not know I would be hard pressed to think
3 that someone that she knew would do something like that
4 to her. So them gaining entry, I didn't check the door,
5 the interior door to see if it was forced.

6 Q. Okay. But you would agree you told 911 dispatch
7 that you initially believed that ---

8 A. --- if that's what's on the tape then that's what I
9 said at that time.

10 Q. Okay. Let's go back and talk about Barbara real
11 quick. A lifetime smoker, right?

12 A. Okay.

13 Q. Smoked cigarettes, right?

14 A. Yes.

15 Q. She didn't smoke in the house through, right?

16 A. Correct.

17 Q. She would smoke outside of the house?

18 A. Correct.

19 Q. Okay. And that was pretty routine for her?

20 A. Yes.

21 Q. Okay. You also told dispatch that she was naked
22 from the waist down.

23 A. Yes.

24 Q. Okay. And you told them that you believed she had
25 been sexually assaulted.

1 A. If that's on the tape then that's what I said.

2 Q. Okay. You testified earlier that she was put in
3 some kind of I don't remember your exact words but sexual
4 position or something in the bathroom; that's what it
5 appeared to look like.

6 A. No. I think I said she was in -- she was posed in
7 an obscene manner.

8 Q. Obscene manner, that's correct. So after -- I think
9 you said you cleared the house, you walked out and you
10 put your gun in your truck and you waited on law
11 enforcement, correct?

12 A. Correct.

13 Q. And I believe the first officer was Officer Haslip?
14 Who was the first officer on the scene?

15 A. I have no idea. I never asked him for his name or
16 his identification.

17 Q. If I told you it was Officer Haslip would you agree
18 with me?

19 A. That depends.

20 Q. What if I'm telling you the truth?

21 A. Exactly.

22 Q. Okay. Well, I'm telling you that it is Officer
23 Haslip and you spoke with him, okay.

24 A. Okay.

25 Q. You told him kind of what you told 911; what you had

1 seen, isn't that correct?

2 A. To be perfectly honest with you I can't remember
3 exactly what I told him. Remember now it's been over two
4 and half years ---

5 Q. --- sure ---

6 A. --- so trying to remember every little conversation
7 I had with law enforcement -- am I trying to remember
8 those times? No.

9 Q. I understand. Did you have a chance to review any
10 of the video recordings in this case prior to testifying?

11 A. Any of the video?

12 Q. Uh Huh.

13 A. No.

14 Q. No? Okay. So that's maybe why you don't remember
15 everything I'm assuming.

16 A. I remember what I need to remember because what I
17 saw is engrained in my mind. That is an image that will
18 live with me for the rest of my life. Anything outside
19 of that is on the peripheral.

20 Q. Okay.

21 A. To me it's not relevant to me.

22 Q. Okay. You told Officer Haslip that you believe that
23 Barbara fought back, that she just wouldn't fold.

24 A. Again...

25 Q. You don't remember? Okay. Then let's fast forward

1 a little bit. When you were outside talking to Deputy
2 Haslip Kim arrived at some point to the scene, that's
3 correct?

4 A. Yes.

5 Q. And she pulled up and I think she pulled up to the
6 right of Deputy Haslip's car and she got out of the
7 vehicle. Do you recall that?

8 A. I don't know exactly where she positioned her
9 vehicle but I know that Kim came up and wanted to go into
10 the house because she said that her Mommy needed her.
11 And I told her at that time you can't go in.

12 Q. And you physically grabbed her and stopped her from
13 going in, do you recall that?

14 A. I wrapped my arms around her to stop her, yes.

15 Q. Okay. Do you recall what Kim said to you and
16 Officer Haslip when she got out of that vehicle?

17 MR. SOWARDS: Objection, Your Honor. It calls for
18 hearsay.

19 THE COURT: I don't know. Members of the jury
20 panel this is the first time I need you to step out of
21 the courtroom. Don't go all the way to the jury room
22 just take them in the hallway there and let me hear about
23 this and I'll bring them back as soon as I can.

24 [Whereupon, the jury exits at 3:09 p.m.]

25 THE COURT: The jury is out, the door is closed.

1 What was the question again?

2 Q. [Mr. Schwartz] Do you recall what Kim told you when
3 she got out of her vehicle?

4 THE COURT: And what is your response to that?

5 THE WITNESS: Kim told me if memory serves me
6 correctly that she was supposed to have met her father at
7 the Waffle House and he didn't show up so she had his
8 meal wrapped up.

9 She said that she tried to contact him but couldn't.
10 Then at some time she managed to get in touch with him
11 for her to meet him at the Waffle House on 17 south, that
12 he had ---

13 THE COURT: --- okay, hold on right there. What's
14 your objection to that?

15 MR. SOWARDS: I think ultimately he is trying to
16 get Mr. McConnell to speak about Kim maybe saying
17 something like if you let me in I can tell you who did
18 it.

19 THE COURT: Well, I appreciate that but I'll
20 overrule your objection to the testimony he has given so
21 far. You want to go further and see what else comes up.

22 MR. SCHWARTZ: Your Honor, that's exactly what I'm
23 going to do ---

24 THE COURT: --- go ahead and ask the question then.

25 Q. [Mr. Schwartz] Mr. McConnell, you heard about the

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1 Waffle House stuff and the IHOP stuff on the phone from
2 Kim.
3 A. Yes.
4 Q. When she got out of her car at Barbara's house and
5 you were -- she got out of the car at Barbara's house and
6 you were speaking with Deputy Haslip, okay.
7 A. Uh Huh.
8 Q. And she ran up to you and you grabbed her.
9 A. Uh Huh.
10 Q. Do you recall her telling you, and I want to make
11 sure I get this right, I can tell you who broke into the
12 house. You don't recall that?
13 A. No, I don't recall her ever saying that.
14 Q. Okay. And you don't recall you and Officer Haslip
15 saying well who?
16 A. [Nods negatively]
17 THE COURT REPORTER: Is that no?
18 A. That's no; I'm sorry.
19 Q. [Mr. Schwartz] And you also don't recall her saying
20 just let me inside; is there a gun inside?
21 THE COURT: Let me inside what?
22 MR. SCHWARTZ: Is there a gun inside the house?
23 THE COURT: He's asking you, I think he's asking
24 you do you recall her saying that?
25 THE WITNESS: I don't.

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1 MR. SCHWARTZ: He doesn't recall it but I still
2 think I should be able to ask it. It's not hearsay.

3 THE COURT: I'll allow that.

4 MR. SOWARDS: It's hearsay if he -- I mean the
5 answer not but he's stating the hearsay as part of the
6 question. It's immaterial what the answer is; that the
7 hearsay evidence is already before the jury.

8 THE COURT: I appreciate your position. I'll
9 overrule your objection. Bring the jury in. It's not
10 for the truth of the matter asserted. It's to prove it
11 was said.

12 [Whereupon, the jury enters at 3:13 p.m.]

13 THE COURT: Anytime anybody needs to take a break
14 just raise your hand and tell me I need to take a break;
15 and we'll all take a break if we need to.

16 THE COURT: Now, go right ahead.

17 MR. SCHWARTZ: Thank you, Your Honor.

18 Q. [Mr. Schwartz] A couple more questions Mr.
19 McConnell. Do you recall Kim arriving to the scene that
20 night?

21 A. Yes.

22 Q. And Kim is the daughter of Barbara?

23 A. Yes.

24 Q. Okay. Do you recall her coming up to you and trying
25 to get in the house?

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- 1 A. Yes.
- 2 Q. And then you grabbed her and wouldn't let her go in?
- 3 A. Correct.
- 4 Q. Do you recall her telling you I can tell you who
- 5 broke into the house?
- 6 A. No, I don't.
- 7 Q. Do you recall asking her who?
- 8 A. If I don't recall her asking me who broke into the
- 9 house how can I...
- 10 Q. Okay. And you don't recall her telling you just let
- 11 me inside; is there a gun inside the house?
- 12 A. No, I don't.
- 13 Q. And she never told you who broke into the house?
- 14 A. I don't know what -- the only thing that I can tell
- 15 you that I remember her telling me when she got there and
- 16 I grabbed her she said I need to go inside; my Mommy
- 17 needs me. And I said you can't go in.
- 18 Q. Okay.
- 19 A. Anything from that point dealing with Kim because
- 20 during that time law enforcement was there doing their
- 21 investigation. Information was being gathered. I had
- 22 information.
- 23 I cooperated with law enforcement in giving them
- 24 that information that they needed. I don't remember
- 25 everything that Kim said to me from the time she arrived

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1 until whenever.

2 Q. Okay. Fair enough.

3 MR. SCHWARTZ: No further questions, Your Honor.

4 THE COURT: Anything on redirect?

5 MR. SOWARDS: Just a few questions, Your Honor.

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REDIRECT EXAMINATION

BY MR. SOWARDS:

Q. A.J. you said -- Mr. Schwartz asked you if you remember certain things that Kim told you that evening. What do you remember that she told you that evening?

A. From the initial phone call?

Q. From when she arrived on the scene; from that initial phone call to when she arrived on the scene, yes sir.

A. The only thing that I remember her saying was my Mommy needs me. And I told her you can't go in because I knew had she gone in that crime scene and saw what I saw there's no telling what would have happened to her.

So anything else that she may have said I don't remember. I don't even think that I paid that much attention to much of anything else that she said because what I saw was traumatizing even to me. And I've seen dead people before. I've seen more cut up, mutilated, shot people than anyone else.

I grew up in a funeral home so I've seen it all. But when you see a loved one who has been brutalized you don't want anyone else to see something like that; especially a relative because you want them to remember that loved one as they were before. You don't want that image in their head.

1 Q. Now you testified that Barbara would have only
2 opened the door for someone she knew.

3 A. Yes.

4 Q. Would she have opened the door for the defendant?

5 A. Yes ---

6 MR. SCHWARTZ: --- objection. Calls for
7 speculation, Your Honor.

8 THE COURT: I agree. I sustain the objection to
9 that.

10 Q. [Mr. Sowards] Now did Barbara and the defendant have
11 any children other than Kim?

12 A. Christopher and Adrienne.

13 Q. Did Adrienne come to the house that night?

14 A. She was on her way but I told her to go home. She
15 was totally distraught and I didn't want her driving from
16 Summerville down in that condition. I told her to go
17 home; I would take care of Kim. And I think Adrienne
18 went home.

19 Q. So she never made it to the house?

20 A. No.

21 MR. SOWARDS: Beg the court's indulgence.

22 THE COURT: Thank you very much. You can return to
23 your place in the courtroom.

24 [Whereupon, the witness is excused and exits the
25 witness stand]

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1 THE COURT: We're going to take a short break now
2 and let everybody have a little recess now. Move around,
3 get you a drink of water or whatever for about ten
4 minutes and we'll be back. Then we plan to go to 5
5 o'clock or a few minutes before 5 when we end for today.
6 So let's everybody take a break, refresh yourselves, come
7 back ready to finish up with the testimony for the rest
8 of the day.

9 [Whereupon, the jury exits at 3:22 p.m.]

10 [Whereupon, court is in recess from 3:22 p.m. until
11 3:31 p.m.]

12 [Whereupon, State's exhibit numbers 131 and 132 are
13 marked by the court reporter]

14 [Whereupon, defendant's exhibit number 2 is marked
15 by the court reporter]

16 THE COURT: By the way we're going to have a short,
17 well I'll talk to you about how we're going to schedule
18 tomorrow morning because I've got a conflict that I have
19 to deal with so we'll talk about that before y'all leave.

20 MR. WEST: Judge, we want to talk about scheduling
21 anyway.

22 THE COURT: We'll take it up when we finish with
23 this.

24 MR. WEST: The point is we've got to figure out how
25 many witnesses we're going to get to today to...

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1 THE COURT: How many more you got? Who's next?

2 MS. BALDWIN: Well, we were going to do FBI Agent
3 Simmonds. And he shouldn't be too terribly long but I
4 imagine he would take us to 4 o'clock.

5 THE COURT: 4:30; an hour.

6 MS. BALDWIN: My point is Your Honor and this is
7 what we were talking about during the break is that our
8 next witness is going to be extremely lengthy probably
9 based on what Mr. West has indicated.

10 THE COURT: Can you switch and get a 30 minute one
11 in?

12 MS. BALDWIN: That's what I was thinking was we
13 would do our 30 minute one now and then break for the day
14 maybe a little bit earlier then start ---

15 THE COURT: --- no objection.

16 MS. BALDWIN: All right.

17 THE COURT: Bring the jury in.

18 [Whereupon, the jury enters at 3:32 p.m.]

19 THE COURT: Call your next witness.
20
21
22
23
24
25

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1 MR. SOWARDS: The State calls Agent Clay Simmonds.

2 [Whereupon, Agent Simmonds comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please speak into the microphone
6 and state your full name for the record spelling your
7 last name for us. Thank you.

8 THE WITNESS: My name is Robert Clayton Simmonds;
9 spelling of the last name is S-I-M-M-O-N-D as in David-S.

10 - - - - -

11 CLAY SIMMONDS,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SOWARDS:

16 Q. Agent Simmonds, where are you currently employed?

17 A. I'm a special agent with the FBI here in Charleston,
18 South Carolina.

19 Q. And how long have you been with the FBI?

20 A. In May will be 16 years.

21 Q. Could you describe for the jury please your
22 educational background?

23 A. Sure. I graduated from the College of Charleston
24 with a degree in Business and Accounting. After that I
25 went to work for Charleston Police Department where I was

1 on patrol for approximately two years and then worked and
2 was transferred over to the FBI violent crime taskforce
3 where I was assigned there for three years. I went to
4 graduate school after that at Clemson University.

5 9/11 took place and I got hired on by the FBI,
6 joined the FBI in May of 2002, finished Quantico, was
7 assigned out in Oklahoma City, Oklahoma for ten years.
8 Then I went to FBI headquarters for two years and
9 approximately the last four years I've been here.

10 Q. And what is your current assignment with the FBI
11 here in Charleston?

12 A. My primary assignment is to work violent crimes and
13 gang matters here, anything that is related to violent
14 crimes; kidnappings, bank robberies, gang activity, drug
15 activity and things of that nature.

16 But I'm also a member of a group of agents called
17 CAST; it's the Cellular Analysis Survey Team. We conduct
18 historical cell site analysis of phone records to try and
19 provide a visual depiction of where the phone was at a
20 particular date and time.

21 Q. And what training have you received to become a
22 member of CAST?

23 A. To become a certified member of CAST you spend
24 approximately 400 hours in training. The first week is
25 just kind of getting an idea about the records; what are

1 they, how do you get them. Then you analyze the records
2 and you start creating the maps that give you that visual
3 depiction.

4 The second phase of class is called an advanced
5 cellular analysis course where we start having a few
6 anomalies with the cell phone records that may be
7 presented in Universal Time Code. There may be some
8 other quirks about the records that we have to work
9 through and go through that.

10 We go through a wireless tracking course where we
11 learn how to intercept and track cell phones. We then
12 spend a good week on being an instructor and teaching
13 this material.

14 So we go to classes and teach other local state and
15 federal law enforcements how to use the records and
16 analyze those records and create their own visual
17 depictions of the cell phone activity.

18 Then we have two two-week courses of training where
19 the cell phone law enforcement working groups, law
20 enforcement relations groups who provide us the cell
21 phone records and their engineers from the major cell
22 phone providers come in and train us.

23 They tell us how to get the records, what records
24 are available, why they keep some of the data they keep,
25 why they don't keep some of the data that they keep. The

1 engineers explain the network and how its set up and how
2 it operates for each one of the major service providers.
3 We have also a period of learning about radio frequency
4 and how it works within our environment.

5 Then the next phase is a two-week course of where we
6 learn to be expert witnesses and then we have a mock
7 court where they give us a scenario, we come up with our
8 presentation, our visual depiction, our maps and present
9 that and then they put us in an environment like this and
10 start questioning us and cross-examining us on that.

11 Then afterwards we'll go out and start analyzing the
12 records on a regular basis. And during all that time,
13 during that period which takes almost 18 months or two
14 years to get completed we are analyzing records and
15 having people review them and things of that nature.

16 Q. Does your training include a test or testing or an
17 exam?

18 A. Sure. After each phase of testing we have to have a
19 test and receive a passing score to be able to move on to
20 the next bit of training.

21 Q. And do you receive continuing training in order to
22 maintain your certification?

23 A. Sure. Every year, so in two months, next month I go
24 off to be recertified as a CAST agent. We have the cell
25 phone providers again with the law enforcement relations

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1 groups and their engineers come back to us and give us
2 updates on their network, give us anything else that
3 might be forthcoming within their networks that might
4 assist us in locating missing children or evidence or
5 finding phones of fugitives or things of that nature.

6 Q. Now you told you a lot about the training that you
7 receive. Do you also train people?

8 A. Sure. Part of my duties when I was transferred to
9 FBI headquarters I was a supervisor of the CAST team. So
10 I coordinated all the training that we took or that we
11 provided to other state, local, and federal law
12 enforcement agencies.

13 I would assist in those trainings and actually
14 tomorrow I'm leaving for Tampa to go down to assist in
15 some training for local law enforcement in the Tampa,
16 Florida area.

17 Q. You mentioned historical cell cite analysis. What
18 exactly is that?

19 A. Sure. Basically call detail records are provided by
20 the service providers. I don't know how many people
21 still get a cell phone bill but back when you used to get
22 a cell phone bill or your long distance bill it would
23 give you the information that you would have on there
24 would be like the date and time that a call took place,
25 what phone number you called or what phone number called

1 you and then how many minutes or seconds you spent on
2 that phone call so they could properly bill you. Then at
3 the very end with call detail records they give you a
4 little bit more information where they give you the
5 switch that was utilized and the tower and sector that
6 was used to place those calls or text messages during
7 that time.

8 The switch is also known as a LAC, it's a location
9 area code. It's just a group of towers within a
10 vicinity. And then when you couple that with what tower
11 and sector was used that would be the only tower and
12 sector what that switch used in the entire AT&T and
13 Verizon, Sprint network. It won't be found anywhere else
14 on their network.

15 So that is the reason why we're able to take those
16 records and match them up to the tower list that the
17 phone companies provide and give you a general area of
18 where the phone was when those calls took place.

19 Q. Agent Simmonds, approximately how many times have
20 you performed historical cell site analysis and in what
21 types of cases?

22 A. I look at cell phone records almost every single
23 day. I can't think of a day in the last couple of years
24 that I haven't looked at cell phone records at some point
25 or another. They range from anything case wise to gang

1 and drug cases that I primarily work to homicide cases,
2 missing children, kidnappings, bombing cases,
3 counterterrorism cases that we may have within the
4 office. So we run the whole gamut of different types of
5 cases that we use this for.

6 Q. And what kind of agencies can request CAST services?

7 A. Again as I said before I keep mentioning state,
8 local, and federal law enforcement that we go out and
9 train. They're the same individuals that can come and
10 ask for assistance if needed, if they need some
11 assistance from us.

12 Q. And have you testified as an expert before in court?

13 A. I have several times.

14 Q. And in what courts?

15 A. Charleston County, I think this makes my fourth time
16 here in Charleston County, Berkeley County, Washington,
17 D.C. I testified in Tennessee but I don't think I quite
18 -- the Judge didn't acknowledge me as an expert because
19 nobody asked to, but I testified in Tennessee and in
20 Washington, D.C. is another one.

21 MR. SOWARDS: Your Honor, at this time the State
22 would offer Agent Simmonds as an expert in historical
23 cellular telephone record and data analysis.

24 THE COURT: Any questions you want to ask him about
25 his qualifications?

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1 MR. WEST: No objection to his qualification.

2 THE COURT: Go right ahead.

3 MR. SOWARDS: May I approach, Your Honor?

4 THE COURT: Yes.

5 Q. [Mr. Sowards] I'm going to hand you two items. One
6 has been marked as State's exhibit 131 and the other is
7 132.

8 [Whereupon, the witness is shown exhibits]

9 Q. Agent Simmonds were you asked to analyze some call
10 detail records in this case?

11 A. Yes sir, your office asked me to look at some I
12 believe it was Verizon records that were associated back
13 in 2015 around the September timeframe.

14 Q. And is that the item that I just handed you State's
15 exhibit 131?

16 A. That's correct.

17 Q. And you recognize that?

18 A. Yes sir, I do.

19 Q. And 132 were you also provided with subscriber
20 information for the number that you analyzed?

21 A. I was.

22 Q. And what does that subscriber information tell you?

23 A. So the subscriber information tells me that the
24 telephone number that is associated with this particular
25 individual that number is 843-509-3564 also provides an

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1 account number and then it gives me the name that is
2 listed. It's from Mr. G.T. Little at 223 Burnham Court.

3 Q. And Agent Simmonds what type of information will you
4 find in the call detail records like the ones before you?

5 A. Again, as I was explaining how cell phone networks
6 are generally set up they are kind of like your phone
7 bill that you used to get they provide a little bit of
8 data giving you the tower and the sector that was used
9 within what they call the network element or the switch
10 that was utilized.

11 And when you combine the switch and the tower and
12 the sector that were utilized you won't find that tower
13 and sector with that switch anywhere else on the network.
14 So couple that information within the call detail records
15 along with the tower list that is provided by the
16 networks we are able to give you a general idea of where
17 the phone was when that call or text or transaction took
18 place.

19 Q. Agent Simmonds did you prepare a power point
20 presentation in anticipation of this trial?

21 A. Yes, sir I did.

22 Q. And that supports your analysis?

23 A. Yes, sir.

24 [Whereupon, State's exhibit number 133 is marked by
25 the court reporter]

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1 Q. Agent Simmonds, I'll hand you now what has been
2 marked as State's exhibit 133. Do you recognize that?

3 [Whereupon, the witness is shown exhibit]

4 A. I do. I see a change that was made that is not
5 reflected in this particular document but it's the power
6 point presentation that I created back in February for
7 your office.

8 Q. Would reference to your power point presentation
9 help you in discussing your analysis?

10 A. That's correct. Yes, sir.

11 MR. SOWARDS: Your Honor, at this time the State
12 would ask to publish the power point presentation
13 prepared by Agent Simmonds.

14 THE COURT: Any objection?

15 MR. WEST: No objection, Judge.

16 THE COURT: All right go ahead.

17 [Whereupon, a slide is shown]

18 Q. [Mr. Sowards] And if you could we'll just walk
19 through what does slide 1 tell us here?

20 A. The first slide is just the cover sheet page that
21 tells you who I am, where I come from, what I did. I
22 analyzed the records for 843-509-3564, the date that I
23 finished the report, and my information.

24 [Whereupon, the next slide is shown]

25 Q. And what are we looking at here on slide 2?

1 A. So this is a slide that shows you what a typical
2 three-sided tower looks like. You guys probably see it
3 every day as you drive up and down the streets to and
4 from work to and from home, running your errands and
5 things of that nature.

6 It just shows you that the towers are divided up
7 into three sectors approximately 120 degrees for each
8 particular sector so you can get a 360 degree circle to
9 cover that particular area.

10 And if you hit enter a couple more times you will
11 see they divide them up into sectors of one, two, and
12 three. Or some companies will do it as alpha, beta,
13 gamma. Hit it two more times.

14 [Whereupon, Mr. Sowards complies]

15 A. And so that's how they divide those sectors up so we
16 know what sectors were used when those phone calls or
17 text messages took place.

18 [Whereupon, the next slide is shown]

19 A. This sheet just explains to you what I was asked to
20 do. It gives you the timeframe that I was asked to
21 conduct the analysis in, the methodology behind it, how I
22 took the call detail records.

23 I married them up with the cell phone tower list
24 that was provided by the company. Using a software piece
25 of equipment we were able to plot the towers off on a map

1 and then visually display what towers and sectors were
2 used at the times that were referenced here on page 3.

3 [Whereupon, the next slide is shown]

4 A. This is just to show you what you should anticipate
5 looking at on the next slides. I will point out this
6 page is primarily to show you that the towers are divided
7 up into these nice little pie wedges and the little red
8 circle or semi-circle that comes out from it is just to
9 show you that the energy of the RF frequency, the radio
10 frequency is coming from the tower.

11 It doesn't necessarily mean that the phone was
12 within that red portion of it. It could be anywhere
13 between the two arms in there. But the red portion that
14 kind of jets out is just to show you that is the side
15 that the phone used at that particular moment.

16 [Whereupon, the next slide is shown]

17 A. This here is a map of the Verizon network in the
18 Charleston area in September of 2015 with important
19 points of interest that I was asked to place on a map.
20 So the red square is 2317 West Palmer Drive in
21 Charleston.

22 I identified that as the crime scene where this took
23 place. 223 Burnham Court, Charleston South Carolina is
24 Doctor General Little's residence. And then 3691 Leeds
25 Avenue in North Charleston South Carolina is the location

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1 of the Charleston County Sheriff's Office. So I was
2 asked to look at phone records basically from September
3 22 starting fairly early in the morning until about 3:30
4 if I recall correctly on September 23rd.

5 From this information the phone used Verizon tower
6 259, sector 2 from approximately 8 a.m. to 5:24 p.m. and
7 it was utilized over 198 times during that time period.
8 The reason why I don't have a box to show you each time
9 the phone was utilized this whole map would be one big
10 box so I just summarized it there in the title section.

11 In the title section there I point out that the
12 Beaufort Naval Hospital is within the footprint of that
13 tower because there is not another tower at the end of
14 that area.

15 [Whereupon, the next slide is shown]

16 A. So this is the telephone used of that same device
17 843-509-3564 from approximately 5:48 p.m. to 7:13 p.m.
18 Again it leaves the Beaufort St. Helena area at
19 approximately 5:48 and kind of goes up Highway 21 to
20 Highway 17 arriving back just under the yellow marker
21 that is Doctor Little's home at approximately 7:13 p.m.
22 that day. So basically the individual the phone just
23 left and drove over to the Little residence and arrived
24 at approximately 7:13 p.m.

25 [Whereupon, the next slide is shown]

1 A. So from approximately 7:37 p.m. to 8:21 p.m. on
2 September 22nd the phone utilized these two towers listed
3 Verizon tower 456 and Verizon tower 1456 and tower 436
4 during that time frame.

5 The phone used the two towers that would encompass
6 Mr. [sic] Little's residence and also the crime scene
7 where this incident took place.

8 [Whereupon, the next slide is shown]

9 A. Again, from approximately 8:49 to 10:28 p.m. on
10 September 22nd the phone utilized these towers that are
11 depicted there.

12 On this map mainly using the same two towers that we
13 talked about earlier, the ones that would cover Doctor
14 Little's residence and the crime scene but eventually
15 around 10:28 p.m. they'd use tower 435 which is near 17
16 and Highway 165 in the Ravenel area of South Carolina.

17 [Whereupon, the next slide is shown]

18 Q. Agent Simmonds I have a few questions about this
19 particular slide. Go to the box up in the middle tower
20 4562 the calls that are listed in there when you're
21 analyzing the call detail records are you able to
22 determine from those records the duration of a call?

23 A. Sure. Again, as I stated earlier call detail
24 records also provide you not only the date and time it
25 took place, the number that you spoke to or that called

1 you and then how long each one of those calls took place.

2 Q. And would the records indicate for example if
3 someone tried to call this phone and that phone call was
4 not answered?

5 A. Sure. Verizon will show you whether they are
6 incoming or outgoing calls. They will also show you if a
7 call was forwarded. And usually when Verizon shows you
8 that a call was forwarded and it went to your voicemail
9 it gives you two lines of that particular transaction.

10 One to show you that hey, it went through our
11 network, we couldn't find you so we forwarded it to your
12 voice mail and then it will provide the tower and sector
13 that the phone was utilized when it received that
14 voicemail.

15 Q. And in this case specifically I'd like to ask you
16 about phone calls made to this number between 21:19,
17 which is 9:19 and 21:45. How many times was this phone
18 number dialed during that period?

19 A. The 509 number, how many times was it called between
20 21:19 and what was the last time?

21 Q. And 21:45?

22 A. Give me a second.

23 [Whereupon, the witness reviews document]

24 A. Approximately ten times.

25 Q. And were any of those calls answered by this phone?

1 A. No, they all appear to be forwarded to a voicemail.

2 Q. Now forwarded to a voicemail and you talked about a
3 phone, it's the phone that is communicating with the
4 towers, if a phone is for example dead; it doesn't have
5 any power left in the battery will it communicate with
6 the tower?

7 A. No, because there is no RF frequency going out from
8 the phone to the tower and vice versa. So when your
9 phone like I'm sitting up here today or if any of y'all
10 have your phones on you your phone is constantly looking
11 for the tower that provides the cleanest, strongest
12 signal to make a transaction.

13 So as long as your phone is on it is continuously
14 surveying the network to say hey, I'm over here and I see
15 one, two, three towers clearly. And so when a call or a
16 text or you want to make a call or a text comes in it
17 says hey, I want to use this tower.

18 And then when that phone gets resources granted from
19 that tower that's when the records are populated to tell
20 you what tower and sector were used when those calls took
21 place. So if the phone is not on or if there is no power
22 to the phone those transactions don't take place.

23 Q. And we see up there that there appear to be two
24 towers that are relatively close together.

25 A. That's correct.

1 Q. Is it always true that if say for example you are
2 closer to 4562 than you are to 4361 that you will always
3 connect to 4562?

4 A. No, because there are many factors that make up why
5 your phone may or may not use a tower. Terrain can make
6 a big difference. So if you're in say downtown New York
7 City one they're going to have a lot more towers in there
8 because they have more people to provide service to so
9 they need to increase their capacity to provide those
10 services.

11 But also they have taller buildings that what we
12 have here in Charleston. So a building can reflect the
13 RF frequency from a tower so even though you may be
14 closer to this tower there is a building in the way but a
15 tower four or five blocks further away is providing you a
16 better signal so your phone will use that particular
17 tower.

18 [Whereupon, the next slide is shown]

19 A. Again, this next slide just shows you the phone
20 usage from approximately 10:32 in the evening to about
21 3:25 in the morning on September 23rd..

22 So the phone starts off again as it ended in the
23 previous slide in the area of Highway 17 and Highway 165
24 and it continues and starts moving up 17 back towards
25 Doctor Little's residence and the crime scene generally

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1 arriving in the area around 11 o'clock. It stays along
2 in that area until approximately 2 in the morning when
3 the phone goes over to a tower 1350 which encompasses the
4 area that would be the Sheriff's Department or the
5 Sheriff's office.

6 MR. SOWARDS: Your Honor, at this time the State
7 would seek to move State's exhibit 131, 132, and 133 into
8 evidence.

9 THE COURT: Any objection?

10 MR. WEST: None from the defense.

11 THE COURT: That's numbers 131, 132, and 133?

12 MR. SOWARDS: That's correct, Your Honor.

13 [Whereupon, State's exhibit numbers 131, 132, and
14 133 are entered into evidence by the court]

15 MR. SOWARDS: Beg the court's indulgence.

16 [Whereupon, Ms. Baldwin and Mr. Sowards confer]

17 Q. [Mr. Sowards] Agent Simmonds, I don't have any
18 further questions for you. Please answer any the defense
19 may have.

20 A. Yes, sir.

21

22

23

24

25

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1 CROSS-EXAMINATION

2 BY MR. WEST:

3 Q. Agent Simmonds, I haven't seen you in a long time.

4 A. It's been a while since the last time I testified

5 before you.

6 Q. When was the last time that we met?

7 A. Two and half years ago when you were in the

8 prosecutor's office up in Berkeley County.

9 Q. That's right. And so you've always been friendly

10 with the Solicitor's office, right?

11 A. Sure.

12 Q. You're pretty much at their service whenever they

13 call you for help.

14 A. If I can be of service, sure.

15 Q. Sure. When did you first become involved in this

16 particular case?

17 A. Around January of this year.

18 Q. Who called you?

19 A. Sherry Niblock.

20 Q. Okay. And who is that?

21 A. She's an investigator over at the Charleston County

22 Solicitor's office.

23 Q. Okay. And what did she ask you to do?

24 A. She asked me if I could look at some cell phone

25 records related to this case and basically provided me

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1 the information I've been talking about these last few
2 minutes and said hey, will you tell us what towers the
3 phones used during this timeframe that I've been talking
4 about.

5 Q. Now, the information Mr. Sowards just elicited from
6 you that wasn't everything you looked into now, was it?

7 A. Say that one more time.

8 Q. The questions Mr. Sowards asked you you looked into
9 some other information for the Solicitor's office, isn't
10 that true?

11 A. Sure. They also provided two other phones that they
12 were interested in and I also conducted an analysis on
13 those.

14 Q. I'm going to show you what has been marked as
15 defendant's exhibit number 2.

16 [Whereupon, the witness is shown exhibit]

17 Q. Can you tell the jury whether you recognize that
18 printout?

19 A. Sure. It's the analysis that I did for telephone
20 number 843-469-1507, which is an AT&T phone.

21 Q. Okay. Were you told whose phone that was?

22 A. A daughter or wife's; I can't remember. That's all
23 I know -- all I knew was it was Doctor Little's daughter
24 or wife's phone. I can't remember which one it was.

25 Q. Okay. Is this depiction a true and accurate

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1 representation of the work that you did for the
2 Solicitor's office?

3 A. Yes, sir.

4 MR. WEST: Your Honor, at this time I would move
5 defendant's exhibit 2 into evidence.

6 THE COURT: Any objection?

7 MR. SOWARDS: No objection, Your Honor.

8 THE COURT: All right.

9 [Whereupon, defendant's exhibit number 2 is entered
10 into evidence by the court]

11 Q. [Mr. West] Now I'm sorry I don't have access to the
12 power point for this one so we're going to have to do a
13 little bit of back and forth, is that okay?

14 A. That's fine.

15 Q. In fact this courtroom is much better than the
16 courtroom in Berkeley County and we actually have smart
17 technology here in Charleston.

18 A. That's great.

19 Q. I'm going to show you a couple of things.

20 [Whereupon, defendant's exhibit 2 is shown]

21 Q. Agent Simmonds, this is exhibit number 2 that you
22 were just looking at.

23 A. Yes, sir.

24 Q. And the phone number listed on top is 469-1507, is
25 that correct?

State v General Theophilus Little
Clay Simmonds-Cross-Examination by Mr. West
March 19, 2018

- 1 A. 843, yes sir.
- 2 Q. And you examined this phone from the times of 4:56
- 3 p.m. to 8:08 p.m., is that correct?
- 4 A. 4:46 p.m.
- 5 Q. Oh, sorry. My glasses aren't doing me as good as I
- 6 thought they were. Why did you start at that time?
- 7 A. They asked me to look -- the Solicitor's office
- 8 asked me to look during the time of 6 p.m. to 12 a.m. on
- 9 the 23rd during that time period. Looking at the records
- 10 the first call closest to 6 o'clock was at 4:46 p.m.
- 11 Q. Okay. If they would have asked you to look at some
- 12 other times you would have done that as well?
- 13 A. If that's what they needed, yes sir.
- 14 Q. But they limited what they asked you to do?
- 15 A. That's what I was asked to do so I limited it to
- 16 that analysis, yes sir.
- 17 Q. Sure. And how about after 8:08 p.m.? Did anybody
- 18 ask you to evaluate the phone records from after 8:08
- 19 p.m. on that night?
- 20 A. Yes. If you go to the next page there will be times
- 21 all the way up to about midnight.
- 22 Q. Okay. Just for reference for the jury --
- 23 [Whereupon, the exhibit is shown]
- 24 Q. You would agree that stops about 10:50 p.m.?
- 25 A. That's correct.

State v General Theophilus Little
Clay Simmonds-Cross-Examination by Mr. West
March 19, 2018

1 Q. No times after 10:50 p.m.?

2 A. Without looking at the records I don't think there
3 was anything, there were any cell phone transactions that
4 would provide tower information after 10:50 p.m. but I'd
5 have to go back and look at the records themselves. But
6 if there would have been it would have been placed on the
7 map.

8 Q. As part of your analysis you've previously testified
9 that you can analyze who directed the initial phone calls
10 versus who received the phone calls?

11 A. I could tell you what numbers called the target
12 number and what numbers he or she called.

13 Q. Sure because you're just analyzing the phone; you're
14 not analyzing who actually has the phone?

15 A. Yes. It's not any relevance to me.

16 Q. Sure. In your prior testimony you indicated that
17 the phone that has been told to you was Doctor Little's
18 phone ---

19 A. --- that's just the subscriber information to it,
20 yes sir.

21 Q. Okay, was located at his house during the time of
22 this alleged incident.

23 A. I wasn't told anything about where the phone was
24 located during the incident.

25 Q. What did you investigation reveal?

State v General Theophilus Little
Clay Simmonds-Cross-Examination by Mr. West
March 19, 2018

1 A. My investigation just shows what towers the phone
2 used during the timeframe that I had depicted there on
3 the map. Now where they actually found the phone
4 themselves when they went to do their investigation I
5 don't have a clue.

6 Q. Sure. So it's not your testimony to this jury
7 today that you can tell where the phone actually was at a
8 particular timeline because it was using two separate
9 towers?

10 A. I can tell you during the time that the phone
11 utilized those towers it was within the footprint of the
12 tower and sector that was displayed there on the map.

13 Q. Okay. How long have you said you worked with the
14 FBI?

15 A. Almost 16 years.

16 Q. Now have you ever worked with the Solicitor's office
17 in cases in which you did not testify? Earlier you just
18 described ---

19 A. --- no, I'm sure I have.

20 Q. Sure.

21 A. There have been several times that I think I haven't
22 testified in the past.

23 Q. I'm going to show you a document that has been
24 released by the Department of Justice. I'm going to ask
25 you if you recognize or follow along with me some of the

1 things -- I'm going to mark this as State's -- excuse me,
2 defendant's number 3 for identification.

3 [Whereupon, defendant's exhibit number 3 is marked
4 by the court reporter]

5 [Whereupon, the witness is shown document]

6 Q. From that document in the fiscal year of 2016 you
7 would agree with me that the FBI budget was 8,798.8
8 million dollars, is that correct?

9 A. According to this document, sure.

10 Q. Okay. That's just another fancy way of saying the
11 FBI spends billions of dollars every year, is that
12 correct?

13 A. We have a fairly large budget.

14 Q. Okay. In 2017 the budget request increased to about
15 9,502.4 million dollars. Again, that's just a fancy way
16 of saying about nine billion dollars was pumped into the
17 FBI?

18 A. That's just what was requested.

19 Q. Okay. But you, your testimony is the FBI is
20 virtually unlimited resources?

21 A. We have a fairly large budget to accomplish the
22 mission of the bureau.

23 Q. And you'd agree with me that according to this
24 document and the FBI sources that the FBI is the
25 principal investigative arm of the United States

1 Department of Justice?

2 A. That's correct.

3 Q. It has the responsibility and authority to
4 investigate specific crimes assigned to it and provide
5 other law enforcement agencies with cooperative services
6 such as fingerprint identification, laboratory
7 examinations and training?

8 A. I would agree that's what it says here but that's
9 not all inclusive of what we do.

10 Q. Sure. It's not all inclusive but those are some
11 examples of things that the FBI has the capabilities to
12 do, is that correct?

13 A. Sure.

14 Q. So fingerprint analysis is specifically within the
15 realm of capabilities of the FBI?

16 A. Sure.

17 Q. Laboratory examinations such as DNA profiling is
18 specifically within the realm of things within the
19 capability of the FBI?

20 A. I don't know if I would agree with the word
21 profiling but an examination of DNA evidence sure.

22 Q. Sure. And those exams can come from various types
23 of bodily fluid such as things found during an autopsy,
24 is that correct?

25 A. Sure.

State v General Theophilus Little
Clay Simmonds-Cross-Examination by Mr. West
March 19, 2018

1 Q. How about hair?

2 A. Yes.

3 Q. You would agree the FBI has the capability to make a
4 DNA profile from hair?

5 A. If there is DNA pulled from the roots and they are
6 able to get -- but I'm not a DNA expert ---

7 Q. --- sure, I'm not asking ---

8 A. --- you need to ask them. I don't know.

9 Q. Is your testimony you don't know whether the FBI can
10 make DNA profiles from hair?

11 A. Not from like cut hair. I don't know if they can.

12 It's my understanding if it is pulled like out from the
13 roots there is DNA there to examine. But all in all I
14 don't know exactly how they come up with their DNA
15 information.

16 Q. Okay. Does the FBI have blood spatter experts?

17 A. I'm sure we do.

18 Q. Okay. How about shoe print analysis experts?

19 A. I'm sure we do.

20 Q. Okay. You would also agree with me that an integral
21 part of FBI investigations is surveillance in cases, is
22 that not correct?

23 A. Yes, sir.

24 Q. Okay. In fact that document you're holding says the
25 FBI can shift seamlessly between intelligence collection

1 and action allowing the agency to continue gathering
2 intelligence on a subject to learn more about his social
3 and financial network.

4 A. I don't see exactly where it says that but I'm not
5 going to doubt your word that it says that in here.

6 Q. You would agree with me that that seems like
7 something the FBI would put out wouldn't it?

8 A. [No response]

9 Q. Also, the FBI investigative philosophy emphasizes
10 close relations and information sharing with other
11 federal, state, local and international law enforcement
12 and intelligence agencies. Does that sound correct?

13 A. Sure.

14 Q. So what that says to me and what I'm hearing from
15 that document is the FBI is willing, ready, and
16 particularly able to assist. All you have to do is ask?

17 A. Sure.

18 MR. WEST: No further questions for this witness at
19 this time.

20 THE COURT: Anything on cross -- redirect?

21 MR. SOWARDS: Just a couple of questions, Your
22 Honor.

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REDIRECT EXAMINATION

BY MR. SOWARDS:

Q. Agent Simmonds directing your attention back to this case you obviously looked at the call detail records. Do those records indicate in that period of time that the phone registered to General Little received or made phone calls to 843-469-1507?

A. Yes, it had several transactions with that particular number.

Q. And I apologize for doing this to you but how many in that evening timeframe?

[Whereupon, the witness reviews document]

A. It might take me a few minutes to count it here by hand.

Q. Just starting at say 8 o'clock to 10 o'clock.

A. What was the number again?

Q. The number would be 843-469-1507.

[Whereupon, the witness reviews document]

A. Approximately seven or eight during that from about 8 to about 10 o'clock. And that's just the 1507 number mainly is calling General Little -- Doctor Little's phone.

And there is a couple that I see where Doctor Little's phone tried to return that phone call. So 12 to 14 times just as ---

State v General Theophilus Little
Clay Simmonds-Redirect Examination by Mr. Sowards
March 19, 2018

1 Q. --- during that two-hour timeframe?

2 A. Yes, as a general estimate, yes sir.

3 Q. Thank you Agent Simmonds. No further questions at
4 this time.

5 THE COURT: Thank you. You can return to your
6 place in the courtroom or be excused.

7 [Whereupon, the witness is excused and exits the
8 witness stand]

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1 THE COURT: Anything else today?

2 MS. BALDWIN: Nothing more today, Your Honor.

3 THE COURT: All right. Let me ask you. The
4 situation I have is I need to be at another location for
5 -- I'm a pallbearer at a funeral downtown tomorrow at --
6 I need to be there by 10:30 so I need to leave here by 10
7 o'clock I would say. So is it worthwhile for us to come
8 in at 9 o'clock and work till 10 o'clock?

9 MS. BALDWIN: Yes, Your Honor. We could come and
10 do a couple of short witnesses I believe.

11 THE COURT: Okay.

12 MS. ZMROCZEK: And Your Honor, what may assist the
13 court and the jury so we're not wasting everyone's time
14 if the prosecution and the defense can sit down and maybe
15 map out those witnesses so we're not just culling through
16 papers ---

17 THE COURT: --- I'm confident you can do that.
18 Everybody on the jury able to be here tomorrow morning at
19 9 o'clock? If not, raise your hand.

20 [Whereupon, no one responds]

21 THE COURT: All right. We'll look forward to
22 seeing you tomorrow morning. By the way have you been
23 elected as the Foreperson of the jury?

24 UNIDENTIFIED JUROR: No sir, I was wondering why he
25 didn't sit there.

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1 THE COURT: Well, try to take care of that either
2 this evening or before -- somebody else has been?

3 JUROR NUMBER 57: I left my stuff over here and just
4 came back over here.

5 THE COURT: That's okay. Tell me your name?

6 JUROR NUMBER 57: My name is [REDACTED].

7 THE COURT REPORTER: What's your juror number, sir?

8 JUROR NUMBER 57: 57.

9 THE COURT: Good. So you know then the routine.
10 You're going to move down there and move around or
11 whatever. Do not discuss the case with family, friends
12 or anyone else over the evening recess or really at any
13 time during the trial, at any time during the trial. It
14 would be improper. It would be a violation of your oath
15 to discuss this case with anyone other than the 12 of you
16 in the jury room at the conclusion of the case. Don't
17 discuss it while it's going on.

18 The only time you're to talk about it is as I said
19 when the 12 of you are together in the jury room at the
20 conclusion of the trial answering the question that you
21 must answer in this case. So please keep that in mind.
22 Don't do any research; look up things on your cell phone
23 or your computer. Hardly anybody needs to be told this
24 but don't watch the news on the local news or read the
25 newspaper, although I'm addicted to the newspaper; that's

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1 the first thing I do in the morning after getting my
2 coffee but I imagine maybe y'all don't do that. But stay
3 away from anything that might give you some information
4 outside of this courtroom outside of this trial, okay.

5 Now, I think that covers it. Leave your notepads
6 with the bailiffs as you leave. We'll keep them locked
7 up over the evening recess and give them back to you
8 tomorrow morning. Have a nice evening and see you
9 tomorrow at 9 o'clock.

10 [Whereupon, the jury exits at 4:16 p.m.]

11 THE COURT: Everybody stay here until the jury has
12 had an opportunity to clear the courthouse.

13 [Whereupon, court adjourns at 4:20 p.m.]
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 19th day of March, 2018.

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

July 31, 2018



Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

GENERAL THEOPHILUS LITTLE

Defendant

COURT OF GENERAL SESSIONS

DOCKET NO. 2016-GS-10-2883

TRANSCRIPT OF RECORD

March 20, 2018

Charleston, South Carolina

Volume 2 (of 5)

B E F O R E:

THE HONORABLE THOMAS L. HUGHSTON, JR., JUDGE

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Circuit Court Reporter

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1 PROCEEDINGS

2 THE COURT: Thank you. We're waiting on one juror
3 so as soon as that person gets here; we'll be ready to go
4 with the jury. Anything prior to bringing the jury in?

5 MS. BALDWIN: Nothing from the State.

6 THE COURT: So we're going from 9:00 to 10:00 and
7 then I'm going to feed the jury at 12 o'clock. And so
8 we'll start back at 1 o'clock. It'll be a long afternoon
9 but that's the way we have to do it.

10 [Off the record momentarily]

11 THE COURT: Before we begin, we'll pause for a
12 Moment if you don't mind, in memory of a great lawyer at
13 the Charleston Bar who recently died, John George Morris,
14 a dear friend and a great lawyer, in memory. All right.
15 Bring the jury in, somebody.

16 [Whereupon, the jury enters at 9:03 a.m.]

17 THE COURT: All right. We have the jury with us.
18 Glad to see you made it back safe and sound and on time
19 this morning. We appreciate that. Let me tell you about
20 what the schedule's going to be today. I'm a pallbearer
21 at a funeral at 11:00. I need to be there at 10:30. So
22 we've got to go till 10:00 and then I anticipate getting
23 back here about 12:00. And I would ask that you be back
24 at 12:00. Well, what it is we're going to feed you. I
25 think you already know that and ordered lunch for you to

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1 help save time, to keep you out of the weather if you
2 want to stay out of the weather. And so the lunch will
3 be here about 12 o'clock?

4 CLERK OF COURT: Yes, Your Honor.

5 THE COURT: It'll be available from then and so eat
6 your lunch and then we'll get started as soon as we can
7 after that. If we can get started by 12:30 and all,
8 that'd be nice and all. It's going to make for a long
9 afternoon, but we'll take some breaks during the
10 afternoon to try to keep us alert and focused on the
11 case. And, also, try to be here at 12 o'clock and then
12 finish your lunch by about 12:30 and we'll get started
13 with the trial again as soon as we can after that. All
14 right. Call your next witness.

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State v General Theophilus Little
Adrienne Jackson-Direct Examination by Mr. Sowards
March 20, 2018

1 MR. SOWARDS: Thank you, Your Honor. The State
2 calls Adrienne Jackson.

3 [Whereupon, Ms. Jackson comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: I need you to speak in that
7 microphone so we can hear you. State your full name for
8 the record spelling your last name for us. Thank you,
9 ma'am.

10 THE WITNESS: Adrienne Jackson, J-A-C-K-S-O-N.

11

12 ADRIENNE JACKSON,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SOWARDS:

17 Q. Good morning, Ms. Jackson. May I call you Adrienne?

18 A. Yes.

19 Q. All right. Adrienne, do you know the defendant,
20 General Little?

21 A. Yes.

22 Q. And how do you know him?

23 A. He's my father.

24 Q. And were you related to Barbara Little?

25 A. Yes.

1 Q. And how were you related to Barbara Little?

2 A. She's my mother.

3 THE COURT REPORTER: Ma'am, I'm sorry. You're going
4 to have to speak up a little bit.

5 A. She's my mother.

6 Q. [Mr. Sowards] And tell me about your mother,
7 Barbara?

8 A. She's the sweetest woman that I ever knew. She did
9 anything that she could for myself and my kids. She
10 would come to every event that they had from band to
11 grandparent day to whatever.

12 I was often running late because the kids were in
13 multiple activities and she would arrive there early and
14 hold seats for us. You know, I had events at my school;
15 I work at a school.

16 She would volunteer at the school. She knitted
17 fifteen hats for Lego robotics team that I was the coach
18 for. I mean, anything I ever asked, she was always
19 there.

20 Q. And where did your mother live?

21 A. In West Ashley, West Palmer Drive.

22 Q. And did she live by herself?

23 A. She lived with my sister, Kim.

24 Q. And how did your mother keep her house?

25 A. In terms of like safety or?

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1 Q. Correct. Safety, security?

2 A. She had an alarm system in her house. She always
3 kept all the doors locked. The front door was locked.
4 She had a glass door in front of the front door and that
5 was always locked. She even had a weapon. She had a gun
6 that she kept in the house.

7 She was very aware of her safety and, you know,
8 being the fact that, you know, she and my sister were
9 there alone. She always -- I mean, kind of like Fort
10 Knox; always had the house locked down.

11 Even if I was running to the grocery store and pick
12 up something, like we had Sunday dinner sometimes and she
13 would lock the door behind me and I would have to ring
14 the doorbell because you can't get into the glass door
15 until you -- you know, someone lets you in.

16 Q. And I want to ask you just a little bit about your
17 relationship with General Little. Did you maintain a
18 relationship -- well, first of all, how long were your
19 parents married, Barbara and General Little?

20 A. Up until my sophomore year in college, so.

21 Q. Do you remember about what time that was, what year?

22 A. '96.

23 Q. And you said -- I take it they were divorced at that
24 point?

25 A. Well, they were separated and then divorced.

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1 Q. And have you maintained a relationship with your
2 father, General Little since that time?
3 A. Yeah.
4 Q. And does -- has he remarried, do you know?
5 A. Yeah.
6 Q. And who is he married to currently?
7 A. Carla Washington Little.
8 Q. And do they have children?
9 A. Yeah.
10 Q. And how many children do they have?
11 A. They have three together. Carla had a daughter
12 before they got married.
13 Q. I want to talk about -- I know it's a very difficult
14 subject for you, but I want to take you to September 22nd,
15 2015. Start kind of at the first part of that evening.
16 Where were you that night; do you recall that?
17 A. I was home. It was a school night so the regular
18 school routine --
19 Q. And did you receive any phone calls that night that
20 you remember?
21 A. Yes, from Kim.
22 Q. And what did you tell -- do you remember when Kim
23 called you?
24 A. I don't remember the time but I do remember already
25 being in bed, so that would have been like after the

1 kid's bedtime and all of that when she first started
2 calling me.

3 Q. And what did you tell Kim when she called you?

4 A. Well, she called me at first and she was saying
5 that, you know, she's supposed to meet Dad for dinner.
6 He hadn't shown. She tried to call Mom because she was
7 bored since she was, you know, she was just kind of
8 sitting at the table by herself and she wasn't answering
9 her phone.

10 You know, thinking for a minute, you know, she could
11 be in the bathroom, you know, just -- and she called me
12 back again. I said well call A.J. See if A.J. can go
13 around the corner and check on her. It's something I've
14 actually done before.

15 Q. And after you talked to Kim and told her to call
16 A.J., did you receive any more phone calls that evening?

17 A. After Kim kept calling me, I was getting nervous so
18 I started calling everyone. I was calling my Dad to see
19 where he was.

20 I started calling, you know, my Mom, the house, her
21 cell phone, calling, you know, like my Dad's house,
22 calling Carla. I even called his daughter Callie. I was
23 just trying to get in touch with someone because no one
24 was answering their phone.

25 Q. You said you called Callie. Did you actually speak

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1 with Callie?

2 A. Yeah, I did.

3 Q. And what was that conversation -- well, why did you
4 call Callie?

5 A. Well, I figured none of the adults were answering
6 the phone. The kids always have their phones in their
7 hands so I called her and just wanted to know, you know,
8 where my Dad was; if she knew where he was. Where her
9 Mom was because her Mom wasn't answering the phone. And
10 she told me her Mom was downstairs ---

11 MR. SCHWARTZ: --- objection, Your Honor. Hearsay.

12 THE COURT: You want to be heard? I couldn't
13 understand you.

14 MR. SCHWARTZ: It's hearsay, Your Honor.

15 THE COURT: Do you want to be heard?

16 MR. SCHWARTZ: No, Your Honor, I'll ask another
17 question.

18 THE COURT: Well, ask another question.

19 Q. [Mr. Sowards] Just generally talking about what you
20 were able to do, were you able to speak with Carla?

21 A. Yes. Callie gave Carla the phone.

22 Q. And were you able to speak with your Dad?

23 A. No, Carla said that he wasn't there.

24 Q. Now, I want to -- well, did you go to your mother's
25 house that night?

1 A. I was on the way and -- like I said, I kept calling
2 everyone. A.J. said to not to come. I got about -- I
3 don't think I was outside of Summerville. I was coming
4 the back way. And A.J. told me not to come so I never
5 made it to my Mom's house that night.

6 Q. So you turned around and went home?

7 A. Uh-huh.

8 THE COURT REPORTER: Is that a yes?

9 A. Yes.

10 Q. [Mr. Sowards] Now, you testified that you obviously
11 had a relationship with your mother and you maintained
12 one with your father. What was their relationship like
13 after the divorce?

14 A. You know, strained at first. After I started having
15 kids, you know, they were both coming to events with the
16 kids. You know, we always joked about my house being
17 like Switzerland so they would come to events at my house
18 together. It was cordial.

19 Q. Now, are you familiar -- do you know did your Dad
20 pay alimony to your mother?

21 A. Yes.

22 Q. So you're familiar with the alimony situation
23 between your mother and your father?

24 A. I know that he didn't always pay it. I know that he
25 didn't always pay the full amount. I know that when he

1 started working at Beaufort he would go by her house and
2 drop off the check for her to deposit because I've
3 actually gone with her to deposit the check for him. He
4 said that he -- I guess he wasn't able to get downtown to
5 pay it, so he would drop the check off at her house.

6 Q. You mentioned he was working at Beaufort. Do you
7 know where in Beaufort?

8 A. At the V.A.

9 Q. And how do you know he worked at the V.A.?

10 A. I helped him with his job application.

11 Q. Why the V.A.? Why did you help him get a job there?

12 A. He had his private practice here and it was moving
13 toward, you know, more of electronic. And it just would
14 have made things easier for him to work in a hospital
15 that, you know, he didn't have to do all of that -- the
16 transfer scanning of all of his client's documents and
17 all of that kind of stuff. And he had a friend that
18 worked for the V.A. and recommended it, so that was what
19 he was moving towards.

20 Q. Do you know whether his wages were being garnished?

21 A. I do know that that was being put into place. I
22 don't know when exactly it began. I want to say it
23 started in September, but I don't know that for sure.

24 Q. I want to ask you too about your mother's health at
25 the time. Were you familiar with her health, sort of in

1 the years and months leading up to September 22nd, 2015?

2 A. I know it was something that would concern me. She
3 smoked and we were at a band competition with my son
4 right before that and she fell.

5 We were going into a restaurant and she was walking
6 up the curb and fell, so that was something that I was
7 concerned about, her health. She was supposed to start
8 volunteering at my school. I just wanted to make sure
9 that she was up and moving around and still living an
10 active lifestyle.

11 Q. Now, there's been testimony that your mother was
12 found in the bathroom and she was not wearing underwear
13 under her nightgown. What do you make of that?

14 A. I would think it was consistent with my Mom. It
15 would have been -- at night she would walk around in like
16 her house gown or her gown and she would typically not
17 have on underwear.

18 MR. SOWARDS: I beg the Court's indulgence.

19 [Whereupon, Ms. Baldwin and Mr. Sowards confer]

20 Q. I have no further questions at this time. Please
21 answer any questions the defense may have.

22 MR. SCHWARTZ: Court's indulgence, Your Honor.

23 [Whereupon, Mr. Schwartz and Mr. West confer]
24
25

CROSS-EXAMINATION

1
2 BY MR. SCHWARTZ:

3 Q. Good morning, Ms. Jackson. I just have a few
4 questions for you. Is it true that your father had been
5 ruled in several times for failing to pay the full amount
6 of alimony?

7 A. Yes.

8 Q. And you were an advocate for your father to continue
9 paying those alimony payments to your mother, correct?

10 A. Yes.

11 Q. And you, in fact, you helped her and your brother, I
12 believe, Chris, file for those wage garnishments; is that
13 true?

14 A. What do you mean by filed?

15 Q. Encouraged her to do it?

16 A. Yes.

17 Q. Okay. And to the best of your knowledge those
18 garnishments were done several months prior to her --
19 September 22nd?

20 A. I don't remember when they began.

21 Q. Okay. But it was prior to him having, for General
22 Little having notice of the court hearing coming up for
23 failing to pay?

24 A. I don't know.

25 Q. Okay. Did Dr. Little ever go to jail for failing to

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1 pay alimony?

2 A. Not to my --

3 THE COURT REPORTER: I'm sorry. I didn't hear your
4 answer.

5 A. Not to my knowledge.

6 Q. [Mr. Schwartz] And he and Barbara maintained a
7 cordial relationship after their divorce?

8 A. Well, around myself and my kids, yes.

9 Q. Okay.

10 MR. SCHWARTZ: I have no further questions of this
11 witness, Your Honor.

12 THE COURT: Thank you very much. You can return to
13 your place in the courtroom.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 THE COURT: Call your next witness.
17
18
19
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24
25

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1 MS. BALDWIN: The State calls Christopher Little.
2 [Whereupon, Mr. Little comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Please speak into the microphone so
6 we can hear you. State your full name for the record
7 spelling your last name for us. Thank you.
8 THE WITNESS: Chris Little, L-I-T-T-L-E.
9 - - - - -
10 CHRIS LITTLE,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MS. BALDWIN:
15 Q. Chris, how old are you?
16 A. Forty-three.
17 Q. Do you have any children?
18 A. Two.
19 Q. And how old are they?
20 A. Five and three.
21 Q. And do you have any siblings?
22 A. Three -- or two, sorry. Yes, Adrienne and Kim.
23 Q. Adrienne and Kim? And who is your father?
24 A. Dr. Little over there [indicates].
25 Q. Where is he?

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- 1 A. Right there [indicates].
- 2 Q. Could you describe what he's wearing, please?
- 3 A. A grey suit.
- 4 Q. Who is your mother?
- 5 A. Barbara Little.
- 6 Q. And were your parents together or separated when
- 7 your mother was killed?
- 8 A. Divorced.
- 9 Q. They were divorced. How long had they been
- 10 divorced?
- 11 A. Since -- I guess 19 years, from '96 to '15. From
- 12 '97, I guess.
- 13 Q. Did your father pay alimony to your mother?
- 14 A. Not consistently.
- 15 Q. How much was he supposed to pay approximately?
- 16 A. I think it was 2,300 bucks a month.
- 17 Q. And, Chris, what do you do for a living?
- 18 A. I'm a lawyer.
- 19 Q. Where do you practice?
- 20 A. In Atlanta.
- 21 THE COURT: Where?
- 22 THE WITNESS: Atlanta.
- 23 Q. [Ms. Baldwin] You said your father didn't pay
- 24 alimony consistently?
- 25 A. No.

1 Q. What was your involvement with that situation?

2 A. So, I would help Mom out from time to time, you
3 know, when it got really bad or when she was having
4 trouble paying the bills and the mortgage, I would help
5 her out.

6 You know, I've got my own firm. I'm self-employed
7 like he was. I understand the struggles, right. So we
8 would -- I could almost excuse -- not the delays but I
9 can understand being self-employed how money comes in, a
10 lot of it sometimes, not a lot at other times, right.

11 So when he got the job at the V.A., when you're a W-
12 2 employee, you get a consistent paycheck every single
13 time and your salary is 200,000 dollars and you can't pay
14 2,300 bucks, that's a little ridiculous.

15 So when he got that job, I went and got -- I went
16 and called a friend of mine who's an attorney as well
17 here to set up the garnishment. And it shouldn't be a
18 hard payment to make. But yet I had to lend her probably
19 20,000 dollars over a year and a half or so.

20 Q. Did you ever take to your father about that?

21 A. No. I was angry about it because -- again, it's ten
22 percent of his salary. If you can't budget for that and,
23 you know, and you're supposed to be a smart person and
24 you can't come up with a dam budget. Sorry.

25 Q. Did your mother have any other sources of income?

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1 A. Social Security.

2 Q. Approximately when did that garnishment begin?

3 A. I don't remember the exact date. There was a couple
4 of hearings where he'd been ruled in. I want to say -- I
5 guess -- Adrienne said September, that sounds about
6 right, the prior September.

7 I know that Michael, the attorney who I -- my
8 friend, who filed everything served the, I guess or was
9 going to serve him in March with something. I don't know
10 exactly what that was. I don't know if that was the
11 17,000 dollars that we were talk about. I didn't know
12 anything about that.

13 Q. You mentioned he'd been ruled in before?

14 A. Yeah.

15 Q. For what?

16 A. For not paying the alimony.

17 Q. Do you know how much he'd been ruled in for
18 previously?

19 A. I don't remember exactly. I know that there was --
20 after Mom passed away there was sixty-nine thousand
21 dollars owed.

22 Q. Do you know if it was more or less than that on
23 previous rules?

24 A. I don't.

25 Q. When did you hear about what happened to your

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1 mother?

2 A. September 22nd.

3 Q. And where were you when you heard about it?

4 A. I was at home.

5 Q. And where's home again?

6 A. I'm sorry. In Lawrenceville, Georgia.

7 Q. And take your time. If you need a break, if you need
8 a moment, that's okay. Did you talk to your siblings
9 that evening?

10 A. Adrienne called me and she didn't know much at the
11 time, just that she couldn't find Kim -- you know, she
12 walked me through exactly what she said just before I
13 came up here. You know, she told me exactly the same
14 story.

15 Q. When you say the exact same ---

16 A. Oh, I'm sorry. Just the events. You know, she
17 couldn't find Kim. She couldn't -- she called everybody
18 she could, couldn't get anybody on the phone. You know,
19 that she was on the way over, you know, something had
20 happened to Mom and that A.J. had told her to turn around
21 and go home. And so then I called A.J. and he told me
22 what he saw.

23 Q. What went through your head when you heard about
24 your Mom?

25 A. I mean, at first, you know, shock, sadness, you

1 know, but you're inevitably you start asking the why,
2 who, what and when questions. You know, Adrienne -- it's
3 hard because what Adrienne -- logic -- so when she told
4 me the story, the part about Kim supposed to meet Dad,
5 him giving her some kind of runaround, running her all
6 over town, knowing what I knew, I mean, I hated it but I
7 mean, it took fifteen minutes for me to come to the
8 conclusion that based on what I'd heard, you know, that
9 he was likely the one that did it.

10 Q. Did you talk to your Dad about anything?

11 A. Not that -- no, not that evening.

12 Q. When did you talk to him?

13 A. The next day. He called looking for Kim, asking, I
14 guess, you know, where she was? He needed to talk to her
15 and she wasn't answering his calls.

16 Q. He just told you he was trying to get in touch with
17 Kim?

18 A. Yeah.

19 Q. Did he say anything else?

20 A. Well, yeah. So, there's a couple of things. I
21 mean, he was looking for Kim and said that the -- said --
22 the way the conversation went was the cops think I did
23 this to your mother. I need to talk to Kim to see what
24 timeline she gave them. And I was in shock because I'm
25 like how -- it felt like he was playing defense. I mean,

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1 you don't even say I'm sorry, what happened to your
2 mother. No, no, oh, my God, I can't believe this
3 happened; no emotion whatsoever. A.J. heard it, I had
4 put it on the speaker phone, you know.

5 And he was asking about Kim and a timeline when, you
6 know, my mother is -- I just -- who does that? How do
7 you not say that to somebody that you know, you know?

8 MS. BALDWIN: Court's indulgence.

9 [Whereupon, Ms. Baldwin and Mr. Sowards confer]

10 Q. I have no further questions for you, Chris.

11 THE COURT: Mr. Schwartz?

12 MR. SCHWARTZ: Judge, thank you.

1 CROSS-EXAMINATION

2 BY MR. SCHWARTZ:

3 Q. Mr. Little, your folks were divorced in 1996?

4 A. Yes.

5 Q. And we know your father owed your mother alimony

6 every month since then, right?

7 A. Yes.

8 Q. And we know that he's been behind for years?

9 A. Yes.

10 Q. All right. And, I mean, I think we can all agree

11 that he was bad with his money?

12 A. Yes.

13 Q. But he did support you growing up?

14 A. Yes.

15 Q. And your siblings as well?

16 A. Yes.

17 Q. Paid for y'all to go to private high schools?

18 A. Yes.

19 Q. Paid for y'all's cars?

20 A. Yes.

21 R. Right. Your mother relied on Dr. Little for alimony

22 payments as well as Social Security to survive

23 financially?

24 A. Yes.

25 Q. And she had ruled him in numerous times over the,

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1 almost twenty years they had been divorced?
2 A. Yes.
3 Q. And they've always kind of worked out a deal prior
4 to going to court to keep him out of jail?
5 A. Yes.
6 Q. And he's never done any jail time for any of this?
7 A. No.
8 Q. And at some point prior to this incident you, in
9 fact, called an attorney and had him establish a wage
10 garnishment?
11 A. Yes.
12 Q. Do you recall calling the V.A. Hospital and checking
13 up on that garnishment and finding out that you had sent
14 the paperwork -- somebody had sent the paperwork to the
15 wrong V.A. office?
16 A. I think so.
17 Q. Would it refresh your memory if that was in June of
18 2015?
19 A. That sounds about right.
20 MR. SCHWARTZ: Court's indulgence?
21 [Whereupon, Mr. West, Mr. Schwartz and Ms. Zmroczek
22 confer]
23 Q. [Mr. Schwartz] Do you recall meeting with Detective
24 Muirheid at some point right after the incident?
25 A. Yes.

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1 Q. And I believe you were there and Kim was there and
2 also Adrienne?

3 A. Yes.

4 Q. Do you recall making the statement to Detective
5 Muirheid that this was not enough money that somebody
6 would kill somebody over?

7 A. I'm sorry?

8 Q. Do you recall making a statement to Detective
9 Muirheid that this amount of money that he owed was not
10 enough for somebody to kill somebody over?

11 A. I don't know my exact statement. The context that I
12 -- knowing myself, what I was saying is, I can't believe
13 somebody would kill somebody over such -- over that sum
14 of money.

15 Q. So that's a yes?

16 A. That's my answer.

17 THE COURT REPORTER: I'm sorry. I didn't hear you.

18 A. That's my answer.

19 MR. SCHWARTZ: No further questions, Your Honor.

20 THE COURT: Thank you very much. You may return to
21 your place in the courtroom.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 THE COURT: Call your next witness.

25

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1 MS. BALDWIN: Your Honor, may we approach?

2 [Whereupon, an off the record bench conference is
3 held]

4 THE COURT: All right. I'm informed that we've
5 reached the end of witnesses for this morning. And I'll
6 try to keep things on track and proceed as expeditiously
7 as possible. So we're going to stop and come back. As I
8 said, I'd ask you to be back -- what time did I say? We
9 want to be back and in here by 12:30. And also, try to
10 be back at -- lunch is at 12:00, be back in the courtroom
11 at 12:30 hopefully. All right. So see you back here
12 then. Take your note pads with you to the jury room, and
13 bring them back then.

14 [Whereupon, the jury exits at 9:30 a.m.]

15 THE COURT: Be seated. I think I'm going to have to
16 interrupt this for a sentencing that I have scheduled. I
17 took the plea back some time ago and asked for a pre-
18 sentence investigation. And that has now been completed
19 and the lawyers and the gentleman who's in jail are ready
20 to go ahead with that.

21 And I think I've scheduled that to come in 2
22 o'clock. So we may have to take like a fifteen minute
23 break for me to do that at 2 o'clock. So I wanted to
24 alert you to that, also. All right. We'll be back then
25 when I said we'd be back.

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1 [Whereupon, court in recess from 9:32 a.m. to 12:41
2 p.m.]

3 THE COURT: Thank you. All right. Bring the jury.
4 Somebody go out and bring the jury in. Who is your next
5 witness?

6 MS. BALDWIN: Kimberly Little.

7 THE COURT: Is she present?

8 MS. BALDWIN: Yes, sir.

9 THE COURT: Have her come on up. You can wait right
10 there. Just leave her right there [indicates] until
11 everybody gets in -- wait, wait, wait right there. Wait,
12 right there. I don't want to isolate you yet.

13 [Whereupon, the jury enters at 12:42 p.m.]

14 THE COURT: Just go ahead and be seated. All right.
15 I hope you had a nice lunch. We'll continue now with the
16 trial. Next witness.

17

18

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State v General Theophilus Little
Kimberly Little-Direct Examination by Ms. Baldwin
March 20, 2018

1 MS. BALDWIN: The State calls Kimberly Little.
2 [Whereupon, Kimberly Little comes forward.
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Speak into the microphone so we can
6 hear you. State your full name for the record spelling
7 your last name for us, ma'am. Thank you.
8 THE WITNESS: Kimberly Little, L-I-T-T-L-E.
9 - - - - -
10 KIMBERLY LITTLE,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MS. BALDWIN:
15 Q. You just need to speak into that microphone really
16 loud so that the court reporter can hear what you're
17 saying okay?
18 THE COURT: Will that chair slide up? That helps
19 sometimes.
20 Q. [Ms. Baldwin] I want to make sure everybody can hear
21 you. Ms. Little, do you go by Kim or Kimberly?
22 A. Either one; you can call me Kim.
23 Q. Okay. Kim, how old are you?
24 A. Forty-one next month.
25 Q. You're forty-one next month. Do you work?

1 A. Yes.

2 Q. What do you work doing now?

3 A. Post closer for my brother at Parkway [phonetic].

4 Q. Okay.

5 THE COURT REPORTER: A what?

6 A. A post closer.

7 Q. What is that exactly?

8 A. Oh, wow ---

9 Q. --- just briefly.

10 A. Okay. Briefly, basically after the attorneys finish

11 the closings, then the closers finish everything. I

12 basically get everything out to lenders, the final stuff.

13 Q. Okay. Do you have any children?

14 A. No.

15 Q. And are you married?

16 A. Divorced.

17 Q. How long have you been divorced?

18 A. April 2016, I believe.

19 Q. What was the status of your marriage in September of

20 2015?

21 A. I was living with my Mom so I guess not legally

22 separated but separated.

23 Q. You weren't living with your husband?

24 A. I wasn't living with him but no legal paperwork or

25 anything like that.

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1 Q. Okay. Who's your father?

2 A. Doctor Little, G.T. Little.

3 Q. Is he in the courtroom today?

4 A. Yes.

5 Q. Do you know what kind of car he drove back in
6 September of 2015?

7 A. Yes, silver Toyota Sequoia.

8 Q. And do you remember his address at the time?

9 A. I know how to get there, but the actual numbers, I
10 can't tell you that. I know how to get there.

11 Q. Who was your Mom?

12 A. Barbara Little.

13 Q. Okay. And you said you were living with your Mom at
14 the time?

15 A. Yes.

16 Q. What address was that?

17 A. 2317 West Palmer Drive, Charleston. Here; here in
18 Charleston, South Carolina.

19 Q. What neighborhood?

20 A. Drayton on the Ashley.

21 MS. BALDWIN: Your Honor, may I approach the
22 witness?

23 THE COURT: Sure.

24 Q. [Ms. Baldwin] Kim, I'm going to show you what's been
25 marked as State's exhibit 10. Do you know what that is?

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1 A. That's our house.

2 Q. Okay.

3 MS. BALDWIN: At this time I'd like to admit State's
4 Exhibit 10 into evidence.

5 MS. ZMROCZEK: No objection, Your Honor.

6 THE COURT: So that's State's Exhibit what?

7 MS. BALDWIN: 10, Your Honor.

8 [Whereupon, State's Exhibit Number 10 is entered
9 into evidence by the court]

10 [Whereupon, the photograph is shown]

11 Q. [Ms. Baldwin] And Kim, that's your house?

12 A. Yes.

13 Q. Okay. Where you lived with your Mom?

14 A. Yes.

15 Q. Anyone else live there?

16 A. No.

17 Q. And where were you living -- or where were you
18 working back in September of 2015?

19 A. I was taking care of my aunt -- well, my great aunt.
20 She's ninety now. My grandma's sister.

21 Q. Okay. Do you remember where she was living?

22 A. The same house as always; [REDACTED]

23 [Whereupon, State's exhibit number 134 is marked by
24 the court reporter]

25 Q. Kim, I'm going to show you State's Exhibit 134 for

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1 I.D. Do you know what that is?

2 [Whereupon, the witness is shown map]

3 A. It's a map, has our address -- that would be my
4 Dad's Ruth's great aunt's house.

5 Q. Okay. I'll put it up on the screen.

6 MS. ZMROCZEK: Your Honor, I believe they have to
7 move it into evidence before they publish it.

8 THE COURT: Yeah, you want to put it into evidence?

9 MS. BALDWIN: Well, I'd like to put it in just as
10 demonstrative evidence, Your Honor. I don't think that I
11 need to move it in for her just to point it out.

12 THE COURT: Well, it's going to be shown to the
13 jury, and all. I think you ought to put it into
14 evidence.

15 MS. ZMROCZEK: I have no objection to that. I just
16 think that's the proper way to...

17 MS. BALDWIN: Well, if Your Honor insists, I will
18 move State's 134 into evidence.

19 THE COURT: In evidence without objection.

20 [Whereupon, State's exhibit number 134 is entered
21 into evidence by the court]

22 [Whereupon, the map is shown]

23 Q. [Ms. Baldwin] Now, it's a little hard to see on
24 there but -- so where is your aunt's house? And if
25 you touch that screen; it's a touch screen so you can

1 actually make a little mark.

2 THE COURT: You can help her if you want to.

3 A. Can you shrink it? I don't think it's on here.

4 Q. [Ms. Baldwin] Is it hard to see?

5 A. No, wait.

6 Q. Can you see a little bit better now?

7 A. Yeah. The one with the red...

8 Q. Right about in there [indicates]?

9 A. Yeah.

10 Q. Okay.

11 THE COURT: Right in where?

12 THE WITNESS: [REDACTED]

13 THE COURT: Well, I know. But can you point that
14 out on the map?

15 THE WITNESS: Right here [indicates]. This location
16 right here [indicates]. It's putting up red, but I'm
17 touching the thing.

18 Q. You could do a circle if you want just to help
19 everybody out?

20 A. Okay.

21 THE COURT: Okay. Thank you.

22 Q. Okay.

23 A. Okay.

24 Q. [Ms. Baldwin] And it's a little off from that but
25 where is your -- where were you living?

- 1 A. [Indicates on screen]
- 2 Q. Okay. And where was your father's house?
- 3 A. Here [indicates]..
- 4 Q. Okay. So tell me about your Mom. What was she
- 5 like? What kind of person?
- 6 A. Oh wow. Quiet, sweet, selfless, didn't like to be
- 7 in other people's, you know, business and drama, you
- 8 know, any family drama, whatever, she never liked to be
- 9 in that or anything like that. She was just, you know, a
- 10 cool Mom, just chill and nice.
- 11 Q. Were you and she friendly?
- 12 A. Uh-huh. Oh yeah, very.
- 13 Q. Was she a smoker?
- 14 A. Yeah.
- 15 Q. Where did she keep her cigarettes?
- 16 A. In her pocket. In her -- she would have a
- 17 housedress mostly at home, in her pocket. But if we went
- 18 out it would be in her purse.
- 19 Q. At nights, where would she smoke?
- 20 A. Either the back porch or the garage.
- 21 Q. When would she lock her doors?
- 22 A. At night or if she's home alone or I'm home alone,
- 23 we'd keep the doors locked.
- 24 Q. Did she have a cell phone?
- 25 A. Yeah.

- 1 Q. Would she keep it on vibrate or let it ring?
- 2 A. Either way it just depends. She's like --
- 3 THE COURT REPORTER: I'm sorry. I didn't hear that.
- 4 A. It depends, just like pretty much everyone else
- 5 sometimes you put it on vibrate, sometimes it's on ring;
- 6 it just depends.
- 7 Q. Okay. I'm going to bring you to the night of
- 8 September 22nd of 2015. Did you talk to your Dad that
- 9 evening?
- 10 A. Yeah.
- 11 Q. Did you talk to your Dad?
- 12 A. Yeah.
- 13 Q. Okay. What did you talk to your Dad about?
- 14 A. He was asking me to meet him at IHOP at 9:15; the
- 15 one on Savannah Highway at was on the map.
- 16 Q. He asked you to meet you at the IHOP on Savannah
- 17 Highway? What were y'all supposed to do there?
- 18 A. Yes, right.
- 19 Q. What were y'all supposed to do there?
- 20 A. Eat. He wanted me to get him an omelet and I got
- 21 pancakes.
- 22 Q. So he gave you his order?
- 23 A. Yes.
- 24 Q. About what time did you leave the house?
- 25 A. I'm going to guess about 8:30-ish, close to 8:40;

1 8:30 to 8:40, depending on that time.

2 Q. And what did your Mom do as you were leaving?

3 A. She was -- at the exact time I was walking out the
4 door, she was at the front door to lock it. And
5 basically I just told her I'd see her when I got back.

6 Q. Did your Mom lock the front door?

7 A. Yeah. And you got to lock the glass door and then
8 the hard door.

9 Q. And how do you know that she locked it?

10 A. Because I was there when she locked it because I
11 made sure she locked it.

12 Q. I'm going put State's 134 back up for it. You went
13 to IHOP then?

14 A. Yes.

15 [Whereupon, the map is shown]

16 Q. Can you show up there on the map where the IHOP is?

17 A. It's on Savannah Highway.

18 Q. Okay. What did you do when you got to IHOP?

19 A. I got there early so I just kind of got a table and
20 chilled for a while. But the whole time or just as soon
21 as I got there?

22 Q. Well you said you chilled for a while. Was your Dad
23 there?

24 A. No, I was there by myself.

25 Q. Okay. Did your Dad ever arrive at IHOP?

1 A. No.

2 Q. So when you say you chilled there, what about were
3 you doing?

4 A. I mean I was by myself. I mean, I was sitting there
5 by myself throughout the time period making calls because
6 I was trying to find out where he was and I called my
7 Mom, but she never answered either. And my sister.

8 Q. So you called your Mom?

9 A. Uh-huh.

10 THE COURT REPORTER: Is that yes?

11 A. Yes. Sorry.

12 Q. Your sister?

13 A. Yes.

14 Q. And your Dad?

15 A. Yes.

16 Q. Okay. Did you ever meet your Dad while you were on
17 the phone at the IHOP?

18 A. No.

19 Q. Did you try calling him or texting him or both?

20 A. I had called him. I tried calling him a number of
21 times. I don't know how many times, but I know it was
22 more than once because I was worried.

23 I called my Mom, I believe a few times. I can't
24 tell you the number of times because she wasn't answering
25 and that's not normal. And I did get in touch with my

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1 sister.

2 Q. Do you remember what phone number you would use for
3 your Dad?

4 A. 509-3564. I think that was his number.

5 Q. Did you have it programmed into your phone?

6 A. Yeah.

7 Q. Okay. Who did you get a hold of on the phone while
8 you were calling these people?

9 A. While inside, my sister.

10 Q. Okay. And your sister, what's her name?

11 A. Adrienne.

12 Q. Okay. And what did you do as a result of talking to
13 Adrienne?

14 A. Basically, I asked her to call Mom because she
15 wasn't answering and Dad, because neither one were
16 answering, because I couldn't get through.

17 Q. Does your mother usually answer the phone when you
18 call her?

19 A. Yes.

20 Q. What else did you do? Did you talk to anybody else
21 while you were at the IHOP?

22 A. The waiter.

23 Q. Did you talk to any other family members?

24 A. While inside?

25 Q. Inside or outside?

1 A. Oh, outside as -- I don't think I was at the
2 outside. I think by the time -- I end up calling my
3 uncle eventually but I don't think I was at the outside
4 when I called my uncle. I think I was in the process of
5 driving off if I remember correctly.

6 Q. Okay. Do you recall about what time you left IHOP?

7 A. They close at 10:00 so it would have been close to
8 that time because there wasn't a lot of people inside.

9 Q. Did you order any food while you were there?

10 A. Yeah.

11 Q. What did you do with that food?

12 A. I took it with me. I paid for it.

13 Q. Let me show you what's been marked as State's 104.

14 [Whereupon, the witness is shown exhibit]

15 Q. Can you tell me what that is?

16 A. An IHOP receipt, my IHOP receipt. IHOP receipt.

17 MS. BALDWIN: Your Honor, at this time I'd like to
18 admit State's 104 into evidence.

19 MS. ZMROCZEK: Without objection, Your Honor.

20 [Whereupon, State's exhibit number 104 is entered
21 into evidence by the court]

22 Q. [Ms. Baldwin] So you paid for it?

23 A. Yes, I paid for the meals.

24 Q. Is that your bill that showed up in front of you?

25 A. Yes.

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- 1 Q. Okay. Did you eventually talk to your Dad?
- 2 A. Yeah.
- 3 Q. Do you recall about what time?
- 4 A. After I, you know, finished paying and everything
- 5 and left. I shot him a text to let him know it was
- 6 closing at 10:00 and then he called me.
- 7 Q. What did your Dad say when you talked to him?
- 8 A. Well, I told him on the phone again, you know, they
- 9 close at 10:00. And I guess we both were kind of shocked
- 10 because I think they used to be a 24 hour or whatever.
- 11 But eventually he just asked me to meet him at the Waffle
- 12 House.
- 13 Q. Did you tell your Dad that you had ordered food for
- 14 him?
- 15 A. Yes.
- 16 Q. Okay. But he told you to meet you at the Waffle
- 17 House?
- 18 A. Yes.
- 19 Q. What did you think about that?
- 20 A. Strange.
- 21 Q. Why was that strange?
- 22 A. Because I already had the food.
- 23 Q. And so what did you do after that, after you talked
- 24 to your father?
- 25 A. Well, after that I was just kind of like, okay. And

1 I was going to go meet him, but in route there, that's
2 when, you know, my uncle and I were on the phone and he,
3 long story short he told me something happened to Mom.

4 So I didn't go to the Waffle House, but I did
5 eventually tell my Dad I wasn't going to meet up because
6 I didn't want him to go to the Waffle House and I not be
7 there.

8 Q. Okay. And what did your Dad say in response to you
9 saying something -- you couldn't meet him at the Waffle
10 House?

11 A. He was -- I remember thinking he said okay.

12 Q. Did you tell him why you couldn't meet him at the
13 Waffle House?

14 A. Yeah, I just said A.J. said something happened to
15 Mom.

16 Q. So where did you go?

17 A. Home.

18 Q. And what did you do when you got home?

19 A. I remember parking the car. I remember a lot of
20 cops. I remember a pastor there, a pastor for the police
21 or whatever.

22 Basically, like you're asking like what did I do. I
23 mean, I got there but it was taped up. You can't go in
24 the yard or the house or anything like that.

25 Q. Did you want to go into the house?

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- 1 A. Yeah.
- 2 Q. Why did you want to go in the house?
- 3 A. Because he said something happened to my Mom.
- 4 Q. Did you speak to your Dad again that evening?
- 5 A. Yes. A lady -- I thought it was a cop, but I'm
6 learning later she's a detective. She asked me to call
7 him to come to the house.
- 8 Q. And did your Dad ever show up to the house?
- 9 A. No.
- 10 Q. Okay. Did he ever show up there to comfort you?
- 11 A. No.
- 12 Q. Was Adrienne at the house when you were talking to
13 your Dad?
- 14 A. No.
- 15 Q. After that conversation that you had telling your
16 Dad to come to the house, did you talk to your Dad on the
17 phone again?
- 18 A. I don't remember if that was the last call or not.
19 I don't remember.
- 20 Q. Did you talk to other family members after this
21 happened?
- 22 A. Yes. I believe I called my brother. I believe I
23 called a cousin. I can't remember if I called Adrienne
24 again but I may have.
- 25 MS. BALDWIN: Court's indulgence.

1 [Whereupon, Ms. Baldwin and Mr. Sowards confer]
2 Q. [Ms. Baldwin] Kim, please answer any other questions
3 that the defense may have.
4 A. Okay.
5 MS. ZMROCZEK: May it please the Court?
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CROSS-EXAMINATION

1
2 BY MS. ZMROCZEK:

3 Q. What's up? What's wrong? Those are the first two
4 words that came out of your mouth when you got out of the
5 car.

6 A. Okay.

7 Q. To your house, right?

8 A. I don't remember. I'm going to be honest, ma'am.
9 So if you tell me that's what I did...

10 Q. Well, are you familiar that police officers have
11 video cameras in their cars?

12 A. Yes.

13 Q. And that they capture audio?

14 A. Yes.

15 Q. And, in fact, you were present for a hearing prior
16 to this trial where that was discussed, right?

17 A. That they have cameras, yes.

18 Q. And have you had an opportunity to listen to it
19 since then?

20 A. Which one?

21 Q. Any of the tapes that you're on?

22 A. The one where I was in a cop car.

23 Q. Okay. So you listened to the interview with
24 Investigator Thompson?

25 A. I guess that's his name.

1 Q. Okay. In the police car, right?

2 A. Yes.

3 Q. All right. And we'll come back to that, but I want
4 to talk first about when you got out of the car, okay?

5 A. Okay.

6 Q. And I'm going to try to keep things organized.
7 There's a lot to ask you. So if you have any questions
8 or you don't understand my question, just make sure that
9 I can clarify it for you, okay?

10 A. Okay.

11 Q. All right. So you tell the officers and A.J.,
12 you've got to tell me what happened, right?

13 A. Okay. If you say -- I mean, that -- I don't know
14 what I said outside so -- I didn't see cameras or
15 anything. Said like standing outside?

16 Q. Where ---

17 A. --- the only thing I got to review was the one in
18 the car where I'm in the car with the detective. That's
19 the one I got to review, but what I said outside, I don't
20 know.

21 Q. That they --

22 A. I don't know exactly what I said when I said it.

23 Q. Okay. Would it refresh your recollection to hear or
24 see that video?

25 A. Okay.

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1 MS. ZMROCZEK: Your Honor?

2 THE COURT: Go right ahead.

3 MS. ZMROCZEK: Thank you.

4 MS. BALDWIN: Your Honor, if I may ask if the jury
5 may step out since that's not been admitted into the
6 evidence yet.

7 THE COURT: Well, can you maybe help us along by --
8 can admit that that's what she said for her or something?

9 MS. BALDWIN: I mean, I think if she asked her if
10 she said but she says couldn't remember. I mean, we
11 could definitely play the video for her, but I don't
12 think it's in the presence of the jury.

13 THE COURT: I agree with you. But, I mean, but you
14 know what it said, don't you?

15 MS. BALDWIN: Yes, sir.

16 THE COURT: Well, can you admit that as true or not?

17 MS. BALDWIN: I don't know if that's the proper way
18 to do it, Your Honor.

19 THE COURT: Well, I'm asking you.

20 MS. BALDWIN: I'm not going to object if she asks
21 those questions about whether or not she said it.

22 THE COURT: Well, do you know what she said?

23 MS. BALDWIN: Yes, Your Honor.

24 THE COURT: You either contest that or say no,
25 that's what she said?

1 MS. BALDWIN: I don't know what every single
2 question she's going to ask is. I can say that this
3 particular question ---

4 THE COURT: --- help us on this one point. Help us
5 on this one point.

6 MS. BALDWIN: I just don't want to put myself in a
7 position to testify, Your Honor.

8 THE COURT: I'm going to allow you.

9 MS. BALDWIN: Well, Your Honor, I would not object
10 that that is what the witness said on the video.

11 THE COURT: Go ahead.

12 MS. ZMROCZEK: Thank you, Your Honor.

13 Q. [Ms. Zmroczek] I can tell y'all who broke into the
14 house?

15 A. If you say it says -- if it's on video.

16 Q. It's on video. I can tell y'all who broke into the
17 house. And Officer Haslip asked you who. Do you recall
18 that?

19 A. No, you have to tell me. I don't remember.

20 Q. Okay. And then do you recall telling them that you
21 need to see first and asking about a gun and asking if
22 she was shot?

23 A. I don't remember any of that but if you say that I
24 did then ---

25 THE COURT: --- maybe if this is all on the

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1 recording, maybe it's best to play it.

2 MS. ZMROCZEK: Thank you, Your Honor.

3 THE COURT: Okay. But I didn't know it was going to
4 be all of this. And if it's on the recording and it's
5 her, play it so we get the full flavor of it.

6 MS. ZMROCZEK: Thank you, Your Honor.

7 MS. BALDWIN: May we play it outside of the presence
8 of the jury, Your Honor?

9 THE COURT: To start with, yes.

10 MS. BALDWIN: Thank you.

11 THE COURT: Thank you. Go to the jury room.

12 [Whereupon, the jury exits at 1:04 p.m.]

13 MS. ZMROCZEK: Your Honor, I apologize. I did
14 advise the State that I would be asking this witness ---

15 THE COURT: --- go ahead. Go ahead. Go ahead. I
16 was trying to find a shortcut. Go ahead.

17 MS. ZMROCZEK: Okay.

18 [Whereupon, video plays]

19 [Whereupon, video ends]

20 [Not taken down]

21 MS. ZMROCZEK: Those are all the questions regarding
22 her statement.

23 THE COURT: Any objection to that?

24 MS. BALDWIN: No objection to her asking her about
25 it if that refreshed her recollection.

1 THE COURT: Any objection to showing that to the
2 jury?

3 MS. BALDWIN: Yes, Your Honor, foundation. It's not
4 her video. I think she can ask her if she remembers it
5 and if it refreshes her recollection. If she denies
6 making the statements then she could put it in.

7 THE COURT: Well, let's go ahead and do that.

8 PROFFER CROSS-EXAMINATION

9 BY MS. BALDWIN:

10 Q. Does that refresh your recollection?

11 A. [Nods affirmatively]

12 THE COURT: Yes?

13 THE WITNESS: Yes.

14 Q. [Ms. Zmroczek] And that fairly represents what you
15 said that evening?

16 A. Apparently; it's on the video.

17 THE COURT: All right. It's going in without
18 objection then.

19 MS. BALDWIN: I'm objecting to the video coming in,
20 Your Honor.

21 THE COURT: Okay. Over your objection, then.

22 MS. BALDWIN: Your Honor --

23 THE COURT: What is your objection?

24 MS. BALDWIN: Well, if I may, Your Honor, they
25 haven't established foundation, where this video came

1 from, who it is. The proper way to question her about it
2 would be to ask her if she made those statements. She
3 said I don't remember. We use the video to help her
4 remember and now she says, I remember stating it. So she
5 can ask her in front of the jury about making the
6 statement.

7 THE COURT: And we'll go through all that again in
8 front of the jury?

9 MS. BALDWIN: Yes, sir.

10 THE COURT: Bring the jury in.

11 MS. BALDWIN: I don't object to her line of
12 questioning ---

13 THE COURT: --- I'm just trying to save some time.

14 MS. BALDWIN: I understand that ---

15 THE COURT: --- bring the jury in.

16 THE COURT: [To the witness] Let me know if you
17 need a break or anything. You've handled yourself well.

18 [Whereupon, the jury enters at 1:11 p.m.]

19 THE COURT: The jury -- y'all just go ahead and have
20 a seat. If they want to stand up, they can. But y'all
21 go ahead and sit down. All right. You may continue to
22 examine the witness?

23 MS. ZMROCZEK: Thank you.

24 CROSS-EXAMINATION (RESUMES)

25 BY MS. ZMROCZEK:

1 Q. After reviewing the video, do you recall making
2 those exact statements?
3 A. Yes. It's on that video.
4 Q. Okay. That's what the video shows, right?
5 A. It's on there.
6 Q. Did you ever ---
7 THE COURT: Remind of us how -- I don't remember if
8 that was explained to the jury or not.
9 Q. [Ms. Zmroczek] Okay. So what you said when you got
10 out of the car was what's wrong?
11 A. [Nods affirmatively]
12 Q. What happened?
13 A. [Nods affirmatively]
14 Q. You've got to tell me what's going on?
15 A. [Nods affirmatively]
16 Q. No, no, no. I can tell you who broke into the
17 house. Those were your words, right?
18 A. Yes.
19 Q. As soon as you arrived back at your home?
20 A. Yes.
21 Q. And when the officer asked you who you said, you've
22 got to let me in the house first?
23 A. Yes.
24 Q. You asked about a gun and if she was shot? She,
25 being your mother?

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- 1 A. Yes.
- 2 Q. And that was the very first thing when you got out
3 of your vehicle?
- 4 A. [Nods affirmatively]
- 5 Q. And you had gotten out of your vehicle after leaving
6 Waffle House and calling your ---
- 7 A. --- I didn't make it to the Waffle House.
- 8 Q. Excuse me, leaving IHOP and calling your -- is it
9 your uncle?
- 10 A. Yes.
- 11 Q. And you called him approximately at 9:48 and stayed
12 on the phone with him for approximately six minutes,
13 right?
- 14 A. I don't know the time length but he told me to stay
15 on the phone with him, yes.
- 16 Q. And you stayed on the phone with him?
- 17 A. Yes.
- 18 Q. Okay. And you also told the officer that you locked
19 -- that she locked the glass door before you left?
- 20 A. Yes, locks the glass and the hardwood door.
- 21 Q. And the hardwood door. And there was actually a
22 problem with the hardwood door. It didn't latch
23 properly, did it?
- 24 A. Latch properly?
- 25 Q. It didn't close properly? There was a problem with

1 it, right?

2 A. Yeah, you'd put a little bit of force -- you have to
3 put a little force on -- I don't know why, but you'd have
4 to put force to really shut it, shut it too.

5 Q. Okay.

6 THE COURT REPORTER: I'm not sure they can hear you,
7 ma'am. If you would just speak up a little.

8 THE WITNESS: Yes, you had to a little force behind
9 the door because it's an old door.

10 Q. Okay. And you -- I want to talk briefly -- you
11 mentioned that your mother was a smoker?

12 A. Yes.

13 Q. And she did not smoke in her house?

14 A. No.

15 Q. What kind of cigarettes did she smoke?

16 A. I think it's Virginia Slims. They're the really
17 skinny ones.

18 Q. They're really skinny cigarettes in a skinny box,
19 correct?

20 A. Yes.

21 Q. Let me show you what's been marked for
22 identification right now as ---

23 MS. ZMROCZEK: May I approach the witness, Your
24 Honor?

25 Q. [Ms. Zmroczek] --- as defendant's 19 and 20 and ask

1 if you recognize...

2 [Whereupon, the witness is shown exhibit]

3 A. That is it looks like...

4 Q. Do you recognize them or not?

5 A. That's the den door.

6 Q. Right. Right. I'm pointing here [indicates]?

7 A. Oh. Yes.

8 Q. Okay. And do they fairly and accurately represent
9 the cigarettes your mother smoked?

10 A. Yes.

11 MS. ZMROCZEK: Your Honor, at this time we would
12 move defendant's 19 and 20 into evidence.

13 THE COURT: Any objection?

14 MS. BALDWIN: No objection.

15 [Whereupon, defendant's exhibit numbers 19 and 20
16 are entered into evidence by the court]

17 MS. ZMROCZEK: And we'd like to publish as well.

18 [Whereupon, the photographs are shown]

19 Q. [Ms. Zmroczek] Where my finger is pointing, that's
20 the box of -- is that a box of cigarettes a brand that
21 she smoked?

22 A. Yes.

23 Q. And that was defendant's 19. Defendant's 20, is a
24 little bit closer up.

25 [Whereupon, the photograph is shown]

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1 Q. That's the long, skinny box of cigarettes that she
2 smoked?

3 A. Yes.

4 Q. Okay. And you said this is by which door?

5 A. That would be the den door. The den is white.

6 Q. The den door. Okay. And when she smoked she
7 obviously used a lighter, correct?

8 A. Yes.

9 Q. And she had a black lighter, right?

10 A. A what?

11 Q. A black lighter? A lighter that was black in color?

12 A. She had multiple lighters.

13 Q. She had multiple lighters? When she would go to
14 smoke she would bring the lighter with her and her
15 cigarettes?

16 A. Yeah, whichever one.

17 Q. I'm sorry?

18 A. Whichever one. She had -- you know, you buy them in
19 the packs?

20 Q. Sure.

21 A. And they come in different colors, so whatever.

22 Q. I'm going to show you what's been marked for I.D. as
23 defendant's 9 and 10.

24 [Whereupon, the witness is shown exhibits]

25 A. That's the lighter or was one of them.

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1 Q. That's one of her lighters that she uses?
2 A. Yeah. That's a lighter.
3 MS. ZMROCZEK: Your Honor, at this time we would
4 move defendant's 9 and 10 into evidence
5 THE COURT: Any objection?
6 MS. BALDWIN: No objection.
7 [Whereupon, defendant's exhibit numbers 9 and 10 are
8 entered into evidence by the Court]
9 Q. [Ms. Zmroczek] I'm putting up defendant's 9.
10 [Whereupon, the photograph is shown]
11 Q. And what we were indicating and looking at was the
12 lighter that's on the floor, correct?
13 A. Yes.
14 Q. And is that in the den or is that somewhere else?
15 A. [No response]
16 Q. Is that the foyer?
17 A. Yes.
18 Q. And this is defendant's 10.
19 [Whereupon, the photograph is shown]
20 Q. From a little farther away, but is my finger
21 indicating where -- do you see the lighter?
22 A. Yes. It's right next to that little table.
23 Q. Okay. And your mother would go outside to smoke,
24 right?
25 A. Yes.

1 Q. I want to talk to you a little bit about -- you had
2 another conversation with a separate officer after
3 officer Haslip and before Investigator Thompson, right?
4 I believe you said she was a lady. Maybe you thought she
5 was a detective?

6 A. Yeah, all she wanted me to do was call him. I don't
7 remember a conversation with her. I just remember that
8 part.

9 Q. Okay. You just remember that she wanted you to call
10 your Dad and she wanted you to get your Dad to come over
11 there, right?

12 A. Yes.

13 Q. Okay. That was her idea is for -- she said call him
14 and see if you can get him over here?

15 A. Yes.

16 Q. Okay. And he actually answered, right?

17 A. Yes.

18 Q. Okay. And y'all spoke?

19 A. Yes.

20 Q. And you had told him at that point that something
21 had happened and your Mom had passed?

22 A. I said someone took my Mom from me.

23 Q. Someone took my Mom from me. Those were your words?

24 A. Yeah, I don't remember saying that she'd passed, not
25 worded like that.

1 Q. After you interact with officer Biggs you then get
2 into Detective Thompsons vehicle; do recall that?
3 A. I got into a vehicle with the detective. I don't
4 remember their names, ma'am.
5 Q. Okay. You got into a vehicle with a detective. And
6 you said that you actually got to listen to that audio,
7 right?
8 A. Of me in that car, yes.
9 Q. And he -- the investigator told you that he was
10 audio taping your conversation?
11 A. Yes.
12 Q. And the reason that they do that so you don't have
13 to remember two years later, right?
14 A. I figured it was standard.
15 Q. All right. And you had an opportunity to hear that,
16 right?
17 A. Yes.
18 Q. And the first thing that you tell him in that video
19 is it doesn't make any sense?
20 A. Okay. Yes.
21 Q. Okay. It doesn't make any sense. My Dad knows I
22 love my Mom. It doesn't make any sense that he would
23 take my Mom from me. That's what you told Investigator
24 Thompson, correct?
25 A. Yes.

1 Q. Okay. And then he kept asking your questions,
2 Investigator Thompson did, didn't he?

3 A. Yes.

4 Q. And I want to come back to those in a moment. But I
5 want to talk about is what did you do that whole day?
6 What time did you get up in the morning? What was your
7 normal routine?

8 A. Get up in the morning; go to my great aunt's house,
9 my grandma's sister. I take care of her.

10 Q. And what time was that?

11 A. I think I got there at 8:00 in the morning. I think
12 I start 8:00 in the morning.

13 Q. Okay. And so when you would get up, would you get
14 up before your mother?

15 A. Yes.

16 Q. And would you turn off the alarm or would she turn
17 off the alarm?

18 A. So that that morning I would have turned it off and
19 put it on as I'm leaving.

20 Q. So you would turn it off and put it on?

21 A. Yes. But I also let her know. I don't just leave
22 the house.

23 Q. Okay.

24 A. I'm not going to just walk out. So I let her know
25 so she makes sure she does it.

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- 1 Q. So if she wasn't awake you would have woken her up?
- 2 A. Yes.
- 3 Q. Do you recall if you woke her up that morning?
- 4 A. That's what I would normally do, yes.
- 5 Q. Okay. And did you own a vehicle?
- 6 A. I don't own a vehicle.
- 7 Q. Did you have a vehicle?
- 8 A. At that time -- I do now but at the time --
- 9 Q. At the time?
- 10 A. They were both my Mom's vehicles.
- 11 Q. So your Mom had two vehicles?
- 12 A. Yes.
- 13 Q. And what was the first one?
- 14 A. A Ford Escape.
- 15 Q. It was Ford Escape. What color was it?
- 16 A. Black.
- 17 Q. Black. Did you drive that one?
- 18 A. Not for a few months because something wrong with
- 19 it. It's like too much for me to afford at the time to
- 20 fix it but we're going to get it fixed so we can drive
- 21 it. That way I can drive that and she could have her
- 22 white car back.
- 23 Q. The white ---
- 24 A. --- we were sharing the white car.
- 25 Q. Her white car.

1 A. The Ford Edge.

2 Q. Okay. I'm sorry. I don't mean to keep interrupting
3 you.

4 THE COURT REPORTER: I'm sorry, the white what?

5 A. We was sharing a white Ford Edge with that time
6 period.

7 Q. [Ms. Zmroczek] So the black vehicle was out of
8 operation?

9 A. Yes.

10 Q. Who was the last person to be in that vehicle?

11 A. The black one?

12 Q. Yes?

13 A. I would have normally driven that one.

14 Q. That's the one that you normally drive?

15 A. Yes.

16 Q. Okay. Let me show you what's been marked as
17 defendant's exhibit 3, 4 and 5 and ask if you recognize
18 those pictures?

19 [Whereupon, the witness is shown photographs]

20 A. Okay.

21 Q. Do you?

22 A. Yes.

23 Q. And do they fairly and accurately represent the
24 vehicle as it was photographed on that same date,
25 September 22nd?

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1 A. I don't quite --

2 Q. Okay. The police took those pictures on September
3 22nd inside the black vehicle, correct?

4 A. I don't know when these pictures were taken.

5 Q. Okay. You don't know when the pictures ---

6 A. I wasn't there watching them do all of that stuff.

7 I wasn't ---

8 THE COURT REPORTER: Ma'am, I'm sorry. I can't
9 understand you.

10 THE COURT: I can't understand you either. I can't
11 understand you.

12 A. I wasn't watching so I don't know when they were
13 taken.

14 THE COURT: All right. Next question.

15 Q. [Ms. Zmroczek] Do you recognize the phones?

16 A. Yes. That's a bag of them. We had a lot of old
17 phones and stuff like that because my nephew had a
18 project and he would take the old phones. It was a bag
19 but it was in the car.

20 Q. That was in the vehicle?

21 A. Yes.

22 Q. Okay.

23 MS. ZMROCZEK: Your Honor, at this time we would
24 move defendant's 3, 4, and 5 into evidence.

25 MS. BALDWIN: No objection.

1 THE COURT REPORTER: Your numbering is not right.

2 MS. ZMROCZEK: Oh, my number is off.

3 THE COURT REPORTER: 3 is the I.D. of the
4 Department of Justice document.

5 MS. ZMROCZEK: Oh, that's right.

6 THE COURT REPORTER: That was 3.

7 MS. ZMROCZEK: All right. So 4, 5, and 6?

8 THE COURT REPORTER: 4, 5, and 6.

9 MS. ZMROCZEK: Sorry, Your Honor. 3 is improperly
10 marked and I'll change that to six.

11 THE COURT: So what is it?

12 MS. ZMROCZEK: So it's 4, 5, and 6, Your Honor. 3
13 was an exhibit yesterday that was marked for I.D.

14 THE COURT REPORTER: Marked for I.D.

15 MS. ZMROCZEK: But not entered.

16 THE COURT REPORTER: Correct.

17 [Whereupon, defendant's exhibit numbers 4, 5, and 6
18 are entered into evidence by the court]

19 Q. [Ms. Zmroczek] Okay Defendant's 5, that's the inside
20 of the black vehicle that you normally drove, right?

21 A. Yeah. But it hasn't been driven in a couple of
22 months.

23 Q. And had not been driven in a couple of months.
24 Defendant's 6, just a closer up shot?

25 [Whereupon, the photograph is shown]

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1 A. Uh-huh.

2 Q. And Defendant's 7?

3 [Whereupon, the photograph is shown]

4 A. Uh-huh. Yes.

5 Q. Okay. Was that your phone?

6 A. I'm not sure. There were a bag and I had a bunch of
7 old phones that we had and they're in there. I don't
8 know where they would have been afterwards if we had
9 taken -- well, me or anyone had taken them out, but we
10 just collected all the old phones and stuff like that;
11 anything for a school project so I'm not sure.

12 Q. Okay. And do you recall when you charged it?

13 A. Charged what?

14 Q. The phone?

15 A. I wouldn't have charged that phone. That's an old
16 phone.

17 Q. Okay.

18 A. We all had iPhones.

19 Q. You had an iPhone?

20 A. I had an iPhone.

21 Q. Tell the jury who your now ex-husband, then
22 estranged husband? Was he estranged at that time or were
23 y'all -- what was your marital status in September ---

24 A. --- I was just living in Charleston and he was
25 living in Texas.

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- 1 Q. But y'all were still married?
- 2 A. Yes.
- 3 Q. And in a marriage together?
- 4 A. Yes, we were still married.
- 5 Q. Okay. And do you recall what his phone number was?
- 6 A. Not -- not off the top of my head, no.
- 7 Q. If I read the number [REDACTED]
- 8 A. I would believe that would be his.
- 9 Q. That would be his number?
- 10 A. [Nods affirmatively]
- 11 THE COURT REPORTER: Is that a yes?
- 12 A. Yes.
- 13 Q. [Ms. Zmroczek] How often did you speak with your ex-
- 14 husband?
- 15 A. I think I tried to call him every day but he didn't
- 16 always answer.
- 17 Q. Okay. You'd actually spoken to him on September
- 18 22nd, correct?
- 19 A. Yes.
- 20 Q. Around 6:30 in the evening?
- 21 A. Yes.
- 22 Q. And y'all had about a nine-minute conversation?
- 23 A. I don't know how long.
- 24 Q. Okay. Where were you when you spoke to him?
- 25 A. I remember -- the last time I believe I was driving

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- 1 home from my aunt's house.
- 2 Q. Back to your house?
- 3 A. Yes.
- 4 Q. Okay. Did you make any calls that evening to let
- 5 him know what had happened?
- 6 A. I'm sorry.
- 7 Q. Did you make any phone calls to him that evening to
- 8 let him know what had happened?
- 9 A. I don't remember if I did.
- 10 Q. Okay. So what time would you usually get home from
- 11 care-giving for your aunt, great aunt?
- 12 A. Well, it actually depends. Normally -- well, it
- 13 depends on how many caretakers there were at the time.
- 14 But at this time I think -- if I remember, I think I was
- 15 the only one left to take care, other than the neighbor
- 16 Joe who would relieve me.
- 17 Q. Okay. So about what time would you be relieved?
- 18 A. I don't remember exactly the time. I don't want to
- 19 say exactly what time I went home.
- 20 Q. Okay. Were you actively looking for a more
- 21 traditional type of employment?
- 22 A. Yes. My Dad was trying to help me find work with
- 23 the V.A. or anything like that.
- 24 Q. So your Dad was trying to help you?
- 25 A. Yes.

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1 Q. You had a degree from the University of --

2 A. UNC-Charlotte.

3 Q. UNC-Charlotte in political science?

4 A. Yes.

5 Q. You had asked your Dad and had been asking your Dad
6 numerous times over the week and days following up to
7 this day about helping you get a job, right?

8 A. Yeah. He would call me asking me like, you know, he
9 -- because I worked for him so he knows my skills like as
10 far as what I'd be able to do.

11 Q. And, in fact, you'd called him just that morning
12 around 10:30 and said did you get that stuff off the
13 website, Dad?

14 A. Okay.

15 Q. Right?

16 A. I probably did because I talked to him at Mom's
17 house too.

18 Q. And, in fact, that's why y'all were meeting that
19 evening, not just to have dinner but to talk about your
20 job situation?

21 A. I don't know. He didn't explain that would be the
22 reason why we'd meet. I don't know that, if that was his
23 intentions at that time.

24 Q. But just a few hours earlier you had had a
25 conversation where you told him you need that paperwork?

1 A. No, not like that.

2 Q. You did not have that conversation?

3 A. Had a conversation. I asked him about the
4 paperwork. And I don't know if he got it or not. All he
5 asked me on the phone when I was home was to meet him at
6 the IHOP at 9:15 and he gave me his food order.

7 We didn't mention anything about paperwork in that
8 conversation so I'm not sure if that's what he intended
9 he could or done or not, you know, you have to ask him
10 that.

11 Q. Okay. And so the Waffle House is off of 17, you
12 say?

13 A. Yes.

14 Q. And how long does it take you to get there from
15 Palmer Drive to that Waffle House. What route did you
16 take? Did you take 61 or 17?

17 A. I believe I took 61 to the Waffle House.

18 Q. Okay. So that's the shorter route, about -- a little
19 over six miles, right?

20 A. I don't know how many miles.

21 Q. I mean -- not Waffle House, IHOP. I keep confusing
22 them.

23 A. I don't know how many miles that is.

24 Q. Okay. Do you know how long it took you?

25 A. I would assume probably fifteen minutes.

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1 Q. Okay. And so that Waffle House is somewhere where
2 your Dad ate a lot of the time?
3 A. Yeah.
4 Q. The servers knew him?
5 A. Yes.
6 Q. They knew his order?
7 A. Yeah, his orders -- he'd change up from time to time
8 but they're familiar with him, yes.
9 Q. He would mix up the senior omelet order and put
10 different things in it sometimes, right?
11 A. Yeah, or the crepe or something.
12 Q. And he --
13 A. Or sometimes in the past he would have ordered a
14 crepe or...
15 Q. So he would mix it up?
16 A. It depends on what he wanted to eat that day, you
17 know.
18 Q. And that evening he had told you if you get there
19 before he does to order him ---
20 A. --- to order that omelet, yeah ---
21 Q. --- to order that omelet for him. You said you left
22 your house around 8:30?
23 A. 8:30ish. I don't know exactly what time. I'm
24 assuming that that's the time. I'm not saying that's the
25 time. I'm assuming it is.

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- 1 Q. Okay. And so knowing it took you about fifteen
2 minutes or so to get there, right?
- 3 A. I didn't go and say oh, it'll take me fifteen
4 minutes in my head. No, I just probably left at that
5 time to get there.
- 6 Q. Okay. And I want to go back to -- let's go back to
7 the interview in the vehicle with Detective Thompson?
- 8 A. Okay.
- 9 Q. And he said -- was it -- and I don't want to
10 misquote him. You were asked if it was an out of the
11 ordinary for your Dad to call you at night.
- 12 A. Did he ask me that?
- 13 Q. Right?
- 14 A. Yes.
- 15 Q. And you told him what?
- 16 A. No. I've met him many times in the past for dinner
17 or lunch or anything, yeah.
- 18 Q. In fact, you said it's not unusual?
- 19 A. No, it's not.
- 20 Q. Not unusual at all, right?
- 21 A. No, it's not.
- 22 Q. And then he said well, did you typically get an
23 order from him?
- 24 A. It would depend.
- 25 Q. And you said but that wasn't unusual, right?

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- 1 A. No. I didn't see anything unusual, no, at the time.
- 2 Q. Okay. He asked you if it was unusual or out of the
- 3 ordinary for your father to be running late?
- 4 A. Correct. Sometimes he ran late, sometimes he was
- 5 there on time.
- 6 Q. Sometimes he ran late?
- 7 A. Sometimes he might beat me there.
- 8 Q. Right. And so you said that that wasn't unusual.
- 9 A. No.
- 10 Q. And, in fact, you said that you were worried about
- 11 him?
- 12 A. After a while when he didn't show.
- 13 Q. Because he got up every morning?
- 14 A. Yes, we were all worried about him?
- 15 Q. Got up ---
- 16 A. --- because he gets up early in the morning and
- 17 drives to Beaufort and has to come back, yeah.
- 18 Q. But he gets up from Charleston and drives all the
- 19 way to Beaufort, works his shift and then comes all the
- 20 way back?
- 21 A. Yes.
- 22 Q. Okay. And you were concerned because he would ---
- 23 A. --- he is up in age. He has three kids.
- 24 Q. I'm sorry. When we talk over each other she can't
- 25 take it down and they can't hear it so I'll try to not

1 interrupt, but I didn't hear what you said.
2 A. He was up in age and have three kids.
3 Q. Okay. And so Investigator Thompson asked you well,
4 why were you calling your Mom? And what did you tell
5 him?
6 A. I don't remember what I told him.
7 Q. Okay?
8 A. But I just know -- I mean, I'm sitting there. I
9 called her because my Dad didn't show up. I know that
10 much so that could have been why or I could have -- I
11 don't remember exactly why.
12 Q. It could have been that you were bored or it could
13 have been you were worried about him?
14 A. I don't know. It was two and a half years ago. I
15 don't know.
16 Q. Okay. And that's when you went on to elaborate
17 about your instincts that there was something wrong with
18 him?
19 A. [No response]
20 Q. Because of his age and his children?
21 A. My instinct?
22 Q. You had a feeling?
23 A. I was just worried because he wasn't there.
24 Q. Okay. And then the very next question that
25 Investigator Thompson asked you is does your Dad pay

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1 alimony?
2 A. Okay.
3 Q. The police are the ones who brought alimony up, not
4 you?
5 A. I don't remember.
6 Q. Okay. In fact, he asked you if it was contentious
7 between them, right; if they fought about it?
8 A. Okay.
9 Q. And you said it's not like that?
10 A. No, they didn't fight. They didn't fight. What do
11 you mean ---
12 Q. Right. They didn't fight about it, right?
13 A. No. It was...
14 Q. It was something that happened a lot that when he
15 would get behind she would call and then he would come
16 and pay, right?
17 A. Sometimes, yes. But they didn't fight at the door.
18 Most of the time I greeted my Dad.
19 Q. Right. Right. Right. They didn't fight. And, in
20 fact, your brother had helped set this wage garnishment
21 up so the money was coming out automatically now, right?
22 A. I don't know when.
23 Q. But you know it was prior to this or you don't
24 recall?
25 A. Prior to?

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- 1 Q. Prior to September 22nd.
- 2 Q. Yeah, but some -- yeah, there was a garnishment,
3 yeah. I'm aware of that. But when it took effect and
4 all the details of that, all I know is yeah, there was a
5 garnishment there but I don't know the details on it.
- 6 Q. Your parents, both your Mom and your Dad did a lot
7 to support you as children, all three of you, right?
- 8 A. Yes.
- 9 Q. Paid for y'all to go to college?
- 10 A. Yes.
- 11 Q. Your Mom was letting you live at the house?
- 12 A. Yeah, I'm her kid.
- 13 Q. How old were you on September 22nd, 2015?
- 14 A. I'm forty-one now. I was probably in my thirties.
- 15 Q. Okay. And she let you come and go as you pleased?
- 16 A. Yeah.
- 17 Q. She let you use her car?
- 18 A. Yeah.
- 19 Q. She paid for your phone?
- 20 A. Yes, we're on a plan it's a three, me, her and my
21 nephew.
- 22 Q. And you, your Mom and your nephew were all in the
23 same AT&T plan?
- 24 A. Yes, they told her it was cheaper to do it that way.
- 25 Q. Okay. And sometimes you would text your Dad when he

1 was late on the alimony, right?

2 A. Yeah. I would sit there and text because, you know,
3 he didn't bring it for my Mom. Yeah, and I try and help
4 her do it.

5 Q. And, in fact, on January 21st of 2015 you texted him
6 Dad, please bring Mom her check. It's really hurting me
7 financially?

8 A. Yeah. Because I'm the only one that was bringing in
9 and two, we were running short on money so we needed him
10 to bring the check. It helped us with our bills, yeah.

11 Q. Right. But your words were it was hurting you
12 financially?

13 A. Yeah. It was because having more money to pay for
14 it so I needed him to bring the money over. So that's
15 what hurting financially -- not financially all over at
16 that time, at that moment to get him to come and bring it
17 so we can finish paying the other bills in the house.

18 Q. Okay. And then again in March, March 11, 2015 you
19 sent him another text that said hey Dad, don't forget me
20 if you still can help. Whenever you needed money or
21 needed anything you would go to your parents, right?

22 A. Yeah. They were really good at helping me.

23 Q. And they -- I sorry. Go ahead.

24 A. Both of my parents helped me, yeah they were very
25 good at that.

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- 1 Q. Right. And, in fact, when you moved back from
2 Texas, I think you broke down on the way back, right?
- 3 A. I didn't break down.
- 4 Q. Did you run out of gas or money?
- 5 A. No. When I was there I didn't have the funds to get
6 back so my Dad gave me five hundred dollars to help me
7 get back to Charleston.
- 8 Q. Okay. So you were in a jam ---
- 9 A. --- yeah.
- 10 Q. Needed to get out and you called your Dad?
- 11 A. Yeah. He gave me the five hundred dollars to come
12 back.
- 13 Q. Okay. Your parents got divorced when y'all were all
14 out of the -- not living in the house anymore, correct?
- 15 A. I was in college.
- 16 Q. You were in college. Were you still living at home?
- 17 A. I went to UNC-Charlotte.
- 18 Q. So that's a no?
- 19 A. I stayed in the dorms at UNC-Charlotte.
- 20 Q. Okay. So even though y'all were all grown, it still
21 affected y'all that divorce, right?
- 22 A. Yeah. They're our parents.
- 23 Q. And do you know who he married?
- 24 A. I'm sorry?
- 25 Q. Do you know who he married?

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- 1 A. Carla Washington.
- 2 Q. Tell this jury how you feel about Carla Washington.
- 3 A. She's not a nice lady.
- 4 Q. And, in fact, how did you describe her to Officer
- 5 Thompson?
- 6 A. She's evil.
- 7 Q. Did you call her a gold-digging ---
- 8 A. --- honey, I called her everything under the sun.
- 9 Q. Okay. You didn't like her?
- 10 A. No.
- 11 Q. She felt like she was keeping -- she was interfering
- 12 with your family?
- 13 A. They were already married.
- 14 Q. And they have three kids?
- 15 A. Right.
- 16 Q. That he had to support?
- 17 A. I didn't like her. I don't like her personality.
- 18 Q. Okay. Your Mom knew who she was though, right?
- 19 A. Well, yeah.
- 20 Q. They knew each other?
- 21 A. Before or after? What do you mean before or after?
- 22 Q. After. In 2015, did they know each other?
- 23 A. Yeah.
- 24 Q. Yeah. They knew each other, right?
- 25 A. Yeah. They already had three kids and everything.

- 1 Q. And your Dad was also very involved still with
2 helping y'all and with helping your Mom and owing his
3 alimony when he could, right?
- 4 A. What's that?
- 5 Q. Your Dad was very -- he was still involved? Your
6 Mom and Dad talked a lot about the welfare of you and
7 your brother and your sister, correct?
- 8 A. They remained our parents and did what good parents
9 do is what I'm going to just go with. I don't know
10 exactly what you're saying.
- 11 Q. They did what good parents did. Even though they
12 weren't married they still communicated about their
13 children?
- 14 A. Yeah.
- 15 Q. And what was the best thing for their children?
- 16 A. Yeah.
- 17 Q. And what he was trying to help you and the best
18 thing for you was to get you a job so that you didn't
19 have to be financially dependent on your Mom anymore,
20 right?
- 21 A. I'd be able to help -- basically, I'd be able to
22 help a lot more because I'd get paid a lot more.
- 23 Q. And he was encouraging that, right?
- 24 A. Yes.
- 25 Q. Okay. The day after on September 23rd, you had

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1 another meeting with another investigator, right?

2 A. Yes.

3 Q. And that would have been Investigator Muirheid?

4 A. Uh-huh. Yes.

5 Q. Okay. And that was also recorded, right?

6 A. I believe so.

7 Q. And that was you and Chris, your brother and

8 Adrienne, your sister and...

9 A. Okay, yeah. Yeah, that was recorded.

10 Q. That was recorded. And y'all were all in a room,

11 right?

12 A. Yes.

13 Q. And y'all, the children, had a bunch of questions

14 that you were wanting answered, right?

15 A. Yeah. We want answers to everything, yeah.

16 Q. And Investigator Muirheid told you he had one

17 suspect, right?

18 A. I don't remember his exact words. I just remembered

19 we asked a lot of questions.

20 Q. You were asking a lot of questions?

21 A. Yes.

22 Q. Because y'all were saying things like you couldn't

23 believe your father had done this, right?

24 A. I'm sorry?

25 Q. Y'all were saying you couldn't believe he had done

1 it?

2 A. Oh, yeah. I mean, I'll speak for me. I'm not going
3 to speak for my siblings.

4 Q. Okay. And y'all were unsure -- he wanted to come to
5 the funeral to support y'all. He being Dr. Little, your
6 Dad, right?

7 A. You will have to ask -- he didn't call me so you
8 would have to ask if that's information you got from
9 whoever.

10 Q. Y'all discussed that in the video would you agree
11 with me on that?

12 A. I guess so if it's in the video.

13 Q. And you've met with the Solicitor's office several
14 times, correct?

15 A. [No response]

16 Q. You've met and talked to them in preparation for the
17 trial or discussing the facts?

18 A. The attorneys you're talking about?

19 Q. I am.

20 A. Let's see that last time we had to come down here, I
21 came on a Thursday and a Friday. And this time I came on
22 a Friday.

23 Q. Okay. And I want to focus on this time that you
24 came on a Friday?

25 A. Okay.

1 Q. Tell the jury what you told them when you came down
2 on this past Friday?

3 A. What do you mean? I mean, we talked about a lot of
4 things. I can't just want to say we talked one thing. I
5 didn't come down here and mention one thing.

6 Q. Okay. Let me see if I can help you. Did you tell
7 them that on the day of the incident a tan car with
8 tinted windows pulled up in front of your house?

9 A. Yes.

10 Q. It paused?

11 A. Uh-huh.

12 Q. It drove away into the driveway of the house?

13 A. Not my house.

14 Q. Of a different house, right?

15 A. Down by the cul-de-sac, the little circle.

16 Q. Down by the cul-de-sac. And then it paused again in
17 front of your house?

18 A. The car -- you know, this is when I'm coming home
19 from -- this isn't that night. This is during the day,
20 you know, I'm coming from my aunt's house. It paused in
21 front of our house.

22 Q. Okay. So I can be clear. You're still talking
23 about September 22nd?

24 A. Yes.

25 Q. Okay. So September 22nd, tell the jury about what

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1 you saw?

2 A. I said the car paused in front of our house for, you
3 know, I guess a few seconds -- it pulled in front of our
4 house, paused there, drove down to the cul-de-sac into
5 someone's driveway, but not all the way up in the
6 driveway, just partially in the driveway, you know, for a
7 few seconds. They back out and then they go down the
8 other road, the side road.

9 Q. And that was suspicious enough for you to tell the
10 prosecutors, right?

11 A. Yes. I wanted to tell them everything I knew.

12 Q. You wanted to tell them everything you knew?

13 A. Yes.

14 Q. And when you spoke with Investigator Haslip right
15 out the gate you told him you knew who did it?

16 A. Which one?

17 Q. The first officer?

18 A. [No response]

19 Q. The video we watched?

20 A. Okay.

21 Q. You told Investigator Thompson that meeting him for
22 dinner, him running late, those things were not unusual?

23 A. Right.

24 Q. You told him, Investigator Thompson, that you were
25 worried about him?

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1 A. Uh-huh. Yes.

2 Q. And Investigator Biggs tried to get you, after your
3 Dad knew that your Mom had passed, tried to get you to
4 get your Dad to come back to the house?

5 A. The female?

6 Q. Yes, the female?

7 A. Yes.

8 MS. ZMROCZEK: I beg the Court's indulgence.

9 [Whereupon, Ms. Zmroczek, Mr. Schwartz and Mr. West
10 confer]

11 Q. Thank you for answering my questions.

12 THE COURT: Anything on redirect?

13 MS. BALDWIN: Briefly, Your Honor.
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1 REDIRECT EXAMINATION
2 BY MS. BALDWIN:
3 Q. Kim, have you seen all the evidence in this case?
4 A. Not everything.
5 Q. Did you see -- at the time that this happened, the
6 night that it happened, when you ran up to the house, had
7 you seen all the evidence?
8 A. I couldn't go in the house. I had to stay in the
9 street. They won't let you onto the property.
10 Q. Did you go to your father's house that night?
11 A. No.
12 Q. Okay. Do you care about your father?
13 A. Yes.
14 Q. You love him very much, don't you?
15 A. Yes.
16 Q. He's your Dad?
17 A. Yes.
18 Q. Okay. I believe the defense brought up the tan car.
19 that you saw that day. Do you know who was in that car?
20 A. No.
21 Q. Do you know what they were doing there in the
22 neighborhood?
23 A. No.
24 Q. Okay. How many times did you have to ask your Dad
25 to pay his alimony? I believe there were some text

1 messages mentioned.

2 A. Probably a number of times throughout. I mean, it's

3 been years so, you know, a number of times.

4 Q. Several times?

5 A. Yeah.

6 Q. Would he always pay?

7 A. No.

8 Q. I know the defense asked you about your Dad

9 sometimes was late to a meeting, to meet with you?

10 A. Yes, sometimes.

11 Q. Okay. Did he ever just not show?

12 A. No.

13 Q. Would he be an hour late?

14 A. No.

15 Q. When you came to the scene that evening, what was

16 your mindset? When you came to your house, you heard

17 about your Mom?

18 A. Messed up.

19 MS. BALDWIN: Court's indulgence.

20 [Whereupon, Ms. Baldwin and Mr. Sowards confer]

21 Q. [Ms. Baldwin] I believe that the defense brought up

22 your interview with Detective Muirheid on the 23rd, I

23 believe?

24 A. Okay.

25 Q. Do you remember telling Detective Muirheid that you

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1 thought your Dad used you as an alibi?

2 A. I probably asked if someone told me. I can't
3 remember exactly if I just volunteered it.

4 Q. I'm sorry?

5 A. Say again?

6 Q. Do you remember you met with -- your meeting with
7 Detective Muirheid on the 23rd?

8 A. Okay.

9 Q. Okay. Do you remember telling him that your Dad
10 used you as an alibi?

11 A. Yes, because that's what I was told. Yes.

12 Q. Okay.

13 MS. BALDWIN: No further questions.

14 THE COURT: Thank you very much. You can return to
15 your place in the courtroom.

16 [Whereupon, the witness is excused and exits the
17 witness stand]

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March 19, 2018

1 THE COURT: And we're going to take a break at this
2 time. This is an appropriate time. Actually, I have
3 another matter that's scheduled that's going to take
4 about fifteen minutes. So we're going to take about, at
5 least a fifteen minute break, more like twenty minutes
6 maybe or something like that.

7 So let's go to the jury room, relax. Ask if you
8 need a water, soft drink, coffee, whatever. The bailiffs
9 will be available for you to get that so have about a
10 fifteen or twenty minute break while I take care of
11 something else.

12 [Whereupon, the jury exits at 1:52 p.m.]

13 [Whereupon, court in recess from 1:52 p.m. until
14 2:24 p.m.]

15 THE COURT: Thank you. Please be seated. Who's
16 next?

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State v General Theophilus Little
Eddie Haselden-Direct Examination by Mr. Sowards
March 19, 2018

1 MR. SOWARDS: The State will be calling Eddie
2 Haselden from Family Court.

3 THE COURT: Is he here?

4 MR. SOWARDS: He is here, Judge.

5 THE COURT: Bring him in.

6 MR. SOWARDS: One thing, Your Honor is he --
7 originally, we were going to call a different witness
8 from the Family Court. That witness's name was read to
9 the jury pool. We think it may be appropriate -- he's
10 not available -- just to ask the jury if anyone knows Mr.
11 Haselden. That's the same thing you did with...

12 THE COURT: I'll do that.

13 MR. SOWARDS: Okay.

14 [Whereupon, the jury enters at 2:25 p.m.]

15 THE COURT: All right. We have the jury back with
16 us now and the next witness is who?

17 MR. SOWARDS: Eddie Haselden from Family Court.

18 THE COURT: Okay. Hold it just a second now. His
19 name was not called out to you. They thought they were
20 going to call somebody but that person's not available so
21 they called this gentleman here [indicates]. So take a
22 good look at him. He works for the Clerk of Court; Eddie
23 Haselden. Any of y'all know him in any way? Have any
24 dealings with him, anything like that?

25 [Whereupon, there is no response from the jury]