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VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JUSTIN ANTONIO BUTLER,

APPELLANT

APPELLATE CASE NO. 2016-001269

RECORD ON APPEAL

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1 State of South Carolina) In the Court
 2 County of Lexington) Of General Sessions

3
 4 Indictment No.: 2015-GS-32-1307
 5 2015-GS-32-1308
 6 2015-GS-32-1309
 7 2015-GS-32-1310

8 State of South Carolina,)
 9 Plaintiff,)
 10 vs.) Transcript of Record
 11 Justin Antonio Butler,)
 12 Defendant.)

13 June 6-9, 2016
 14 Lexington, South Carolina

15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge, and a jury.

17
 18 A P P E A R A N C E S:

19 D. Shawn Graham, Deputy Solicitor
 20 Robert E. McNair, III, Assistant Solicitor
 21 Attorneys for the State

22 James R. Snell, Esquire
 23 Johnson M. Snell, Esquire
 24 Attorneys for the Defendant

25 Brenda J. Sigwald, Circuit Court Reporter
 To The Honorable R. Knox McMahon
 P.O. Box 206, Jackson, South Carolina 29831

1 (A brief recess was observed.)

2 **MOTION TO SUPPRESS**

3 THE COURT: All right. What is our next motion,
4 let's see, defense motion?

5 MR. JAMES SNELL: Yes, Your Honor, we have -- we
6 have two that are -- two separate basis -- challenges to
7 search warrants.

8 THE COURT: All right. You may proceed, Mr. Snell.

9 MR. JAMES SNELL: Thank you so much, Your Honor,
10 and I believe that the reporter has premarked, that's just
11 our exhibits for the purpose of the motion.

12 Number 1, which is the collection of Lexington
13 County issued search warrants and then Number 2, which is
14 the Alabama Search Warrant and Return.

15 THE COURT: All right.

16 MR. JAMES SNELL: And these are documents provided
17 during discovery from the Solicitor's Office and I don't
18 know if you'd like me to hand these up.

19 THE COURT: Yes, sir, thank you, Mr. Snell.

20 THE COURT REPORTER: Your Honor, those are Court's
21 Exhibits.

22 THE COURT: All right.

23 THE COURT REPORTER: And they've got -- they're
24 going to move to State's ID.

25 THE COURT: And so the photo ID's are now -- the

1 photo lineups are now State's 1, 2 and 3 for identification
2 purposes only?

3 THE COURT REPORTER: Yes, sir.

4 MR. JAMES SNELL: All right. Your Honor and so
5 just taking these kind of separately, looking at the search
6 warrants identified in the Defense Exhibit 1, which is kind
7 of a big thick stack, but that's just all of the warrants,
8 local warrants they produced, printed. A kind of issue is
9 that these are records going for -- of course airline
10 records; kind of like records for flights; Sprint, Verizon,
11 phone records, T-Mobile phone records, dealing with records
12 for Tycus Toland, Vonkeith Toland, other numbers associated
13 with out-of-state accounts or out-of-state area codes and
14 prefixes. Basically it's all the phone records that were
15 produced during the case and all the flight information
16 produced --

17 THE COURT: Flight?

18 MR. JAMES SNELL: Flight information, yes, Your
19 Honor.

20 THE COURT: There as an airline flight?

21 MR. JAMES SNELL: Yes, Your Honor.

22 THE COURT: All right. Thank you.

23 MR. JAMES SNELL: And -- and the way -- the way
24 this case developed, the Sheriff's Department obtains
25 records from the airlines looking at the passenger listings

1 to try to identify -- try to put the codefendant or the
2 defendants in this case, which Mr. McClure; he's not on
3 trial and Mr. Butler, who is on trial, in Lexington coming
4 in from out of state as well as the phone records that were
5 used to identify both of them and implicate them.

6 Our position is looking at everything that was
7 transmitted with these search warrants, which all went to
8 out-of-state entities, the first thing that the Court --
9 the Magistrate's authority to issue a search warrant stems
10 from South Carolina Code 17-13-140 and that statute says
11 that any -- it says that a Magistrate or Recorder or City
12 Judge or any Judge of a court of this state having
13 jurisdiction over the area where the property sought is
14 located, and that's through the beginning portion of our
15 Search Warrant Statute, may issue a search warrant for and
16 seize and it goes on to list different items including
17 constituting -- property constituting evidence of a crime
18 or tending to show the particular person committed a
19 particular offense.

20 So in this case, the warrants that were all issued
21 by the Magistrate were issued by a Judge that does not have
22 jurisdiction over the area that these documents and records
23 and other materials were. The warrants all indicate on the
24 face that they were being sent out of state, outside of the
25 jurisdiction of the Magistrate or of this Court and there

1 is no exception in the enabling statutes or any other
2 provision of South Carolina Law providing for -- for the --
3 the validity of an out of state -- of a search warrant
4 issued out of state.

5 I think it's analogous to the lawyer in Circuit
6 Court issuing a, for example, a *Subpoena Duces Tecum* to out
7 of state entities, which there is I believe, a line of
8 ethics opinions and other court opinions holding that that
9 is not only illegal but improper and violative of our
10 rules. Of course, I'm not alleging our prosecutors or
11 Solicitors in this case did anything like that. However,
12 the search warrants, again on their face appear invalid for
13 that reason.

14 Additionally, I noted that the -- all the materials
15 that were transmitted out of state, there's a -- there's
16 a -- I think a -- you're trying to get records from -- from
17 these out-of-state entities. I understand that the person
18 on the other end of the phone or you called there
19 information division or their legal office. They may ask
20 for something for their file. They may say we're happy to
21 provide you records, just send us something, you know, for
22 our file. You know, I'm not -- if these entities are going
23 to be voluntarily complying, which is what this is,
24 voluntary compliance because South Carolina Court has no
25 authority to, you know, enforce these warrants.

1 The Sheriff's Department can accomplish the exact
2 same thing or the investigators by just issuing simply a
3 letter saying please give -- this is an official
4 investigation, you know, please send us this items, but
5 they chose not to do that and instead to use the search
6 warrant form and procedures.

7 Additionally, there is no limiting instruction,
8 language, cover letter, or anything else transmitted that
9 would put the recipient on notice that these search
10 warrants have no force or applicability of law and
11 compliance is strictly voluntary. So they didn't, you
12 know, have a cover letter where they -- where they
13 suggested, you know, here's the search warrant you asked
14 for even though it isn't valid in your jurisdiction. They
15 didn't do that either.

16 So based on the fact that it's a search warrant,
17 all the search warrants are completely invalid. The
18 recipients were never put on any sort of notification or
19 nothing's part of the record that they were invalid. There
20 are other mechanisms that they can used to voluntarily ask
21 for the documentation without using unenforceable search
22 warrants.

23 We believe that those search warrants and all the
24 resulting -- basically all the resulting items, which again
25 are all phone records and airline records in the case

1 should be suppressed.

2 THE COURT: Thank you. Thank you, Mr. Snell.
3 Solicitor.

4 MR. GRAHAM: Thank you, Your Honor. I would begin
5 by saying that the defendant has no expectation of privacy
6 on those records. Once he decides he's going to do
7 business or an individual decides that they're going to do
8 business with a company, it's those companies records; it's
9 not his records and that company is the one that decides
10 how those records are released. So he -- he used to be --
11 but now we talk about expectation of privacy. He has no
12 expectation of privacy. Those are not his records.

13 THE COURT: Are there any -- any policies though on
14 privacy that the company itself issues to the customers?

15 MR. GRAHAM: I think that's why, depending on the
16 type of material you're looking for, whether it's bank and
17 different banks may be different. I think all phone
18 companies do require search warrants, but I know that --

19 THE COURT: No, no, that's not my question.

20 MR. GRAHAM: I'm sorry, Your Honor.

21 THE COURT: It may be inartful. Does the company
22 not indicate to its customers its company's privacy
23 policies?

24 MR. GRAHAM: I'm sure they do, Your Honor, and I
25 don't know what those policies are for each of these. In

1 looking at it, yes, I'm sure they do, Your Honor.

2 THE COURT: Go right ahead, Solicitor.

3 MR. GRAHAM: I know when law enforcement was
4 looking for these records, they contact their legal
5 department. There's whole departments in each and every
6 one of these companies and they are providing what's asked
7 for. I would assume if it was -- if their privacy policies
8 required it, it would be on them and not the police to
9 notify the suspect or I think if there's a complaint
10 against his privacy policies with the company, that would
11 be him and the company, not necessarily our obtaining those
12 records.

13 THE COURT: All right.

14 MR. GRAHAM: They are -- law enforcement is sending
15 the search warrants where they are told to send the search
16 warrants. They could serve them on a registered agent in
17 South Carolina. All these companies do business in South
18 Carolina, but those companies are telling law enforcement
19 where to send them. So I think that it could be done, I
20 guess if we had to comply with those, it could have been
21 done, and maybe there's a good faith exception for it.

22 I just don't think -- I mean I think the law is
23 pretty well settled. He doesn't -- any argument he has
24 about the company releasing it -- but he doesn't have,
25 they're not his records. It's not like his home, it's not

1 like a safe, it's not like a bank deposit box that's his.
2 Once you choose to do business with another company, it's
3 that company's records about a transaction with him, but
4 it's not his private records. He's already disclosed his
5 actions out to the world.

6 THE COURT: All right.

7 MR. GRAHAM: I guess the only thing I would add,
8 Your Honor, is if Mr. Snell's argument is correct, then
9 there's no way law enforcement would ever be able to get
10 the records because he's saying that nobody should ever
11 issue -- nobody could ever issue anything to require any
12 company to do anything and obviously, that's not the case.

13 Your Honor, I guess to maybe narrow it down, if he
14 does have any rights, he's at least got start to limit it
15 to the ones that he has an expectation of privacy in.
16 Several of these phones, there's only two phones that we
17 have records on that we're going to link to the defendant.
18 So this argument wouldn't even apply because he doesn't
19 have -- it's not his -- I mean he has a claim for this
20 argument, he has to say his rights were violated, not
21 somebody else's rights.

22 So all those other phone records we have for all
23 those other people, he doesn't even have standing to object
24 to that. So there's only two phones that we believe belong
25 to him that he has the potential right to object to and

1 that would be a 404 number from Verizon and a 501 number
2 from Sprint. I don't know whether he's going to admit that
3 those are his lines or not. I don't know whether he has to
4 admit those lines. I think for him to say he's got a
5 constitutional right he'd have to admit they are his.

6 Your Honor, I have a U.S. Supreme Court case.

7 THE COURT: I'm sorry. Go ahead, Solicitor. Go
8 right ahead.

9 MR. GRAHAM: I would just for the record, Your
10 Honor, Smith v. Maryland 442 U.S. 735, 1979, states that an
11 individual enjoys no Fourth Amendment Protection of
12 Information he voluntarily turns over to a third party.

13 THE COURT: Thank you, Solicitor.

14 Give my law clerk that cite, Solicitor, the cite
15 you just had, that U.S. Supreme Court, state it again for
16 the record.

17 MR. GRAHAM: Smith v. Maryland it is 442 U.S. --
18 I've got to relocate it, Your Honor, I apologize.

19 THE COURT: That's all right.

20 MR. GRAHAM: Smith v. Maryland 442 U.S. 735, 1979,
21 U.S. Supreme Court.

22 THE COURT: All right. Mr. Snell, any cases you
23 want me to look at?

24 MR. JAMES SNELL: Judge, the -- and I was looking
25 at this issue, not as a Fourth Amendment and a privacy

1 issue. Of course, these are phone records and flight
2 records not of Mr. Butler necessarily, but of other
3 individuals who were -- it seems to go, you know, of course
4 in the event that the Sheriff's Department is using -- a
5 search warrant is an official looking document. They send
6 out a search warrant that has no legal validity. They get
7 a magistrate to sign something the magistrate has no
8 authority to sign under law.

9 THE COURT: I understood that argument. Do you
10 have any case law that you want me to look at?

11 MR. JAMES SNELL: No, Your Honor.

12 THE COURT: All right. Thank you.

13 Do you have anything?

14 MR. GRAHAM: No, Your Honor.

15 THE COURT: While -- while we were doing the other
16 motions, my law clerk did some research and there are two
17 cases to be found. One is 2013 Westlaw 2360239; it is a
18 Court of Appeals of Michigan unpublished. It is People v.
19 The State of Michigan, Wilson and GOJCAJ. Down in the
20 Michigan case it is later on it's referring to a case
21 called State v. Jacob, 185 Ohio Appellant 3rd 408, 924 N.E.
22 2d 410 a 2009 case. I found no precedent in South
23 Carolina. This Michigan case, the defendant argues that
24 his attorney was ineffective for not moving to suppress the
25 telephone records which were obtained pursuant to two

1 search warrants served on defendant's cell phone carrier;
2 the carrier's office in Texas.

3 The defendant primarily argues that the telephone
4 records should not have been suppressed because the
5 magistrate who issued, correct myself. The defendant
6 primarily argues the telephone records should have been
7 suppressed because the magistrate who issued the two search
8 warrants lacked jurisdiction to issue warrants pertaining
9 to an out-of-state party.

10 That appears to be what we have here, as I
11 understand Court's Exhibit Number 1.

12 The Fourth Amendment protects against illegal
13 searches and seizures and requires the use of a warrant
14 issued by a magistrate based on probable cause. Here the
15 police treated the cell phone records as protected by the
16 Fourth Amendment and obtained search warrants from a
17 magistrate. As I understand it, that's what the police did
18 here, correct?

19 MR. GRAHAM: Yes, sir.

20 THE COURT: The defendant argued that the
21 magistrate lacked jurisdiction to issue the search warrants
22 because they were directed at Metro PCS Subpoena Compliance
23 Office, which is located in Richardson, Texas. So you've
24 got a Michigan case, telephone records, the records are in
25 Texas.

1 This Court has recognized that a magistrate's
2 authority to issue search warrants extends statewide.
3 Defendant relies on State v. Jacob, which is the Ohio case
4 I cited, to argue that the Magistrate lacked jurisdiction
5 to issue warrants for records in Texas. This Michigan
6 Court concludes Jacobs is distinguishable, and so do I. In
7 Jacob, in that case, the defendant -- the defendant, who
8 resided in California, was charged under Ohio Law with
9 theft from an elderly person when the defendant agreed to
10 sell figurines for the victim on the internet. Police in
11 Ohio obtained a search warrant from the local court to
12 search a residence in California. The warrant was executed
13 by a member of the San Francisco Police Department and
14 alleged that the discovery of evidence that connected the
15 defendant to the offense in South Carolina (sic).

16 The defendant was arrested in California and
17 extradited to Ohio. Later the police obtained another
18 search warrant for electronic devices that had been seized
19 at the defendant's home and transferred to Ohio. The
20 defendant challenged the validity of the California search
21 warrant on the grounds that the supporting affidavit did
22 not establish probable cause for the search and that the
23 warrant was unlawfully executed in California.

24 The Ohio Court of Appeals concluded that the search
25 warrant violated defendant's Fourth Amendment rights.

1 Although Jacob holds one state court should not
2 subject citizens of another state to its law of search and
3 seizures, in this case, this case is clearly
4 distinguishable because it does not involve the search of
5 resident and seizure of physical property located in
6 another state. The evidence obtained from the Metro PCS in
7 Texas involved only the records of electronic
8 communications that occurred in Michigan, not Texas. Even
9 though the warrant was served on a party at its office
10 outside this state, solely concerned transactions that
11 occurred within this state, thus Jacob does not support
12 defendant's argument that the magistrate lacked
13 jurisdiction to issue the warrants.

14 They go in this case also to talk about the
15 affidavits lacked probable cause; that is not before this
16 Court. It's just that the magistrate lacked jurisdiction
17 to issue the warrants; South Carolina magistrate to issue
18 warrants for records that were maintained in other
19 jurisdictions.

20 Now, y'all need to tell me if the flight
21 information is a different creature and the phone records
22 are not. I have not got -- the warrant has not been
23 specifically pulled out.

24 MR. GRAHAM: We're not planning on introducing
25 those in this case, Your Honor.

1 THE COURT: All right. So all these are telephone
2 records of -- assuming they are relevant, assuming they're
3 relevant, the only search warrant should focus on are
4 telephone records associated with the individuals in this
5 case, correct?

6 MR. GRAHAM: Besides phones and Mr. Snell hasn't
7 mentioned, but I assume this argument encompasses the other
8 two search warrants that were -- or the one wasn't a search
9 warrant, I don't think. There's a Greyhound Bus Ticket and
10 I think that was sent to a subpoena to Atlanta.

11 DETECTIVE GARRICK: No, I've got that in person.

12 MR. GRAHAM: You got that in person without any
13 documentation?

14 DETECTIVE GARRICK: Yes.

15 MR. GRAHAM: So a Greyhound bus ticket or copies or
16 screens of that transaction with Mr. Butler; and then the
17 other thing would be an Enterprise Rental Agreement with
18 McClure's name on it and that was by -- I'm not sure how
19 that was obtained, whether it was by subpoena or --

20 THE COURT: Well, is that -- is that part of
21 Court's 1, Mr. Snell?

22 MR. JAMES SNELL: Judge, I used all the -- all the
23 search warrants. If I -- I understood the bus tickets they
24 just asked for over the counter.

25 THE COURT: So that's not part of Court's 1?

1 MR. JAMES SNELL: No, Your Honor.

2 THE COURT: And then the rental car is not part of
3 Court's 1?

4 MR. JAMES SNELL: I didn't see it, Judge. I didn't
5 see a subpoena for it, I assume they just asked for it or
6 got it voluntarily.

7 THE COURT: All right. So as to the issue as to
8 Court's Number 1, which I think would be your Number 2 on
9 your e-mail, Mr. Snell?

10 MR. JAMES SNELL: Yes, Your Honor.

11 THE COURT: My ruling would be I would deny that
12 motion to suppress based on the Michigan case and
13 distinguishing the Ohio case. These are just records held
14 by a third-party out-of-state custodian. I don't think
15 there's any expectation of privacy. I think they're very
16 much different as we all do between residences and cars and
17 such.

18 And you had an issue as to an Alabama Search
19 Warrant; is that correct.

20 MR. JAMES SNELL: I do, Your Honor. If I may ask
21 one question regarding the prior ruling.

22 THE COURT: Yes, sir.

23 MR. JAMES SNELL: That prior ruling applies to the
24 flight information as well as the phone records?

25 THE COURT: Well, the Solicitor just indicated to

1 me they were not going to use the flight information.

2 MR. JAMES SNELL: Our -- our position --

3 THE COURT: I'm not going to rule on something
4 that's not going to come before me.

5 MR. JAMES SNELL: Our position would be, if their
6 proper warrants were submitted and documentation came out,
7 that the results in each subsequent evidence based on that
8 would be fruit of the poisonous tree and also subject to
9 being suppressed.

10 THE COURT: Well I'm not tracking that. You --
11 that hadn't been presented to me until after I ruled, so
12 I'm -- I apologize, I'm not tracking it. I thought I -- I
13 thought I was ruling on what was before me as to records
14 and then the Solicitor tells me, I'm not going to use
15 flight records and I'm not understanding why -- why am I
16 ruling on that; I don't understand?

17 MR. JAMES SNELL: That'll be cleared up.

18 THE COURT: All right.

19 MR. SNELL: I mean -- I mean -- I may have been off
20 track.

21 The intent of the motion was not only should these
22 items be suppressed for purposes of this trial, but if the
23 Court so found that the issuance of this out-of-state
24 search warrants was improper, that not only would -- would
25 the results be suppressed, but of course all of the

1 stemming evidence stemming from those results, would also
2 be fruit of the poisonous tree.

3 THE COURT: Well, since I have found I'm not going
4 to suppress it, then I think I would -- I'm not even sure
5 there's a tree, much less whether or not it's poisonous.
6 Because if I think they have -- he has, Mr. Butler, no
7 expectation of privacy, there is no tree. If -- if there
8 is a tree, he has an expectation of privacy and there is
9 fruit; it ain't poisonous. I mean that's kind of the
10 flow -- that's my thinking on that. There's no expectation
11 of privacy. The police went and got a search warrant for
12 these out-of-state records held by third party vendors,
13 custodians or what have you; and I guess my ruling would go
14 on to that. But at the same time, since I'm saying they're
15 admissible, I think that would encompass that there is no
16 fruit -- there is no fruit, there is no poison, there is no
17 tree.

18 MR. JAMES SNELL: Thank you, Your Honor.

19 THE COURT: If I understood your argument, I
20 apologize for not tracking it properly, Mr. Snell.

21 MR. JAMES SNELL: Thank you.

22 THE COURT: Yes, sir.

23 MR. JAMES SNELL: Thank you very much.

24 And move on to Number 2.

25 THE COURT: Yes, sir. Number -- as to the Alabama

1 witness speak up and that exhibit displayed in a more
2 efficient manner. Thank you. Thank y'all very much and
3 thank y'all very much for your service and your loyalty to
4 your oath.

5 Any objections to anything I've told the jury from
6 the State, Solicitor?

7 MR. GRAHAM: No, Your Honor.

8 THE COURT: Defense, Mr. Snell?

9 MR. JAMES SNELL: No, Your Honor.

10 THE COURT: Thank you very much. Solicitor, you
11 may --.

12 MR. MCNAIR: Thank you, Your Honor, may it please
13 the Court.

14 THE COURT: Yes, sir.

15 **OPENING STATEMENTS**

16 MR. MCNAIR: Tycus Toland decided to ride with his
17 brother, Vonkeith, to sell a car to defendant, Justin
18 Butler. He made a deadly mistake. He didn't know it, but
19 he had just become the wild card in Terry McClure and
20 Justin Butler's plans to rob Vonkeith; and nothing was
21 going to stop them from doing what they came all the way
22 from Alabama and California to do. So after Terry McClure
23 and Justin Butler got back to Vonkeith's house after test
24 driving that vehicle, Terry McClure wasted little time in
25 eliminating that wild card. He put a gun to the back of

1 Tycus Toland's head and executed him before he had time to
2 flinch and after he shot Tycus in front of his brother,
3 Vonkeith, he then turned that gun on Vonkeith and started
4 shooting him too. As Vonkeith is trying to get away, the
5 next time he sees Justin Butler, Justin Butler has a gun in
6 his hand sticking it in Vonkeith's face saying give us the
7 drugs and the money or I'll kill you.

8 This was just the culmination of what they had been
9 planning for days. You will hear that in the days prior to
10 this incident, Terry McClure and Justin Butler start
11 talking on unregistered phones, prepaid phones, minute
12 phones, burner phones, whatever you want to call them.
13 They are phones that you obtain without providing any
14 identifying information.

15 You will hear that when Justin Butler and Terry
16 McClure start talking on those phones, Mr. Butler then
17 calls Vonkeith Toland shortly thereafter, tells him he's
18 interested in buying a used car. They make plans to meet
19 in South Carolina on the weekend of April 26th, 2014. You
20 will see that on the 24th, Justin Butler takes a Greyhound
21 Bus from where he lives in Alabama to the airport in
22 Atlanta where he meets up with Terry McClure, who is coming
23 from California.

24 Prior to them meeting there, you will hear about
25 texts that Justin Butler sent to Terry McClure saying he's

1 got the hammy with them and you'll hear about what that
2 means.

3 Terry McClure then rents a car at the Enterprise at
4 the Atlanta Airport and they ride together to South
5 Carolina. On the 24th and 25th, prior to this murder,
6 Butler and McClure are in the Greenwood area. Butler
7 begins texting and calling an 864 number in Greenwood, the
8 same number he had called the first time he had talked to
9 Terry McClure. There's a text on that 864 Greenwood number
10 to Justin Butler asking him, are you going to need the
11 hammer to fix it? Justin Butler's response was most
12 likely.

13 Ladies and gentlemen, he is not a carpenter. If
14 you can't already tell from the context what that means,
15 you will hear testimony about it in this trial. They then
16 leave Greenwood on the 26th. They meet Vonkeith at his
17 mother's house in North. Tycus was there with other
18 members of their family. People who are there, they see
19 them, they see the car they came in. That house is in
20 North, South Carolina. They then leave North and they
21 follow Vonkeith and Tycus to Vonkeith's house on Bushberry
22 Road in Pelion.

23 When they get there Vonkeith, Butler and McClure
24 leave to test drive the vehicle Butler supposedly wanted to
25 buy. They leave Tycus behind. When they get back, they're

1 standing around the Infinity looking at it making small
2 talk and then like I mentioned earlier, in a flash, Terry
3 McClure pulls a gun, shoots Tycus Toland in the back of the
4 head before he can even react. At that point, Vonkeith
5 tries to get away. Terry McClure starts shooting him too.
6 Vonkeith is somehow able to make it to the rear of his
7 residence. At that point, he sees Justin Butler. Justin
8 Butler has a gun, he sticks it in his face, he says give us
9 the drugs and the money or I'll kill you. Justin Butler
10 and Terry McClure go inside the house, pulling out drawers,
11 ransacking it looking for whatever they were looking for.

12 At some point, McClure comes back out the house, he
13 sees Vonkeith there on the ground fighting for his life
14 with a phone in his hand trying to call 911. He snatches
15 the phone from him, goes back in the house, a short time
16 later or during that time, Vonkeith had been able to crawl
17 under his house to hide from them. They come back out,
18 they don't see Vonkeith on the ground where they had left
19 him. They freak out and they leave. Before they left,
20 they snatch the DVR for the security system that Vonkeith
21 had in his house. Vonkeith is able to crawl from
22 underneath his house all the way to the front back to where
23 his vehicle was to get another phone where he then called
24 911. He was shot multiple times and he survived and he's
25 here to testify today.

1 Ladies and gentlemen, Mr. Butler is charged with
2 murder, attempted murder, burglary first degree, possession
3 of a weapon during the commission of a violent crime. The
4 Judge is going to instruct you on the law at the end of
5 this case and he is the authority on the law. Ladies and
6 gentlemen, I just want to give you a little preview now.

7 Under the law of South Carolina, when two people
8 combine together to commit a crime, the act of one is the
9 act of all; the hand of one is the hand of all. I'm sure
10 you've heard that before. When two people agree to commit
11 a robbery and use guns and a murder is committed in the
12 course of that robbery, it doesn't matter who pulled the
13 trigger or not. They are both equally guilty of murder.

14 The Judge will also instruct you on what reasonable
15 doubt is at the end of this trial. I want to talk a little
16 bit about that now because a lot of people have
17 misconceptions about what that term really means. It does
18 not mean that we have to prove things to you to an absolute
19 certainty. That does not exist in this world. It does not
20 mean that we have to prove things to you beyond any or all
21 doubt. What it means is that after you consider the
22 evidence, are you firmly convinced that he is guilty and if
23 you are, then you've taken an oath to find him guilty.

24 As I stand here right now, I have no idea what the
25 defense may or may not say. They don't have to say a word;

1 the burden is completely on us. We accept that and we
2 welcome that. But I suspect the easiest thing to do in this
3 case is try and dirty up Vonkeith, call him a drug dealer.
4 He's been convicted of selling drugs in the past. He's
5 going to tell you he wasn't selling drugs at the time this
6 incident happened. But regardless, it is no defense to
7 murder, robbery, or burglary or anything else that somebody
8 may or may not be a drug dealer. You don't have the right
9 to commit murder just because somebody is a drug dealer.

10 I suspect the defense is also going to bring up the
11 fact that there was a gun found under Vonkeith's bed in his
12 house. That gun was found with no clip, no bullets,
13 according to CSI, it didn't appear to have been recently
14 fired.

15 Now, ladies and gentlemen, there's no blood on that
16 gun and there's no blood in the house. If Vonkeith had
17 gotten back into the house to stash that gun, you would
18 have seen blood all over the place. Now I don't know what
19 they're going to say about Tycus.

20 MR. JAMES SNELL: Your Honor, I have an objection
21 to this line --

22 THE COURT: Excuse me?

23 MR. JAMES SNELL: I have an objection if we may
24 approach.

25 THE COURT: I'll note your objection. Ladies and

1 gentlemen, as I told you previously, what the attorneys
2 tell you is not evidence. What the attorneys -- the
3 evidence comes from the witnesses testifying under oath
4 from the witness stand. It will be for you to decide the
5 credibility and believability of the witnesses.

6 Thank you. Thank you very much, Mr. Snell.

7 You may continue, Solicitor.

8 MR. MCNAIR: Thank you, Your Honor.

9 Ladies and gentlemen, I'm about to sit down. All I
10 can ask is that you use your common sense throughout this
11 trial. This isn't some science experiment. Just like you
12 do in your everyday life, you can use your common sense to
13 determine what's reasonable and what's not, to sort through
14 the clutter and the spin and determine what the truth is,
15 determine what's fact and what's fiction. And at the end
16 of this trial, we'll come back before you and we're going
17 to ask you to render a verdict that speaks the truth and
18 find this defendant guilty as charged.

19 THE COURT: Thank you. Thank you very much,
20 Solicitor.

21 Mr. Snell.

22 MR. JAMES SNELL: Thank you very much. According to
23 all the evidence in the case, and you've heard the
24 prosecutor's opening statement, the shooter in this case is
25 a gentleman named Terry McClure. Mr. McClure is not in the

1 courtroom. He is not here and they're not trying his case;
2 they're trying Justin Butler only under the theory, you may
3 hear, the hand of one is the hand of all.

4 What we know about these facts from the
5 investigation the police did, from the documentation they
6 turned over to us, what we believe you'll hear during the
7 trial of this case, the first thing Vonkeith has given
8 multiple inconsistent stories and statements. He initially
9 told police that these individuals were there to buy a car
10 and they were off of Craig's List. This led the sheriff's
11 department to issue press release's for stories that the
12 paper referred to this as or the media might refer to it as
13 a Craig's List Killing.

14 Vonkeith -- information that Vonkeith provided led
15 to report to the police at the beginning of this case that
16 the shooter was a white man. You will hear evidence in the
17 trial that both the defendants, Mr. Butler and Mr. McClure
18 are African American. Vonkeith denied doing any type of
19 drug dealing. He was offered immunity, which is a legal
20 protection where they said we will not prosecute you, just
21 tell us about the drug dealing you were doing and he denied
22 it.

23 Vonkeith gave misinformation to the police about a
24 gun in the house. He said there wasn't one, then they
25 offered him immunity on that point and he finally admitted

1 to the police that he knew there was a Glock, a .40 caliber
2 gun in the house that he attributed to a girlfriend.

3 Vonkeith also later said that at the time of the shooting,
4 that when his brother was shot, it was without warning and
5 he said that Justin Butler appeared surprised; that he was
6 not prepared for it and that's extremely important in this
7 case because the prosecutor is alleging that these folks
8 were part of a -- had a common plan to commit this crime
9 and commit the shooting. Again, the evidence is going to
10 be from their one witness that saw the shooting or says he
11 saw it that Butler was surprised.

12 I think the scene of this event is also significant
13 and you're going to hear a lot about it. The first thing
14 this is not a normal neighborhood or a normal house, you
15 know, that you may see in the community. This is a
16 double-wide mobile home on a secluded lot with a gated
17 driveway, a six foot privacy fence and security system.
18 There are at least five dogs; one of which is loose when
19 the police arrive. The Toland family is there on scene. I
20 think one of the deputies that secured the house may
21 testify that one family member tried to actually come in
22 the house while the police were doing the investigation.
23 One dog is moving evidence around in the yard while the
24 police are there. But at no point during any of this time,
25 according to the documentation or reports, did Vonkeith

1 tell the police that they were there to rob drugs.

2 So I don't believe that's -- he didn't tell them,
3 any of the investigators, at any initial points -- we're
4 not exactly sure at what point that story came out, but
5 that's not something that he initially said. In fact, as
6 late as the -- I mean months and months after the shooting,
7 the detective in the case said that they hadn't identified
8 anything they thought specifically was taken from the
9 trailer except for potentially a security system.

10 So we believe the evidence in this case is going to
11 show a lot of unanswered questions, a lot of facts that are
12 not known, other than simply Mr. Butler, who is the only
13 defendant on trial, is not guilty. He is not the shooter,
14 was not prepared for a shooting, and was surprised by the
15 shooting. We'd ask you to take all that into consideration
16 and at the end of the trial return a verdict of not guilty.
17 Thank you.

18 THE COURT: Thank you. Thank you very much, Mr.
19 Snell.

20 Solicitor, you may call your first witness.

21 MR. MCNAIR: Your Honor, the State calls Roger
22 Gilland.

23 THE COURT: All right. If you'd come around and
24 join us and be sworn please.

25 ROGER GILLAND,

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1 after being duly sworn, testified as follows:

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

4 THE WITNESS: Roger Gilland. G-I-L-L-A-N-D.

5 **DIRECT EXAMINATION**

6 BY MR. MCNAIR:

7 Q Officer Gilland, you are one of the CSI's in this
8 case, correct?

9 A Yes.

10 Q And were there multiple CSI's on the scene?

11 A There were.

12 Q Were you essentially the lead CSI?

13 A I was, yes.

14 Q Would you give the jury a little bit of your
15 background in law enforcement?

16 A I've got an Associate's Degree in Criminal Justice.
17 I've got a Bachelor of Science Degree in Crime Scene
18 Investigation. I graduated from the South Carolina
19 Criminal Justice Academy and I've had a multitude of
20 training and other lecture type deals relating to many
21 areas of forensic investigation.

22 Q Prior to being with Lexington County Sheriff's
23 Department, were you at any other agency?

24 A I was. I was at the FBI, City of Columbia Police
25 Department.

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1 Q What was your position while you were there?

2 A I was a patrolman, Master Patrol Officer, Crime
3 Scene Investigator and a trainer.

4 Q All right. Are you currently in law enforcement?

5 A No.

6 Q What are you doing these days?

7 A I'm an over-the-road truck driver.

8 Q You moved on to greener pastures?

9 A Yes.

10 Q All right. Let's talk about this case. Did you
11 respond to the scene of Bushberry in Pelion.

12 A I did.

13 Q What time did you get on the scene?

14 A It was right after the call went out. I was
15 actually down the road clearing up from another scene.

16 Q Had the scene been secured prior to your arrival?

17 A It had not. They were in the process of attempting
18 to secure it. There was a bunch of family members, not on
19 scene, they were in the driveway before you get into the
20 residence, the residential area. I couldn't even gain
21 access to the residential area.

22 Q Okay.

23 A They were getting stopped by law enforcement.

24 Q All right. So they did not enter the crime scene?

25 A Not to my knowledge.

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1 Q So you were there when the crime scene was secured?

2 A I was.

3 Q All right. Were any of the victims still on scene
4 at that point?

5 A I -- yes, the --

6 Q Do you recall who?

7 A The deceased victim was. I believe the other
8 victim had already been transported.

9 Q Now, I guess as a CSI can you describe to the jury
10 kind of how you work a crime scene?

11 A Generally whenever I first arrive on a scene, I'll
12 make contact with the lead investigator and the officers,
13 the first responding officers on the scene, find out from
14 them what kind of -- a little bit of what happened, what
15 they believe happened. After I make contact with them and
16 kind of get a back story, I'll go walk through the scene
17 just to look and see what evidence there is, what areas we
18 may need to go ahead and secure a little better, what
19 evidence may need to be collected immediately, due to
20 situations that's out of our control due to weather and
21 other things.

22 After I do that, then I grab my camera, I take
23 overall photographs of everything. I photograph my way
24 into the scene and I try to go ahead and do that as quickly
25 as possible. That way I capture the scene during

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1 conditions that it was when the crime had occurred,
2 whatever had happened had occurred.

3 Q So is it fair to say you kind of start broad and
4 work your way in?

5 A Yes, sir.

6 Q All right. Now as far as this case was concerned,
7 did you locate any shell casings?

8 A I did.

9 Q How many shell casings did you find?

10 A I believe there were five.

11 Q Do you recall the caliber they were?

12 A They were all .40 caliber.

13 Q All right. We'll get more into more detail later,
14 but in general where were they located?

15 A There was one located next to the car where the
16 deceased victim was and there were four shell casings
17 around the back of the residence. There was like an
18 addition, I'm not sure they had started doing a deck or a
19 porch or an add on to the house, but there was a wooden
20 structure back there that was a fairly new build and there
21 were shell casings were around that area.

22 Q All right. Did you collect all those casings?

23 A I did.

24 Q Did you locate what appeared to be blood?

25 A Yes.

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1 Q Do you recall where you saw that?

2 A There was a reddish brown stain on the left hand
3 rail going into the residence on the front door of the
4 residence that appeared to be blood. There was also a
5 reddish brown stain that appeared to be blood underneath
6 part of the back of the residence. There was a board
7 forming up under that structure that kind of connected to
8 the house and it looked like someone had went underneath
9 that residence and left a blood transfer on that board.

10 Q Okay. Did you locate any guns outside the
11 residence?

12 A Not outside the residence.

13 Q Did you locate any guns beside the deceased victim?

14 A No.

15 Q Now, did you at some point make your way into the
16 residence?

17 A Yes.

18 Q Can you describe the condition of the house?

19 A The -- the residence was ransacked. I don't
20 believe there was any room that wasn't ransacked inside
21 that residence.

22 Q Did you locate anything of significance inside the
23 residence?

24 A I went inside the residence looking through the
25 residence, there were a number of security cameras outside

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1 of the residence and the wires ran into the residence.

2 Tracing of the wires into the residence, they kind of
3 connected in one area and it appeared that they connected
4 to a DVR, some type of recording equipment. That equipment
5 was missing and the -- the cords had been unplugged. You
6 could tell that the plugs had been unplugged recently
7 because they were on top of stuff that had been ransacked.

8 Q Did you locate a gun inside the residence?

9 A Yes, I did. I located a Glock .40 caliber handgun
10 in the master bedroom underneath the bed toward the
11 headboard of the bed underneath, it was kind of buried
12 under a bunch of stuff. It did not appear that it had been
13 placed there recently. It had been there for a while.

14 Q Okay. Did you observe that gun closely and inspect
15 it?

16 A I did. I did check it for any rounds in the
17 chamber and the magazines laying around it. There was no
18 magazine in it -- in the gun. There was no round in the
19 chamber and there were no rounds around that gun.

20 Q Based on your training and experience, did that gun
21 appear to have been recently fired?

22 A It did not. What I kind of did was running a smell
23 test and it did not smell like it had been fired. When a
24 gun has been recently fired, you have a strong odor from
25 the gunpowder where the gunshot residue would be inside the

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1 gun.

2 Q Did you locate what appeared to be any blood
3 whatsoever inside the residence?

4 A Not inside the residence.

5 Q I'm going to show you what's been premarked as
6 State's Exhibit 4 through 26. These are photographs. Will
7 you please just take a minute to look through those?

8 (There was a pause in the proceedings.)

9 BY MR. MCNAIR:

10 Q Do you recognize those?

11 A I do. They appear to be photos that I had taken on
12 the scene.

13 Q Do they accurately represent the way the scene
14 looked the day you took the photos?

15 A They do.

16 MR. MCNAIR: Your Honor, we'd offer State's 4
17 through 26 into evidence at this time.

18 THE COURT: Mr. Snell?

19 MR. JAMES SNELL: No objection.

20 THE COURT: State's 4 through 26 in evidence
21 without objection.

22 (State's Exhibit Number 4, Number 5, Number 6,
23 Number 7, Number 8, Number 9, Number 10, Number 11, Number
24 12, Number 13, Number 14, Number 15, Number 16, Number 17,
25 Number 18, Number 19, Number 20, Number 21, Number 22,

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1 Number 23, Number 24, Number 25, Number 26 were entered
2 into evidence.)

3 MR. MCNAIR: May I have the witness step down, Your
4 Honor.

5 THE COURT: Yes, sir. You may step down.

6 THE WITNESS: Thank you, sir.

7 THE COURT: Wait a minute while I come down.

8 MR. MCNAIR: Yes, sir, they don't show up good on
9 the screen.

10 THE COURT: No, no, that's fine. I just wanted you
11 to step around some.

12 MR. MCNAIR: I got ya.

13 BY MR. MCNAIR:

14 Q All right. I'm going to show you State's
15 Exhibit 4 and you come around here and just explain to the
16 jury what this shows.

17 A This is a photo standing outside of the fence.
18 There's a very long driveway that leads to this property
19 and this is standing in that driveway taking the photograph
20 toward the residence.

21 THE COURT: Solicitor, I'm not sure this end of the
22 jury could see that.

23 MR. MCNAIR: I'll pass it.

24 THE COURT: Thank you.

25 BY MR. MCNAIR:

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1 Q All right. State's 5; what does State's 5 show?

2 A This is inside the fenced-in area and this is a
3 corn patch here. This is the vehicle that the victim was
4 found in front of and this is another vehicle, which the
5 victim, I believe was located, the second victim was
6 located.

7 Q Okay. And what type of vehicle was the deceased
8 victim come from?

9 A The white Infinity.

10 Q Okay. And the other vehicle was what?

11 A A silver Honda.

12 Q A silver Honda. All right. Exhibit 6?

13 A This is a closer photo of the silver Honda.

14 Q Did that show the location of the deceased victim
15 as well?

16 A It does.

17 Q State's 7?

18 A And this is a closer photo of the white Infinity
19 with the victim lying by it.

20 Q Do you recall if there was anything around the
21 deceased victim?

22 A I believe there was a cell phone at the beginning
23 and inside the car, right on top of the battery here is a
24 set of keys.

25 Q Okay. Does this appear to be a cell phone right

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1 here beside the victim?

2 A It does.

3 Q State's 8?

4 A This is a photograph of the front of the residence
5 where it had the actual numbers for house.

6 Q Okay. You mentioned you saw blood on the front
7 handrail?

8 A Yeah, it would have been on this handrail over here
9 with the outside of the photograph.

10 Q Do you recall if that door was open or closed when
11 you first arrived?

12 A It was closed I believe.

13 Q All right. State's 9?

14 A This is the kitchen area inside the residence. It
15 was probably one of the cleanest rooms believe it or not,
16 but all the cabinet doors were open as if the cabinets had
17 been gone through.

18 Q State's 10?

19 A This again is the cabinets in the kitchen and this
20 would be I guess you would call it the den area over here
21 and the significance of this photograph was the .40 caliber
22 handgun that was found in the top cabinet.

23 Q Okay. State's 11?

24 A The box.

25 Q Okay. You pulled it out of the cabinet and

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1 photographed it closer?

2 A Right.

3 Q What does State's 12 depict?

4 A This is the doorway, the entrance into the master
5 bedroom. This is the bed that we had found the gun and
6 these here are the cords leading from the surveillance
7 cameras outside the residence into the residence.

8 Q Okay. Is that where the security system appeared
9 to have been disconnected?

10 A That's where one of them had been disconnected,
11 yes.

12 Q All right. And State's 13 is that just a closer --

13 A That's a closer video.

14 Q Okay.

15 A A closer photo, of course.

16 Q All right. State's 14?

17 A This is a photo just inside the door of the master
18 bedroom capturing as much as I could with the angle of the
19 lens of the area that had been ransacked.

20 Q All right. State's 15?

21 A This is the gun that was located under the head
22 area of the bed on the floor underneath the bed.

23 Q Okay. Is the condition -- is this how it looked
24 when you first saw it?

25 A Pretty much. There was a few other things right

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1 here in front of it before we actually located the gun.

2 Q Okay. State's 16?

3 A This is the set of car keys and the house keys that
4 was on top of the battery of the white Infinity.

5 Q 17?

6 A This is a photo of the passenger side of the silver
7 Honda.

8 Q Did you have any indication of where the victim who
9 had been transported had been?

10 A It appeared the victim that was transported had
11 been located here and there was a what appeared to be blood
12 on the seat and the door here as well as some trash left
13 over from EMS where they had done work on the victim.

14 Q All right. And that's just a closer view?

15 A That's a closer view and there's a cell phone right
16 there in the door.

17 Q All right. Did you collect that cell phone?

18 A I did.

19 Q Did you enter that into evidence?

20 A I did.

21 Q That's just a closer view of that cell phone?

22 A It is.

23 Q State's 17 through 19. State's 20?

24 A This is the wooden structure on the back of the
25 house that I spoke of earlier where it appeared that

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1 someone had started building a deck or an addition to the
2 house or something. A number of shell casings were located
3 in this area.

4 Q All right. You testified you found four shell
5 casings back in this area?

6 A Yes.

7 Q State's 21, is that just another photo of that
8 location?

9 A Yes, that's a photo of the -- the backside of the
10 house with that addition from a different angle.

11 Q All right. State's 22?

12 A This is a photograph of the back sliding glass
13 door. To me it appeared that someone had grabbed it from
14 the middle or toward the bottom and yanked it out in order
15 to gain access to the interior of the residence.

16 Q All right. And that placard C, what does that
17 represent?

18 A That was a reddish brown stain on the door handle
19 that appeared to be blood.

20 Q All right. What, if anything, did you do with that
21 area?

22 A I collected a swab of the stain for evidence.

23 Q All right. State's 23?

24 A This is the front entrance of the house, the steps
25 leading into the house. This is the handrail where there

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1 was red stain, a brownish red stain that appeared to be
2 blood, which I swabbed and collected as evidence.

3 Q Okay. State's 24?

4 A All right. You've got C up here which is the
5 reddish brown stain that I swabbed. B is a reddish brown
6 stain that appeared to be blood where it appeared that
7 someone had crawled underneath the house. I swabbed that
8 area and collected that. Number 19 was -- it appeared to
9 be a possible bullet hole, but after further investigation,
10 we actually took that area apart. It was not a bullet
11 hole.

12 Q All right. Twenty-five, that's just a close up?

13 A That's a close up of the area I swabbed.

14 Q Is this a low area to the ground?

15 A It is.

16 Q And State's 26?

17 A This is the front of the house. This is actually
18 right inside to the right hand side of the steps. An
19 opening underneath the house and this is where we found the
20 victim that I believe, had survived, if I'm correct. His
21 clothing was in this area.

22 Q Okay Does that appear to be where he crawled out
23 the front of the house?

24 A It is. It was.

25 MR. MCNAIR: Beg the Court's indulgence.

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1 BY MR. MCNAIR:

2 Q All right. I'm going to show you what's been
3 premarked as State's Exhibit 27 and ask if you recognize
4 this?

5 A I do. It's a -- it's a drawing that I did, of
6 course the drawing is not to scale; it's my representation
7 of the scene.

8 Q Did you take measurements prior to drawing this?

9 A I did.

10 Q Is everything in it's approximate position of where
11 it was on the scene that day?

12 A It is.

13 Q All right. And did you also write on this diagram?

14 A I did.

15 Q What do your handwritten notes represent?

16 A The shell casings that were located at the scene.

17 Q All right. And Is that the approximate location of
18 where you located the shell casings?

19 A It is.

20 MR. MCNAIR: Your Honor, we'd offer State's Exhibit
21 27 into evidence?

22 MR. SNELL: No objection.

23 THE COURT: State's 27 is in evidence without
24 objection.

25 (State's Exhibit Number 27 was entered into

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1 evidence.)

2 MR. MCNAIR: If you don't mind I'm going to grab
3 the easel, Your Honor.

4 BY MR. MCNAIR:

5 Q All right. Will you show the jury where the
6 Infinity was located?

7 A This is the white infinity here.

8 Q This is the location of the deceased victim?

9 A Yes.

10 Q All right. And what shell casings did you find by
11 that location?

12 A Number 3 was a Federal .40 caliber Smith and Wesson
13 shell casing**.

14 Q And when you say Number 3; is that how you labeled
15 it?

16 A Yes.

17 Q That's CSI Number Three?

18 A Yes.

19 Q All right. And this is the Honda that vehicle that
20 you previously testified too?

21 A Correct.

22 Q All right. Will you -- point out where the other
23 shell casings were located and what they were.

24 A Number Four is an RAK Smith and Wesson shell
25 casing. It was located just outside of the wooden

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1 structure on the back of the house. Number 5 is, appeared
2 to be a shere -- it was located on the inside of the wooden
3 structure as well as Number 6, which is an RP .40 caliber
4 plus shell casings.

5 And then Number 7 was located closer to the house
6 inside the wooden structure, almost where the victim would
7 have crawled under the house. It was a Winchester .40
8 caliber bullet shell casing.

9 Q Which door, based on this diagram would have been
10 bent?

11 A It would have been this door right here which was a
12 sliding glass door.

13 Q And this appeared to be the location of where --
14 this is where you found blood underneath the house?

15 A Yes.

16 Q Now, as far as the dogs in the crime scene. Are
17 you aware if they moved any shell casings?

18 A They did not move the shell casings themselves.

19 Q Okay.

20 A As far as I know.

21 Q What were the dogs grabbing at the crime scene?

22 A They -- this area right here represents a pile of
23 clothing that was located beside the silver Honda. They
24 had actually grabbed that and strewn it out into this area
25 here and they grabbed the marker, the evidence marker on

Roger Gilland - Direct Examination by Mr. McNair

1 the evidence itself that placard for Number 7, and drug it
2 underneath the house and over in this area here while they
3 were --

4 Q Okay. The items that you recovered in the Honda,
5 that appeared to be just the victim's clothing removed by
6 EMS?

7 A Yeah, it was some type of clothing. I'm not sure
8 if it was the victim's clothing or just clothing that was
9 out of the car.

10 Q Okay. You can have a seat.

11 Did you attempt to obtain any fingerprints from
12 inside the residence?

13 A Yes, we did.

14 Q Were you able to obtain any fingerprints?

15 A We were not able to obtain anything of comparable
16 quality. It was all smudges and overlaps.

17 Q Okay. Nothing that could be sent off for testing?

18 A Correct.

19 Q Did you attempt to obtain any fingerprints from the
20 vehicles?

21 A I did not, but I instructed Crime Scene
22 Investigator, Keith Sprinkle to do that test.

23 Q Okay. You mentioned you did take swabs for
24 potential DNA from the crime scene?

25 A Yes.

Roger Gilland - Direct Examination by Mr. McNair

1 Q I'm going to show you what's been premarked as
2 State's 28 and 29 and ask you if you can identify those.

3 A Yes, 28 is going to be the -- the swab from the
4 back of the residence I collected where apparently someone
5 had went underneath the house.

6 THE COURT: Speak up just a little bit for me?

7 THE WITNESS: Yes, sir. Swab C or Exhibit 28 is
8 Swab C, which I collected from the backside of the house
9 where the wooden structure is where it appeared that
10 someone had went underneath the house. Number 29 is swab
11 E, which is from the left handrail of the front steps
12 leading into the residence.

13 MR. MCNAIR: Your Honor, we'd offer those two
14 exhibits into evidence at this time, 29 and 29?

15 MR. JAMES SNELL: No objection.

16 THE COURT: State's 28 and 29 are in evidence
17 without objection.

18 (State's Exhibit Number 28 and Number 29 were
19 entered into evidence.)

20 BY MR. MCNAIR:

21 Q All right. I'm going to show you what's been
22 premarked as State's 30 through 34 and ask if you can
23 identify those.

24 A 34 is going to be shell casing Number 6 as it
25 relates to that diagram that I started with earlier. 33 is

Roger Gilland - Direct Examination by Mr. McNair

1 going to be shell casing Number 4 as it relates to the
2 diagram. 32 is going to be shell casing Number 7 as it
3 relates to the diagram. 31 is going to be shell casing
4 Number 5 as it relates to the diagram; and 30 is going to
5 be shell casing Number 3 as related to the diagram.

6 MR. MCNAIR: We'd offer State's 30 through 34 into
7 evidence.

8 MR. JAMES SNELL: No objection.

9 THE COURT: State's 30 through 34 in evidence
10 without objection.

11 (State's Exhibit Number 30, Number 31, Number 32,
12 Number 33, Number 34 were entered into evidence.)

13 BY MR. MCNAIR:

14 Q State's 35?

15 A State's 35 would be the cell phone that I recovered
16 from the passenger side door handle of the silver Honda.

17 Q The cell phone that was reflected in the photos
18 that we just saw?

19 A Yes, sir.

20 MR. MCNAIR: Your Honor, we'd offer State's 35 into
21 evidence as well.

22 MR. JAMES SNELL: No objection.

23 THE COURT: State's 35 is in evidence without
24 objection.

25 (State's Exhibit Number 35 was entered into

Roger Gilland - Direct Examination by Mr. McNair

1 evidence.)

2 BY MR. MCNAIR:

3 Q Did you submit all those items into evidence?

4 A I did.

5 Q During the time they were in your possession or
6 control, did you manipulate them in any way?

7 A No.

8 Q Swab C, where did you -- do you recall where you
9 testified that swab came from?

10 THE COURT: What State number is that; is that 28
11 or 29?

12 THE WITNESS: 28.

13 BY MR MCNAIR:

14 Q 28.

15 A Swab C, I believe I misspoke on that. I believe I
16 said it came from the underneath part of the house.

17 Q Correct.

18 A Swab C actually came from the door.

19 Q Okay. Swab C is reflected in the photos we just
20 viewed?

21 A Right.

22 Q It's on the back door at the rear of the residence?

23 A Yes.

24 Q Okay. And swab E, did you testify, is that 29, did
25 you testify that came from the front handrail of the

Roger Gilland - Direct Examination by Mr. McNair

1 residence?

2 A Yes.

3 Q Is that what appeared to be blood in the
4 photograph?

5 A Yes.

6 Q I show you what's been marked as State's 36; is
7 that the gun that you recovered from under the bed inside
8 the residence?

9 A I can't say whether it's the gun or not. I
10 actually would have to end up taking the gun out and verify
11 the serial number on it. That is the packaging that I
12 packaged the gun in.

13 Q Okay.

14 MR. MCNAIR: Permission to open it up, Your Honor?

15 THE COURT: Well, what is the -- do we know the
16 condition of the gun?

17 MR. GRAHAM: It's my understanding that it's got a
18 secure lock on it, Your Honor. It doesn't have a clip or
19 any ammo in it.

20 THE COURT: All right. You're welcome to ask him
21 if it can be verified. It has a gun lock in it and no ammo
22 in it; never typically point it at anyone in the courtroom
23 if you choose to be demonstrative purposes. But yes, you
24 may open it and also, if you would advise for the record
25 that it has a gun lock in it.

Roger Gilland - Direct Examination by Mr. McNair

1 MR. MCNAIR: Yes, Your Honor.

2 THE COURT: And there's no ammunition in it or the
3 magazine.

4 THE WITNESS: It does have a gunlock. There is no
5 magazine and no ammo.

6 THE COURT: Thank you. And it slides back --

7 THE WITNESS: The slide if back, yes, sir.

8 THE COURT: Thank you very much.

9 THE WITNESS: The serial number on this gun is
10 EYR093, Echo, Yankee, Romeo 093; and the gun that I
11 collected has a serial number of EYR093; Echo, Yankee,
12 Romeo 093. That is the gun I collected.

13 MR. MCNAIR: Your Honor, we'd offer State's 36 into
14 evidence?

15 MR. JAMES SNELL: No objection.

16 THE COURT: State's 36 is in evidence without
17 objection.

18 (State's Exhibit Number 36 was entered into
19 evidence.)

20 MR. MCNAIR: Your Honor, we have no further
21 questions at this time.

22 Please answer any questions that the defense has.

23 THE COURT: Thank you. Thank you very much. Mr.
24 Snell?

25 ///

Roger Gilland - Cross-Examination by Mr. James Snell

CROSS-EXAMINATION

1
2 BY MR. SNELL:

3 Q Mr. Gilland, can you tell us to the best of your
4 knowledge approximately what time the shooting took place?

5 A I'm not exactly sure what time. I know it was kind
6 of earlier in the evening.

7 Q The six o'clock hour; does that sound about right?

8 A That's sounds -- that sounds close, yes. Maybe
9 around 6:30ish.

10 Q And in looking at the -- at your -- at the notes
11 you took, some of the shell casings were recovered close to
12 11:30 p.m.?

13 A That's correct.

14 Q So I guess it's fair to say that they were laying
15 out there for at least five hours approximately?

16 A Yes.

17 Q I understand looking at the reports we have the dog
18 loose that you testified moved some items around, the
19 clothes and the marker, correct?

20 A Yes, sir.

21 Q And that dog remains, if I understand, loose the
22 whole time you were there?

23 A Yes, sir.

24 Q Okay. And I think at the end, you and Deputy
25 Sprinkle actually put some dog food out and watered him and

Roger Gilland - Cross-Examination by Mr. James Snell

1 gave him some food?

2 A Before we cleared the scene, Deputy Sprinkle
3 actually fed him and gave him some water, yes.

4 Q All right. Did you yourself have an occasion to
5 interview or talk to Vonkeith Toland?

6 A I did not.

7 Q And have you actually spoken to anybody that has
8 any firsthand knowledge of what happened?

9 A No, I have not.

10 Q And so you yourself don't have any firsthand
11 knowledge of what actually occurred on this date?

12 A Correct.

13 Q Okay. Other than your testifying as -- as what the
14 evidence was and what the scene was as you found it?

15 A Correct.

16 Q All right. And so specifically regarding the gun,
17 you don't have firsthand knowledge of any inconsistent
18 statements that Vonkeith gave about it?

19 A No, I do not.

20 Q All right. Now, if -- if with regard to the scene,
21 I guess this a double-wide mobile home?

22 A It is.

23 Q All right. Can you describe how far off of the
24 road is it?

25 A It's a pretty good ways down the road. I would say

Roger Gilland - Cross-Examination by Mr. James Snell

1 if I had to guess the driveway leading to it is probably an
2 eighth of a mile.

3 Q Is it fair to say it's secluded?

4 A Yes.

5 Q And there's a fence around it?

6 A There is.

7 Q How high is the fence?

8 A Approximately a six foot high privacy fence.

9 Q When you say privacy, does that mean you can't see
10 through it?

11 A Correct, it's -- the wooden board type, yes, as you
12 can see from the photographs.

13 Q Is the driveway gated?

14 A It was, I believe.

15 Q And there were, assuming you went inside, you could
16 see where there was some kind of device hooked up to the
17 cameras?

18 A Yes.

19 Q How many cameras were there?

20 A I -- I didn't count the cameras. If I had to
21 guess, it was probably five to six at least.

22 Q Did you mark -- I'm looking at the diagram here
23 marked as State's Exhibit 27 and I don't see where cameras
24 are marked?

25 A They're not marked on the diagram and I didn't know

Roger Gilland - Cross-Examination by Mr. James Snell

1 the cameras. I just saw and I observed the cameras on the
2 scene.

3 Q Were they marked anywhere; was there an official
4 record maintained of where the cameras -- the positions
5 were?

6 A No.

7 Q Did anybody ever verify the cameras were operable?

8 A No.

9 Q Plugged them up?

10 A No.

11 Q And I understand you went in the house, you found
12 the gun, correct?

13 A Initially, yes.

14 Q This gun here. And that gun appeared to be -- was
15 it ever tested?

16 A Not to my knowledge. I couldn't answer that.

17 Q But does it appear to have all the parts and pieces
18 and where it would be operable?

19 A With the exception of the magazine.

20 Q And I understand there was some money recovered,
21 small amounts in the mobile home?

22 A Yes.

23 Q Okay. I think there was some cash; do you recall
24 how much?

25 A I believe if I can look at my notes, I can tell

Roger Gilland - Cross-Examination by Mr. James Snell

1 you.

2 Q Please.

3 A There is a hundred dollar bill and a twenty dollar
4 bill located inside right there.

5 Q Do you recall where that was -- where in the
6 residence they were?

7 A They were underneath the foot of the bed in the
8 master bedroom.

9 Q Close to the gun?

10 A No. Well in the same area of the gun, but not
11 close to it.

12 Q But in the same bed?

13 A It was more at the foot of the bed, kind of halfway
14 under the foot of the bed, the footboard of the bed and
15 halfway out of the footboard of the bed.

16 Q And that's the same room that the wires led into?

17 A Yes.

18 Q Okay. And if I understand, if you need to look at
19 your notes, there was nothing else specific you could tell
20 was missing or gone?

21 A No. The place was pretty ransacked.

22 Q How -- how long after, approximately what time did
23 you first get on the scene?

24 THE COURT: Would you rephrase that question?

25 BY MR. SNELL:

Roger Gilland - Redirect Examination by Mr. McNair

1 Q Yeah, what time did you -- what time did you get,
2 originally get to the scene?

3 A I arrived on the scene at approximately 5:04.

4 Q p.m.?

5 A Yes.

6 Q Okay. How many other -- was the scene already
7 secure with other deputies?

8 A There were other deputies on scene and attempting
9 to secure the scene at the time.

10 Q Do you know how long they had been there before you
11 arrived?

12 A I do not.

13 Q Okay. And were you the first deputy -- you were
14 the first investigator, first officer to take pictures of
15 the scene?

16 A Yes.

17 Q All right. Thank you.

18 MR. JAMES SNELL: No other questions.

19 THE COURT: Redirect, Solicitor?

20 MR. MCNAIR: Very briefly, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY MR. MCNAIR:**

23 Q Even though you didn't collect those shell casings
24 until hours after you arrived, nobody was moving those
25 shell casings were they?

Roger Gilland - Redirect Examination by Mr. McNair

1 A No.

2 Q The scene had been secured?

3 A It had.

4 Q The shell casings were in the same location as when
5 you first arrived, you just didn't collect them until a few
6 hours later?

7 A Correct. It takes time to photograph and document
8 all the evidence and get to the point where you can
9 actually start picking up evidence.

10 MR. MCNAIR: Thank you, Your Honor?

11 THE COURT: Recross, Mr. Snell?

12 MR. JAMES SNELL: Nothing further, Your Honor.

13 THE COURT: Thank you. Thank you very much for
14 being with us, Mr. Gilland.

15 THE WITNESS: Not a problem.

16 THE COURT: You may step down. Any objections the
17 officer being excused?

18 MR. MCNAIR: No, Your Honor.

19 THE COURT: Mr. Snell?

20 MR. JAMES SNELL: No objection.

21 THE COURT: Thank you. Thank you very much. You
22 may be excused.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Solicitor, you may call
25 your next witness.

Roy Mefford - Direct Examination by Mr. Graham

1 legal matter, which I have done so. As I told you, your
2 time is very important to me. I'll try to manage it more
3 efficiently than I have already done this morning.

4 As far as the delay, please, and I know you will
5 not hold it for or against either of the parties nor Mr.
6 Butler. Thank you for your continued complete attention,
7 undivided attention to the parties during the trial of this
8 case.

9 All right. This is Sergeant, say it again,
10 Sergeant.

11 THE WITNESS: Roy Mefford.

12 THE COURT: All right. Solicitor, you may
13 continue.

14 MR. GRAHAM: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. GRAHAM:

17 Q Sergeant Mefford, where are you employed, sir?

18 A With the Lexington County Sheriff's Department.

19 Q And how long have you been in law enforcement?

20 A I'm in my twenty-fourth year.

21 Q Can you move the microphone a little closer to you
22 please, sir.

23 And how long have you worked for the Lexington
24 County Sheriff's Department?

25 A I'm in my nineteenth year at the Sheriff's

Roy Mefford - Direct Examination by Mr. Graham

1 Department.

2 Q Back in April of 2014, what was your job with
3 Lexington County at that time?

4 A At that time I was a Sergeant in the Major Crimes
5 Unit which handles serious incidents and crime against
6 persons.

7 Q As a Sergeant in major crimes, what was your job
8 responsibility?

9 A My job during the week was various administrative
10 things; we assign cases and do an overview of
11 investigators, I supervise investigators on their cases,
12 provide them with guidance and advice in a supervisory roll
13 and during our on-call time, I am on call with a team of
14 investigators and I direct, basically direct, the scene of
15 a serious incident.

16 Q Back on April 26th of 2014, were you notified
17 regarding a homicide and other crimes that occurred at
18 Bushberry Road in Lexington County?

19 A Yes, I was.

20 Q And why were you notified of that?

21 A I was notified because I was the on-call sergeant
22 for the major crimes unit at that time and that type of
23 crime fell under our investigative assignment.

24 Q Once you became aware of that, what, if anything,
25 did you do immediately?

Roy Mefford - Direct Examination by Mr. Graham

1 A Once we get a call like that, I start to gather
2 information from whatever sources I can and dispatch the
3 road and any other -- any other -- any other sources I have
4 to start coordinating logistics. On these cases, you have
5 different places you want to send investigators. The
6 primary incident location was Bushberry Road and if
7 I've got that address correct, Bushberry Road in
8 Pelion. At that time, I started figuring out where I need
9 to send investigators, if the crime scene Unit is
10 necessary, if the victims need transporting.

11 I had learned at that point that one victim had
12 been transported and one person -- one victim was still on
13 the scene, deceased and from that point, I decided to send
14 Detective Garrick and Detective Etheredge at the time to
15 the scene. I was going to the scene. I requested that CSI
16 respond to the scene.

17 I had Detective Traci Barr, who was also on call
18 with us, respond to the hospital to meet with any family
19 witnesses and to check the status of the victim, who I
20 later identified as Vonkeith Toland that was transported,
21 and once I arrived on the scene, I started coordinating the
22 scene.

23 Q When you arrived on the scene, was that location in
24 Lexington County?

25 A Yes, sir, the Pelion area of Lexington County.

Roy Mefford - Direct Examination by Mr. Graham

1 Q When you arrived on the scene, what, if anything,
2 did you see?

3 A When I arrived on the scene, the patrol deputies
4 are the initial ones that secure the scene. At that time,
5 like I say, one of the victims had been transported so we
6 were able to secure the scene. There were no other victims
7 to be treated in the area. The road had already done a
8 protective sweep of the house and found nobody else
9 present. At that time we secured the scene. CSI begins to
10 take -- I instructed them to start taking initial exterior
11 photographs and started then gathering information from the
12 initial deputies who responded.

13 I spoke to Sergeant Rivera and Deputy Mitchum, who
14 had responded, and got whatever information from them I
15 could use to further the investigation and I coordinated
16 with Detective Couch, who was also on call. I had him
17 respond to the Sheriff's Department and I again provided
18 him information to obtain the search warrant to search the
19 residence at the crime scene.

20 Q In addition you were dealing with investigators
21 working at the residence and securing a search warrant
22 there, did you also have detectives go to the hospital?

23 A Yes, I had Detective Traci Barr go to the hospital.
24 While she was there the situation required additional
25 investigators with all the people present. So I then had

Roy Mefford - Direct Examination by Mr. Graham

1 Detective Etheredge leave the scene and respond to the
2 hospital to assist with interviewing witnesses and later on
3 when Detective Couch brought the search warrant. The
4 decision was made between another supervisor on the scene
5 and myself to send Detective Couch to the hospital to also
6 assist. Originally they were over at Richland Memorial.

7 Q What, if any, information did you receive from your
8 detectives who went to the hospital regarding potential
9 telephone communications between the victim and the two --
10 and the suspects in this case?

11 A Based on the information we received, it was
12 apparent he had communicated with the individuals who met
13 at his mother's house prior to going to his house in
14 reference to a transaction over a vehicle and at that
15 point, I began to focus on the telephone communication
16 portion of it with the victim in addition to coordinating
17 the crime scene.

18 Q Additionally, once you went back -- so you have
19 detectives at the hospital, you have detectives in crime
20 scene working at the house. At some point, did you and
21 your detectives meet back at headquarters that night?

22 A Yes, I did a -- I did a -- a cursory walkthrough of
23 the residence just to familiarize myself with the
24 residence. Detective Garrick and I did just so we knew in
25 our mind the layout of that residence and the -- and the

Roy Mefford - Direct Examination by Mr. Graham

1 scene while CSI was there still collecting evidence, we all
2 met up at the Sheriff's Department to have a briefing in
3 our briefing room just to basically pull everybody in that
4 I had sent on the investigation and compile information and
5 at that point, we also gathered information that we would
6 have through our communications as far as 911 calls and
7 what's called the CAD Report. It's a Computer Automated
8 Dispatch where notes are put inside the -- in the computer
9 for each call, the 911 call, and any radio traffic and
10 notes provided by officers and witnesses to our dispatch
11 and communications. We print that out so we could look at
12 that to gather any additional information.

13 Q Did one of the detectives under your supervision
14 find something that you deemed to be important in the CAD
15 Report?

16 A Yes, in the CAD Report that is maintained by our
17 dispatch and generated by our dispatch with Lexington
18 County Communications, they indicated that a Zo from Cali
19 was associated with the two individuals that met with the
20 victim, Vonkeith Toland.

21 Q So what is a CAD Report?

22 A A CAD Report is a -- it's generated from a computer
23 screen. They type in notes while they're -- while they're
24 receiving and dispatching a call, they -- any radio traffic
25 or additional information that the -- the 911 dispatcher

Roy Mefford - Direct Examination by Mr. Graham

1 will read it on a regular call, gets from either the
2 telephone or other sources, they can type into that -- into
3 that computer system and it's immediately sent to the
4 responding deputies and they can tell and set a pattern of
5 a lot of radio traffic or to cut down on the radio traffic.
6 They can put notes that are viewable by the deputies that
7 are -- that are in real time.

8 Q So reviewing the CAD Report, could it appear that
9 the information that when you said Zo from Cali --

10 A Yeah, it appeared that information came from
11 Vonkeith Toland during the 911 call to our dispatch?

12 Q And why was that information important to you; what
13 did it do any good to you?

14 A He indicated that he knew the perpetrators and the
15 perpetrators were associated in some way with Zo from Cali.

16 Q Now, you had previously testified about the
17 importance of the -- the victim communicating with the
18 suspect by phone. What, if anything, did you do based on
19 that information?

20 A At that time, I -- we obtained the primary phone
21 number for Vonkeith Toland from the family because he was
22 unable to speak at that time and I did what's called an
23 exigent circumstance request to the phone company. The
24 phone company at that time was T-Mobile for that phone
25 number and I made the request for telephone number

Roy Mefford - Direct Examination by Mr. Graham

1 -5730, which I will note in my report I had the
2 numbers reversed at the end all the way through my report,
3 but the number is -5730. That is the number that
4 was provided to us as the primary communication -- primary
5 telephone that Vonkeith Toland uses to communicate. So I
6 obtained those records in an emergency situation such as
7 this. We're able to obtain phone records in emergency
8 circumstances for missing persons, or if we think there's a
9 danger to the public and at that time, I felt there was so
10 I obtained his records immediately.

11 Q So when you looked through Von's -- did you get
12 those records?

13 A I did.

14 Q Okay. And when you looked through Vonkeith
15 Toland's records for -5730, what, if anything, did
16 you find of interest as an investigator in this case?

17 A I was looking for -- we had obviously talked to
18 witnesses who knew a time frame about when Vonkeith and
19 Tycus left the residence. Tycus being the -- the deceased
20 victim; and along with the two individuals that were
21 unknown had left the residence in North to head to
22 Bushberry Road in reference to a vehicle transaction. And
23 at that point, we took that time frame and looked at the
24 fact that the witnesses identified an out-of-state tag or a
25 possible out-of-state tag on the vehicle that the two were

Roy Mefford - Direct Examination by Mr. Graham

1 driving. So in reviewing the phone records, I immediately
2 picked up on the fact that one of the numbers stood out as
3 being a 40 --

4 MR. JAMES SNELL: Objection, hearsay --

5 THE COURT: Sir?

6 MR. JAMES SNELL: Objection. Hearsay to records.

7 THE COURT: He's reviewing the records; it wouldn't
8 be hearsay.

9 MR. JAMES SNELL: They were not provided.

10 THE COURT: Sir?

11 MR. JAMES SNELL: They're not -- and they're not
12 provided evidence and there's no foundation.

13 THE COURT: It wouldn't be hearsay for him to
14 testify as to what he did. He's saying I reviewed the
15 records. Stave versus Green and Davis indicate that the
16 conduct of the investigation is admissible.

17 Ask your next question, Solicitor.

18 MR. GRAHAM: Thank you, Your Honor.

19 BY MR. GRAHAM:

20 Q What, if anything, showed up when you reviewed
21 those records as far as you felt needed further
22 investigation?

23 A Based on the time frame and communications between
24 the victim and the individuals that came to his house or
25 his mother's house at that time and the out-of-state tag

Roy Mefford - Direct Examination by Mr. Graham

1 that was observed, I noticed a -5436 number that
2 communicated with the victim shortly before the two
3 individuals arrived at the mother's residence and that came
4 back to an Atlanta or a Georgia area code so that combined
5 with the out-of-state tag, I figured that that was a good
6 place to start with the investigation based on the phone
7 records.

8 Q Once you identified that -5436 number, what,
9 if anything, did you do or people under your direction do
10 regarding obtaining those records?

11 A I felt confident that that phone was somehow
12 related to the incident so I instructed the investigator to
13 get a search warrant for that telephone number to try to
14 obtain the -- the -- identify the person who that phone
15 belonged to and also to eventually find the location of
16 that phone during the time of the incident based on the
17 cell tower information.

18 Q Previously you had mentioned the CAD Report and the
19 911 call contained information regarding the suspects being
20 associated with a Zo from Cali. At this time, what, if
21 anything, did you do with that information regarding asking
22 other investigators?

23 A Yeah, I'll have to back up a little bit because all
24 of this is going on at once. We're gathering all this
25 information simultaneously and once we figured out Zo from

Roy Mefford - Direct Examination by Mr. Graham

1 Cali, we attempted to -- I instructed investigators at
2 Ridgeland Bar to get with the family and see if anybody
3 knew who Zo from Cali was because it was obviously
4 mentioned by the victim in the 911 call and they did. And
5 we also once that -- once we got some information that led
6 us to the -- to speak with a witness who knew Zo from Cali
7 from dealing with auto sales, a Marvin Smith at Affordale
8 Auto Sales in Gaston. From that information, we were able
9 to gather along with information we were able to determine
10 that his name was Alonzo -- Alonzo Walker and we did a
11 background research on Alonzo Walker based on his -- the
12 name and we also located Alonzo Walker as a Facebook friend
13 to one of the victims. And from that we started to do
14 background check and I found out that Alonzo Walker was
15 associated with the Fairfield, California area based on the
16 investigation.

17 Q Let me show you a photograph and ask if you
18 recognize this?

19 A I do.

20 Q And does that fairly and accurately depict
21 something that was handed to you during the course of this
22 investigation or provided to you by --

23 A Provided to me, yes, sir.

24 MR. GRAHAM: Your Honor, the State would offer this
25 into evidence.

Roy Mefford - Direct Examination by Mr. Graham

1 MR. JAMES SNELL: Objection.

2 THE COURT: You have an objection?

3 MR. SNELL: Objection, Your Honor.

4 Mr. Foreman, ladies and gentlemen, step out please
5 momentarily. Do not discuss with case with anyone during
6 this recess.

7 (The jury left the courtroom at 12:13 p.m.)

8 THE COURT: All right. Mr. Snell, your objection?

9 MR. JAMES SNELL: Relevance and additionally on
10 relevance, just looking at the photograph, we believe will
11 the prejudicial value would outweigh any probative value
12 that it may have. While it doesn't appear to be probative.

13 THE COURT: All right. Solicitor?

14 MR. GRAHAM: Your Honor, the individual, I don't
15 have it in front of me. I believe the individual on the far
16 right is Alonzo Walker.

17 THE COURT: Mark it as next State's number for
18 identification?

19 THE COURT REPORTER: 37.

20 THE COURT: All right. Go ahead, Solicitor.

21 MR. MCNAIR: The individual on the far right in
22 State's Number 37 is Alonzo Walker. It was pulled off by a
23 victim --

24 THE COURT: Which one is this one?

25 MR. MCNAIR: On the right of the picture, Your

Roy Mefford - Direct Examination by Mr. Graham

1 not engaged in any -- does not appear to be engaged in any
2 drug usage whatsoever and that drug of choice of Mr. Butler
3 could be a cigarette or a cigar; I don't know. I can't --
4 I can't really see anything in his hand.

5 All right. You want to get that prepared.

6 MR. GRAHAM: It's being printed right now, Your
7 Honor.

8 THE COURT: All right. What did you say?

9 MR. GRAHAM: They're printing it off right now.

10 THE COURT: All right. How much longer you going
11 to be with Mr. Mefford?

12 MR. GRAHAM: Thirty minutes probably, twenty
13 minutes.

14 THE COURT: I want to step out just a minute. Just
15 stay in place.

16 (Court's Exhibit Number 3 was marked for evidence.)

17 (The jury entered the courtroom at 12:29 p.m.)

18 THE COURT: All right. Welcome back, ladies and
19 gentlemen. Again thank you, thank you very much for your
20 patience. All right. Please continue to give the parties
21 your complete and undivided attention as I know you will as
22 you have done throughout the trial of this case.

23 Thank you, Solicitor and Mr. Snell.

24 Solicitor, you may ask your next question.

25 MR. GRAHAM: Thank you, Your Honor.

Roy Mefford - Direct Examination by Mr. Graham

1 BY MR. GRAHAM:

2 Q Detective, we'll come back to the photo but
3 continuing on with your investigation on this case.

4 One of the things that you testified to previously
5 was your interest in the number -5436 that showed up
6 on the victim's phone records?

7 A Yes, sir.

8 Q Did you obtain records from that number?

9 A I did.

10 Q And did you have an opportunity to review the
11 records for that number?

12 A I did. I reviewed the records. There was some
13 text content, phone data, and also locate tower location
14 from the usage about the time of the incident.

15 Q What specifically -- well, based on what you saw,
16 what did you feel the need to do?

17 A At that -- looking at the records, it was obvious
18 that that phone, the person with that phone was believed to
19 be involved in this incident upon reviewing the records.
20 So then I started looking at the conversation that person
21 was having and also we wanted to identify the person with
22 that phone. The phone came back as being registered, I'd
23 say unregistered, it was registered to a Smith subject out
24 of California.

25 MR. JAMES SNELL: Objection, Your Honor.

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1 THE COURT: Excuse me.

2 MR. JAMES SNELL: Objection.

3 THE COURT: I would sustain that objection.

4 Mr. Foreman, ladies and gentlemen of the jury, as
5 far as that response and registration information, that
6 would not be in evidence at this time. At this time; it
7 may never be in evidence. So you may not consider it in
8 any manner whatsoever.

9 Thank you. Thank you very much, Mr. Snell.

10 Solicitor, you may ask your next question.

11 MR. GRAHAM: Thank you, Your Honor.

12 BY MR GRAHAM:

13 Q Based on your review of the 404 number, did you
14 believe that it was involved in this case and merited
15 further investigation on your part?

16 A I did.

17 Q So what, if anything, did you or somebody under
18 your direction do to try to determine who that 404 number
19 belonged to?

20 A Upon review of the records, I saw a phone number
21 that stood out to me because it was blocked. They star
22 67'd before they called the number and due to the time and
23 the length of the phone call, I figured that individual
24 would know who was calling them at that time and it should
25 stand out to them that the phone number was blocked and I

Roy Mefford - Direct Examination by Mr. Graham

1 believe the call was in the middle of the night or in the
2 early hours. So I focused on that number and tried to
3 identify who the 404 belonged to by calling them.

4 Q So did you, in fact, call the number that had been
5 star 67'd on the records?

6 A I did.

7 Q Do you remember the number you called?

8 A I'd have to refer to it directly in my notes.

9 (Looking at his notes.)

10 That number was -3587 and it had a star 67
11 behind it.

12 Q Did you call that number?

13 A I did.

14 Q Were you able to speak to an individual?

15 A I did.

16 Q Was it male or female?

17 A Female.

18 Q Were you able to determine a name from talking to
19 that person?

20 A Not during that conversation.

21 Q And how -- what was your take of that person's
22 willingness to speak with you?

23 A They were evasive when I told them why I was
24 calling.

25 Q Now, later on did another detective contact that

Roy Mefford - Direct Examination by Mr. Graham

1 number?

2 A Yes.

3 Q Were you present when that happened?

4 A I was. It was in my office.

5 Q Okay. Can you tell me what happened during that
6 conversation?

7 A During that phone conversation we had a name to ask
8 that person directly if they knew that person, that
9 individual at that time. We had the name of Justin Butler.

10 Q And once you brought up the name, Justin Butler,
11 when you ended the conversation, was it a male or female
12 that you spoke to the second time or that Detective Garrick
13 did?

14 A A female.

15 Q The same female?

16 A Yes.

17 Q After speaking with her and providing the name,
18 Justin Butler --

19 MR. JAMES SNELL: Objection.

20 THE COURT: Yes, sir?

21 MR. JAMES SNELL: Your Honor, objection. I think
22 that previous answer was hearsay. The witness didn't
23 have -- wouldn't have direct firsthand knowledge of --

24 THE COURT: I would overrule that objection because
25 he has knowledge of Mr. Butler's name. He had knowledge of

Roy Mefford - Direct Examination by Mr. Graham

1 that.

2 MR. JAMES SNELL: If I may, Your Honor?

3 THE COURT: Excuse me?

4 MR. JAMES SNELL: If I may --

5 THE COURT: Y'all step up here please.

6 (There was a bench conference out of the hearing of
7 the jury and the court reporter.)

8 THE COURT: Thank you. Thank you very much, Mr.
9 Snell.

10 Thank you, Solicitor. You may ask your next
11 question.

12 BY MR. GRAHAM:

13 Q The person that you talked to the first time that
14 you said was evasive and Detective Garrick and you talked
15 to the second time was a female; was it the same person?

16 A I believe it was, yes, sir.

17 Q Based on that second conversation that Detective
18 Garrick had and that you were present for, did you all have
19 a telephone number to follow up on?

20 A Yes, we did.

21 Q What was the number that you followed up on after
22 speaking with that female?

23 A The -0391.

24 Q Okay. And that was -- the question you asked her
25 was what, if any questions did you or Detective Garrick ask

Roy Mefford - Direct Examination by Mr. Graham

1 regarding a particular individual, you gave a name; is that
2 correct?

3 A Yeah, we asked if she knew who that person was
4 and -- and asked how to get ahold of him.

5 Q And the person that you asked for was?

6 A Justin Butler.

7 Q Okay. Now let's back up for a second and let me
8 show you this and ask the defense to take a look at that
9 photograph.

10 MR. GRAHAM: Your Honor, is the --

11 THE COURT: All right.

12 MR. GRAHAM: Does that meet Your Honor's
13 requirements?

14 THE COURT: Yes, sir.

15 MR. GRAHAM: I apologize, Your Honor.

16 THE COURT: Yes, sir.

17 MR. GRAHAM: And I believe this would be State's
18 37; State's 37, Your Honor, and we would offer this into
19 evidence at this time.

20 THE COURT: All right. Mr. Snell?

21 MR. SNELL: Your Honor, we maintain the prior
22 objection.

23 THE COURT: All right. Subject to prior objection.
24 Thank you. Thank you, Mr. Snell.

25 (State's Exhibit Number 37 was entered into

Roy Mefford - Direct Examination by Mr. Graham

1 evidence.)

2 BY MR. GRAHAM:

3 Q Where did you obtain that photograph?

4 A I obtained it from Detective Traci Barr and it was
5 provided to her by the family --

6 Q Okay.

7 A -- of Vonkeith Toland.

8 Q Was that given in response to you all asking for
9 information regarding Zo from Cali?

10 A Yes, sir.

11 Q Once you got this --

12 MR. GRAHAM: And permission to publish this Your
13 Honor?

14 THE COURT: Yes, sir, you may publish.

15 BY MR. GRAHAM:

16 Q Once you got this, what, if anything, did you do
17 with this?

18 A We had done a background check on -- a background
19 search on Alonzo Walker and from looking at the information
20 that we had, he appeared to be heavily associated with the
21 Fairfield, California area. And at that time, with that
22 photograph, we -- I made contact with the major crimes unit
23 in Fairfield, California. Detective Steve Trojanowski is
24 who I was directed to and sent him that photograph. This
25 is prior to knowing Justin Butler's name, and sending that

Roy Mefford - Direct Examination by Mr. Graham

1 photograph in the hopes that he could provide us some
2 information as to the two individuals in that photograph.

3 Q Based on that information, did he identify the
4 individual that's now on the left of the photograph for
5 you, the one with the baseball cap with red band?

6 A On the right?

7 Q On the right.

8 A Yeah, the person on the right, yes. He identified
9 that individual as Justin Antonio Butler.

10 MR. JAMES SNELL: Objection; hearsay.

11 THE COURT: Yes, sir, I overrule that objection.

12 BY MR. GRAHAM:

13 Q You used that information to know to ask for Justin
14 Butler when you spoke with the female on the phone,
15 correct?

16 A Yes, sir.

17 Q In addition, once you developed a name to go with
18 this picture, did you prepare a photo lineup?

19 A Yes,.

20 THE COURT: Let me stop you just a minute here,
21 Solicitor.

22 Mr. Foreman, ladies and gentlemen of the jury, as
23 to State's 37, just a couple of issues in that regard. I
24 have allowed that into evidence, but only for a limited
25 purpose. The limited purpose would be only as to

Roy Mefford - Direct Examination by Mr. Graham

1 identification of the individuals or individual within the
2 photograph and for no other purpose whatsoever. Obviously,
3 as I told you previously, the believability of evidence is
4 for you, the jury, to determine, whether it's the testimony
5 or physical items of evidence and I will point out to you
6 any observations you may make as to conduct of either of
7 the parties in there is totally irrelevant, should not be
8 discussed, is not an issue before you. Further, the
9 photograph has actually been redacted. A third individual
10 in there was redacted at my direction so that has no
11 relevancy whatsoever that the photo has been redacted. And
12 again, evidence is whatever weight and value you, the jury,
13 deem is appropriate.

14 Thank you. Thank you very much, Solicitor. You may
15 continue.

16 MR. GRAHAM: Thank you, Your Honor.

17 BY MR. GRAHAM:

18 Q Now that you had a name and a potential number
19 associated with Mr. Butler, were you able to determine
20 through background investigation where he might be living
21 at?

22 A Yes, I found that he -- that his current address of
23 record was in Muscle Shoals, Alabama.

24 Q Now a photo lineup was created regarding Mr.
25 Butler. But not talking about that and moving on because

Roy Mefford - Direct Examination by Mr. Graham

1 those witnesses will testify.

2 What, if anything, did you do with the -0391
3 number that you were given by the female on the phone that
4 had been star 67'd?

5 A Detective -- Detective Garrick and me contacted the
6 individual with that number at my request. Once she
7 provided the contact information for Justin Butler, we
8 contacted him. Detective Garrick called him.

9 Q Did you obtain a search warrant for the phone
10 records yourself for the -0391 number?

11 A Yes, once we confirmed that it was his number, we
12 did it.

13 Q And did you have an opportunity to look through
14 those phone records?

15 A I did.

16 Q And did you believe that those phone records were
17 also relevant to your investigation?

18 A I did.

19 Q Going back to the 404 number, the -5436,
20 which was the phone that you identified communicating with
21 the victim's phone.

22 A Yes, sir.

23 Q The records you reviewed there, was there also
24 another number that you noticed of interest with a 707 area
25 code?

Roy Mefford - Direct Examination by Mr. Graham

1 A I did. Based on --

2 MR. JAMES SNELL: Your Honor.

3 THE COURT: Yes, sir.

4 MR. SNELL: Objection. I would renew our previous
5 objections regarding phone records and the disclosure.

6 THE COURT: And the what; I'm sorry, I couldn't
7 quite hear you.

8 MR. JAMES SNELL: I would renew the objection we
9 made previously regarding the phone records.

10 THE COURT: At the in-camera hearing?

11 MR. JAMES SNELL: Yes, Your Honor.

12 THE COURT: All right.

13 MR. JAMES SNELL; We renew that with regards to the
14 line of questioning regarding phone records.

15 THE COURT: Of course renewed for the record and I
16 would renew my previous trial ruling.

17 Thank you, Mr. Snell.

18 You may continue, Solicitor.

19 BY MR. GRAHAM:

20 Q So looking back at the -5436, was there also
21 another number that you got that you thought was relevant
22 to your investigation?

23 A There was.

24 Q And what was that number?

25 A That number was -0402.

Roy Mefford - Direct Examination by Mr. Graham

1 Q What made you think that they were relevant?

2 A It was based on text communications. We were able
3 to preserve a small portion of the texts around the time of
4 the incident and in reviewing those, I thought that it was
5 relevant to the case and that number was relevant to the
6 case.

7 Q Did you obtain a search warrant for those records?

8 A I did.

9 Q What, if any -- did you have an opportunity to
10 review those records?

11 A Yes, sir, I did.

12 Q Based on your review of those records, what, if
13 anything, did you do?

14 A Based on those -- based on those records --

15 Q 707 area code is where?

16 A It's Fairfield, California.

17 Q Based on your review of those records, the
18 -0402, after reviewing those, what, if anything, did
19 you do?

20 A I felt that that phone was definitely relevant to
21 the case and I began to do research on the airlines for --
22 for flight information based on the information I saw in
23 the phone records.

24 Q What, if anything, did you discover during your
25 review of the flight information?

Roy Mefford - Direct Examination by Mr. Graham

1 MR. JAMES SNELL: Your Honor, I object to the
2 previous hearing from the in-camera hearing yesterday
3 regarding the flight information search warrant as well.

4 THE COURT: That -- let me make sure I'm tracking
5 you, Mr. Snell. That was the same in-camera.

6 MR. JAMES SNELL: It was, Your Honor.

7 THE COURT: All right.

8 MR. JAMES SNELL: My previous objection included
9 the phone records. I just wanted to make sure we were
10 clear for the record.

11 THE COURT: It was not a separate and distinct in
12 camera. That was all combined?

13 MR. JAMES SNELL: Yes, Your Honor.

14 THE COURT: Thank you. I would -- thank you, Mr.
15 Snell. I would renew my previous trial rulings.

16 BY MR. GRAHAM:

17 Q Based on the flight information and the phone
18 records reviews for that 707 number, what, if anything, did
19 you discover?

20 A I prepared a search warrant for flight information
21 for a specific routes based on the phone records that I
22 found or the information I found in the phone records. I
23 prepared a search warrant for specific flights to two
24 airlines and flight information based on the times and the
25 time and locations I saw on the phone records.

Roy Mefford - Direct Examination by Mr. Graham

1 Q Based on the flight information you have and the
2 phone records you reviewed, were you able to develop one
3 and only one person who could have traveled that?

4 A Yes.

5 Q And what was the name of the individual you
6 developed?

7 A Terry Renee McClure.

8 Q Based on that investigation, did you prepare a
9 photo lineup?

10 A I did.

11 Q And did you in fact show that photo lineup to
12 Vonkeith Toland?

13 A I did.

14 Q Let me show you State's Number 3, which is
15 currently for identification and ask if you recognize that?

16 A I do. This is a photo lineup that I prepared
17 including Terry McClure in the lineup based on a photograph
18 I obtained from Fairfield Police Department.

19 Q Terry McClure is number what in this photo lineup?

20 A Number 5.

21 Q Now, did you show this photo lineup to Vonkeith
22 Toland?

23 A I did.

24 Q What, if anything, did you say to him regarding
25 administering that photo lineup you showed Vonkeith Toland?

Roy Mefford - Direct Examination by Mr. Graham

1 A I told him that we had -- we had some information
2 in the case and had possibly identified somebody involved.
3 And I told him that the person may or may not be in this
4 photo lineup and he indicated that he could identify them
5 if they were and I showed him the lineup and he immediately
6 picked Number 5.

7 Q Did you do anything to indicate to him who he
8 should pick in that photo lineup?

9 A Absolutely not.

10 Q And how quickly did he indicate that Number 5 was
11 the person who was involved in his shooting and his
12 brother's shooting?

13 A Immediately.

14 Q Once he pointed out Number 5, what, if anything,
15 did he do to memorialize it on a piece of paper?

16 A I provided him with a pen and he circled Number 5,
17 the photograph itself, and then he wrote Number 5 on the
18 line there where it says that he's identified him and he
19 put his initials. He was still having difficulty; he was
20 still in the hospital at that time and he put his initials
21 on the witness line and then I signed below it.

22 Q So the date shown is 5/10/2014; is that the date
23 that you showed it to him?

24 A Yes, sir.

25 Q Where were you at?

Roy Mefford - Direct Examination by Mr. Graham

1 A The -- at the Palmetto Richland Hospital in ICU.

2 Q And what -- what was Mr. Toland's medical condition
3 at that time?

4 A He was -- he was still in critical condition; he
5 had a trach. He was able to talk or I can't say talk, but
6 he was able to communicate. He would try to talk, but
7 words wouldn't come out. It was very raspy, but he was
8 able to somewhat communicate and at that -- at that point
9 we would focus on the photo lineup and -- and he was able
10 to coherently answer my questions as far as yes and no and
11 things like that.

12 Q He signed down, there's a signature on the
13 investigator line; who is that?

14 A That's me.

15 MR. GRAHAM: Your Honor, the State would offer this
16 into evidence at this time?

17 MR. JAMES SNELL: No objection.

18 THE COURT: All right. State's 3 for
19 identification is now State's --

20 (State's Exhibit Number 3 was entered into
21 evidence.)

22 BY MR. GRAHAM:

23 Q So, Sergeant, at this point you now have Mr. Butler
24 identified as a potential suspect and you have Mr. McClure
25 identified as a potential suspect; is that correct?

Roy Mefford - Direct Examination by Mr. Graham

1 A Yes, sir.

2 Q All right. Going back and looking at the 404
3 number, which is the number that dealt with the victim, did
4 you also follow up on the other avenues leading to that
5 regarding someone who may have been present in Atlanta?

6 A Yes.

7 Q What, if anything, did you do based on that
8 information?

9 A As -- as far as the communication with that 404
10 number or --

11 Q Yes, did you go -- did you or someone on your
12 behalf go and speak with an individual who also had
13 communication from the records on the 404 number?

14 A Yes, we identified an individual who spoke with
15 that individual or communicated with that individual. I
16 asked the Atlanta Police Department to interview a female
17 who identified as being associated with that number and I
18 also went down and spoke to her later on in the
19 investigation.

20 Q What was her name?

21 A Ladondra Ellis.

22 Q Based on your conversation with her, what, if
23 anything, did you do?

24 A I went to the -- based on the conversation with
25 her, I went to the main Greyhound Bus Station in Atlanta,

Roy Mefford - Direct Examination by Mr. Graham

1 Georgia, and met the manager there.

2 Q Okay. And did you obtain records from Greyhound?

3 A I did. I obtained a bus ticket or bus ticket
4 information and video.

5 Q And in your opinion, that was also relevant to this
6 investigation?

7 A Yes, it was.

8 Q In addition to Greyhound, did you also at some
9 point follow up with records from Enterprise Rental Car?

10 A I did.

11 Q What was it that made you go to the Enterprise
12 Rental Car?

13 A I -- the information that we had on the individual,
14 one of the individuals flew in to Atlanta and one of them
15 took a bus. So for transportation purposes I began to
16 search possibilities of rental cars in the area.

17 Q And what did your research -- did you come to any
18 opinions after your research?

19 A I did. I received information that Terry McClure
20 rented a car from the Atlanta Airport.

21 Q And did you obtain those records as well?

22 A I did.

23 Q Sergeant, I believe that's all the questions I
24 have. I appreciate you answering them.

25 THE COURT: All right. Perhaps now would be a good

1 time, I assume your cross would not be brief, Mr. Snell?

2 MR. SNELL: It will take several minutes, Your
3 Honor, yes, sir.

4 THE COURT: I think now would be a good time to
5 take our luncheon recess. Please remember during this
6 recess, do not discuss this case with others, that includes
7 your fellow jurors, lunch mates and friends or anyone else.
8 Do not read, watch or listen to any news accounts of the
9 case. Do not do any independent investigation or any
10 investigation on the internet. Remember to keep an open
11 mind and not decide any issue in the case until you've
12 heard all the evidence and all the testimony, closing
13 arguments by the attorneys and instruction on the law by
14 the Court.

15 I would ask you if you would please be back
16 promptly at 2:15; 2:15, that will give you, I don't know,
17 an extra ten or fifteen minutes to sit and wait. I hope
18 y'all have a pleasant lunch. I'll see you promptly at
19 2:15. Thank you very much.

20 (The jury left the courtroom at 12:54 p.m.)

21 THE COURT: All right. Sergeant, you may certainly
22 step down to enjoy your luncheon recess as some of the
23 others of us will do. You may not discuss the case or your
24 testimony with anyone when you're subject to
25 cross-examination and perhaps redirect examination.

Roy Mefford - Cross-Examination by Mr. James Snell

1 THE COURT: I thought I heard a noise outside.

2 Were you calling cadence; you marching the jury in?

3 THE BAILIFF: They're learning.

4 THE COURT: Thank you. Welcome back ladies and
5 gentlemen of the jury panel, I hope y'all had a pleasant
6 lunch.

7 Sergeant, if you would come back around and join us
8 please.

9 As you recall, we had completed the direct
10 testimony of the Sergeant by the Solicitor. It is now time
11 for cross-examination by Mr. Snell.

12 Mr. Snell?

13 MR. JAMES SNELL: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 BY MR. JAMES SNELL:

16 Q You were -- you were -- you and Investigator
17 Garrick kind of worked this case from the beginning?

18 A Yes, sir.

19 Q How many years have you been in law enforcement?

20 A About twenty-four.

21 Q It's not your first case?

22 A No, sir.

23 Q Just looking from the notes, it looks like the
24 estimated time of the incident was about 4:20 p.m. Does
25 that match with your notes to your recollection?

Roy Mefford - Cross-Examination by Mr. James Snell

1 A I believe that's when the 911 call, basing it on
2 the 911 call, and there's obviously some time before then
3 because as we found out later, he had to crawl some
4 distance; and you know, where the incident started to get
5 to his phone to call 911.

6 Q I know some of the -- some of the records indicates
7 that the military time is 1620?

8 A Yes.

9 Q Now -- and there was -- it's probably obvious, but
10 you yourself, you don't have any direct firsthand knowledge
11 of what happened?

12 A No, sir.

13 Q What time was it before you arrived on scene?

14 A It would have had to be around a little before five
15 o'clock. I don't know if I have the exact time; it may be
16 in the CAD somewhere, but I was notified fairly quick.

17 Detective Etheredge and Garrick were out on another
18 scene and actually heard it on the radio and called me
19 directly so I was -- I was on my way immediately. Sometime
20 before five o'clock, sir.

21 Q And when you got on scene, were you able at that
22 point to -- to speak to I guess the other deputies and
23 officers that were present?

24 A I specifically spoke to Deputy Mitchum, who was the
25 initial responding deputy or one of the initial responding

Roy Mefford - Cross-Examination by Mr. James Snell

1 deputies.

2 Q At the time you arrived, was Vonkeith Toland still
3 there?

4 A No, sir, he had been transported.

5 Q Okay. Was the remains of Tycus Toland still there?

6 A Yes, Tycus was still there.

7 Q When was your first opportunity -- let me ask it
8 this way: You subsequently had an opportunity to talk to
9 Vonkeith Toland?

10 A Since the incident?

11 Q Yes, sir.

12 A I spoke to him briefly with Detective Garrick when
13 we showed the initial lineup. I went and showed him the
14 initial lineup of Terry McClure. He was having difficulty
15 speaking. I didn't really talk to him too much at that
16 point and then there was some subsequent interviews at the
17 solicitor's office that I was there when the interview
18 began, but left for another engagement.

19 Detective Garrick spoke twice and then as far as
20 interviewing him on this case and then in trial preparation
21 there's been several meetings.

22 Q I understand -- I understand the lineups were shown
23 on May 8th and May 10th?

24 A Yes.

25 Q Is that correct?

Roy Mefford - Cross-Examination by Mr. James Snell

1 A Yes.

2 Q Okay. And just to be clear, the lineups, if I
3 may --

4 MR. JAMES SNELL: If I may, Your Honor, approach
5 the witness?

6 THE COURT: Yes, sir.

7 BY MR. JAMES SNELL:

8 Q And these are the two lineups that you were able
9 to --

10 A Yes, sir.

11 Q -- show.

12 And so the first lineup on May 8th, Mr. Toland
13 identified Butler?

14 A Yes, sir.

15 Q Butler.

16 And the second lineup on the 10th, he identified
17 Mr. McClure?

18 A Yes, sir.

19 Q Okay. At the time he identified Mr. McClure,
20 information you were provided was that Mr. McClure was the
21 actual shooter of Tycus Toland?

22 A The information during the -- I'm sorry, repeat the
23 question.

24 Q The information you had at that time was that Tycus
25 Toland -- that Terry McClure was the shooter of Tycus

Roy Mefford - Cross-Examination by Mr. James Snell

1 Toland?

2 A At the first photo lineup, yes, on the 8th.

3 Q Okay.

4 A That information was provided to us by Vonkeith
5 when we showed him the lineup of Justin Butler.

6 Q That's the only information you've been provided
7 was that Terry McClure was the shooter of Tycus Toland?

8 A Well, at that time? I mean you want me to get into
9 what he told us at that time?

10 Q No, I just -- I just -- I just said at the time of
11 the photo lineup, that's the information you were provided
12 that --

13 A Yes, sir.

14 Q -- Terry McClure?

15 A Yes, sir, it's been consistent from that point that
16 Terry McClure was the shooter of Tycus.

17 Q All right. And at any point during those
18 interviews, I guess during the 2014 or 2015 timeframe, did
19 you ever ask Mr. Toland, Vonkeith Toland, what the motive
20 was for this?

21 A I didn't ask him a lot of direct questions myself.
22 I don't recall asking him many details at all about the
23 case. My second meeting with him was strictly for the
24 photo lineup for McClure and I updated him on the case and
25 once I provided him with an update -- at the time he was

Roy Mefford - Cross-Examination by Mr. James Snell

1 still in ICU obviously and I didn't discuss a lot.

2 I remember him getting emotional after I updated
3 him on the case actually and we mainly focused on the photo
4 lineup. The initial interview, if you would call it that,
5 where we showed him the lineup of Mr. Butler, I actually,
6 after the photo lineup was complete and I recall him saying
7 the part about McClure being the shooter and that -- then
8 after that, he made a statement that he believed, you know
9 that they both shot him, which is in my notes. And then
10 after that, I began to get information to my phone about
11 McClure and matter of fact, while we were at the hospital
12 showing the first photo lineup, I started receiving phone
13 calls and e-mails identifying the other person so I had to
14 excuse myself from the conversation and stepped out of the
15 room or the pertinent area.

16 And I started to follow up on that information
17 while we were at the hospital. So I didn't have a lot of
18 direct contact or direct conversation with Mr. Toland at
19 that time.

20 Q And those weren't conversations -- you indicated
21 that you thought that this was a house burglary?

22 A Based on the totality of the circumstances, the
23 evidence and as you said, this isn't my first case, the --
24 you know, a lot of times we don't have a victim to tell us
25 these things in homicides. A lot of times we don't have a

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1 victim at all that's able to tell us what happened so you
2 have to piece a lot of this together based on the evidence,
3 based on the circumstances from prior to even talking to
4 the victim who fortunately lived.

5 We were able to look at it and I was able to look
6 at it and based on the forced entry, the ransacking of the
7 residence, the apparent cables going to a device that was
8 missing and based on those circumstances, I felt that I was
9 able to conclude in my mind that that would have been the
10 motive.

11 Q That's fine. And have you had a chance on April
12 26th, the day that this actually happened, search
13 warrant -- after a search warrant, to actually go in the
14 house and look around, correct?

15 A I did a cursory walkthrough just to familiarize
16 myself with the scene after CSI obviously had done their
17 thing as far as fingerprints and things like that. They
18 would tell me what was going on in the house from outside.
19 I did do a walkthrough of the residence.

20 Q And we saw the pictures from in the house --

21 A Yes, sir.

22 Q -- that Officer Gilland had taken and the house was
23 kind of in a little bit of disarray, is that fair?

24 A Yes, sir.

25 Q And it's true at the time you did the walkthrough

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1 and looked at it, you didn't see anything that indicated
2 there was any type of drug activity in the house?

3 A Not that I recall.

4 Q Other than just the -- other than I know looking at
5 the reports, it was like a -- for personal use a --

6 A I was going to say maybe in the yard I think a
7 grinder was found or something.

8 THE COURT: What?

9 THE WITNESS: A grinder, some kind of
10 paraphernalia.

11 BY MR. JAMES SNELL:

12 Q And a grinder is a small metal cylinder that's used
13 to actually grind marijuana for smoking purposes?

14 A Apparently, yeah. Yeah, I believe so. I don't
15 work a lot of narcotics, but that's what I'm -- that's what
16 I was told and I know that was found. I don't remember
17 where it was found. I believe it was outside in the yard,
18 but -- but that wasn't something that -- it wasn't
19 something -- I've worked cases where that was the
20 motivation and it wasn't something that sparked -- you
21 know, it didn't ring out to me that it was a drug
22 motivation.

23 Q And just to get the stuff on the grinder because --
24 because -- for folks that aren't familiar with these type
25 things. I mean grinders are actually fairly common and if

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1 you know what they look like, you can see them for sale in
2 every gas station don't you?

3 A Yeah, I think they have a different variety of
4 them, like it's as common as like a pipe or a lighter that
5 people sell that's used for, you know, it's the use of it
6 that's illegal, not the possession of it.

7 Q That's correct. So and at the time, I guess at
8 the -- back in 2014 when you were interviewing on at least
9 two occasions at the hospital, Mr. Vonkeith Toland, you
10 weren't provided any information at that time that
11 indicated this was an armed robbery?

12 A No, sir.

13 Q No. Does the --

14 A Other than the fact that they were armed. The
15 perpetrators were armed and there was forced entry. That
16 was the kind of stuff you put together.

17 Q And the entry was clear it was forced; it wasn't --
18 they didn't have a key to the house to simply ignore it?

19 A The window was completely shattered and the frame
20 was tore up and the there was a couch in front of it so
21 that's what made us realize it wasn't from the inside out;
22 that it was from the outside in because -- because of the
23 way the couch was positioned. Somebody wouldn't have, you
24 know, kicked the door out that way; it would have been in
25 to gain entry and the couch was moved.

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1 Q Now where -- and at some point, you were able to
2 find or observe blood on the outside of the mobile home
3 looking like somebody had crawled underneath it?

4 A Yes, sir, to the left of the rear door that was
5 shattered out.

6 MR. JAMES SNELL: And, Your Honor, if I may ask the
7 witness to point on the diagram?

8 THE COURT: Yes, sir, you may.

9 BY MR. JAMES SNELL:

10 Q If you just want to point towards just where that
11 was and --

12 A It would have been here next to -- next to this
13 structure. This was like a -- it looked like it was in the
14 process of being built, some sort of structure around an
15 addition and it was just the framing of it and there was a
16 board running this way close to the back of the mobile home
17 and you could see scrape marks where it appeared that
18 somebody had crawled under there.

19 There wasn't a ton of distance between the ground
20 and that where a larger person had went under there and
21 there was blood and it appeared that they went underneath
22 the trailer.

23 Q Did your investigation indicate the location -- and
24 you may want to point to it if you need to, of where
25 Vonkeith was when he was shot?

Roy Mefford - Cross-Examination by Mr. James Snell

1 A Where Vonkeith was when he was shot?

2 Q Yeah, on the -- on the premises where was he when
3 he was shot?

4 A The only thing we saw that would indicate that was
5 shell casings and blood. We know where he ended up and we
6 know where shell casings were, but as far as where he
7 was -- where he was initially shot, it's hard to determine
8 from this without speaking to him.

9 Q Well -- and I was going to ask you, as the
10 investigator in the case, did y'all -- so you never
11 received information through the investigation as to
12 whether or not he was shot in the front yard, the back
13 yard, under the house, on the side?

14 A I believe that came out eventually in interviews,
15 but not initially at the hospital if that's what you're
16 referring to, but subsequent interviews as far as where he
17 was actually standing when he was shot, that was not
18 determined early on. It was later on that that information
19 was provided from the victim.

20 Q Now, looking -- looking at the different reports
21 from the scene, the first thing, you -- you previously
22 testified that you got a chance to review the CAD Report?

23 A Yes.

24 Q And so you're aware that the information provided
25 to the -- to your department initially was that the shooter

Roy Mefford - Cross-Examination by Mr. James Snell

1 was white?

2 A That's what I understand from the mother. It was a
3 911 call from the mother. That obviously was not true.

4 Q And you're aware that the information provided was
5 initially provided from Vonkeith that the shooters were
6 from Craig's List?

7 A Again, those are things that we look into,
8 obviously. And I actually reviewed the 911 -- that was the
9 only source that I'm aware of that that came from was the
10 initial incident report by the responding deputy and he --
11 he amended that in his report. The review of the 911 tape
12 which the line is open, I'm sure that the line is open for
13 several minutes and it appears to me the entire
14 conversation between that deputy and Mr. Toland is recorded
15 on 911 and upon my review, I never heard anything involving
16 Craig's List come out of the victim's mouth.

17 I did, other than -- the only thing that I know as
18 far as communication-wise was that he communicated with
19 them on his phone.

20 Q I guess you're aware of whatever the communication
21 was to the initial deputy about Craig's List, I mean it was
22 enough that the press release I, guess --

23 A Once it's in the report, we can't unring that bell
24 and they get a copy of it and they, you know, I'm not
25 faulting -- that's not where the fault is. Obviously, it

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1 was in the report and but that was the documentation and it
2 was a document that the sheriff's department had and -- and
3 I believe that's how it ended up in the media.

4 Q All right. And I know part of the -- one of the
5 initial reports indicated kind of a finding that Vonkeith
6 had been uncooperative on the scene?

7 A From what I understand, yes, but I, again as the
8 investigator in the case, I think he had a good reason
9 to -- if you listen to the 911 call, maybe if you just
10 walked up on him and he didn't answer the question, but if
11 you listen to that 911 call, I think there was a reason he
12 was not talking very much.

13 Q And of course, I'm sure he was emotional; his
14 brother had just been shot and all the circumstances.

15 A I think -- I think that combined with his injuries
16 and -- and he says several times on there why he's not
17 communicating I believe from what I remember. He indicates
18 why he doesn't on the phone.

19 Q But the information you were provided that came in
20 the investigation on the 26th, which is the date of the
21 shooting, was that the suspects were affiliated with Zo
22 from California?

23 A And that was from -- that was from the victim
24 saying that directly. The other information was third
25 party and I think that was a call from the victim to his

Roy Mefford - Cross-Examination by Mr. James Snell

1 mom to dispatch and if you listen to that 911 call, I think
2 you will see where some things could be misconstrued.

3 Q But as far as -- as the other information you were
4 provided on the 26th, none of it provided names for Mr.
5 McClure, Mr. Butler, or information about where they were
6 from or anything like that?

7 A No, sir, just the -- just the fact that they were
8 associated with Zo from California.

9 Q And it seems like it took you several weeks and a
10 lot of digging around to get the -- to make the next step?

11 A It's a complex case with the communication and the
12 cell phone records and things like that, yes, sir. I think
13 it was -- it occurred on the 26th and we showed the photo
14 lineup on the 8th.

15 Q But -- fair to say if -- I mean there was
16 information and details that you learned subsequent to the
17 investigation that Vonkeith Toland had that he didn't share
18 with you on the 26th?

19 A The 26th he was unable to communicate. I didn't
20 attempt it. I can't say he was uncooperative. I didn't
21 attempt to contact him on the 26th. He was life reached
22 out and I don't think he was able to communicate on the
23 26th.

24 Q Other than what he did on the 911 tape and any
25 other communication he might have given to the deputy?

Vonkeith Toland - Direct Examination by Mr. McNair

1 A On the 26th, yes, sir.

2 Q All right. Thank you. No other questions.

3 A Thank you.

4 THE COURT: Redirect, Solicitor?

5 MR. GRAHAM: No, Your Honor.

6 THE COURT: Thank you. Thank you very much. You
7 may step down.

8 All right. Solicitor, you may call your next
9 witness.

10 MR. MCNAIR: Your Honor, the State calls Vonkeith
11 Toland.

12 THE COURT: All right. Mr. Toland, if you'll
13 please come around and join us.

14 VONKEITH TOLAND,

15 after being duly sworn, testified as follows:

16 THE CLERK: Have a seat please, sir. Once you're
17 seated, speak up loud and clear, state your full name
18 spelling your last, please.

19 THE WITNESS: My name is Vonkeith Toland.

20 T-O-L-A-N-D.

21 **DIRECT EXAMINATION**

22 **BY MR. MCNAIR:**

23 Q Vonkeith, tell the jury a little bit about
24 yourself. How old are?

25 A I'm 35 years old.

Vonkeith Toland - Direct Examination by Mr. McNair

- 1 Q Are you married?
- 2 A Soon to be married.
- 3 Q You have a fiance?
- 4 A Yes, sir.
- 5 Q How many kids do you have?
- 6 A Two.
- 7 Q Where did you grow up?
- 8 A I grew up in North, South Carolina.
- 9 Q Is that where your mother still lives?
- 10 A Yes, sir.
- 11 Q What do you do for a living?
- 12 A I sell cars.
- 13 Q Is that what you were doing back in April of 2014?
- 14 A Yes, sir.
- 15 Q Where were you living back at that time?
- 16 A I was living in Pelion, South Carolina.
- 17 Q What was the address?
- 18 A Bushberry.
- 19 Q And that's in Lexington County?
- 20 A Yes, sir.
- 21 Q Who lived with you at that address?
- 22 A Me, my fiance, and two kids.
- 23 Q Okay. Now how are you related to Tycus?
- 24 A He's my brother.
- 25 Q Younger or older?

Vonkeith Toland - Direct Examination by Mr. McNair

1 A Younger brother.

2 Q How much younger?

3 A He's four years younger than me.

4 Q How old was Tycus when he died?

5 A Twenty-nine. He just had a little boy.

6 Q Let's go ahead and talk about this. Have you
7 always sold cars?

8 A Well, not always. When I was in my twenties I
9 did -- I used to do stuff that wasn't right and I ended up
10 getting arrested for it.

11 Q You've been convicted of that, correct?

12 A Yes, sir.

13 Q You have two counts of trafficking cocaine from
14 2009, correct?

15 A Yes, sir.

16 Q You have a possession of crack, 2006?

17 A Yes, sir.

18 Q Were you selling drugs back in April 2014?

19 A No, sir.

20 Q Let's talk about the day that you were shot and
21 your brother was killed. Prior to that day did somebody
22 contact you about wanting to buy a car?

23 A Yes, sir, a guy called me and wanted to know if I
24 had any other cars for him, like he had been coming to see
25 me prior for like cars, but he never seemed to buy any. So

Vonkeith Toland - Direct Examination by Mr. McNair

1 that day he called and was like, Cuz, you got any other
2 cars for me down there; you done found a nice car for me by
3 now; I need something really nice, something real nice.

4 Q All right. Stop right there. You had had previous
5 dealings with this guy?

6 A Yes, sir.

7 Q You knew who he was?

8 A Yes, sir.

9 Q Did you know his name?

10 A I knew him as nickname. I didn't know his
11 government name. I only knew his nickname.

12 Q What was his nickname?

13 A His nickname was Jonah.

14 Q You mentioned that as a person you'd had previous
15 dealings with?

16 A Yes, sir, he was introduced to me from another guy
17 that bought cars from me.

18 Q Okay. Who was that guy?

19 A His name is Zo, Alonzo Walker.

20 Q All right. We'll get to that in just a minute.

21 How many times had you seen the guy that you knew as Jonah
22 before April 26th?

23 A I think I seen him three or four times prior to
24 that.

25 Q What was the purpose of you meeting with him on

Vonkeith Toland - Direct Examination by Mr. McNair

1 those occasions?

2 A The first two times he came to look at a Dodge
3 Magnum. It was white and it had some suspension issues so
4 he didn't want to purchase it. He told me if I could get
5 the work fixed on it, he would come back and buy it and
6 that was the first time. And the next time he came it was
7 to see a black BMW and he looked at the BMW and didn't like
8 it; he said there was some problems with it. The service
9 engine light was on and he didn't know why it was on and I
10 just told him he could get it fixed; he could take it
11 somewhere and find out what's wrong with it. And prior to
12 that, the next time he came was the 26th.

13 Q Okay. Did he ever purchase a car from you?

14 A No, sir.

15 Q In relation to when the shooting was, what time
16 period was this when he came down before?

17 A Months before, it was a few months. It was good
18 bit of months before then. It was prior to the previous
19 year.

20 Q All right. Now when he contacted you prior to the
21 shooting about wanting to buy a car, how did he contact you
22 on that occasion?

23 A He called me. I actually had sent him a picture of
24 the car like so he could know how it looked.

25 Q Okay.

Vonkeith Toland - Direct Examination by Mr. McNair

1 A And he contacted me.

2 Q We'll get to that. Now what phone of yours did he
3 call you on?

4 A I believe it has to be the 221 if I'm not mistaken.

5 Q Tell me this, do you recognize the number
6 -5730?

7 A Yeah, that was it.

8 Q Is that your phone?

9 A Yes, sir.

10 Q That's your iPhone?

11 A Yes, sir.

12 Q All right. And is that the number that you were
13 contacted on?

14 A Yes, sir.

15 Q Now, did you recognize the number that he was
16 calling from?

17 A This was a new number, but what I did being I
18 already had his name and he had called me from a couple of
19 different numbers so I would just always say like something
20 to remind me of who he was and he called me from that
21 number that week, it was a few days before the incident and
22 I didn't put his name in again, I just put something like
23 Zo car fan, just letting me know that he like, I met him
24 through Zo and he wanted to purchase a car. So I just put
25 something in there to remind me who he was.

Vonkeith Toland - Direct Examination by Mr. McNair

1 Q Okay. All right. And he had not contacted you on
2 that number before?

3 A No, it was a new one.

4 Q And you saved it as, Zo car fan, in your phone you
5 think?

6 A Yes, sir.

7 Q You mentioned you sent them a picture of the car?

8 A Yes, sir, he had wanted to know how it looked and I
9 was like, well I can send you a picture. Like the next day
10 or so I took a picture of it.

11 Q What type of car was it?

12 A It was a M45 Infinity, an '03.

13 Q Did you talk about price or anything like that?

14 A Well, I told him I wanted 10,000 for it.

15 Q Now, how did you leave it with him when he said he
16 wanted to come down and look at the car; did you agree to
17 meet them at some point?

18 A I told him that when I sent him the picture, I was
19 like well the car don't have the rims on it anymore so
20 that's why I'm selling it to you cheaper and he asked me
21 when he could come and I was like whenever you get down
22 there, I'll just meet you and let you see the car. And he
23 was like I'll call you when I get in town and that was like
24 maybe two days later or so.

25 Q All right. Did you know where he was coming from?

Vonkeith Toland - Direct Examination by Mr. McNair

1 A No, I just assumed he was coming from Alabama
2 because he always said he was from Alabama and Zo told me
3 he was from Alabama.

4 Q Well, when was the first time, I guess that you saw
5 him in person?

6 A On the 26th.

7 Q Okay. And where were you?

8 A On the 26th, that was the first time I saw him on
9 the 26th.

10 Q No the first time you saw him after he called you
11 about wanting to come down and see the car?

12 A Yeah, that was the 26th.

13 Q Okay. And where were you at that time?

14 A At my mother's house.

15 Q Was he alone?

16 A No, sir, another guy was with him I'd seen before
17 too. That's who he brought with him to look at a car
18 before, to look at the black BMW.

19 Q Did that surprise you that he was not alone?

20 A Yeah, kind of, I kind of wondered why they were
21 together because I thought the other guy was from
22 California. I was like maybe he was just down here with
23 him hanging out or something.

24 Q So you had met that guy on a previous occasion as
25 well?

VonKeith Toland - Direct Examination by Mr. McNair

1 A Yes.

2 Q Who -- who was that guy with him that you'd met him
3 prior?

4 A He was with Buddy.

5 Q The guy you knew as Jonah?

6 A Uh-huh (affirmative response).

7 Q Okay. Can you describe what both of those
8 individuals looked like?

9 A One was light skinned with dreads, shorter; and the
10 other one was taller and dark skinned with short haircut.

11 Q Which one had dreads?

12 A Jonah.

13 Q The guy you knew as Jonah?

14 A Yeah.

15 Q And the other guy you said was taller and had a
16 short haircut?

17 A Yeah, the guy with the short haircut, like when he
18 first introduced himself he was telling me like he had just
19 got out of jail and I wasn't really sure. So I didn't
20 really try to learn his name or get to know him.

21 Q Okay. So did you know -- you didn't know his name
22 at all?

23 A I remember him saying like a nickname and stuff and
24 I be trying not to really remember if I'm not going to get
25 to know a person long term.

Vonkeith Toland - Direct Examination by Mr. McNair

1 Q Okay. And how did you meet that individual; you
2 mentioned you met Jonah through Alonzo Walker?

3 A Yeah.

4 Q How did you meet the other guy?

5 A I met him with Jonah, but I spoke with Alonzo and
6 he was telling me that the other guy was getting out of
7 jail and it was his brother and he wanted to try and help
8 him get a car and when they came down he was with Jonah and
9 that was my first time meeting him at the car lot.

10 Q Okay.

11 A When he came to look at the car.

12 Q So you met them on one occasion prior to the 26th?

13 A Twice. The first time he came was to look at the
14 car and then he came to look at the -- the first time I
15 ever met him was the very first time I met him and he came
16 another time to look at the black BMW?

17 Q Okay. Now, where were you when they arrived at
18 your mother's house?

19 A I was on the porch playing cards.

20 Q All right. Did you see him pull up?

21 A Yes, I seen the truck pull up.

22 Q What type of vehicle were they in?

23 A A little small SUV looking like a little kid truck
24 or something, like a little smaller truck, I think if I'm
25 not mistaken.

Vonkeith Toland - Direct Examination by Mr. McNair

1 Q All right. What did y'all do when they got to your
2 mother's house?

3 A Well, they sat in the car for a minute. I guess
4 they were waiting on me to come out and let them know I was
5 there and we were sitting there playing cards at my momma's
6 house before they came in. So once I got a chance to get
7 out the game, I alerted them and let them know I was in the
8 house and they came in the house and that's when the taller
9 guy, he ended up playing poker too.

10 Q Sitting at the same table with you?

11 A Yes.

12 Q Where was the guy you knew as Jonah?

13 A He was sitting down at first and then he was just
14 kind of moving around and playing with his phone. He went
15 to the car one time. He wasn't really at the table playing
16 cards with us.

17 Q Was he talking to anybody?

18 A No, sir.

19 Q All right. Who all was at your mother's house
20 besides you and those two individuals?

21 A I think it was my sister, my cousin, my father and
22 my mother, and my brother, my mother's boyfriend.

23 Q All family?

24 A Yeah, it was a bunch of family. It was like a good
25 bit of us there.

Vonkeith Toland - Direct Examination by Mr. McNair

1 Q And Tycus was there as well?

2 A Yeah, he was there as well. He was playing cards
3 too.

4 Q Now, at some point, did you leave your mother's
5 residence?

6 A Yes, I left her residence to go and -- I was going
7 to look at some property that was for sale so I went and
8 took a look at it and met with the guy and I actually let
9 them know where I was going. And when I returned back, the
10 guy, Terry, got out of the game.

11 Q The tall guy with short hair?

12 A Yeah.

13 Q You didn't know anybody's name that day, correct?

14 A No, sir. The only name I knew was the nickname.

15 Q Okay. So when you got back, he got out of the card
16 game?

17 A Yeah, he got out the game like he was like I was
18 about to get back in and he kind of stepped out like, you
19 know, like he was ready. He was impatient from waiting on
20 me.

21 Q Why did you tell them to meet you at your mother's
22 house that day?

23 A Well, I didn't really actually tell them to meet me
24 there, it's just that the previous time that he came
25 before, he came to my mother's house to look at the BMW so

Vonkeith Toland - Direct Examination by Mr. McNair

1 I guess he just kind of assumed that that's where he would
2 come because it was on the weekend and the car lot wouldn't
3 be open on the weekend on Saturday.

4 Q Okay. Now, how did they know how to get there?

5 A I remember one time I sent Jonah the address.

6 Q Okay. Was that prior to the 26th or that day you
7 sent him the address of your mother's house?

8 A I don't recall sending that to anybody; I'm not
9 sure, but I know I sent it to him before so I knew he knew
10 where it was at.

11 Q Okay. And when the person that you know as Jonah
12 showed up at your mother's house, was that the same person
13 that you'd been talking to on the phone?

14 A Yes, sir.

15 Q Same voice?

16 A Yes, sir.

17 Q And that was the only number that you saved as Zo
18 car fan in your cell phone?

19 A Yes, sir.

20 Q All right. Well, after you got back from looking
21 at some property, did you then leave your mother's
22 residence?

23 A Yeah, we went there and I see he didn't want to
24 play cards, well the other guy got out of the car and I
25 felt like I guess they were in a rush. They wanted to look

Vonkeith Toland - Direct Examination by Mr. McNair

1 at the car and get back. And so then I was going to tell
2 my brother --

3 Q Your brother is Tycus?

4 A Yes, Tycus. I was asking him did he want to ride
5 with me to get the car so they could look at it and first
6 he was like, No, I don't really feel like riding and what
7 have you. And then he was like, I'll go with you.

8 Q All right. So who left in what car?

9 A I actually left in my brother's car. We took it
10 and parked it at my cousin's house, which is actually my
11 aunt's house, but she passed.

12 Q Back up a little bit. What type of car were you --
13 did you leave in?

14 A I left in a gray Dodge Challenger.

15 Q Okay. And what was Tycus --

16 A And he was driving a Honda Accord.

17 Q And the other two guys were in that small SUV?

18 A They were driving a small SUV.

19 Q All right. And y'all were heading towards your
20 residence on Bushberry?

21 A Yes, sir, we were headed there.

22 Q Did you stop anywhere before you got to your
23 residence?

24 A Yeah, we stopped to drop off his car. He picked me
25 up in the Honda and then we headed to Bushberry.

Vonkeith Toland - Direct Examination by Mr. McNair

1 Q All right. Were you -- were you there long when
2 you dropped off that Challenger?

3 A No, we were there maybe two or three minutes. The
4 taller guy was like asking what's up with that car; I want
5 to buy that car; what's up with that one. I was like,
6 that's my brother's car; it ain't for sale.

7 Q Let's go ahead and talk about this. What -- what's
8 the situation with that Challenger?

9 A Well, the situation with the Challenger as far as I
10 know prior or after?

11 Q When you spoke to Detective Garrick, what did you
12 tell him about that Challenger?

13 A When I first -- first spoke with him about the
14 Challenger in the hospital?

15 Q Yes, sir.

16 A Oh, yeah, when I had first spoken about the
17 Challenger in the hospital, I told him that it must have
18 been the guys on or I wasn't sure who it was on because my
19 brother -- well, when the incident happened, I was still in
20 the hospital and I wasn't really sure what happened with my
21 brother and I wasn't -- I didn't know that he was dead at
22 the time. So me being like a father figure to him the
23 whole time, I kind of like was trying to protect him
24 because I know that I felt that the car wasn't right and he
25 kept telling me that the car's right and he's just waiting

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1 on the guys to give him the title to the car. And I'm like
2 well there's no way that these guys should hold your title
3 this long. You've done give them half of the money; they
4 should be back to get the rest.

5 Q So you suspected that car had been stolen?

6 A Yeah, I did.

7 Q All right. And were you trying to protect your
8 brother when you told Detective Garrick it must have been
9 the suspect's car?

10 A Yeah, that's what I told him.

11 Q All right.

12 A I was worried about him and you know, I found out
13 that he was deceased later and like, I realized that there
14 wasn't no need to hide it anymore.

15 Q Right. So when y'all leave, when you drop off the
16 Challenger are you and Tycus now in the same car?

17 A Yes, sir, we're in the Honda Accord riding to my
18 house.

19 Q Okay. And the suspects are following you to your
20 house?

21 A Yes, sir.

22 Q Now, what happens when y'all first get to
23 Bushberry?

24 A When we first arrived, I had to lift up the hood on
25 the car and get the battery straight so I could crank it

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1 up. So I go to the car and hook up the battery before the
2 car would charge up because I used to always unhook it
3 being the battery might die from sitting. I cranked the
4 car up and Jonah told me that he wanted to drive it. So
5 I --

6 Q He wanted to take a test drive?

7 A Yeah, so he got in the driver's seat and the taller
8 guy got in the passenger seat and I ain't just wanted him
9 to drive out hisself so I got in the backseat.

10 Q Okay. Where was Tycus?

11 A He stayed behind. He got my key from me and said
12 he just wanted to walk to the house.

13 Q All right. How long were y'all on the test drive
14 for?

15 A I think we test drove the car like maybe not even
16 three minutes because we went down the road from where I
17 stay, we just drove down the road maybe a half a mile and
18 then he turned around and came back up another half a mile.

19 Q What happened, go ahead and tell the jury what
20 happened when you got back to Bushberry?

21 A When we got back -- when we got back, Jonah wanted
22 to look at the car some more so he like opened the hood up
23 and started looking at it like, I guess making me seem as
24 if I think that he's like interested in the car because he
25 was looking at the inside, lift the motor up looking at

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1 like really checking the car out and -- and I was standing
2 there just kind of waiting letting him look at it and my
3 brother was standing there and Terry, the taller guy was
4 standing there with us as well.

5 Q Y'all all standing around the Infinity?

6 A Yes, sir, kind of in the area. I was like -- we
7 was like right by it.

8 Q Okay. Y'all making small talk?

9 A Yeah, kind of just not saying much, just talking a
10 little.

11 Q Was there a point in the conversation where you
12 thought something may be wrong?

13 A Well yeah, there was one point when we was
14 discussing like he was talking about a guy so and the
15 taller guy came out and said --

16 MR. JAMES SNELL: I'm going to object; hearsay.

17 THE COURT: I'm going to overrule that under -- I
18 can't call the rule number right now, but statements made
19 in the presence.

20 You may continue, Solicitor.

21 MR. MCNAIR: Thank you, Your Honor.

22 THE WITNESS: And he -- the guy was like I was
23 speaking about Zo and out of the blue he was just like,
24 Fuck that bitch, excuse me, and he was like -- I'm like why
25 would he say that. The only way I really know y'all is

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1 through him, so it kind of made me think, like why would he
2 even say that. I felt like he would have to feel that I
3 know Zo better than I know him so for him to say that he
4 must feel like I -- it's going to be -- he could say that
5 because he felt like I wasn't going to be able to tell Zo
6 later. I felt that that's why he said it.

7 BY MR. MCNAIR:

8 Q What happened after that?

9 A Well, after that the conversation kind of went dry
10 because I started feeling funny and then my brother wasn't
11 never a big talker and -- and then all of a sudden, Terry
12 just -- well, the guy that's taller had just reached on his
13 side and instantly was shooting my brother in the head. I
14 was just couldn't even react like if I was the one about to
15 be shot in the head, my brother wouldn't have even been in
16 the direct to stop him like I wasn't able to stop him.

17 Q Did your brother even flinch?

18 A He didn't even -- all he could do was the same
19 thing. I could see it coming; he couldn't even use his
20 hands to knock it down it was so fast. It was unexpected.
21 We never even would think that that's what was going on.
22 These guys were acting like they wanted to buy a car just
23 so they could get me alone.

24 Q Where did they shoot him?

25 A They shot him in the head and then shot him like,

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1 he wanted to make sure he got him in the right place
2 because he kind of reached his arm and he shot him.

3 Q In the back of his head?

4 A In the back of his head, like.

5 Q How close were you to your brother when it
6 happened.

7 A We was all like in a triangle. I could touch my
8 brother, I could touch him, he could touch me. Everybody
9 was close enough.

10 Q Right in front of your face?

11 A Yeah, I was closer than she is to me.

12 THE COURT: She is, the Court Reporter?

13 THE WITNESS: Yes, sir. I was closer to him than
14 that. I was actually closer than you are too. We were
15 pretty much like we could put our arms around each other
16 like this. He was like right here and my brother was like
17 right here.

18 BY MR. MCNAIR:

19 Q Where was the guy with dreads you knew as Jonah
20 when that happened?

21 A Jonah was still over there by -- like in front of
22 the car with the hood up. He had the keys so he was just
23 like scared or acting like he was --

24 Q Your brother, he was in front of that Infinity, was
25 he not?

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1 A Yes, sir.

2 Q All right. So y'all were all in front of that
3 Infinity?

4 A Yeah, like right there around in the vicinity of
5 the car and Jonah was kind of standing a little bit away
6 from us, not really right there on us, like, he was more in
7 a position where if me -- if we had to race to his truck,
8 he'd be the first one there.

9 Q Okay. And after your brother was shot, what did he
10 do?

11 A Well, after my brother was shot, it was like so
12 startling like I was shot so I'm like looking crazy and
13 like confused and I look over at him and he's like -- like
14 scrambling a little bit like, not like he's like, you know,
15 not really sure where he want to go, but he want to come
16 and get right beside the guy who just shot him or where he
17 want to go to the truck, but eventually I seen him run to
18 the truck like he was searching for something. And then by
19 this time, I'm still trying to back away from the other guy
20 who shot my brother and he's like telling me that, you
21 know, even after he shot my brother, he's pointing the gun
22 at me and he say you know what this is, you know what we
23 coming for, we want it, you might as well give it up.

24 I'm like man, I did this like, I'd love for y'all
25 to right now, ain't play around and like what's the

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1 problem. And I don't get it; you shot my brother. He was
2 like shut up, don't worry about it. I know you got money;
3 you might as well get it out.

4 MR. JAMES SNELL: Your Honor, object to hearsay.

5 THE COURT: Overruled.

6 THE WITNESS: And I basically just was trying to
7 like, it was so much going on at the time in my mind like,
8 more than anything I wanted to help my brother so --

9 BY MR. MCNAIR:

10 Q What happened after -- now when you saw Jonah go to
11 the vehicle, did you see him after he left the vehicle or
12 were you somewhere else at that time?

13 A The next time I see him is when I tried to get away
14 and the guy, the taller guy, shot me like maybe three times
15 at first and then I'm kind of crawling still trying to get
16 away because when I tried to stand back up, I couldn't
17 stand up. Like my arms wouldn't even work and my legs were
18 barely working.

19 Q Were you backing away from the tall guy when I was
20 starting to shoot?

21 A Yeah, I was backing away from him. I tried to turn
22 around so I could do like a little dash, like a running,
23 that's when he shot me.

24 Q So do you see Jonah kind of as you're backing away?

25 A Yeah, that's when I noticed him when -- after my

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1 brother was first shot and I was trying to figure out what
2 to do, like when I was away -- stepping away from the
3 taller guy.

4 Q I guess as you're backing up is the vehicle they
5 came in kind of in your view?

6 A Yeah, everything was -- I could view everything. I
7 could see my brother, I could see Jonah and I could see the
8 taller guy clearly, I could see everybody.

9 Q As you sit here today, do you have a vivid memory
10 of where he started shooting you first?

11 A I would have to say he started shooting me in the
12 front of the house first and then he shot me in the back of
13 the house the second time.

14 Q All right. When you say the back of the house,
15 are you talking about where you had that addition in the
16 rear?

17 A Yeah, when I finally crawled around, I looked back
18 up. I had finally got up --

19 Q Let me stop you right there. When was the first
20 time after you saw Jonah run to the vehicle, when was the
21 next time you saw him?

22 A The next time I saw him was when I was looking up
23 off the ground and he had a gun in my face.

24 Q Where were you when you were on the ground?

25 A In the back next to the steps. The both actually

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1 had the guns pointed at me at the time. They had asked me
2 for money and stuff and I'm like --

3 Q What --

4 MR. JAMES SNELL: I object, Your Honor.

5 THE COURT: Repeat the question please.

6 BY MR. MCNAIR:

7 Q I believe the question --

8 MR. JAMES SNELL: May we approach just very
9 briefly, Judge.

10 THE COURT: Yes, sir.

11 (There was a bench conference out of the hearing of
12 the jury and the court reporter.)

13 THE COURT: Thank you, Mr. Snell.

14 Thank you, Solicitor. You may ask your next
15 question.

16 BY MR. MCNAIR:

17 Q So the next time you see Jonah, you were on the
18 ground beside the steps in the rear of your residence; did
19 he have a gun in his hand?

20 A Yes, sir.

21 Q Is he pointing it at you?

22 A Yes, sir, they're both pointing guns at this time.
23 They've both got the guns like in my face threatening to
24 kill me.

25 Q What does -- what in particular does Jonah say to

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1 you?

2 A Well, he asked me where the drugs and the money are
3 at. I mean I ain't got none. I was like -- he was like
4 man, I'm going to kill you if you don't tell me where to
5 find them; I'm going to kill you. So finally I was like,
6 Well the money's in the house; you just got to go find it.
7 My girlfriend hide it and he was like -- and the other
8 taller guy was like no, get up; you're going in the house
9 with us and I was like man, you done shot me, I can't move;
10 I can't go nowhere. And then finally he decided they both
11 went to the back door and the taller guy kicks the glass,
12 sliding door glass and busts it out and then they enter the
13 home.

14 Q Both of them went inside?

15 A Yeah, they both went inside and I can hear them
16 like scrambling in the house tearing it up like, just
17 looking for stuff and finally the taller guy comes back
18 outside and I'm sitting there trying to dial 911 because
19 really I wasn't concerned with myself; I was more concerned
20 for my brother. So I was just trying to call to see if I
21 could get some help for him. So when the guy comes back
22 outside, the first thing he said was where -- where is the
23 camera, where is the camera and I was like it don't work;
24 it's in the room, but it don't work.

25 He said, Oh, you got a phone. And then he started

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1 shooting me again and he shoot like maybe three or four
2 times. I think that's when I got shot in the neck and just
3 kind of like fell down and I just laid there like I was
4 dead and he grabbed the phone out my hand and when he
5 grabbed it I like picked my hand up with it and I just let
6 my hand drop. I couldn't hold my hand up; I just let it
7 drop and make him think that I was done and then he goes
8 back in the house and I can hear them like ransacking the
9 house even more.

10 I can hear them like in that back room where the
11 cameras are located like they must be trying to tear them
12 out. So then I was like thinking to myself like if I don't
13 get out of here, when he come back out, he's going to
14 probably finish me off like he did my brother. So I just
15 went and crawled up under the trailer. Well, there was
16 like an opening where we were building on -- adding on to
17 the house and I decided I'd just crawl up under there and
18 hid behind the pillars or the blocks on the mobile home
19 and.

20 I stayed there for like maybe 30 seconds and then
21 they started coming out and I could hear like Jonah saying
22 like where he at; where he at. And the taller guy, because
23 Jonah hadn't been outside since he was the one tearing the
24 house up, and the taller guy was like the one that came
25 back out and he shot me the second time. So when he came

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1 out, he shot him too but I wasn't there anymore. He was
2 like I don't know; I don't know, and they both like
3 hurrying, but the taller guy was like I could see from
4 being up under the trailer that I could see like that Jonah
5 was first and the taller guy was second because he had on
6 like the Timberland boots and I remember because he had --
7 I remember looking at his boots when he kicked the back
8 glass open. And he was leaving from there, like after
9 Jonah was like where he at; where he at and he's like I
10 don't know. I could see them trying to look up under the
11 trailer and he was leaving like if I could just really see
12 his feet and the gun, like he was like hoping I wouldn't
13 might try to come up from under the trailer or something.

14 Q Uh-huh (affirmative response).

15 A And he had a gun pointed up under there, After he
16 realized that I wasn't coming out, he ran back to the
17 vehicle and I could hear like speed off like if it was on a
18 highway you could like eeerk, but it did on dirt. It did
19 on dirt so that was like trying to get up out of there.

20 Q The tires?

21 A Yeah, I could hear it. I waited under there for
22 like maybe a few minutes, like maybe I'm thinking like a
23 minute or two. I was starting to get short winded. I
24 could tell I was losing a lot of blood and I didn't want to
25 just sit up under the trailer to see if they were going to

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1 come back or I probably would have died under the trailer.
2 So then -- so I decided to go ahead and crawl from up under
3 there and locate a phone and I know that --

4 Q You were close to your phone?

5 A -- it was in the car. I know my secondary because
6 I have two phones. One of my phones is for like family and
7 my other phone is like people who call me about cars and
8 they will call you at any time of the night like no
9 respect. So I try to have two separate phones, but the
10 phone that people call me about cars, I left it in the car.

11 So when I -- he had took my other phone and so I
12 didn't have no way of calling. So I went to the car,
13 crawled all the way to the car, but actually when I was
14 about to start crawling, I couldn't move so I had to like
15 take my shorts off. I had some shorts on and I was up
16 under the trailer and every time I tried to move it was
17 like my legs were just stuck together. So I slid the
18 shorts off and then I crawled up there and went to go check
19 on my brother like and see is he okay and I could tell he
20 wasn't so I went on to the car and I called 911.

21 Q Okay. Do you recall what you told the 911 operator
22 about how you knew the suspects?

23 A At the time, I didn't think I was going to make it.
24 I was like bleeding bad and short winded and I wanted to
25 try to just let them know something that you know if I

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1 died, they'll know some type of way to find who did it and
2 I remember telling her that the guys that they could get in
3 contact with, the guy Zo is from California; they could
4 find out who the two guys were that robbed me by their real
5 names. I knew if I told her the nicknames, they wouldn't
6 know anything about a nickname. So I just wanted to kind
7 of let her know what had happened.

8 Q Let's -- so how do you know about Alonzo Walker
9 then? That's how you knew these two guys previously?

10 A Yeah, Alonzo Walker, I met him from a friend from
11 school. It's his -- Alonzo is his first cousin. He
12 introduced me to Alonzo; he first bought a vehicle of mine
13 and then after that, he may have purchased like four more
14 vehicles after that.

15 Q You've sold vehicles to Alonzo in the past?

16 A Yeah, I sold him quite a few. So like he refers
17 somebody to me, I would figure they were legit like him.

18 Q Have you hung out with Alonzo on more than just a
19 business level?

20 A Yeah, I remember when he came from California one
21 time to buy one of the vehicles, a guy I knew from school
22 had told me that they were going out to hang out and asked
23 me did I want to go and I went along with them.

24 MR. JAMES SNELL: Objection; hearsay.

25 THE COURT: Overruled.

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1 BY MR. MCNAIR:

2 Q So you have hung out with Alonzo I guess on more of
3 a social level before?

4 A Yeah, like maybe once or twice.

5 Q Did you feel like you did anything that would give
6 Alonzo the impression that maybe you were still in the drug
7 business or that you had money or anything of that nature?

8 A I wouldn't say I gave him any idea of thinking I
9 was still in the drug business. I think he just kind of
10 assumed that I had money, you know, he -- he bought a bunch
11 of cars from me so he know what kind of money he was
12 spending with me and then just the fact of me letting him
13 know that I did used to deal drugs and I was telling him
14 stuff like, you know, I did what I did one time and got out
15 of it and when I came home, everything that I had prior to
16 me going in pretty much like my cars and stuff I still had,
17 so I was just really selling them, recuperating to make
18 money.

19 Q All right. And I don't know how else to ask, but
20 do you feel like you were maybe kind of flashing back at
21 that time and gave him the impression of having money?

22 A When I first met him, I would say that he would
23 think that because I still had my jewelry from, you know,
24 like whenever I would go out or the night that we went out
25 together I had wore a lot of jewelry and kind of, I think

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1 he remembered that. I remember him asking me about buying
2 it.

3 MR. JAMES SNELL: Objection; hearsay.

4 THE COURT: I would sustain that objection.

5 MR. MCNAIR: Yes, sir.

6 BY MR. MCNAIR:

7 Q Now, what names did you know Alonzo Walker by?

8 A Just Zobama and Zo.

9 Q And Zo from Cali is what you told 911?

10 A Zo and Zobama.

11 Q Now, there was a gun located in your house under
12 the bed. Were you aware that that gun was there?

13 A No, sir, I wasn't aware at first that it was there.
14 I found out later that it was there.

15 Q Was that your gun?

16 A I bought it maybe years prior, but I thought it was
17 gone because I actually gave it to my fiance when I went to
18 prison and told her, you know, if they needed it for
19 protection, keep it at the house while I'm gone and once I
20 returned, I never seen it again. So I thought maybe she
21 had got rid of it.

22 Well, I seen it one prior time when she tested it
23 and was saying that -- I told her that it's best for her to
24 get a registered one and she told me that she had one --
25 one like that one. So when she tested it and she seen she

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1 had one like it and it didn't kick too much for her, she
2 said she was going to get one of those.

3 MR. JAMES SNELL: Object to hearsay.

4 THE COURT: I would sustain the objection.

5 BY MR. MCNAIR:

6 Q She -- you mentioned she had test fired that weapon
7 before?

8 A Yes, sir, testing --

9 Q Do you recall where she was when she test fired it?

10 A We were at the house.

11 Q Okay.

12 A We were at the house.

13 Q Do you remember if you were in the front or the
14 back?

15 A I'm not too sure, it may was the front or it -- I
16 don't recall exactly where.

17 Q Well, there was a shell casing from that gun in
18 your yard. Would that have been from the time that she
19 test fired it?

20 A Yes, if there was one there because that would have
21 been the only time it was fired.

22 Q All right. You mentioned the tall guy came out and
23 took your phone; do you remember the number to that phone?
24 Do you recognize the number -8366?

25 A Yeah, that was the number.

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1 Q That was the phone that was taken from you?

2 A Yes, sir.

3 Q You also mentioned that you had a security system
4 in your house?

5 A Yes, sir.

6 Q Did you have a recording device?

7 A Yes, sir, a DVR that records up to a week or two
8 and then it resets again.

9 Q Where was that recording device located in your
10 house?

11 A It was located in the master bedroom.

12 Q Was that stolen from your house?

13 A Yes, sir.

14 Q I'm going to show you State's 12. Do you recognize
15 that picture?

16 A Yes, sir.

17 Q And where do those wires go to?

18 A To the camera station.

19 Q And that's what was missing from your house?

20 A Yes, sir.

21 Q And that's your master bedroom?

22 A Yes, sir.

23 Q I show you State's 19. Is that a picture of your
24 phone?

25 A Yes, sir.

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1 Q That's the phone that you called 911?

2 A Yes, sir.

3 Q And that's the phone that Jonah contacted you on?

4 A Yes, sir.

5 Q This is a silly question, but you didn't give them
6 permission to enter your residence, did you?

7 A No, sir.

8 Q Do the names Dominique Dutson, a Mr. Pou and
9 Rashaad Gatson mean anything to you?

10 A Yes, sir.

11 Q Are those people that you know?

12 A Yes, sir. Two of them are friends of my brother
13 and one of them is my brother in-law.

14 Q Okay. And did your brother drive that Honda
15 Accord?

16 A Yes, sir. He drove it for a few times like he
17 would drive it around; he didn't really have any
18 transportation at the time. He would get it and drive it.

19 Q So if those peoples fingerprints were found in that
20 Honda Accord, would that be surprising to you?

21 A No, sir.

22 Q They've been around that vehicle prior to this
23 incident at some point?

24 A Yes, sir.

25 (State's Exhibit Number 38 was marked for

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1 identification.)

2 BY MR. MCNAIR:

3 Q Do you recall being shown -- give me that back.

4 I'm going to show you what's been premarked as
5 State's Exhibit 38. Just take a look through those two
6 pages. Are those screen shots from your iPhone?

7 A Yes, sir.

8 MR. MCNAIR: Your Honor, we'd offer State's 38 into
9 evidence?

10 MR. JAMES SNELL: No objection.

11 THE COURT: State's 38 is in evidence without
12 objection.

13 (State's Exhibit Number 38 was entered into
14 evidence.)

15 BY MR. MCNAIR:

16 Q Now, you mentioned you sent a text of the vehicle
17 to the guy you knew as Jonah?

18 A Yes, sir. The reason I kind of sent the picture
19 was because like I said prior, he would come and look at
20 the car but he never bought one, so I wasn't really sure if
21 he was going to buy one so I'm like, well, if I send him
22 the picture, he'd know whether he wanted the car because I
23 know that car rides good so if he decided not to want that
24 car, then I know he's not really here to buy a car.

25 Q I got ya. Now, tell me based on these records, you

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1 mentioned you saved his number under -- as Zo car fan?

2 A Yes, sir.

3 Q When is the first call that you received from Zo
4 car fan based on your cell phone?

5 A It was the 24th of April, two days before the
6 incident.

7 Q And what number did you send a picture of that car
8 to?

9 A The same number, -5436.

10 Q Okay.

11 A I remember when he called me like the first two
12 times, I didn't even answer because I was like man, I'm not
13 going to answer this dude; he ain't wanting to buy no car.
14 He's just wasting my time; I don't know why he keep
15 calling.

16 Q The guy that called you on that number was the guy
17 you knew as Jonah when he showed up?

18 A Uh-huh (affirmative response).

19 Q All right. And when did you send him a text
20 message of the picture of the Infinity?

21 A That was the next day. I had sent it and I was
22 like well he wanted to try the car. I told him I wasn't
23 going to be able to get it right then, but I would send it
24 soon.

25 Q That was the 25th when you sent him the picture of

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1 the Infinity?

2 A Yeah, the day before.

3 Q All right. Do you recall being shown photo lineups
4 in this case?

5 A Yes, sir.

6 Q I'm going to show you State's Exhibit Number 3. Do
7 you recognize this lineup?

8 A Yes, sir.

9 Q Do you recall who showed that to you?

10 A I believe it was Detective Mefford.

11 Q Okay. Were you still at the hospital at that
12 point?

13 A Yes, sir.

14 Q When he showed you that, did you recognize one of
15 the individuals in there?

16 A Yes, sir.

17 Q And did you circle one of the individuals?

18 A Yes, sir.

19 Q What number did you circle?

20 A Number 5.

21 Q And how certain were you of your pick?

22 A A hundred percent.

23 Q Are those your initials down there?

24 A Yes, sir.

25 Q Did he in any way suggest to you who you should

Vonkeith Toland - Direct Examination by Mr. McNair

1 pick out?

2 A No, sir, not at all. He just pretty much told me
3 that the person that may or may not be in the picture.
4 When I looked I said they are in there.

5 Q Okay. Now, I'm going to show you State's Exhibit
6 Number 2. Do you recognize that photo lineup?

7 A Yes, sir.

8 Q Do you recall being shown that lineup?

9 A Yes, sir, that was the original, first one I had
10 seen.

11 Q Do you remember who showed you this lineup?

12 A Both the detectives was there that day.

13 Q Okay. What did they tell you prior to showing you
14 that lineup?

15 A They pretty much told me the same thing. Although
16 with the second guy, he was like the person may or may not
17 be in there and they asked me if I seen the person who did
18 this to me and my brother, and would I be able to identify
19 them; and I was like yes. And he just basically told me
20 they may or may not be in the lineup.

21 Q All right. And did you recognize one of the
22 individuals in that lineup?

23 A Yes, sir.

24 Q Which one did you circle?

25 A Number 3.

Vonkeith Toland - Direct Examination by Mr. McNair

1 Q Are those your initials down there at the bottom?

2 A Yes, sir.

3 Q How certain were you that it was Number 3?

4 A A hundred percent certain.

5 Q Did it take you any time at all to pick them out?

6 A No, sir, other than, you know, me being in the
7 hospital in pain. As soon as I saw the picture, I knew
8 exactly who they were.

9 Q You were alert enough to pick them out of a lineup
10 though, correct?

11 A Oh, yeah. I just really couldn't talk much. I was
12 in a lot of pain, but I know what was going on and who did
13 what to me and my brother.

14 Q Vonkeith, do you see the person that stuck a gun in
15 your face on April 26th, 2014 in court today?

16 A Yes, sir.

17 Q Where is he?

18 A Over there with the defense.

19 MR. MCNAIR: Let the record reflect he pointed at
20 the defendant.

21 BY MR. MCNAIR:

22 Q Does he look any different today than he looked on
23 April 26th, 2014?

24 A He cut his hair off, but he still look the same.

25 Q He cut his dreads off?

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 A Yeah, he cut his dreads. That was it.

2 Q Are you certain that's him in court today?

3 A Oh, yeah, I'm certain.

4 MR. MCNAIR: Your Honor, I did misspoke. I guess
5 State's Exhibit 2, it was still for ID purposes and it's
6 not in evidence; I'll correct that.

7 THE COURT: All right. Mr. Snell, State's 2; did
8 you say it's still ID?

9 MR. MCNAIR: Yes, sir.

10 THE COURT: All right. Mr. Snell?

11 MR. JAMES SNELL: Thank you very much.

12 **CROSS-EXAMINATION**

13 BY MR. JAMES SNELL:

14 Q I'm sure, Vonkeith, Mr. Toland. I know this is
15 hard for you to come and testify today, isn't it?

16 A Yeah, it's hard, but it's something I got to do.

17 Q I'm very sorry about your brother, but with that, I
18 have some questions. I think that we'll kind of run
19 through about what happened and -- and different stories.

20 THE COURT: Mr. Snell.

21 MR. JAMES SNELL: Yes, sir.

22 THE COURT: Ask your first question please.

23 BY MR. JAMES SNELL:

24 Q At any point prior to April 26th or any point in
25 the past, have you ever -- you never talked to either Mr.

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 McClure or Mr. Butler about buying some drugs; is that
2 true?

3 A No.

4 Q And you never actually sold them any drugs before,
5 did you?

6 A Never.

7 Q Have you ever bought drugs from them?

8 A Never.

9 Q Did they ever see you with any drugs?

10 A They may have saw me smoking before.

11 Q Like a small amount of personal marijuana?

12 A I was smoking, but that's it. I've seen him with a
13 lot of drugs.

14 Q But they never saw you with --

15 A The only time that me and him have ever been
16 acquainted around drugs is when he first came, he showed me
17 a big bag of weed and asked me if I would take that for the
18 car and I told him no.

19 Q All right. So at the time -- at the time of the
20 shooting, your testimony was you were not involved in the
21 drug business?

22 A Not at all.

23 Q In fact, the prosecutor at one point offered you
24 immunity to tell the truth if you were involved in the drug
25 business which means you wouldn't get in trouble for it?

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 A No, they never actually offered that to me. The
2 only problem that was ever done was the situation with the
3 gun. Like, you know, they never really -- I didn't know
4 about it. So I had told my father and we went there and
5 asked them about immunity for the gun being there. I never
6 knew about that other. But as far as drugs, you know...

7 Q Okay. So the prosecutor never gave you immunity
8 regarding prosecution for any drug activity regarding this
9 case?

10 A No, there was never any drugs involved in it.

11 Q But they never offered you immunity?

12 A Not that I can recall.

13 Q So if they had offered -- if they had wanted to buy
14 one of your cars, I guess your testimony is you would turn
15 down marijuana; you would have wanted to be paid cash?

16 A Yeah, at the time I was going through some
17 financial stuff, so I could use the money and I would said
18 no to drugs at all.

19 Q Now, your -- previously when you talked to the
20 police about this, you reported that, I think your
21 testimony is that when your brother got shot it was kind of
22 sudden and unexpected?

23 A Yes.

24 Q And there hadn't been any type of arguments or
25 dispute between you and Mr. Butler and Mr. McClure or your

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 brother and Mr. Butler and Mr. McClure?

2 A No, sir, they never even gave me the idea to think
3 that they were going to even try anything like that or even
4 give me a -- the only time that they made me feel uneasy
5 around them was when the taller guy mentioned the statement
6 about, you know, the other guy that they knew that actually
7 introduced us. So that's the only time I felt uneasy
8 during the time but there was never any arguments or any
9 disputes. They were just looking at the car then. There
10 was nothing to dispute over.

11 Q And they had actually spent several hours at your
12 mother's house before this, correct?

13 A Yes.

14 Q Playing cards or Mr. McClure was playing cards
15 and -- while y'all were over there?

16 A Yes, sir.

17 Q And everybody was getting along good?

18 A Yes, sir.

19 Q Now, when you -- you -- according to your
20 testimony, was Mr. McClure, he was the one that shot your
21 brother kind of suddenly, correct?

22 A Yes, sir.

23 Q And you had previously indicated that Mr. Butler,
24 who is the defendant on trial, actually was surprised by
25 the shooting, correct?

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 A It was more like, I wouldn't say he was surprised;
2 it was more like just -- it was more like a look on his
3 face like he didn't know where to go. Like I said, whether
4 to Jonah and Butler or to go get his gun from the car
5 because I would assume he already had it on him; he had to
6 go to the truck and get it. But the taller guy already had
7 it on him.

8 Q But Mr. Butler wasn't ready for a shooting,
9 correct?

10 A Ready?

11 Q He didn't have a gun with him at the time. This
12 honest person, Mr. Butler didn't have a gun?

13 A I can't really give you an answer to that because I
14 never actually saw him got the gun out the car; he could
15 have had the gun on him at the time, but just ran to the
16 car and got something else, but I know when he came to put
17 the gun in my face, he had possession of it and I never
18 seen him pick it up.

19 Q Okay. And so I just want to make sure I'm clear
20 because the information that police gave us in a -- in a
21 supplemental report was that you had told them that Mr.
22 Butler was surprised by the shooting.

23 A I think it was more in the lines of like he knowed
24 what was going to happen, but he didn't know when or how it
25 was going to occur because like I say, the previous times

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 they came to see me, they weren't trying to rob me then.
2 They never got the opportunity. So he could think that
3 it'd be another opportunity that was missed. So he
4 wouldn't necessarily think it was about to happen right
5 then until the shots went off.

6 Q But you're aware the police said -- indicated in
7 their -- in their reports or notes they provided to us that
8 you told them that you were -- that Mr. Butler was
9 surprised?

10 A Yeah, you could say that.

11 Q And you testified before that Mr. McClure was the
12 one that shot you, correct?

13 A Yes, sir.

14 Q All right. And that Mr. Butler, your testimony is
15 he ran to a car and got the gun and came back and pointed
16 it at you, correct?

17 A Well, he ran to the car. I can't say that he
18 actually got the gun out of the car.

19 Q Okay.

20 A I would assume that he did because he came back and
21 put it in my face after he left the car.

22 Q Now, at the time -- if I understand correctly, at
23 least initially you told the police that you didn't recall
24 a gun being in the mobile home, correct? And then later
25 when they offered you immunity, you admitted that you knew

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 the gun was there?

2 A Could you repeat the question?

3 Q Yeah. Initially you told the police you didn't
4 know that the gun they found in the mobile home was there
5 and it wasn't until after they offered you immunity that
6 you remembered it was there?

7 A No, because that ain't the way it went. It was --
8 I never knew about the gun so originally I told them that
9 if they found a gun, then it had to be their gun and once I
10 found out that it wasn't their gun, then I let the officers
11 know that it was my gun.

12 Q So initially you didn't tell the police that you
13 knew that there was a gun in the mobile home other than if
14 they happened to find a gun that Mr. McClure or Mr. Butler
15 had brought there?

16 A That's how I assumed it because I didn't have any
17 knowledge of a gun at all at the time.

18 Q During -- during the time of either on the 26th
19 on -- which is when you were -- made the 911 call that is
20 you were -- and then later in the hospital on May 8th and
21 May 10th, you never told the police that anything had been
22 stolen from your -- from your home, correct?

23 A I wasn't really aware at the time because I hadn't
24 been to the house since I had left with the -- I got shot
25 and I had never been back to the house. I was just in the

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 hospital after they shot me. After I was shot, I went in
2 the helicopter and I had never been back to the house. So
3 I wouldn't know what they actually took out the house.

4 Q Then let's do this from after May 10th, did you --
5 you didn't see the detectives or the investigators anymore
6 until January of this year, correct?

7 A Yeah, it was a minute.

8 Q Okay. When you say a minute, I've got a
9 supplemental report dated January -- it says on January
10 8th, 2016, you had a followup meeting with Detective
11 Garrick?

12 A Uh-huh (affirmative response).

13 Q And that would have been your first time seeing the
14 detectives since May 10th, 2014?

15 A I think so.

16 Q Okay.

17 A It took me quite a while in like rehab. So, by the
18 time that I was almost rehabbing I end up -- they contacted
19 me to meet up with them again.

20 Q The -- the story you have about them asking you for
21 the money and drugs?

22 A Uh-huh (affirmative response).

23 Q That's the story that wasn't -- you didn't first
24 disclose to police until January of 2016, correct?

25 A I didn't speak with them again until January of

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 2016.

2 Q But at the time you were in the hospital meeting
3 with the detectives on May 8th, 2014 and May 10th, 2014 --

4 A The detectives was concerned with the two guys that
5 shot me and my brother. So they must have arrested them.
6 They really didn't have a reason to speak with me again
7 until it was time to talk about the case.

8 Q So that whole time, the police never knew that they
9 had -- were robbing -- attempting to rob you for guns and
10 for money and drugs?

11 A Well, they knew they were trying to rob me, but for
12 what I'm not sure if they knew what. Usually when you're
13 trying to rob someone it's for something like money or
14 something.

15 Q So the first time you -- just to make sure we're
16 clear. The first time you disclosed it to law enforcement
17 was January 8th of this year that it was an attempted
18 robbery over money and drugs?

19 A Yeah, I wasn't exactly sure what date. I did
20 disclose it to them. I'm not sure what they -- it wasn't
21 necessarily like saying it was money and drugs because the
22 first guy was asking about money and then the second guy
23 was asking about money and drugs. It was like they just
24 wanted something. You could tell that the guys, you know,
25 the entire time they were acting as if they didn't know

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 about money, but I could tell when they were robbing me
2 that they was just some guys who went in there and just
3 trying to take from people.

4 Q All right. Now in addition to -- I want to follow
5 back up. I guess your testimony that when you first talked
6 to the police about the Dodge Charger, at that point you
7 believed there was a good likelihood that the Charger was
8 stolen?

9 A I didn't know for a fact, so I don't want to, you
10 know, say that I thought maybe it was. But me selling
11 cars, I know like the procedure and I know that it wasn't a
12 proper procedure because if they was going to sell him the
13 car and he was giving them the money; they should have had
14 the title. It shouldn't have been no reason to delay the
15 title.

16 Q Had you ever talked to your brother or shared your
17 concerns with your brother about them?

18 A Well, I told him and you know, he said that -- he
19 just kind of was in denial like maybe the guys were going
20 to go back eventually until the number was changed. Once
21 the number was changed, then he kind of started looking
22 like maybe it's going to -- somethings not right and he was
23 like maybe the guy had a title loan on it or I was like,
24 even he had the title loan, that still wouldn't give him no
25 reason not to come back and get the rest of the money

Vonkeith Toland - Cross-Examination by Mr. James Snell

1 unless he couldn't get the title.

2 So it's like I had my doubts and my concerns, but,
3 you know it wasn't my money so I can't tell him what to do
4 or how to handle the situation. I just told him that if
5 something was wrong, he'd have to find out eventually.

6 Q And you were concerned that if your brother had
7 been caught with the stolen car that he could have been in
8 trouble for that?

9 A Yes.

10 Q And so you basically lied to the police to protect
11 your brother?

12 A Well, I kind of like told them that I thought it
13 was the guys. I was just like if it is stolen, then I
14 don't want to say it's his and somebody say it's theirs and
15 they done did all this horrible stuff; they just claim the
16 car. But I ended up finding out he was dead and I felt
17 like it was just right to tell the truth on the car.

18 Q And then after that, if I understand correctly you
19 were -- that Mr. McClure shot you and then shot you a
20 second time; three times including in the neck?

21 A Yes.

22 Q And that's before you crawled underneath the
23 trailer, correct?

24 A Yes.

25 Q After you crawled under the trailer, did you ever

Vonkeith Toland - Redirect Examination by Mr. McNair

1 see either Mr. McClure or Mr. Butler's face again on the
2 26th?

3 A No, sir, I didn't see their faces anymore, just
4 their legs and their shoes and heard their voices.

5 Q All right. Thank you. No other questions.

6 THE COURT: Redirect, Solicitor?

7 MR. MCNAIR: Very briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. MCNAIR:

10 Q Mr. Toland, you say the guy you knew as Jonah
11 appeared surprised, but is it your testimony that he
12 appeared surprised that it happened or that it happened at
13 that moment?

14 A I think it was more surprised that it happened at
15 that moment. It wasn't like a surprise of what was going
16 on because he already knew what their plans were. It was
17 just that he didn't know when it was going to happen.

18 Q After -- after that happened --

19 MR. JAMES SNELL: Your Honor.

20 THE COURT: Yes, sir?

21 MR. JAMES SNELL: If I may, I'm objecting. That
22 was -- the witness was testifying that would be
23 speculation.

24 THE COURT: You asked him the same thing about what
25 the police were thinking and such. So I would overrule the

Vonkeith Toland - Redirect Examination by Mr. McNair

1 objection. You went into it on cross subject to Rule 611.

2 BY MR. MCNAIR:

3 Q After the tall guy shot, he didn't run away and
4 leave, did he?

5 A No, he didn't. He -- after, I guess after he kind
6 of got hisself settled, he immediately joined and he, you
7 know, when they -- when they both came to the back where I
8 was laying at, he was the one that was more on the
9 aggressive side at that point.

10 Q All right. And I know you may not know that we
11 actually told you we were giving you immunity, but we did
12 tell you we wouldn't prosecute you for telling us the
13 truth; did we not?

14 A Yes, sir.

15 Q Thank you.

16 THE COURT: Thank you, Solicitor.

17 Recross, Mr. Snell?

18 MR. JAMES SNELL: No recross, Your Honor.

19 THE COURT: Thank you. Thank you very much, Mr.
20 Toland, you may step down.

21 All right. Perhaps, ladies and gentlemen, it would
22 be a good time to take our afternoon recess. Please
23 remember during this recess do not discuss this case with
24 anyone including your fellow jurors. With that being said,
25 you may go to your jury room. We will take about 15

1 common sense. But we have four witnesses that I understand
2 talking to the State and defense that we should be able to
3 get through within a reasonable time this afternoon and I
4 would like to and will try to get to that point.

5 Again, if at any time, you know, there is a charge
6 sometimes that you hear that I give occasionally at the
7 beginning of a trial that if you've never been a juror, a
8 trial is very different than what you may see on T.V. It's
9 not always exciting, riveting, and such like that. It can
10 and has to be sometimes very methodical. It can be just
11 moving along because of the slowly and repetitive because
12 of the way the trials and evidence is presented. So we'll
13 try to press on for the afternoon. Again, if anybody needs
14 a break, if your thoughts start to wander in any way just
15 please let me know and we'll take a recess.

16 All right. Solicitor, call your next witness.

17 MR. GRAHAM: The State calls Joseph Trawicki.

18 THE COURT: All right. Yes, sir. If you'd come
19 around and be sworn for us please.

20 JOSEPH TRAWICKI,

21 after being duly sworn, testified as follows:

22 THE CLERK: Have a seat, sir. Once you're seated,
23 state your full name spelling your last for the record
24 please.

25 THE WITNESS: Joseph Trawicki. T-R-A-W-I-C-K-I.

Joseph Trawicki - Direct Examination by Mr. Graham

DIRECT EXAMINATION

1
2 BY MR. GRAHAM:

3 Q I'm sorry, I mispronounced your name, Trawicki?

4 A You're not the first, sir.

5 Q Where are you employed, sir?

6 A Sprint.

7 MR. JAMES SNELL: Your Honor, at this time, I'd
8 like to renew our previous objections.

9 THE COURT: Subject to your previous objections and
10 I renew my previous trial rulings, pretrial rulings.

11 Solicitor.

12 BY MR. GRAHAM:

13 Q Mr. Trawicki, what do you do for Sprint?

14 A I am one of the records custodians.

15 Q So when we talk about records custodians, we're
16 talking about transactional records of calls and texts and
17 tower location and things like that regarding cell phones,
18 cell towers and phones from Sprint; is that correct?

19 A That's correct.

20 Q Those records are kept in the regular course of
21 Sprint business?

22 A Yes, they are.

23 Q And they are made at or near the time the event
24 occurs?

25 A Yes, they are.

Joseph Trawicki - Direct Examination by Mr. Graham

1 Q And you have been designated as their custodian,
2 correct?

3 A Yes, sir.

4 Q Let me show you a disc and ask if you recognize
5 this disc?

6 A Yes, sir.

7 Q You're looking on the disc itself, why are you
8 looking on the disc?

9 A I reviewed this compact disc yesterday and
10 initialed it after reviewing it.

11 Q All right. Does this contain records for telephone
12 number -0402?

13 A Yes, it does.

14 Q Specifically, this disc contains, and correct me if
15 I'm wrong, and we'll have the call detail record which will
16 include calls and -- the fact that a call occurred and the
17 fact that a text occurred; is that correct?

18 A That is correct.

19 Q It would also have a key that explains that; it
20 would also have tower location for different markets. So
21 anywhere that a call -- when a call is made, if it's used,
22 it records the tower that the call is processed on; is that
23 correct?

24 A That is correct.

25 Q So this would also contain not only listing what

Joseph Trawicki - Direct Examination by Mr. Graham

1 towers were used, but telling you where the towers are
2 physically located?

3 A That is correct.

4 Q So there's a cell tower location for the Sacramento
5 market and the Columbia, South Carolina market, the
6 Greenville market, the D.C. market, Stockton, California
7 market, Atlanta market and Charlotte market; is that
8 correct?

9 A Yes, sir.

10 Q In addition to that, does it also contain IDDR data
11 and a key?

12 A Yes, sir.

13 Q What is IDDR data?

14 A IDDR at this time consisted of when your phone
15 logged on to the internet and when it logged off of the
16 internet.

17 Q In addition does it contain subscriber information?

18 A Yes, sir.

19 Q Okay.

20 MR. GRAHAM: Your Honor, the State would offer 39
21 into evidence at this time.

22 THE COURT: Subject to previous objections?

23 MR. JAMES SNELL: Subject to previous objections
24 and my understanding is the data on the disc encompasses a
25 lot more information that otherwise would be relevant or

Joseph Trawicki - Direct Examination by Mr. Graham

1 admissible.

2 THE COURT: I don't know the answer to that
3 question.

4 Solicitor.

5 MR. GRAHAM: I mean I don't know what -- it
6 contains everything as far as records that they had.

7 THE COURT: For the timeframe?

8 MR. GRAHAM: For a particular timeframe.

9 THE COURT: What particular time?

10 MR. GRAHAM: Which are relevant to this case, yes,
11 Your Honor, for about a month timeframe.

12 THE COURT: It would include what the State would
13 allege is relevant to this case --

14 MR. GRAHAM: Yes.

15 THE COURT: And may include matters that are not
16 relevant to this case?

17 MR. GRAHAM: Yes. The only thing -- and I don't
18 know, it varies by company and I think what Mr. Snell is
19 probably referring to is prior -- it's on disc because
20 otherwise we'd be talking thousands of pages of documents.
21 Some of the records will contain text content and some
22 want.

23 THE COURT: Do you have that information
24 extrapolated in some manner? That focuses the Court and
25 the jury on that which the State alleges is relevant?

Joseph Trawicki - Direct Examination by Mr. Graham

1 MR. GRAHAM: Later on, yes, Your Honor, we'll have
2 an expert come from the sheriff's department who will pull
3 information on here that is particularly relevant and
4 explain it to the jury.

5 THE COURT: Does that answer your question, Mr.
6 Snell?

7 MR. JAMES SNELL: I think it does. What I've seen
8 before, Judge, because I think -- one issue is if you put
9 into evidence all of it is subject to review. A lot of
10 this material might be messages and content that's not
11 admissible and so I wouldn't have any objection to the
12 relevant portions coming into evidence, but as far as the
13 totality of it, I don't know if it could be put into
14 evidence for a limited purpose just for these type items
15 and I don't think it's something that would be helpful for
16 the jury to get into if they decide to try --

17 THE COURT: Well, let me -- let me kind of throw
18 this out to you, Mr. Snell, Solicitor. This has the --
19 ensconces the entire record, which is what this gentleman
20 is here to do as a custodian of the records. That's the
21 entire record.

22 Another witness, if I hear the Solicitor correctly
23 is going to testify as to that part of the Sprint records
24 that the State alleges is relevant and that will come in in
25 a different form extrapolated from this item, correct?

Joseph Trawicki - Direct Examination by Mr. Graham

1 MR. GRAHAM: Yes, sir.

2 THE COURT: So at the time the case goes to the
3 jury, the redacted version so to speak would go, if it's
4 accepted into evidence, would go to the jury room and this
5 particular item, this disc would not have to go?

6 MR. GRAHAM: This would not need to go unless there
7 was some question in the jury about that witness and his
8 explanation or his veracity or anything like that.

9 THE COURT: And if there were, we could do it just
10 like we did the playback of the transcript. It could be
11 identified on this global document to get to the specific
12 document?

13 MR. GRAHAM: Correct.

14 MR. JAMES SNELL: That would resolve the issue,
15 Your Honor.

16 THE COURT: So unless the jury wanted this
17 particular item, but I think the State's got to have the
18 foundation of whatever they later put into evidence that
19 they allege is relevant. They've got to show that it comes
20 from the official records.

21 MR. JAMES SNELL: I think that's correct as long --
22 I just want to -- what I want to avoid is having the
23 complete record published including any portions that might
24 be inadmissible for other reasons.

25 THE COURT: And I agree with that. I agree with

Joseph Trawicki - Direct Examination by Mr. Graham

1 that.

2 MR. JAMES SNELL: Thank you, Your Honor.

3 THE COURT: And we have an issue about a specific
4 record, we'll just -- we'll have to so to speak, cross that
5 bridge when we get to it. All right. Thank you.

6 So just mark it -- mark it for identification
7 purposes only at this time.

8 MR. GRAHAM: Okay.

9 (State's Exhibit Number 39 was entered for
10 identification purposes only.)

11 BY MR. GRAHAM:

12 Q These are the records for -0402?

13 A That is correct.

14 Q In addition, did I ask you to specifically pull off
15 subscriber information for that telephone number?

16 A Yes, sir.

17 Q And do you have a document in your hand that
18 reflects the subscriber information?

19 A I do.

20 Q And is that a fair and accurate reflection of the
21 actual records themselves?

22 A Yes, sir.

23 MR. GRAHAM: Your Honor, the State would offer that
24 document into evidence at this time.

25 THE COURT: What's it's number 38 -- 39?

Joseph Trawicki - Direct Examination by Mr. Graham

1 THE COURT REPORTER: Yes, sir.

2 MR. GRAHAM: 40, sir.

3 THE COURT: 40?

4 THE COURT REPORTER: 40.

5 MR. JAMES SNELL: And subject to the other prior
6 objections.

7 THE COURT: Subject to previous objections.

8 (State's Exhibit Number 40 was entered into
9 evidence.)

10 BY MR. GRAHAM:

11 Q Mr. Trawicki, talking about telephone number
12 -0402, what is the subscriber information; as we go
13 through that, can you tell me when this account was
14 established?

15 A The account was established 4/4/2014.

16 Q The records that are contained in this request and
17 on that disc cover what area or timeframe?

18 A The -- the request -- the legal demand requested
19 records through 4/1/14 through 4/30/2014.

20 Q What the subscriber information shows that the
21 account did not get activated until 4/4/2014?

22 A That is correct.

23 Q All right. Who is the account registered to under
24 the account details?

25 A The name provided was Chris Smith.

Joseph Trawicki - Direct Examination by Mr. Graham

1 Q So is that a default name or is that a name
2 provided by the person who set this up?

3 A That was the name provided by the person who set
4 the account up.

5 Q Now, is that verified in any way?

6 A This is a prepaid account so it is not.

7 Q Okay. When you say a prepaid account, what do you
8 mean?

9 A On a prepaid account, you pay X number of dollars
10 up front and you get Y number of minutes in return. There
11 is -- and that's the extent of the business relationship.
12 When the minutes run out, if you do not wish to re-up then
13 there is no requirement that you do so. When you sign up
14 for an account such as this, there is no requirement to
15 provide name or address and if you do provide any of that
16 information, it is not verified in any way, shape or form.

17 Q So it's called a minute phone; is that the term
18 that's used?

19 A Just a prepaid phone.

20 Q Just a prepaid phone?

21 A Yes, sir.

22 Q If somebody wanted to continue to use it after the
23 allotted minutes, what would they do?

24 A You -- there's multiple ways to recharge the phone.
25 You can go to like a convenience store and buy a card and

Joseph Trawicki - Direct Examination by Mr. Graham

1 call the number and put in the code on the card for that
2 number of minutes; you can go into a store and pay cash;
3 you can give a credit card over the phone. There are a
4 number of ways to do it.

5 Q So the name Chris Smith was given. It was not
6 verified though because it's prepaid, correct?

7 A That is correct.

8 Q There was an address that was given, which is P.O.
9 Box 54988, Irvine, California 92619; is that a real
10 address?

11 A That is a default address. There's no -- for this
12 mobile, there's -- no address is provided by the user.

13 Q On the third page, there's an e-mail at
14 Virginmobileusa.sprintpcs.com Is that a real e-mail
15 address or is that an address that's just created?

16 A That is an e-mail address assigned to that handset.
17 Every handset -- every Sprint phone has one of those. Do
18 they ever get used? I've never seen them actually used
19 before.

20 Q So it's created by Sprint?

21 A That's correct.

22 Q Not at the request of the user?

23 A That's correct.

24 THE COURT: Tell me the number on State's 40, the
25 phone number please?

Joseph Trawicki - Direct Examination by Mr. Graham

1 MR. GRAHAM: The telephone number that's
2 associated with it, Your Honor?

3 THE COURT: Yes, sir.

4 MR. MCNAIR: -0402.

5 THE COURT: Thank you.

6 BY MR. GRAHAM:

7 Q Let me show you another disc, Mr. Trawicki, and ask
8 if you recognize this disc?

9 A Yes, sir.

10 Q Now is that -- you see your initials on it as well?

11 A Yes, sir.

12 Q Is that associated with telephone number
13 -0391?

14 A That is correct.

15 Q And again, as a records custodian for Sprint, are
16 these the records that deal with that account?

17 A Yes, sir.

18 Q All right. And does that disc contain a call
19 detail record including texts showing the date and time
20 that text occurred and calls occurred, subscriber
21 information, the key that explains it and cell site
22 locations showing tower locations in the Nashville area,
23 Atlanta area, Greenville area, and Columbia, South Carolina
24 area?

25 A Yes, sir.

Joseph Trawicki - Direct Examination by Mr. Graham

1 Q And again those are kept in the regular course of
2 business and you're custodian for those records as well?

3 A Yes, sir.

4 MR. GRAHAM: Your Honor, the State I guess under
5 your previous ruling, would mark those for ID for use later
6 by another person?

7 THE COURT: 41, is that 41?

8 MR. MCNAIR: Yes, sir.

9 THE COURT: State's 41, ID only, subject to
10 previous objection.

11 (State's Exhibit Number 41 was marked for
12 identification only.)

13 BY MR. GRAHAM:

14 Q Mr. Trawicki, do you also have a document that
15 reflects the subscriber information that was obtained from
16 that compiled information on that disc 41 for
17 identification, the subscriber information for -0391?

18 A Yes, sir.

19 Q And has that been premarked as State's 42?

20 A Yes, sir.

21 MR. GRAHAM: Your Honor, the State would offer
22 State's 42 into evidence?

23 THE COURT: Subject to previous objections, Mr.
24 Snell?

25 MR. JAMES SNELL: Yes, Your Honor.

Joseph Trawicki - Direct Examination by Mr. Graham

1 THE COURT: All right. 42 is in evidence subject
2 to previous objections.

3 (State's Exhibit Number 42 was entered into
4 evidence.)

5 BY MR. GRAHAM:

6 Q Mr. Trawicki, looking on that, we're now talking
7 about the subscriber information for phone -0391.
8 When was that account established?

9 A This account was established 10/25/2011.

10 Q The name on that account is what?

11 A John McCoy. M-C-C-O-Y.

12 Q And again, would that have been verified?

13 A No, sir.

14 Q But that would have been given by the individual
15 who set up the account to start with?

16 A That is correct.

17 Q Now, the address here again is P.O. Box 54988,
18 Irvine, California 92619; that was a default address?

19 A That is correct.

20 Q Now, is this a post or prepaid phone?

21 A This is a prepaid phone.

22 Q So again, it's a phone that you buy that has
23 minutes on it and you use your minutes and you add minutes
24 to it?

25 A Yes, sir.

Joseph Trawicki - Direct Examination by Mr. Graham

1 Q Okay. Specifically on this one -- what is an
2 electronic serial number?

3 A An electronic serial number is a -- a very long
4 number that's assigned to a specific handset. Each
5 manufacturer has its own code to start with, but an
6 electronic serial number can be typed to a specific phone
7 or handset.

8 Q All right. So it would tell you the actual -- it's
9 a serial number isn't it?

10 A Yes, sir.

11 Q A specific handset?

12 A That's correct.

13 Q So on April 26th -- in April of 2014, can you tell
14 me what electronic serial number was associated with this
15 phone number?

16 A 256691512904350742.

17 Q So if we found a phone, that phone -- if it was a
18 phone used at the time, it would have that number on it,
19 wouldn't it?

20 A That's correct.

21 Q The records that were requested that are on here,
22 what dates did any records cover?

23 A The request covered 3/31/2014 through 4/30/2014.

24 Q And that information is contained on the subscriber
25 page as well, isn't it?

Joseph Trawicki - Direct Examination by Mr. Graham

1 A Yes, sir.

2 MR. GRAHAM: Your Honor, I believe that's all the
3 questions that I have for Mr. Trawicki?

4 THE COURT: Thank you, Solicitor. Mr. Snell?

5 MR. JAMES SNELL: No questions, Your Honor.

6 THE COURT: Thank you. Thank you very much. Thank
7 you for being with us this afternoon, sir.

8 THE WITNESS: Thank you, sir.

9 THE COURT: You may step down and any objections to
10 the witness being excused?

11 MR. GRAHAM: Not from the State, Your Honor.

12 MR. JAMES SNELL: None from Defense.

13 THE COURT: Thank you again, you may be excused.

14 THE WITNESS: Thank you, sir.

15 THE COURT: All right. You may call your next
16 witness, Solicitor.

17 MR. GRAHAM: The State calls Buddy Hoffman.

18 JAMES EDWARD HOFFMAN, JR.,

19 after being duly sworn, testified as follows:

20 THE CLERK: Have a seat right up there, sir. Once
21 you're seated, state your name spelling your last on the
22 record please.

23 THE WITNESS: My name is James Edward Hoffman, Jr.
24 Hoffman, H-O-F-F-M-A-N; nickname Buddy.

25 ///

James Edward Hoffman, Jr. - Direct Examination by Mr. Graham

DIRECT EXAMINATION

BY MR. GRAHAM:

Q Mr. Hoffman, have you been designated as a records custodian for Greyhound Lines regarding documents in this case?

A I have.

Q Let me show you two documents and ask if you recognize these documents.

A I do.

Q Do those documents -- are those documents that Greyhound has said that you are the custodian of?

A Yes.

Q And those are -- specifically would be referred to as -- are they boarding passes?

A Bus tickets.

Q Bus tickets?

A Uh-huh (affirmative response).

MR. GRAHAM: Your Honor, the State would offer these into evidence at this time?

THE COURT: 43?

THE COURT REPORTER: 43.

THE COURT: All right. Mr. Snell?

MR. JAMES SNELL: Subject to the previous objection.

THE COURT: All right. State's 43 is in evidence

James Edward Hoffman, Jr. - Direct Examination by Mr. Graham

1 subject to previous objection.

2 (State's Exhibit Number 43 was entered into
3 evidence.)

4 BY MR. GRAHAM:

5 Q Let me show you another document which we're going
6 to go ahead and label as 44, and ask if you recognize those
7 as well, Mr. Hoffman.

8 A I do.

9 Q And are those -- what do you characterize those as?

10 A Those are print screens off of a ticketing program.

11 Q And are those also records that you've been
12 designated to be the custodian of?

13 A Yes.

14 MR. GRAHAM: Your Honor, the State would offer
15 State's 44 into evidence.

16 THE COURT: Mr. Snell?

17 MR. JAMES SNELL: If I may look at them for a few
18 minutes?

19 THE COURT: Yes, sir.

20 MR. JAMES SNELL: We renew our previous objection.

21 THE COURT: All right. 44 is in evidence subject
22 to the previous objection.

23 (State's Exhibit Number 44 was entered into
24 evidence.)

25 BY MR. GRAHAM:

James Edward Hoffman, Jr. - Direct Examination by Mr. Graham

1 Q Let me see if I can get the overhead on and we can
2 use that. Are you going to be able to see the overhead?

3 THE COURT: You going to be able to see it, Mr.
4 Hoffman?

5 THE WITNESS: Not very clearly.

6 THE COURT: Me neither. You may -- you may step
7 down unless it gets any clearer.

8 You don't mind him holding them, do you Solicitor?

9 MR. GRAHAM: Thank you, Your Honor.

10 THE COURT REPORTER: Speak up, please.

11 THE COURT: Just keep your voice up when you're
12 away from the microphone for us.

13 BY MR. GRAHAM:

14 Q If you would stand here and face the court
15 reporter, that way she can hear you and you can see it up
16 on the screen?

17 A Okay. Very good.

18 Q What is this we're looking at?

19 A This is a bus ticket going from Athens, Alabama to
20 Atlanta, Georgia.

21 Q This is going from Athens to ultimately to Atlanta?

22 A To Atlanta, Georgia. This particular coupon would
23 take the passenger from Athens, Alabama to Birmingham,
24 Alabama where they would change buses.

25 Q So is the ticket, the whole trip covers Athens,

James Edward Hoffman, Jr. - Direct Examination by Mr. Graham

1 Alabama to Atlanta, Georgia --

2 A To Atlanta, Georgia.

3 Q -- stopping and transferring buses in Birmingham?

4 A Correct.

5 Q The date of travel on this was what?

6 A April 24th, 2014.

7 Q And what was the time that the bus was scheduled to
8 depart?

9 A Scheduled to depart at 9:55 a.m.

10 Q Was this purchase in person or online?

11 A Purchased over the internet using a Visa card.

12 Q And how do we know that?

13 A Well, it's listed on the ticket, the lower right,
14 you'll see the tear on the right side, you'll see the tear
15 and then the internet and then the fare information is at
16 the bottom and listed it was used with a Visa.

17 Q The name of the individual who this ticket is in is
18 who?

19 A Justin Butler.

20 Q Continuing to refer to State's 43 and flipping to
21 the next page. That is also another boarding pass for the
22 same date of travel; is that correct?

23 A That is ticket number 212 taking a passenger from
24 Birmingham, Alabama to Atlanta, Georgia.

25 Q So the first ticket was from Athens to

James Edward Hoffman, Jr. - Direct Examination by Mr. Graham

1 Birmingham --

2 A From Athens, Alabama to Birmingham.

3 Q And now we've went from Birmingham to Atlanta?

4 A From Birmingham to Atlanta.

5 Q It was scheduled to depart Birmingham at what time
6 on what day?

7 A 1:30 p.m. on the 24th of April, 2014.

8 Q And the boarding pass or ticket was in the name of
9 who?

10 A Justin Butler.

11 Q Let me show you some screen shots as well.

12 So now we're referring to State's Number 44. Do
13 you see that?

14 A Uh-huh.

15 Q The first page of State's 44; what is this, what is
16 that screen print showing us?

17 A This is from the Grounds Trips Ticketing System
18 under the reservation section and this is just a print
19 screen of a reservation for a ticket from Athens, Alabama
20 to Atlanta, Georgia on April 24th, 2014, in the name of
21 Justin Butler.

22 Q What was -- was there a phone number underneath
23 there?

24 A There is.

25 Q What's that phone number?

James Edward Hoffman, Jr. - Direct Examination by Mr. Graham

1 A The phone number is area code -0391.

2 Q What time was the scheduled departure again on the
3 24th?

4 A 9:55 a.m.

5 Q And the scheduled arrival in Atlanta?

6 A 6:20 p.m. on the same day.

7 Q Turning to page number 2 of State's 44, what is
8 this?

9 A It's again a print screen from the reservation
10 system. This is a different ticket. It's a ticket
11 traveling from Atlanta, Georgia to Athens, Alabama. The
12 ticket was for April 27th. The time is cut off. It
13 appears to be 5:40 a.m. but the end of its cut off.

14 Q And what was the projected arrival time back in
15 Athens?

16 A In Athens, Alabama at 10:20 a.m. on the 27th.

17 Q The name on this ticket again is who?

18 A Justin Butler.

19 Q And the telephone number that was given?

20 A -0391.

21 Q The last page of State's 44, what does that show
22 us?

23 A That is the same ticket leaving from Atlanta,
24 Georgia to Athens, Alabama. This will list the actual
25 ticket number itself, has the passenger's name, show's that

James Edward Hoffman, Jr. - Direct Examination by Mr. Graham

1 he checked a bag, rode the bus.

2 Q Mr. Hoffman, I appreciate your answers. You can
3 have a seat on the stand.

4 MR. GRAHAM: Your Honor, that's all the questions
5 the State has for Mr. Hoffman.

6 THE COURT: Thank you, Solicitor.

7 Mr. Snell.

8 MR. JAMRS SNELL: No questions.

9 THE COURT: Thank you. Thank you very much. Thank
10 you for being with us today, Mr. Hoffman.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: My pleasure.

13 Any objections to Mr. Hoffman being excused?

14 MR. GRAHAM: None from the State, Your Honor.

15 THE COURT: You may be excused. Thank you.

16 MR. GRAHAM: The State would call Karen Milbrodt
17 up.

18 KAREN MILBRODT,

19 after being duly sworn, testified as follows:

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

22 THE WITNESS: My name is Karen Milbrodt.

23 M-I-L-B-R-O-D-T.

24 ///

25 ///

Karen Milbrodt - Direct Examination by Mr. Graham

DIRECT EXAMINATION

BY MR. GRAHAM:

Q Ms. Milbrodt, where are you employed?

A I work for Verizon Wireless.

Q And are you a records custodian for Verizon Wireless?

A I am.

Q And you are here today to talk to us about three different sets of phone numbers; is that correct?

A That's correct.

MR. JAMES SNELL: I object based on the previous objection.

THE COURT: All right. And I reaffirm my previous pretrial rulings.

Thank you. You may proceed, Solicitor.

BY MR. GRAHAM:

Q Ms. Milbrodt, as records custodian for Verizon, did you have an opportunity to look at State's 45 for identification?

A Yes.

Q And is that all the records that Sprint was able, excuse me, Verizon was able to supply for telephone number -5436 for a given time period back in April of 2014?

A These are the records that we were subpoenaed for.

MR. GRAHAM: And, Your Honor, under where we're

Karen Milbrodt - Direct Examination by Mr. Graham

1 operating at that will just be marked for ID for use later
2 by the State.

3 (State's Exhibit Number 45 was marked for
4 Identification only.)

5 THE COURT: Yes, sir.

6 BY MR. GRAHAM:

7 Q Does that disc -- you had an opportunity to review
8 the disc, correct?

9 A I did.

10 Q And that disc contains a lot of information,
11 doesn't it?

12 A Yes, it does.

13 Q It has all the detail records?

14 A Yes.

15 Q Shows incoming and outgoing calls and the towers
16 that use those calls?

17 A Yes.

18 Q The device ID, what features are available, certain
19 web-base activity, texts, text content?

20 A Yes.

21 Q Tower location?

22 A Yes.

23 Q Text billing, incoming texting, subscription
24 information, cell site addresses and keys that explain what
25 all that information is; is that correct?

Karen Milbrodt - Direct Examination by Mr. Graham

1 A That is correct.

2 Q Specifically, did I ask -- well let me show you
3 State's 46, what's been premarked as State's 46; do you
4 recognize that?

5 A I do.

6 Q And is that the subscriber information that was
7 taken off of State's 45 for identification?

8 A Yes.

9 MR. GRAHAM: And, Your Honor, the State would offer
10 that into evidence at this time.

11 MR. JAMES SNELL: We renew our previous objection.

12 THE COURT: State's 46 in evidence subject to
13 previous objection.

14 (State's Exhibit Number 46 was entered into
15 evidence.)

16 BY MR. GRAHAM:

17 Q Ms. Milbrodt, what is the subscriber information
18 for this phone?

19 A The subscriber is known as a prepaid phone so there
20 is no name associated with the phone number attached.

21 Q The number we're talking about again is
22 -5436?

23 A That's correct.

24 Q All right. So there's no subscriber information,
25 none was required and none was given; is that correct?

Karen Milbrodt - Direct Examination by Mr. Graham

1 A That's correct.

2 Q And as a prepaid phone which is -- means it's a
3 minute phone; is that correct?

4 A Correct. Consumer pays for the services prior to
5 having access to them.

6 Q In addition to the information that's on State's 45
7 for identification, is there also some screen prints that
8 came out regarding the purchase and set up of this phone?

9 A There was.

10 Q And is that -- is State's 47, what's been marked as
11 State's 47 a fair and accurate depiction of that
12 information?

13 A It is.

14 MR. GRAHAM: Your Honor, the State would offer this
15 into evidence at this time?

16 MR. JAMES SNELL: Your Honor, we would renew our
17 previous objection.

18 THE COURT: All right. 47 is in evidence subject
19 to previous objection.

20 (State's Exhibit Number 47 was entered into
21 evidence.)

22 BY MR. GRAHAM:

23 Q Ms. Milbrodt, looking at State's 47, these are
24 screen prints from Verizon regarding this phone being
25 purchased; is that correct?

Karen Milbrodt - Direct Examination by Mr. Graham

1 A It is.

2 Q Looking at State's Number 47, can you tell me where
3 the phone that was related to the number that we're talking
4 about was purchased at?

5 A Yes, it was purchased at a Wal-mart in Muscle
6 Shoals, Alabama.

7 Q Can you give the address of that store?

8 A Yes, sir. West Avalon Avenue, Muscle Shoals,
9 Alabama 35661.

10 Q Can you tell from looking at records what date
11 the -- this phone was purchased and the account was
12 activated?

13 A Yes, sir.

14 Q What was the date?

15 A The date of purchase was March 15, 2014.

16 Q And this is a prepaid -- it shows that it's a
17 prepaid account as well, correct?

18 A Correct.

19 Q So it's -- as you discussed on the subscriber
20 information, there's no registration, there's nobody's name
21 or anything on this here; is that correct?

22 A That's correct. A prepaid customer doesn't receive
23 a bill so we don't gather that type of information.

24 Q Can you -- are you able to tell what kind of a
25 phone was purchased?

Karen Milbrodt - Direct Examination by Mr. Graham

1 A Yes.

2 Q What kind of a phone was it?

3 A This was a Samsung Bristol and this is just a
4 little flip phone. It's the basic model phone.

5 Q Is it an expensive phone or a cheap phone?

6 A It's one of the cheaper phones that you can get
7 through us.

8 Q Just a flip phone?

9 A Just a little clam shell, yeah.

10 Q What other information is contained on here?

11 A Some of the features, the mobile telephone number,
12 the account number, again the store information that's on
13 that screen shot and the second page is just another
14 application. It's just another screen shot of another page
15 of our billing system.

16 Q Ms. Milbrodt, let's talk about another number now.

17 A Yes, sir.

18 Q Ms. Milbrodt, looking at State's 48 for
19 identification, do you recognize that disc?

20 A Yes, sir.

21 Q And what's the phone number that's associated with
22 that disc?

23 A Area code -9703.

24 Q And the records on there are records again that
25 shows cell tower information, call data, text data showing

Karen Milbrodt - Direct Examination by Mr. Graham

1 where the phone was used, the keys to explain everything,
2 payment history, text content maybe on that one and also
3 that's pretty much it on that phone; is that correct?

4 A Yes, sir.

5 Q As well as subscriber information?

6 A Yes, sir.

7 MR. GRAHAM: Your Honor, under your previous
8 ruling, we will just have it marked as identification for
9 use later.

10 THE COURT: All right.

11 (State's Exhibit Number 48 was marked for
12 Identification only.)

13 BY MR. GRAHAM:

14 Q Did you, in fact -- the next Exhibit I think is 49
15 that's been premarked; is that correct?

16 A Yes, sir.

17 Q Is that the subscriber information for this phone
18 number?

19 A It is.

20 Q Can you tell me for phone number -9703, who
21 is the subscriber on that account?

22 A The name is Ladondra Ellis.

23 Q And that is not a default name, is it?

24 A No, sir.

25 Q Now, is it verified?

Karen Milbrodt - Direct Examination by Mr. Graham

1 A Yes.

2 Q And why is it verified or how?

3 A Well, you activate service with us, you have to
4 present identification and then we do a credit check using
5 the social, driver's license, date of birth, and once all
6 that passes, we can build an account for you and start
7 sending a bill.

8 Q And the reason you know that is because of the type
9 of phone this is, correct?

10 A Correct, this is post-paid account meaning you
11 receive a bill.

12 Q So Ms. Ellis would receive a bill in the mail and
13 she would write a check or pay for it online?

14 A Correct.

15 Q After the fact?

16 A Right.

17 Q Her address is given as what?

18 A South 23rd Street, Richmond, California 94804.

19 Q All right. One more phone and we will be done?

20 THE COURT: Did you offer Forty-nine?

21 MR. MCNAIR: The court reporter is telling me I did
22 not. Thank you, Your Honor.

23 I would offer State's 49 into evidence.

24 THE COURT: Subject to previous objections?

25 MR. JAMES SNELL: Yes, Your Honor.

Karen Milbrodt - Direct Examination by Mr. Graham

1 THE COURT: 49 is in evidence subject to previous
2 objections.

3 MR. GRAHAM: Thank you.

4 (State's Exhibit Number 49 was entered into
5 evidence.)

6 BY MR. GRAHAM:

7 Q The last Exhibit, Ms. Milbrodt, has been premarked
8 as State's 50 for identification; do you recognize that
9 one?

10 A I do.

11 (State's Exhibit Number 50 was marked for
12 Identification only.)

13 BY MR. GRAHAM:

14 Q And what phone number are those records associated
15 with?

16 A Area code -3719.

17 Q And again you're the custodian?

18 A Oh, it's 3791.

19 Q 3791. And those are Verizon's records?

20 A These are.

21 Q For that phone for the time period that was asked?

22 A Yes.

23 Q And like the other one, you reviewed it and it
24 contains various types of information; text information,
25 data information, cell tower locations and markets that

Karen Milbrodt - Direct Examination by Mr. Graham

1 were used, keys to explain it and other things like that?

2 A Yes.

3 Q And actual text content I believe for that item; is
4 that correct?

5 A That is correct.

6 Q Now State's 51 has been premarked; is that up there
7 with you as well?

8 A It is.

9 Q And is that the subscriber information?

10 A It is.

11 Q And is that accurate and was printed off of State's
12 50 for identification, the disc itself?

13 A It was.

14 Q So what is the subscriber information --

15 MR. GRAHAM: The State would offer 51 into evidence
16 at this time.

17 THE COURT: Subject to previous objection?

18 MR. JAMES SNELL: If I may look at the document?

19 THE COURT: Yes, sir.

20 MR. JAMES SNELL: We renew our previous objection.

21 Thank you.

22 THE COURT: 51 is in evidence subject to previous
23 objections.

24 (State's Exhibit Number 51 was entered into
25 evidence.)

Karen Milbrodt - Direct Examination by Mr. Graham

1 BY MR. GRAHAM:

2 Q All right. Ms. Milbrodt, State's 51 is the
3 subscriber information for telephone number what?

4 A -3791.

5 Q The subscriber -- is that a prepaid or a post-paid?

6 A This is another prepaid account.

7 Q Okay. And that's indicated on State's 51, correct?

8 A Yes, that's on --

9 Q On the second page?

10 A -- page 2.

11 Q All right. The information that was provided for
12 the subscriber, the name and addresses and contact
13 information like that, is it -- what was on -- what's
14 default and what was provided?

15 A Sure. In this particular case, we have the name
16 Cierra listed as the first name of the user of the device
17 or the purchaser. The rest of the information is default
18 information such as the address that we have in Folsom,
19 California for prepaid accounts. It also says it's a phone
20 in the box, which is a prepaid phone. So the only
21 information that's not defaulted would be the name Cierra
22 and of course the mobile number and the account number.
23 Everything is auto-entered into the system?

24 Q And the name Cierra would not have been verified?

25 A Cierra would not have been verified. There's no

Karen Milbrodt - Direct Examination by Mr. Graham

1 credit check or any verification of prepaid accounts and I
2 do want to say there is a contact number that was entered
3 that is not one of our default contact numbers.

4 Q And then can you tell when that phone or that
5 account was activated for that number?

6 A Yes, it was activated on February 15, 2014.

7 Q Thank you, Ms. Milbrodt. Please answer any
8 questions that Mr. Snell has for you.

9 THE COURT: Thank you, Solicitor.

10 Mr. Snell.

11 MR. JAMES SNELL: No questions, Your Honor.

12 THE COURT: Thank you. Thank you very much. Thank
13 you for being with us.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: You may step down. Any objection to
16 the witness being excused?

17 MR. GRAHAM: None from the State, Your Honor.

18 MR. JAMES SNELL: None, Your Honor.

19 THE COURT: You may be excused.

20 THE WITNESS: Thank you.

21 THE COURT: All right. Solicitor, you said you had
22 one more?

23 MR. GRAHAM: We do, Your Honor.

24 THE COURT: All right.

25 MR. MCNAIR: Your Honor, the State calls Richard

Richard Bailey - Direct Examination by Mr. McNair

1 Bailey.

2 RICHARD BAILEY,
3 after having been duly sworn, testified as follows:

4 THE WITNESS: Richard Bailey. B-A-I-L-E-Y.

5 **DIRECT EXAMINATION**

6 BY MR. MCNAIR:

7 Q Mr. Bailey, have you been designated as the
8 custodian of records for Enterprise Rent a Car?

9 A Yes, I have.

10 Q I'm going to show you what's been premarked as
11 State's Exhibit 51. Can you identify that document?

12 MR. MCNAIR: Excuse me, correction State's Exhibit
13 52, Your Honor.

14 BY MR. MCNAIR:

15 Q State's Exhibit 52, can you identify that document?

16 A It's an Enterprise Rent a Car Rental Contract.

17 Q Is that document prepared and kept in the ordinary
18 course of Enterprise business?

19 A Yes, it is.

20 Q Is it made at or near the time the transaction
21 occurred?

22 A Correct, yes.

23 Q Okay. And whose name is reflected on that Lease
24 Agreement?

25 MR. JAMES SNELL: Your Honor, we renew our prior

Richard Bailey - Direct Examination by Mr. McNair

1 objections.

2 THE COURT: All right. Subject to previous
3 objections, you may continue.

4 MR. MCNAIR: Your Honor, we offer State's 52 into
5 evidence at this time.

6 THE COURT: All right. State's 52 is in evidence
7 subject to previous objection.

8 (State's Exhibit Number 52 was entered into
9 evidence.)

10 BY MR. MCNAIR:

11 Q All right. What is the name of the person on that
12 Rental Agreement?

13 A Terry McClure.

14 Q All right. And what Enterprise location did they
15 rent a car from?

16 A The Rental Car Center at the Atlanta Hartsfield
17 Airport.

18 MR. JAMES SNELL: I object, Your Honor.

19 THE COURT: Excuse me?

20 MR. SNELL: The question, I think the question was
21 what -- it said did they rent the car from.

22 THE COURT: Rephrase the question, Solicitor.

23 BY MR. MCNAIR:

24 Q I said, what Enterprise Location did Mr. McClure
25 rent a car from?

Richard Bailey - Direct Examination by Mr. McNair

1 A The Rental Car Center at the Atlanta Hartsfield
2 Airport, College Park, Georgia.

3 Q Okay. And what type of vehicle did Mr. McClure
4 rent?

5 A A blue Hyundai Santa Fe.

6 Q What date did he rent that vehicle?

7 A Thursday, April 24th, 2014.

8 Q And what date was that vehicle due back?

9 A April 27th, 2014.

10 Q In order to rent a car from Enterprise, do you have
11 a to provide a valid driver's license?

12 A Correct.

13 Q I have no further questions. Thank you?

14 THE COURT: Thank you.

15 Mr. Snell.

16 MR. JAMES SNELL: No questions.

17 THE COURT: Thank you. Thank you very much, Mr.

18 Bailey. Thank you for being with us. You may step down.

19 Any objections to the witness being excused.

20 MR. MCNAIR: No, Your Honor.

21 MR. JAMES SNELL: No, Your Honor.

22 THE COURT: You may be excused. Thank you again.

23 All right. Was that the fourth custodian?

24 MR. GRAHAM: Yes, Your Honor.

25 THE COURT: Perhaps at this time it would be a good

Todd Garrick - Direct Examination by Mr. McNair

(The jury entered the courtroom at 9:29 a.m.)

TRIAL CONTINUED

THE COURT: Good morning, ladies and gentlemen of the jury panel. Welcome back. I hope you all had a pleasant evening. As you recall, we are continuing the trial of the case by the presentation of evidence and testimony by the State in its case in chief. I would ask you to please give the parties your complete and undivided attention as you have done throughout the trial of the case.

Thank you. Thank you very much.

Solicitor, you may call your next witness.

MR. MCNAIR: Thank you, Your Honor. The State calls Detective Todd Garrick.

THE COURT: All right. If you'd come around and be sworn for us please.

TODD GARRICK,

after being duly sworn, testified as follows:

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

THE WITNESS: Todd Garrick, G-A-R-R-I-C-K.

DIRECT EXAMINATION

BY MR. MCNAIR:

Q Detective Garrick, where are you employed?

A Lexington County Sheriff's Department.

Todd Garrick - Direct Examination by Mr. McNair

1 Q How long have you been with the Sheriff's
2 Department?

3 A A little over eleven years.

4 Q All right. And what was your position back in
5 April of 2014?

6 A I was a Major Crimes Investigator.

7 Q On April 26th of 2014, were you assigned to
8 investigate a shooting that happened on Bushberry Road?

9 A I was.

10 Q Now, during the course of your investigation, were
11 you involved in reviewing phone records from the victim's
12 phone that called 911?

13 A I was.

14 Q Did you identify a number of interest from those
15 records?

16 A We did.

17 Q What number was that?

18 A It would have been -5436.

19 Q And why did that particular number stand out to
20 you?

21 A Our victim, Mr. Toland, had been in contact with
22 that number just shortly before the incident.

23 MR. JAMES SNELL: Your Honor, I would -- I want to
24 renew our prior objection.

25 THE COURT: All right. Thank you. Subject to

Todd Garrick - Direct Examination by Mr. McNair

1 previous objections, I reaffirm my pretrial rulings.

2 Solicitor, you may ask your next question.

3 BY MR. MCNAIR:

4 Q Did you obtain a search warrant for the records
5 pertaining to that 404 number?

6 A We did.

7 Q Did you also review those records?

8 A We did.

9 Q Were you tasked with calling any of the numbers
10 that were contained in those records?

11 A I was.

12 Q All right. Which number was that?

13 A It would be -3587.

14 Q And why did you call that number?

15 A From looking at the records of the -5436
16 number, it had called that number and right after dialing
17 that number had used star 67 and attempted to -- to block
18 the name.

19 Q Now, prior to calling that number, had you
20 developed a suspect in this case?

21 A We had.

22 Q And what was his name?

23 A Justin Butler.

24 Q And when you called that star 67 number,
25 -3587, did that person answer the phone?

Todd Garrick - Direct Examination by Mr. McNair

1 A She did.

2 Q Were you able to identify who that person was?

3 A I was not, not a name.

4 Q Was that person familiar with Mr. Butler?

5 A She was.

6 MR. JAMES SNELL: I would object to hearsay.

7 THE COURT: Overruled.

8 BY MR. MCNAIR:

9 Q Do you know how that person was familiar with Mr.
10 Butler?

11 A She stated to me that Mr. Butler was the father of
12 her child, and her boyfriend.

13 Q All right. And what did you tell her on that day?

14 A I just asked her, I was trying to get in touch with
15 Mr. Butler, that I was needing to speak with him concerning
16 a case here in South Carolina, I just needed to speak with
17 him and wanted to know how I'd be able to get in touch with
18 him.

19 Q Were you able to obtain a phone number for Mr.
20 Butler?

21 A I was.

22 Q What number was that?

23 A -0391.

24 Q Okay. Did you subsequently call that number?

25 A I did.

Todd Garrick - Direct Examination by Mr. McNair

1 Q What date was that on?

2 A That would have been on April 29th, 2014.

3 Q Did the person who you called answer?

4 A He did.

5 Q Did they identify who they were?

6 A I asked to speak to Mr. Butler, asked him if that
7 was Mr. Butler and he said it was.

8 Q All right. And what did you tell Mr. Butler you
9 wanted to talk to him about?

10 A I just -- I identified myself. I told him the
11 reason for my call, that we were investigating a murder
12 here in South Carolina and needed to speak to him.

13 Q What was his response to that statement?

14 MR. JAMES SNELL: Your Honor, I would renew our
15 prior objections.

16 THE COURT: So noted. I renew my previous pretrial
17 rulings and you may continue, Solicitor.

18 THE WITNESS: Mr. Butler stated that he didn't know
19 what I was talking about, he had never been to South
20 Carolina and wasn't in South Carolina that weekend.

21 BY MR. MCNAIR:

22 Q Do you know where he was when he was talking to
23 you?

24 A Not precisely, I assumed he was in Alabama, where
25 he lived.

Todd Garrick - Direct Examination by Mr. McNair

1 Q He was not in your custody or the custody of any
2 law enforcement agency at that point?

3 A He was not.

4 Q And did you take notes in regards to that
5 conversation with him on that day?

6 A I did.

7 Q Can you tell the jury exactly what he said?

8 A Again he stated that he didn't know what I was
9 talking about and he was not -- never been to South
10 Carolina and had not been in South Carolina. He stated
11 that on April 26th, he was working on his music and then he
12 went fishing around 4:00 p.m. then stated he fished for
13 approximately an hour or an hour and a half. And then he
14 went home and then he stated that -- I asked him if anybody
15 could verify that that I could speak to. He stated that
16 his mother and his brother would be able to verify that.

17 Q All right. Through your investigation were you
18 able to determine the names of his mother and brother?

19 A I was.

20 Q What were their names?

21 A The brother's name is John McCoy and his
22 step-mother's name is Laquita Russell.

23 Q Subsequent to your conversations with Mr. Butler,
24 were you able to speak to those two individuals?

25 A Not before I talked to Mr. Butler.

Todd Garrick - Direct Examination by Mr. McNair

1 Q Subsequent, after you spoke to Mr. Butler?

2 A Yes, I did.

3 Q What, if anything, did they have to say about Mr.
4 Butler's whereabouts?

5 MR. JAMES SNELL: Your Honor, I'm going to object.

6 THE COURT: That would be sustained.

7 BY MR. MCNAIR:

8 Q After speaking to those individuals, were you able
9 to substantiate Mr. Butler's alibi?

10 MR. JAMES SNELL: I'm going to object.

11 THE COURT: That would be sustained.

12 BY MR. MCNAIR:

13 Q After speaking with those individuals was Mr.
14 Butler still a target of your investigation?

15 THE COURT: Again, that would be sustained.

16 BY MR. MCNAIR:

17 Q All right. Now at some point, did you travel to
18 Alabama?

19 A I did.

20 Q What date?

21 A I traveled to Alabama, Florence, Alabama on May
22 14th of 2014.

23 Q And what was the purpose of you going to Alabama on
24 that date?

25 A The purpose was to number one, pick up Mr. Butler,

Todd Garrick - Direct Examination by Mr. McNair

1 but also attempt to speak to John McCoy and Ms. Russell.

2 Q All right. Did you -- are you aware if a search
3 warrant was executed in Alabama on Mr. Butler's residence?

4 A I was.

5 Q And did you also retrieve the items that were taken
6 from his house while you were there?

7 A We did.

8 Q And did you bring those items back to South
9 Carolina?

10 A We did.

11 Q Was one of those items a phone?

12 A It was.

13 Q Do you know the number of that phone that was
14 brought from Alabama?

15 A It would be the -0391.

16 Q That's the number you had previously spoken to Mr.
17 Butler on?

18 A It was.

19 Q All right. Are you aware if there were any other
20 phones found in his residence?

21 A Not that I was aware, no, sir.

22 Q When you took Mr. Butler into custody, did you
23 advise him of what's called his Miranda Rights?

24 A I did.

25 Q How did you advise him of those?

Todd Garrick - Direct Examination by Mr. McNair

1 A I had a card on me that I use to advise people of
2 their rights.

3 Q Would you just go ahead and read that card into the
4 records please.

5 A I will. You have the right to remain silent.
6 Anything you say can and will be used against you in a
7 court of law.

8 You have the right to talk to an attorney and have
9 him or her present while you are being questioned. If you
10 cannot afford to hire an attorney one will be appointed to
11 represent you before any question -- before any questioning
12 if you wish.

13 If you decide at any time to exercise these rights
14 and not answer any questions or, I'm sorry. You can decide
15 at any time to exercise these rights and not answer any
16 questions or make any statements. You understand that each
17 of these rights that I explained to you and then having
18 these rights in mind, do you wish to talk to us now.

19 Q Did he acknowledge he understood his rights?

20 A He did.

21 Q And were you involved in transporting him back to
22 South Carolina?

23 A I was.

24 Q Who was with you?

25 A Crime Scene Investigator, Keith Sprinkle.

Todd Garrick - Direct Examination by Mr. McNair

1 Q All right. During the transport back to South
2 Carolina did you or Investigator Sprinkle attempt to talk
3 to Mr. Butler at all about the case?

4 A We did not.

5 Q Did you attempt to talk to him when you got back to
6 South Carolina?

7 A We did.

8 Q What date was that?

9 A That would have been May 15th of 2014.

10 Q Did you advise him of Miranda prior to that
11 interview?

12 A I did.

13 Q Did you read him the same rights you just read into
14 the record?

15 A I did.

16 Q Where did that interview occur?

17 A That occurred at the headquarters of the Lexington
18 County Sheriff's Department in one of our interview rooms.

19 Q Who all was present for that interview?

20 A Myself, Mr. Butler, and Sergeant Jesse Lance.

21 Q Clearly he was in custody at that point, correct?

22 A Correct.

23 Q And you served him with warrants at that point?

24 A We did not serve the warrants on him until after
25 the interview.

Todd Garrick - Direct Examination by Mr. McNair

1 Q After you read him his Miranda Rights the second
2 time, did he acknowledge that he understood those rights?

3 A He did.

4 Q Did he indicate he wished to speak to you after
5 that?

6 A He said he would.

7 MR. JAMES SNELL: Your Honor, we would renew our
8 previous objection.

9 THE COURT: All right. So noted.

10 BY MR. MCNAIR:

11 Q Did you force or threaten him in any way to talk to
12 you on that occasion?

13 A I did not.

14 Q Was he coherent, did he appear to understand what
15 you were talking to him about?

16 A He did.

17 Q And what statement did he give you on that day?

18 MR. JAMES SNELL: We renew our objection at this
19 point.

20 THE COURT: So noted.

21 THE WITNESS: We began to try to ask him questions.
22 Mr. Butler again stated that he didn't know what we were
23 talking about, that he had not been to South Carolina,
24 didn't know what we were -- why we were talking to him.

25 BY MR. MCNAIR:

Todd Garrick - Direct Examination by Mr. McNair

1 Q Okay. Similar to the statement he had given to yu
2 over the phone?

3 A Correct.

4 Q At some point did you show the victim, Mr. Vonkeith
5 Toland, a photo lineup in this case?

6 A I did.

7 Q What date did you show him the lineup?

8 A May 8th of 2014.

9 Q And where was Vonkeith when you met with him on
10 that day?

11 A He was at the Palmetto Regional Health.

12 Q What was his condition at that point?

13 A He was in intensive care, critical.

14 Q Was he able to talk much?

15 A Barely.

16 Q Okay. Was he alert and aware of what was going on?

17 A He was.

18 Q Were you able to speak with him at length?

19 A Yeah.

20 Q Was it hard to communicate with him though?

21 A Hard to communicate, but we were able to
22 communicate with him.

23 Q Okay. I'm going to show you what's been marked as
24 State's Exhibit Number 2 and ask if you can identify this.

25 MR. JAMES SNELL: Your Honor, we'd renew our prior

Todd Garrick - Direct Examination by Mr. McNair

1 objection.

2 THE COURT: So noted.

3 THE WITNESS: It's the photo lineup that I showed
4 Vonkeith Toland.

5 BY MR. MCNAIR:

6 Q All right. What were your instructions to him
7 prior to showing him that lineup?

8 A I advised Mr. Toland that we had developed a
9 subject, suspect. We were going to show him a photo
10 lineup, a person that was involved in this incident may or
11 may not be in this photo lineup. I told him to take a look
12 at it, take his time, and if he saw the individual to
13 identify him.

14 Q Did he recognize one of the individuals?

15 A He did.

16 Q How did he indicate he recognized him?

17 A He pointed to him and said that was him.

18 Q And did he circle the number on the photo lineup?

19 A He did.

20 Q What number did he circle?

21 A This is --

22 Q Excuse me.

23 MR. MCNAIR: State's Exhibit 2, Your Honor, I
24 grabbed the wrong one. I apologize.

25 BY MR. MCNAIR:

Todd Garrick - Direct Examination by Mr. McNair

- 1 Q Is this the lineup you showed Mr. Toland?
- 2 A It is.
- 3 Q All right. So you gave him the same warnings you
- 4 just testified to?
- 5 A I did.
- 6 Q Did he recognize one of the individuals?
- 7 A He did.
- 8 Q Okay. Who did he circle?
- 9 A He circled Number 3.
- 10 Q Is number three, in fact, Justin Butler?
- 11 A It is.
- 12 Q Are those your initials at the bottom?
- 13 A It is my signature, yes, sir.
- 14 Q That's Mr. Vonkeith's initials?
- 15 A It is.
- 16 Q Did you suggest or hint to him in any way who he
- 17 should pick out?
- 18 A I did not.
- 19 Q How long did it take him to pick out somebody?
- 20 A He picked him out immediately.
- 21 Q Did he tell you how certain he was of his pick?
- 22 A He said he was a hundred percent.
- 23 Q Now, were DNA swabs collected in this case from the
- 24 scene at Bushberry?
- 25 A Yes, sir.

Todd Garrick - Direct Examination by Mr. McNair

1 Q In order to test those samples, did SLED request a
2 sample from Mr. Toland, Vonkeith?

3 A They did.

4 Q Were you involved -- did you take a sample?

5 A I did.

6 Q How was that sample taken?

7 A Basically, we gave Mr. Toland a long Q-tip that we
8 rubbed in his mouth for a period of time and then secured
9 in the envelope and then we sent -- put it in evidence and
10 sent it to SLED.

11 (State's Exhibit Number 54 was marked for
12 identification.)

13 BY MR. MCNAIR:

14 Q I show you what's been premarked as State's Exhibit
15 54 and ask if you can identify this.

16 A It is --

17 THE COURT: I can't quite hear.

18 THE WITNESS: I'm sorry. It's the DNA sample we
19 took from Mr. Vonkeith Toland.

20 MR. MCNAIR: Your Honor, we'd offer State's 54 into
21 evidence at this time?

22 MR. JAMES SNELL: No objection.

23 THE COURT: State's 54 is in evidence without
24 objection.

25 (State's Exhibit Number 54 was entered into

Todd Garrick - Direct Examination by Mr. McNair

1 evidence.)

2 BY MR. MCNAIR:

3 Q This is the sample that was sent to SLED for
4 testing?

5 A Yes, sir.

6 Q Now, in regards to the phone you've testified to,
7 the -5436 phone --

8 THE COURT: 5436, did you say?

9 MR. MCNAIR: 5436, Your Honor.

10 THE COURT: All right.

11 BY MR. MCNAIR:

12 Q It's from Muscle Shoals, Alabama. Did you attempt
13 to follow up on an 864 number on that phone?

14 A We did.

15 Q Can you tell me the whole number?

16 A I don't have it in my notes.

17 Q All right. Were you able to determine the owner of
18 the 864 number on that phone?

19 A We were not.

20 Q Why were you not able to determine the number?

21 A There was no name on that -- on the phone and then
22 could not find any person in Greenwood for that number.

23 Q Okay. That was a pre -- prepaid phone?

24 A It was.

25 Q Did you, in fact, travel to Greenwood to try and

Todd Garrick - Direct Examination by Mr. McNair

1 Locate the owner of that phone?

2 A I did.

3 Q You were able -- unable to obtain any information
4 pertaining to the owner of that phone number?

5 A Correct.

6 MR. MCNAIR: Your Honor, I neglected to offer
7 State's Exhibit 2 into evidence. It's the photo lineup.

8 MR. JAMES SNELL: We renew our prior objection.

9 THE COURT: All right. State's 2 is in evidence
10 subject to previous objections.

11 (State's Exhibit Number 2 was entered into
12 evidence.)

13 BY MR. MCNAIR:

14 Q In regards to Terry McClure, has he been served
15 with warrants in this case yet?

16 A Not yet.

17 Q What is the status of his case?

18 A From what I understand, Mr. McClure is in route to
19 South Carolina at this time.

20 Q From where?

21 A California.

22 Q Is he being extradited?

23 A He is.

24 Q Is he -- when he gets here, is he going to be
25 charged with the same offenses as Mr. Butler?

Todd Garrick - Cross-Examination by Mr. James Snell

1 A He will.

2 Q And he at some point will also have his day in
3 Court; is that correct?

4 A That's correct.

5 MR. MCNAIR: That's all I have at this time, Your
6 Honor?

7 THE COURT: Thank you, Solicitor.

8 Mr. Snell?

9 CROSS-EXAMINATION

10 BY MR. JAMES SNELL:

11 Q Investigator Garrick, did I understand that you
12 were designated as the lead investigator on this case?

13 A Correct.

14 Q I guess, initially we've had some previous
15 discussions or brief talks, and I think you had indicated
16 that it was your belief that this was a -- a -- like a
17 house burglary, where the house was broken into?

18 A Correct.

19 Q Correct. And you didn't have any belief or
20 indication at the onset of the case that this was a
21 drug-motivated crime?

22 A No, sir.

23 Q And I know we had -- you were there on scene back
24 on April 26th, 2014, the day of the incident, correct?

25 A Correct.

Todd Garrick - Cross-Examination by Mr. James Snell

1 Q Had -- you had a chance at that point to view the
2 condition of the mobile home, correct?

3 A Correct, I did a cursory walk-through of the house
4 just to familiarize myself with the inside.

5 Q And you knew at that point that there was, you
6 know, some cash recovered from the residence, a small
7 amount as well as the gun underneath the bed?

8 A Correct.

9 Q Now, I know later on at a preliminary hearing held
10 in this case in September of 2014, you had testified at
11 that point when asked if anything was stolen, that you were
12 still getting with the victims?

13 A Correct.

14 Q And the victims in that case, the primary victim
15 would have been Vonkeith Toland, correct?

16 A Correct.

17 Q Okay. You, in fact, did not meet with him again
18 until January 8th of 2016?

19 A Correct.

20 Q And so at the preliminary hearing you testified
21 that you thought some cash was stolen, but as far as items
22 like T.V.'s and things like that, no?

23 A I don't recall saying that cash was stolen. Like I
24 say, if I did say that, I don't recall saying that.

25 MR. JAMES SNELL: Your Honor, if I may approach?

Todd Garrick - Cross-Examination by Mr. James Snell

1 THE COURT: Yes, sir.

2 BY MR. JAMES SNELL:

3 Q I just -- just looking at this question and this
4 answer?

5 THE COURT: This is used to refresh his memory?

6 MR. SNELL: Yes, refresh his recollections
7 regarding the prior testimony from September.

8 THE WITNESS: We were just speculating to what may
9 have been -- we had no verification at that point that
10 anything was stolen. Because again we had not talked to
11 Mr. -- Mr. Toland.

12 BY MR. JAMES SNELL:

13 Q Okay. So during this time, from September, excuse
14 me, from April 2014 through January '16, we have heard that
15 there was analysis of some other evidence going on
16 including looking at phone records, analyzing records, DNA
17 swabs that were sent in for analysis, all those things are
18 happening during this time?

19 A Correct.

20 Q All right. Now, it wasn't until January 16th,
21 excuse me, January 8th of 2016 at the followup meeting with
22 Mr. Toland that Mr. Toland -- or that you received any
23 information about purported motive for the incident,
24 correct?

25 A Correct.

Todd Garrick - Cross-Examination by Mr. James Snell

1 Q And that was a -- a demand for drugs and money?

2 A Correct.

3 Q And, of course, that was different than your
4 original understanding or belief at the onset of the case
5 that the motive was a house break-in?

6 A That's what from being on scene and the totality of
7 what we were looking at. We had busted in doors and we had
8 forced entry to the house. Yes, we were looking at it as a
9 burglary.

10 Q And would -- would -- when you interviewed Mr.
11 Toland, Vonkeith, at the time, you prepared a written
12 statement that you were able to provide to us?

13 A Correct.

14 Q And in that statement would -- you noted the things
15 that Mr. Toland had said to you about the incident?

16 A Correct.

17 Q And Vonkeith stated that Justin Butler looked
18 surprised when this happened?

19 A Correct.

20 Q After -- after -- the shooting?

21 A Correct.

22 Q And Vonkeith also told you that Terry McClure was
23 the only shooter involved that day?

24 A Correct.

25 Q He said he was the only one that fired and shot

Todd Garrick - Cross-Examination by Mr. James Snell

1 Tycus and the only one who shot himself?

2 A No, Tycus did not shoot himself.

3 Q I'm sorry?

4 A That McClure had shot Tycus.

5 Q Thank you. And, of course, during the
6 investigation, you previously dealt with some prior
7 inconsistent or inaccurate statements given to you by
8 Vonkeith Toland, correct?

9 A Correct.

10 Q Specifically he had --

11 THE COURT: Step out please, ladies and gentlemen.
12 Do not discuss the case during this brief recess.

13 (The jury left the courtroom at 9:56 a.m.)

14 THE COURT: Did you ask these questions of Mr.
15 Toland.

16 MR. JAMES SNELL: Yes, we asked Mr. Toland about
17 the surprise.

18 THE COURT: Yes, sir.

19 MR. JAMES SNELL: And --

20 THE COURT: And did he deny it?

21 MR. JAMES SNELL: He gave a --

22 THE COURT: Did he deny that he said he thought Mr.
23 Butler was surprised?

24 MR. JAMES SNELL: I think eventually --

25 THE COURT: That's not my question. Did he deny

Todd Garrick - Cross-Examination by Mr. James Snell

1 THE COURT: What did you ask?

2 MR. JAMES SNELL: I asked if the court reporter
3 could tell me --

4 THE COURT: You can't ask that. You know the
5 question you asked. The court reporter works at the
6 direction of the Court, not at the direction of you. I'll
7 explain something to y'all. If anybody is going to run
8 this courtroom, it's going to be me.

9 Thank you. Thank you very much, ladies and
10 gentlemen, for that brief break.

11 (The jury entered the courtroom at 10:11 a.m.)

12 THE COURT: Mr. Snell, you may continue. You may
13 ask your last question.

14 MR. JAMES SNELL: Thank you, Your Honor.

15 BY MR. JAMES SNELL:

16 Q Investigator, at the time you went to Mr. Butler's
17 location in Alabama, you didn't recover any -- any physical
18 evidence associated with the scene of this incident,
19 correct?

20 A Correct.

21 Q So there was not a firearm recovered that was
22 connected to the crime?

23 A Correct.

24 Q Okay. And no items that would have been taken from
25 the home and residence that were associated with the crime?

Todd Garrick - Redirect Examination by Mr. McNair

1 A Correct.

2 Q And during your conversation or during the three
3 statements that Mr. Butler had made to you, none of them
4 were corroborative any sort of admission as to his
5 involvement in this incident?

6 A I'm sorry, could you repeat that?

7 Q The statements that Mr. Butler made to you, none of
8 them were corroborative or admission of his involvement in
9 this incident?

10 A Correct.

11 Q And Investigator, of course, you were not present
12 at the time of the incident and don't have any direct
13 firsthand knowledge of what actually occurred?

14 A Correct.

15 Q Thank you. No other questions.

16 THE COURT: Redirect?

17 **REDIRECT EXAMINATION**

18 BY MR. MCNAIR:

19 Q Lieutenant Garrick, you were asked about your
20 testimony in a prior preliminary hearing. Do you recall
21 you indicating that a security box inside the house had
22 been stolen?

23 A Yes, sir.

24 Q You did testify to that in that preliminary
25 hearing?

Todd Garrick - Redirect Examination by Mr. McNair

1 A I'm sorry, I -- can I refresh my memory?

2 Q Yes, sir. Let me direct you to line sixteen and
3 seventeen. When you were asked about any indication of a
4 burglary, what was your answer?

5 A Here or --

6 Q Does that refresh your memory as to what you said
7 during that preliminary hearing when you were asked the
8 question of, Was there any indication of -- that a burglary
9 occurred?

10 A Yes.

11 Q What was your response?

12 A I said that we believe there was a security box
13 inside the house that was stolen.

14 Q Thank you.

15 THE COURT: Recross, Mr. Snell -- any further,
16 Solicitor?

17 MR. MCNAIR: No further questions, Your Honor.

18 THE COURT: Recross, Mr. Snell?

19 MR. JAMES SNELL: No questions, Your Honor.

20 THE COURT: Thank you, detective, you can step
21 down.

22 Solicitor, you may call your next witness.

23 MR. MCNAIR: Tyvonne Toland.

24 TYVONNE TOLAND,

25 after being duly sworn testified as follows:

Tyvonnie Toland - Direct Examination by Mr. Graham

1 THE CLERK: Have a seat and once you're seated,
2 speak up loud and clear, state your full name spelling your
3 last on the record please.

4 THE WITNESS: Tyvonnie Gatson Toland. T-O-L-A-N-D.

5 **DIRECT EXAMINATION**

6 BY MR. GRAHAM:

7 Q Ms. Toland, how are you related to Vonkeith and
8 Tycus?

9 A That's my brothers.

10 Q Those are your brothers. And your momma's name is?

11 A Yvonne Toland.

12 Q Yvonne Toland. Do you remember the date April
13 26th, 2014?

14 A Yes, sir.

15 Q Do you remember being at your mother's house that
16 day?

17 A Yes, sir.

18 Q Do you remember your momma's address?

19 A Yes, sir.

20 Q What is it?

21 A Savannah Highway, North, South Carolina 29112.

22 Q What was going on at your mom's house that
23 afternoon?

24 A We was having a family gathering.

25 Q Was that -- do you remember what day of the week

Tyvonne Toland - Direct Examination by Mr. Graham

1 that was?

2 A A Saturday.

3 Q Could you pull the mic a tad closer to you and
4 speak up a little bit louder.

5 A A Saturday.

6 Q A Saturday. And what kind of family gathering were
7 you having?

8 A We was playing Spades.

9 Q Is that something normal?

10 A Yes, sir.

11 Q Who all was there, do you remember?

12 A Yes, sir.

13 Q Who was there with you?

14 A Me, my mother, and my four brothers, and my uncle,
15 two uncles, my mother's boyfriend, my husband, and my
16 cousin and my brother, father, Justin Butler and Terry
17 McClure.

18 Q You didn't know them by names though, right?

19 A Not at that time.

20 Q In fact, had you met them before that day?

21 A No, sir.

22 Q So what was going on at the house when they
23 arrived?

24 A We was sitting on the porch, our family, playing
25 cards.

Tyvonne Toland - Direct Examination by Mr. Graham

1 Q What -- did you have any idea that they were
2 coming?

3 A No, sir.

4 Q So what's the first thing you noticed about them
5 arriving at your mom's house?

6 A Two fellows that I really didn't know.

7 Q I'm sorry?

8 A Two fellows that I really didn't know.

9 Q Okay. Do you know how they got there?

10 A In like a little Jeep truck. I think it was gray.

11 Q Do you know whether it was a two door or four door?

12 A Four door.

13 Q Four door. Do you -- did you notice anything about
14 the tags on the car?

15 A It was out-of-state tags.

16 Q Out-of-state tags?

17 A Yes, sir.

18 Q Do you know who was driving?

19 A No, sir.

20 Q Did you see both of them get out of the car?

21 A Yes, sir.

22 Q And once they got out of the car, what did they do?

23 A They came into my mother's house.

24 Q Can you describe those two individuals that came
25 into your mom's house?

Tyvonne Toland - Direct Examination by Mr. Graham

1 A One was short with dreads and the other one was
2 tall with a short haircut.

3 Q One was short with dreads and the other was taller
4 with a short haircut?

5 A Yes, sir.

6 Q Were they white or black?

7 A Black.

8 Q Do you know their ages?

9 A No, sir.

10 Q Were they young or old?

11 A They looked young to me.

12 Q How much time did you spend with them?

13 A Maybe twenty or twenty-five minutes.

14 Q What time of the day was it when they were there?

15 A It was after maybe between 1:30, two o'clock,
16 something like that. I'm not sure.

17 Q 1:30 or 2:30 in the morning or 1:30 to 2:30 in the
18 afternoon?

19 A Afternoon.

20 Q Afternoon. Did they come into your mom's house?

21 A Yes, sir.

22 Q What happened when they came into your mom's house?

23 A Well, the shorter one with the dreads, he asked
24 could he sit down in the chair. The taller one with the
25 short haircut, he asked someone if he could use the

Tyvonne Toland - Direct Examination by Mr. Graham

1 restroom.

2 Q Okay. Let me show you a photograph. Let me get it
3 premarked.

4 (State's Exhibit Number 55 and Number 56 was marked
5 for identification.)

6 BY MR. GRAHAM:

7 Q So the shorter one with the dreads asked about
8 sitting in the chair?

9 A Yes, sir.

10 Q Did he end up sitting in the chair?

11 A Yes, sir.

12 Q Let me show you a photograph and ask if you
13 recognize that?

14 A Yes, sir.

15 Q Is that a fair and accurate representation of the
16 chair he sat in?

17 A Yes, sir.

18 Q In your momma's house?

19 A Yes, sir.

20 MR. GRAHAM: The State would offer 55 into
21 evidence, Your Honor?

22 MR. JAMES SNELL: I'm going to object to its
23 relevancy.

24 THE COURT: All right. Overruled. Any other
25 objections?

Tyvonne Toland - Direct Examination by Mr. Graham

1 MR. JAMES SNELL: No objection.

2 THE COURT: State's 55? State's 55 is in evidence
3 without objection.

4 (State's Exhibit Number 55 was entered into
5 evidence.)

6 BY MR. GRAHAM:

7 Q Now the shorter one with the dreads, you spent
8 about fifty-five -- I mean about twenty-five minutes with
9 that afternoon?

10 A Yes, sir.

11 Q Did you get a good look at him?

12 A Yes, sir.

13 Q How far away was he from you?

14 A Maybe a foot because I had to keep like going in
15 and out the house so maybe up closer.

16 Q Did you get a good look at him?

17 A Yes, sir.

18 Q Do you see him in the courtroom today?

19 A Yes, sir.

20 Q Where is he? You're pointing at?

21 A The one in the middle?

22 Q The black male in the middle of the defendant's
23 table, Mr. Justin Butler?

24 A With the red tie.

25 Q Any question in your mind that's the man who was in

Tyvonne Toland - Direct Examination by Mr. Graham

1 the house sitting in your momma's chair?

2 A A hundred percent sure.

3 Q What, if anything, did he do during those
4 twenty-five minutes or so that he was at your house -- at
5 your mom's house?

6 A The taller guy, he was on his phone.

7 Q The taller one with the shorter haircut, you said
8 when he came in the house he went to the bathroom?

9 A Yes, sir.

10 Q Why did that draw your attention?

11 A Because when he went in the house -- after he asked
12 to use the restroom, he went in the house and also my
13 brother, Tycus, called me in the house. So by that time,
14 the restroom and my room is right beside each other. So by
15 the time he goes in the house and I'm going in the house
16 behind him to see what my brother wants, he's like, he came
17 in -- he was coming right back out the bathroom like so
18 fast. I didn't hear no toilet flush, no water running,
19 nothing.

20 Q How long was he in there; do you know?

21 MR. JAMES SNELL: I object to relevancy.

22 THE COURT: Overruled.

23 BY MR. GRAHAM:

24 Q How long?

25 A Maybe a minute.

Tyvonne Toland - Direct Examination by Mr. Graham

1 Q When he came out, what did he do?

2 A Well, my mother's -- during that time, me and my
3 mother's like standing right by the bathroom door and he
4 looked like when he opened the door and we was like -- we
5 was fine with him --

6 MR. JAMES SNELL: Object to hearsay.

7 THE COURT: That would be sustained.

8 BY MR. GRAHAM:

9 Q Without saying what your mom said, just go ahead
10 and tell what happened next.

11 A He came out the bathroom and went and got on the
12 porch.

13 Q Once he went back out on the porch, what did he do?

14 A He asked us what kind of cards we was playing and
15 that he wanted to play.

16 Q Did he end up playing cards?

17 A Yes, sir.

18 Q Let me show you another photograph which is State's
19 56 and ask if you recognize this?

20 A Yes, sir.

21 Q Is that the table he sat at when he played cards
22 with your family?

23 A Yes, sir.

24 MR. GRAHAM: The State would offer 56 into
25 evidence, Your Honor.

Tyvonne Toland - Direct Examination by Mr. Graham

1 MR. JAMES SNELL: I object to relevance.

2 THE COURT: The State's --

3 MR. JAMES SNELL: And also the prejudicial value
4 outweighs the probative value.

5 THE COURT: Let me see the photograph, please.

6 (The Court was looking at State's Exhibit Number
7 56.)

8 THE COURT: All right. Please indicate to me, Mr.
9 Snell, the prejudicial effect of 403 as far as the
10 standards on photographs under State v. Collins and that
11 line of cases; I'm not tracking.

12 MR. JAMES SNELL: If I may approach, Your Honor.

13 THE COURT: Yes, sir.

14 (There was a bench conference out of the hearing of
15 the jury and the court reporter.)

16 THE COURT: State's 56 is in evidence.

17 (State's Exhibit Number 56 was entered into
18 evidence.)

19 BY MR. GRAHAM:

20 Q Ms. Toland, this is a picture of your momma's table
21 where y'all were sitting?

22 A Yes, sir.

23 Q Along with the tall one with the short hair?

24 A Yes, sir.

25 Q Did your brother, Vonkeith, leave at any time at

Tyvonne Toland - Direct Examination by Mr. Graham

1 all?

2 A Yes, sir.

3 Q With the person you identified as Mr. Butler and
4 the taller individual who were at your mom's house? How
5 long was he gone?

6 A Maybe fifteen minutes.

7 Q What was the interaction, not what was said
8 necessarily, but what was in the interaction between your
9 brother, Mr. Butler and the other individual?

10 A He was supposed to sell him a car.

11 Q How were they getting along, could you tell?

12 A Fine to me.

13 Q And you're aware that your brother had been
14 convicted for trafficking drugs before, right?

15 A Yes, sir.

16 Q How did your brother dress back at this time?

17 A To be honest, like a drug dealer.

18 Q Was he wearing jewelry?

19 A Yes, sir.

20 Q How would you describe his manner and how he
21 carries himself?

22 A Back then?

23 Q Yes, ma'am?

24 A Before this happened, he -- my brother was like,
25 he's a flashy type and what I mean about flashy type, he's

Tyvonne Toland - Direct Examination by Mr. Graham

1 like anything he get it have to be seen, anything he knows,
2 he got to be heard.

3 Q Did he flash any money that day at your mom's
4 residence in front of the person you identified as Mr.
5 Butler and the other individual?

6 A Yes, sir.

7 Q Tell me about that.

8 A We was playing cards and he always beat us in cards
9 and he got up and just in his pocket and pull out his
10 money.

11 Q So what did it look like when he pulled it out; do
12 you remember what you saw?

13 A A lot 20's.

14 Q Any idea how much it was?

15 A I would just say somewhere close to a thousand
16 dollars, if that much.

17 Q At some point, your brother, your brothers, and the
18 two people who came, one of them being Mr. Butler you
19 identified, left your mom's house?

20 A Yes, sir.

21 Q What did you do?

22 A I went back in the house with my baby.

23 Q At some point later, did you get a call and learn
24 about what happened?

25 A Yes, sir.

Tyvonne Toland - Direct Examination by Mr. Graham

1 Q How long after those individuals left was it before
2 you heard something?

3 A Maybe forty-five minutes to an hour.

4 Q Did you then go to the hospital?

5 A No, I went to the crime scene.

6 Q Eventually did you end up going to the hospital?

7 A Yes, sir.

8 Q Which hospital was it?

9 A I think Richland Memorial was it.

10 Q At some point, did you hear that the police were
11 asking your family if anybody in your family knew anybody
12 about a Zo from California?

13 A Yes, sir.

14 Q When you heard that --

15 MR. JAMES SNELL: Objection, leading.

16 THE COURT: I hadn't heard any; the only part I
17 heard was when you heard that. Is that the leading part?

18 MR. JAMES SNELL: It was the prior question.

19 THE COURT: The prior question; I don't recall the
20 prior question. Would you check that for me Madam Court
21 Reporter?

22 THE COURT REPORTER: At some point did you hear the
23 police were asking your family if anybody in your family
24 knew anybody about a Zo from Cali.

25 THE COURT: All right. I would overrule that

Tyvonne Toland - Direct Examination by Mr. Graham

1 objection under Rule 611. Thank you.

2 You may ask your next question, Solicitor.

3 MR. GRAHAM: Thank you, Your Honor.

4 BY MR. GRAHAM:

5 Q After you became aware that the police were asking
6 for information about a Zo from California or Cali did that
7 mean anything to you?

8 A Yes, sir.

9 Q What did it mean to you?

10 A I knew the person named Zo from California.

11 Q Who was that person to you?

12 A He wasn't anyone to me; he was a friend of my
13 brothers.

14 Q And what name did you know him as?

15 A Zobama.

16 Q And so once you became aware that the police were
17 looking for people who were associated with Zo from
18 California or Zobama, as you know him as, what did you do?

19 A I got on Instagram.

20 Q What is Instagram?

21 A Instagram is like where you keep up as friends, you
22 watch pictures, different stuff.

23 Q So and I don't know, I don't have Instagram. Does
24 he have his own account or do you have your own account or
25 when you say you got on it, what did you do?

Tyvonne Toland - Direct Examination by Mr. Graham

1 A When I got on it, I went to Zobama page.

2 Q Okay. And why did you go to Zobama's page?

3 A Because I had heard it, you know, from earlier at
4 the hospital did I know a Zo from Cali.

5 Q So when you looked through the Zobama page was
6 there a particular photograph that caught your attention?

7 A Yes, sir.

8 Q Let me show you State's Number 37 and ask if this
9 is what you found?

10 A Yes, sir.

11 Q What about State's Number 37 caught your attention?

12 A Mr. Butler.

13 Q Which one is Mr. Butler?

14 A The one to my right.

15 Q Again, you didn't know him as Mr. Butler?

16 A No, sir.

17 Q So when you were going through Zobama's page and
18 this picture caught your attention?

19 A Yes, sir.

20 Q That person was who; where had you seen that person
21 before?

22 A At my mother's house.

23 Q At your mom's house. Once you had that picture,
24 what, if anything, did you do with it?

25 A I showed my mother.

Tyvonne Toland - Cross-Examination by Mr. James Snell

1 Q And then eventually this made it to the police?

2 A Yes, sir.

3 Q Mr. Tyvonne, thank you. Please answer any
4 questions that Mr. Snell has for you.

5 THE COURT: Thank you, Solicitor.

6 Mr. Snell.

7 MR. JAMES SNELL: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. JAMES SNELL:

10 Q Ms. Toland, how long were y'all playing cards?

11 A I wasn't playing cards.

12 Q How long was your family playing cards?

13 A Maybe an hour, an hour and thirty minutes.

14 Q Do you know what the stakes were in the card game?

15 A No, sir.

16 Q And you had said that you had left the house and
17 then went to the scene, which is the Bushberry Road
18 address, correct?

19 A I left the house. I went to go out of town and my
20 mother called me with the news and that's when I went to
21 the crime scene.

22 Q And did you arrive there before or after the police
23 had got there?

24 A After.

25 Q Okay. All right. Thank you. No other questions.

Cathy Etheredge - Direct Examination by Mr. Graham

1 CATHY ETHEREDGE,

2 after having been duly sworn, testified as follows:

3 THE CLERK: Have a seat please, ma'am. Once you're
4 seated, state your full name spelling your last please.

5 THE WITNESS: My name is Cathy Shervon Etheredge.
6 E-T-H-E-R-E-D-G-E.

7 **DIRECT EXAMINATION**

8 BY MR. GRAHAM::

9 Q Sergeant Etheredge, is that correct?

10 A That's correct.

11 Q Where are you employed, ma'am?

12 A Lexington County Sheriff's Department.

13 Q And currently as a Sergeant, what do you do?

14 A A Sergeant in Internal Affairs, we handle the
15 complaints and investigations on our employees.

16 Q Back in April of 2014, were you in Internal Affairs
17 or doing something different?

18 A I was an investigator in the Major Crimes Unit.

19 Q Do you remember being part of investigation
20 regarding a homicide, attempted murder, and a burglary of
21 Bushberry Road that occurred on April 26th of 2014?

22 A Yes, sir.

23 Q As part of your investigation -- and I believe at
24 that time Sergeant Mefford was supervising that
25 investigation; is that correct?

Cathy Etheredge - Direct Examination by Mr. Graham

- 1 A That's correct.
- 2 Q Were you tasked with showing a photo lineup?
- 3 A Yes, sir.
- 4 Q Let me show you what's been premarked as State's
- 5 Number 1 for identification and ask if you recognize this?
- 6 A I do.
- 7 Q And who did you show that photo lineup to?
- 8 A To Mr. Ishi --
- 9 MR. JAMES SNELL: Objection. Renew our prior
- 10 objections.
- 11 THE COURT: So noted.
- 12 THE WITNESS: Mr. Ishi Toland.
- 13 BY MR. GRAHAM:
- 14 Q Do you remember the day that you showed Mr. Toland
- 15 that photo lineup?
- 16 A April 30th, 2014.
- 17 Q Do you remember where you were at?
- 18 A I met him at the Mexican Restaurant there in
- 19 Swansea, the Hacienda right there on Highway 321 in
- 20 Swansea.
- 21 Q Was it inside the restaurant or in the parking lot?
- 22 A In the parking lot.
- 23 Q Mr. Butler, is he in that photograph?
- 24 A He is.
- 25 Q I mean the photograph lineup?

Cathy Etheredge - Direct Examination by Mr. Graham

1 A Yes, he is.

2 Q Which one is he?

3 A He is Number 5 in this photo lineup.

4 Q Okay. When you met with Mr. Toland, Ishi Toland,
5 what, if anything, did you tell to him prior to showing him
6 that photo lineup?

7 A I spoke to him. I had information from the
8 Sergeant that I was to meet with him because he was at the
9 home when Mr. Butler had arrived there on the 26th and I
10 called him on the phone, made arrangements to meet with him
11 to show him this photo lineup. When I met with him there
12 in the parking lot and I told him that I have a lineup of
13 several people and I just want you to look at this to see
14 if the person that was at your cousin's house is possibly
15 in this lineup.

16 Q Did you tell Ishi Toland that for sure the person
17 was in the lineup?

18 A No, I did not.

19 Q Did you do anything to indicate who Mr. Toland
20 should pick out?

21 A No, sir, that's not how we do a photo lineup.

22 Q And so once you gave Mr. Toland those instructions
23 and showed him the photo lineup, what, if anything,
24 happened?

25 A I had -- as I'm talking to him, I had the photo

Cathy Etheredge - Direct Examination by Mr. Graham

1 lineup in a folder and I was pulling it out and we were at
2 the back of my patrol vehicle and as it was coming down on
3 the trunk, he immediately pointed out Number 5.

4 Q Once he pointed it out, what, if anything, did he
5 do to memorialize his selection?

6 A He circled the Number 5 and in the space here in
7 this form that we have for the sheriff's department, it
8 reads, I viewed the above photographs and have selected
9 photo number, and he wrote the Number 5, as being the
10 person in question in reference to this case.

11 Q Now, there's a place for a witness and a signature.
12 What name is on there and who wrote that?

13 A The witness's signature is Mr. Ishi Toland.

14 Q Below that it says Investigator and there's a
15 signature; whose signature is that?

16 A That's my signature, C. Etheredge.

17 Q And does it indicate what date that the lineup was
18 shown to Mr. Toland?

19 A Yes, it does. Date shown is 4/30/14.

20 Q Please answer any questions Mr. Snell has for you,
21 Sergeant.

22 THE COURT: Thank you, Solicitor.

23 Mr. Snell?

24 ///

25 ///

Cathy Etheredge - Cross-Examination by Mr. James Snell

CROSS-EXAMINATION

1
2 BY MR. JAMES SNELL:

3 Q Investigator, was your only involvement in this
4 case the showing -- well, you said you were actually on the
5 scene on April 26th briefly, 2014, correct?

6 A That's correct.

7 Q Okay. And -- and at that time you had an
8 opportunity to just walk and look at the scene at the
9 mobile home and the other police activity going on?

10 A Very briefly, Yes, sir.

11 Q Okay. And then your other involvement has been
12 with the showing of the lineup to Mr. Toland?

13 A Correct.

14 Q But as far as the actual -- do you have any -- you
15 didn't arrive on the scene until after 911 had been called
16 by Mr. Toland, correct, Vonkeith Toland?

17 A Yes, that's correct.

18 Q So as far as any personal firsthand knowledge of
19 the incident or what occurred, you don't have any, correct?

20 A No, nothing other than what was told to me by Mr.
21 Toland. And I had met with the victim's mom and she
22 wrote -- well she dictated her statement to me.

23 Q But as far as actually -- as far as actually what
24 happened with the shooting of Tycus Toland and Vonkeith
25 Toland, you don't have any direct personal knowledge of

Ishi Toland - Direct Examination by Mr. McNair

1 those events?

2 A No. No, sir.

3 Q Thank you. No other questions.

4 THE COURT: Redirect, Solicitor?

5 MR. GRAHAM: No, Your Honor.

6 THE COURT: Thank you. Thank you very much for
7 being with us this morning, Sergeant, you may step down.

8 Any objections to the Sergeant being excused?

9 MR. GRAHAM: No, sir.

10 MR. JAMES SNELL: No, Your Honor.

11 THE COURT: Again, thank you. Thank you very much.
12 Solicitor, you may call your next witness.

13 MR. MCNAIR: Your Honor, the State calls Ishi
14 Toland.

15 THE COURT: Come around and be sworn for us please.

16 ISHI TOLAND,

17 after having been duly sworn, testified as follows:

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

20 THE WITNESS: Ishi Kente Toland. T-O-L-A-N-D.

21 **DIRECT EXAMINATION**

22 BY MR. MCNAIR:

23 Q Ishi, how do you know Vonkeith and Tycus?

24 A They're my cousins.

25 Q Did y'all grow up together?

Ishi Toland - Direct Examination by Mr. McNair

- 1 A Yes, sir.
- 2 Q All right. Were you close growing up?
- 3 A Yes, sir, really close.
- 4 Q Pretty much known them your whole life?
- 5 A Yes, sir.
- 6 Q Now, what do you do for a living?
- 7 A I'm a barber.
- 8 Q How long you been doing that?
- 9 A Eighteen years.
- 10 Q Where's your barber shop?
- 11 A In North, South Carolina.
- 12 Q Now, on the day that your cousins were shot and
13 killed, had you been with them that day?
- 14 A Yes.
- 15 Q Where had you seen them?
- 16 A At their mother's house.
- 17 Q In North?
- 18 A Yes.
- 19 Q Who all was there that day?
- 20 A Me, Trell, Tycus, Yvonne, Tyvonne, her husband,
21 Vonkeith's dad, and my Uncle John.
- 22 Q All right. A bunch of family members?
- 23 A Yes, just mainly family.
- 24 Q And what were you doing there that day?
- 25 A I stopped by because me and Tyvonne and her

Ishi Toland - Direct Examination by Mr. McNair

1 husband, we was going to a basketball game, so I just
2 stopped by to remind them I'll be ready shortly because I
3 had gotten off work earlier and I was going home to get
4 ready and I told her that we could meet, you know, after I
5 get situated.

6 Q All right. Were Vonkeith and Tycus there when you
7 got there?

8 A Yes, sir.

9 Q Now, at some point while you were there, did some
10 people show up that you didn't know?

11 A Yes.

12 Q Okay. How many?

13 A Two.

14 Q Male or female?

15 A Two males.

16 Q Black, white, Hispanic?

17 A Black.

18 Q Do you remember possibly what time that was?

19 A 1:30 or two o'clock somewhere in there.

20 Q Can you describe -- I guess, where did you first
21 see those two individuals?

22 A When they entered Vonne's home.

23 Q Okay. What were you doing at that time?

24 A I was sitting at the table.

25 Q You were playing cards with everybody else?

Ishi Toland - Direct Examination by Mr. McNair

1 A Yes.

2 Q All right. Did you have a good opportunity to look
3 at both of them?

4 A Yes, I did.

5 Q Were they pretty close to where you were sitting?

6 A Yes.

7 Q Okay. What did they do when they first got there?

8 A The taller gentleman, he came in, he went inside.
9 The shorter gentleman, he sat in a chair kind of close to
10 me. He was just kind of sitting there fooling with his
11 phone.

12 Q All right. Can you describe what the two
13 individuals looked like?

14 A It was a taller gentleman, kind of stocky built,
15 low haircut. Another shorter light skinned gentleman with
16 dreadlocks.

17 Q Okay. And where was the taller gentleman with the
18 short haircut sitting?

19 A He actually sat around by me and where we was
20 sitting, he would have actually been sitting to my left of
21 the table.

22 Q Real close to you?

23 A Yeah.

24 Q All right. And where was the gentleman with
25 dreadlocks sitting?

Ishi Toland - Direct Examination by Mr. McNair

1 A He was sitting, there was a door between us and I
2 was sitting here and he was sitting to my right right
3 there. The door was like --

4 Q Was that pretty close to you as well?

5 A Yeah, because just a doorway that separated us.

6 Q All right. Did you ever learn their names?

7 A After the fact, I mean --

8 Q Okay. You didn't know, they never introduced
9 themselves to you?

10 A No.

11 Q Now, while they were at -- you said the taller
12 gentleman was playing cards where you were?

13 A Yeah, he was at the table actually playing cards
14 with us.

15 Q Did you notice -- was there anything in particular
16 that stood out to you about either one of the individuals?

17 A The taller gentleman, to me, he did seem nervous,
18 but I didn't take much offense of it because he actually
19 reached for a card and I was like -- why is his hand like
20 that, you know, but I didn't -- I didn't think much of it
21 at the time.

22 Q All right. Were you there when those folks left?

23 A No. No, I had left.

24 Q Okay. You left before them?

25 A Yeah, I left before they did.

Ishi Toland - Direct Examination by Mr. McNair

1 Q All right. When you left the residence did you see
2 the car they arrived in?

3 A Yeah, a smaller SUV like bluish grayish and it was
4 kind of crazy because when I backed out, I was able to see
5 it and I was like, Wow, you know it's a car from out of
6 town, kind of colorful tag, you know. I think the color of
7 the tag is what really caught my eye.

8 Q What color was the tag?

9 A It was like yellow, blue, and green I think it was.
10 It was just so colorful right at the time --

11 Q Right.

12 A -- and I had never seen one like that, you know.

13 Q Could you see what state the tag was from?

14 A It said Alabama.

15 Q You said it was what a bluish color SUV?

16 A Bluish gray, you know.

17 Q Did you see the model?

18 A No.

19 Q Now, how long were you at the residence prior to
20 leaving?

21 A I think I left -- I might have stayed another
22 twenty minutes, twenty-five minutes if that.

23 Q Were they there during that entire time that you
24 were there?

25 A Yeah; uh-huh (affirmative response).

Ishi Toland - Direct Examination by Mr. McNair

1 Q All right. Do you remember being showed a photo
2 lineup in this case?

3 A Yes, sir.

4 Q Do you remember who showed you that lineup?

5 A Ms. Etheredge.

6 Q I'm going to show you what's been marked as State's
7 Exhibit Number 1. Is that the lineup that Ms. Etheredge
8 showed you?

9 MR. JAMES SNELL: Your Honor, we just renew our
10 previous objections.

11 THE COURT: So noted.

12 BY MR. MCNAIR:

13 Q All right. And when she showed you that lineup,
14 what did she instruct you?

15 A She said this is a lineup and they may or may not
16 be someone that's on here, you know, that's involved with
17 the situation. Then I looked at it and I was like, Oh
18 yeah, that's the guy right there.

19 Q All right. You immediately recognized somebody in
20 that lineup?

21 A Yes.

22 Q And how did you indicate you knew the person?

23 A Just from seeing him at that time at my aunt's
24 house.

25 Q How did you indicate on the lineup that you

Ishi Toland - Direct Examination by Mr. McNair

1 recognized --

2 A Oh, I pointed at him.

3 Q All right. And did you in fact circle that number?

4 A Yes, sir.

5 Q All right. What number is that?

6 A Number 5.

7 Q All right. Is that your signature?

8 A Yes, sir.

9 Q How certain were you of your pick?

10 A A thousand percent.

11 Q All right.

12 MR. MCNAIR: Your Honor, the State would offer

13 State's Exhibit 1 into evidence at this time.

14 MR. JAMES SNELL: We renew our prior objection.

15 THE COURT: All right. State's 1 is in evidence
16 subject to previous objections.

17 (State's Exhibit Number 1 was entered into
18 evidence.)

19 BY MR. MCNAIR:

20 Q Ishi, do you see the person that you saw in North
21 that day in court today?

22 A Yes, sir.

23 Q Where is he?

24 A The gentleman sitting with the red tie.

25 Q The defendant?

Ishi Toland - Cross-Examination by Mr. James Snell

1 A Yes, sir.

2 Q Are you certain that's him today?

3 A Yes.

4 Q Is there anything different about him today than
5 when you first saw him?

6 A Yeah, he cut his hair, you know, there's nothing
7 different about him.

8 Q He had dreadlocks at the time you saw him?

9 A Yes, sir.

10 Q Ishi, that's all the questions I have. Please
11 answer any questions Mr. Snell may have.

12 THE COURT: Thank you, Solicitor.

13 Mr. Snell.

14 CROSS-EXAMINATION

15 BY MR. JAMES SNELL:

16 Q Mr. Toland, how many minutes were you at the house
17 with your family with Mr. McClure and Mr. Butler?

18 A Probably twenty-five minutes when they got there.

19 Q All right. And if I understand correctly, there
20 were at least eight other relatives that were in the house
21 with you?

22 A Yeah, at least.

23 Q And were all them, I guess, present during that
24 time?

25 A Yes.

Ishi Toland - Cross-Examination by Mr. James Snell

1 Q And so all of them would have had the opportunity
2 to view the same two individuals that you did?

3 A Yes, sir.

4 Q Okay. And if I understand, there wasn't any kind
5 of incident or arguments or any kind of unpleasantness at
6 the house during that time, was there?

7 A No.

8 Q Everybody getting along?

9 A Yes.

10 Q Okay. Thank you. No other questions.

11 THE COURT: Redirect, Solicitor?

12 MR. MCNAIR: Nothing further, Your Honor.

13 THE COURT: Thank you. Thank you, Mr. Toland. You
14 may step down.

15 All right. Solicitor, you may call your next
16 witness.

17 MR. GRAHAM: The State calls Keith Sprinkle.

18 KEITH SPRINKLE,

19 after having been duly sworn, testified as follows:

20 THE CLERK: Have a seat please, sir. Once you're
21 seated, state your full name spelling your last on the
22 record, sir.

23 THE WITNESS: My name is Keith Sprinkle.

24 S-P-R-I-N-K-L-E.

25 ///

Keith Sprinkle - Direct Examination by Mr. Graham

DIRECT EXAMINATION

BY MR. GRAHAM:

Q Where are you employed, Mr. Sprinkle?

A The Lexington County Sheriff's Department.

Q And what do you do there?

A I'm a crime scene investigator.

Q And how long have you been a crime scene Investigator?

A A little over two years.

Q How long have you been in law enforcement?

A Almost seven years.

Q In general terms, what is a crime scene investigator?

A A crime scene investigator, we respond out to -- first of all there's four of us and we -- we respond out to any of the major crimes and property crimes throughout Lexington County; major crimes meaning anything like homicides or suicides, property crimes, or arsons, or armed robberies, burglaries, crimes like -- of that matter.

We respond out there and we process the scene for evidence, photographs, and identify -- identification of evidence and processing the scene to collect and preserve any kind of evidence whether it be latents, blood, any physical evidence.

Q Back on April 26th of 2014, did you respond to

Keith Sprinkle - Direct Examination by Mr. Graham

1 Bushberry Road in Pelion, South Carolina?

2 A Yes, I did.

3 Q Was that for the purpose of assisting CSI Gilland
4 in processing the alleged crime scene at that location?

5 A Yes, sir. I responded to that scene to assist the
6 two other CSI that were responding to that scene as well.
7 That's correct.

8 Q And that would have been CSI David Day, I think at
9 that time as well?

10 A Yes, sir.

11 Q One of the things you were tasked with was
12 processing the Infinity and the Honda that was in the front
13 yard of that residence, those two vehicles; is that
14 correct?

15 A Correct, as they were doing, processing parts of
16 the scene, I was -- I was there to process the two
17 vehicles, those two was the vehicles that you said, the
18 Honda and the Infinity vehicles for fingerprints.

19 Q If I show you State's Number 27 are you able to
20 tell which one is the Honda and which one is the Infinity
21 by looking at that?

22 A Yes, sir. This one down here is going to be the
23 Honda and that's your Infinity.

24 Q So the Infinity is closest to the house?

25 A That's correct.

Keith Sprinkle - Direct Examination by Mr. Graham

1 Q And the Honda is furthest away?

2 A Correct.

3 Q So how do you go about processing cars for
4 fingerprints?

5 A When starting off, obviously, we need to wear
6 gloves so that we're not contaminating anything and putting
7 our fingerprints on any kind of gloves. But after visually
8 inspecting the vehicle for any kind of latent fingerprints
9 then using a fingerprint powder and a duster that we
10 actually brush very fine black powder over the surface that
11 we believe that there may be fingerprints and then the dust
12 will actually adhere to the oils and waters from a latent
13 and then -- so we can visually see that latent pop out and
14 then we -- using tape, a special kind of latent print tape,
15 we actually can collect that fingerprint from that surface.

16 Q All right. So let's talk about the first car you
17 processed. Was it the Infinity or do you remember?

18 A I cannot recall. Actually I processed the Honda
19 first and then I processed the Infinity vehicle after it.

20 Q Okay. Well let's talk about the Honda then. When
21 you processed the Honda, what did you find?

22 A On the Honda, processing the entire exterior of the
23 vehicle, I did obtain eight latent fingerprints throughout
24 the exterior of the vehicle.

25 Q Do see those eight prints, did you actually bring

Keith Sprinkle - Direct Examination by Mr. Graham

1 those cards up with you that you collected?

2 A Yes, I did. I have them. And these are the eight
3 fingerprints or latent prints that I have that I collected
4 from the Honda vehicle.

5 MR. GRAHAM: Your Honor, the State would mark this
6 for ID for use by the next witness who testifies; they
7 haven't been authenticated at this point.

8 THE COURT: That's 57?

9 THE COURT REPORTER: Yes, sir.

10 THE COURT: State's 57, ID only at this time.
11 All right.

12 (State's Exhibit Number 57 was marked for
13 identification.)

14 BY MR. GRAHAM:

15 Q So Investigator Sprinkle, looking at State's 57 for
16 identification, how do you recognize this as being what you
17 retrieved from the vehicle?

18 A Like I stated, after processing the Honda vehicle,
19 there were eight latent prints that I did observe on the
20 vehicle that I did collect and at that time, I do not --
21 cannot confirm whose fingerprints or latent prints they
22 are, but all I can do is observe that is latent prints of
23 some sort of quality so I collect them on scene.

24 I place each latent print that I have on a card and
25 I fill out the back of it and explain and do a draw -- I

Keith Sprinkle - Direct Examination by Mr. Graham

1 have a little sketch and do a drawing where it was
2 collected and I fill out the information of the scene.

3 Q So the eight that you collected from the Honda for
4 attempted identification later, would you tell the jury
5 what the location of the prints were taken from on the
6 vehicle?

7 A Yes, sir and I'll just read through the back of
8 these. One was on the front quarter panel on the driver's
9 side. One was found on the driver's door exterior. One
10 was found on the front corner side panel, passenger side
11 panel. One was found on the back right passenger door
12 exterior. And the -- another one was found on the back
13 right passenger door exterior and one was found on the
14 driver's door exterior. Another one was found on the back
15 left passenger door frame on the exterior side. And the
16 eighth one was found on the back left passenger door.

17 Q So you collected them, lifted them off with the
18 tape and notated where they were from, put them in a bag
19 and turned them in to the sheriff's department for
20 safekeeping?

21 A Correct.

22 Q Now, you also collected items from -- two prints
23 from the Infinity; is that correct?

24 A Correct. After processing the Infinity, I was able
25 to obtain latent prints from that vehicle.

Keith Sprinkle - Direct Examination by Mr. Graham

1 Q Let me show you an item and ask if you recognize
2 that?

3 A Yes, these are the two latent prints that were
4 collected after processing the white Infinity vehicle and
5 these are the two latent prints and also the same as the
6 other vehicle, filled out a small sketch of where I found
7 them.

8 MR. GRAHAM: Your Honor, the State would mark that
9 for identification for use by the next witness as well.

10 THE COURT: All right. That would be State's 58?

11 THE COURT REPORTER: Yes, sir.

12 THE COURT: For identification only.

13 (State's Exhibit Number 58 was marked for
14 identification.)

15 BY MR. GRAHAM:

16 Q Investigator -- Investigator Sprinkle, back to
17 State's 58 ID, you took two -- you found two latent prints
18 that you thought were worth collecting or that you saw on
19 the Infinity. Will you tell the jury what location on the
20 vehicle those two came from?

21 A Yes. And again I'll revert back to the actual
22 prints here. One was found on the back of the trunk on the
23 exterior side of the trunk and also the interior side of
24 the front passenger window. So the front passenger door,
25 the interior part of the window.

Keith Sprinkle - Direct Examination by Mr. Graham

1 Q Thank you, Investigator Sprinkle. Please answer
2 any questions that Mr. Snell may have for you.

3 THE COURT: Thank you, Solicitor.
4 Mr. Snell.

5 MR. JAMES SNELL: No questions, Your Honor.

6 THE COURT: Thank you. Thank you very much.
7 No questions, correct?

8 MR. JAMES SNELL: No questions.

9 THE COURT: Thank you very much for being with us
10 today.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You may step down. Any objections to
13 the officer being excused, Solicitor?

14 MR. GRAHAM: No, sir, Your Honor.

15 THE COURT: MR. SNELL?

16 MR. JAMES SNELL: No, Your Honor.

17 THE COURT: You may be excused.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. Solicitor?

20 MR. MCNAIR: The State calls Jim Hickman.

21 JAMES L. HICKMAN,
22 after having been duly sworn, testified as follows:

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

25 THE WITNESS: It's James L. Hickman, H-I-C-K-M-A-N.

James L. Hickman - Direct Examination by Mr. Graham

DIRECT EXAMINATION

BY MR. GRAHAM:

Q Mr. Hickman, are you currently employed anywhere?

A Yes, sir.

Q Where at?

A At Lexington County Sheriff's Department.

Q And how long have you been in law enforcement?

A Approximately 40 years.

Q In your 40 years of law enforcement, how many of those years have you worked with latent prints?

A About 38.

Q When we talk about latent prints, what are latent prints?

A Latent prints is a -- an image that you leave whenever you touch something. You have ridge characteristics or ridges on your fingers. You can look at your hands and you can see the raised portion and when you touch something, you will leave an imprint there and a latent print, that's what a latent print is.

Q So what is a latent-print examination?

A A latent-print examination is where I take that latent that is -- comes from some scene or someplace and I compare it to a known print of someone.

Q Besides your 30 years of experience in latent-print examination, do you have any other training or education

James L. Hickman - Direct Examination by Mr. Graham

1 relating to latent-print examination?

2 A Yes, sir, I -- I completed the Basic Law
3 Enforcement Class of South Carolina at the Criminal Justice
4 Academy. I have an Associate's Degree in Police
5 Administration from Midland's Tech. I completed a
6 Fingerprint Examination Course at Midland's Tech. I
7 completed a Basic Latent Fingerprint Course at Criminal
8 Justice Academy. I completed an Advanced Latent Print
9 Course at the Criminal Justice Academy. I also completed
10 an Advanced Administrative Fingerprint Course at the FBI in
11 Quantico, Virginia. And I have done a Criminal
12 Investigations Course through the Institute of Applied
13 Science in Chicago and also completed an internship with
14 SLED on crime scenes. I am -- I've taught classes at the
15 sheriff's department to the Citizen's Academy. I've taught
16 classes to all the police officers that come in how to lift
17 fingerprints. And I have also taught the Crime Scene
18 Officers Latent Fingerprints. And I have testified in
19 court about I think seven times as far as latent prints.

20 Q So you've been qualified as an expert seven times
21 before in latent-print examination?

22 A Yes, sir.

23 MR. GRAHAM: Your Honor, at this time, the State
24 would offer Jim Hickman as an expert in latent print
25 examinations?

James L. Hickman - Direct Examination by Mr. Graham

1 THE COURT: Any voir dire in that regard, Mr.
2 Snell?

3 MR. JAMES SNELL: No voir dire, Your Honor.

4 THE COURT: All right. Ladies and gentlemen of the
5 jury panel, normally a person cannot give opinion
6 testimony. Normally when a person testifies to what they
7 saw, heard, sensed by smell, or something of that nature;
8 however, there is an exception when someone is qualified
9 because of education, experience, in a particular field of
10 art, science, or profession. They are permitted to give
11 their opinion in certain areas and the basis of their
12 opinions if the Court qualifies them in that way.

13 This witness, James L. Hickman, will be qualified
14 in the area of Finger Latent Print Identification to give
15 opinion testimony and the basis of those opinions in those
16 areas. That does not mean that you must accept the opinion
17 or the opinions, but is evidence for you, the jury, to use
18 in any way you deem fit and appropriate.

19 Thank you, Solicitor, you may continue.

20 MR. GRAHAM: Thank you.

21 BY MR. GRAHAM:

22 Q Mr. Hickman, I want to show you two exhibits,
23 State's 57 and State's 58 for identification and ask if you
24 recognize both of those?

25 A Yes, sir, I do.

James L. Hickman - Direct Examination by Mr. Graham

1 Q Referring to State's Number 57 for identification,
2 do you recognize those as the prints that CSI Sprinkle took
3 from the Honda Accord related to this case?

4 A Yes, sir.

5 Q And did you have an opportunity to do a
6 latent-print examination comparison on those?

7 A Yes, sir.

8 Q Now, you had several known prints of individuals
9 that you were able to compare; is that correct?

10 A Yes, sir.

11 Q You had known prints for Mr. Butler?

12 A Yes, sir.

13 Q You had known prints for Mr. McClure?

14 A Yes, sir.

15 Q Who else did you have prints for?

16 A A Dominique Dutson; a, I spelled his first name
17 as T-A-V-A-R-I-S Pough, P-O-U-G-H; a Rashawn R-A-S-H-A-W-N
18 Gatson, G-A-T-S-O-N; a Vonkeith, it's V-O-N-K-E-I-T-H
19 Toland; a Jason Butler; Terry McClure, it's M-C-C-L-U-R-E;
20 and Jason Butler again; and Vonkeith Toland; Justin Butler.

21 Q So going through the comparison on the Honda. When
22 you received those and looked at them, did you break them
23 up and actually put numbers on them so that you could keep
24 them separate and refer to them?

25 A Yes, sir, I did.

James L. Hickman - Direct Examination by Mr. Graham

1 Q All right. So if we talk about Print Number 3 in
2 your comparison, which -- that's off the Silver Honda,
3 correct?

4 A Yes, sir.

5 Q Okay. Can you tell me where that print was
6 located? And I believe you're in State's Number 58 for
7 identification; is that correct?

8 A No, sir, it would be 57.

9 Q Seven, thank you.

10 A Latent Lift Number 3?

11 Q Yes, sir.

12 A It came from the back-left passenger door frame on
13 the silver Honda.

14 Q What, if any, opinion were you able to render from
15 that print?

16 A Latent Print Number 3 was of no value to me.

17 Q What does that mean, no value?

18 A That means there wasn't enough characteristics on
19 it or the lift was of no quality where I could use it at
20 all.

21 Q Moving on to what you had labeled Number 4 out of
22 the 10, I guess it reflected, this is also from the silver
23 Honda; where was it collected from?

24 A Back left passenger door window.

25 Q And is that a finger print or a palm print?

James L. Hickman - Direct Examination by Mr. Graham

1 A It's a palm print.

2 Q Have you been able to -- do you have an opinion as
3 to who that belongs to from the palm prints that you had
4 available to look at?

5 A No, sir, I could not identify it to anyone that
6 I -- that I compared it to.

7 Q In fact, on that one though, Mr. Butler was
8 excluded; is that correct?

9 A Yes, sir.

10 Q The defendant in this case?

11 A Yes, sir.

12 Q Number 5 from the silver Honda, where was that
13 print collected from?

14 A The driver's door and it is also a palm print.

15 Q Were you able to make a match on that print and if
16 so to who?

17 A Yes, sir. It was identified as Gatson's print.

18 Q Print Number 6 from the silver Honda, that you
19 labeled Number 6, what kind of prints were those and where
20 were they from?

21 A There was two prints on it, they were fingerprints
22 and it was from the driver's door. They were not
23 identified to anyone.

24 Q They were actually two fingerprints on that one
25 lift though; is that correct?

James L. Hickman - Direct Examination by Mr. Graham

1 A Yes, sir.

2 Q So you sub-labeled them as 6.1 and 6.2?

3 A Yes, sir.

4 Q 6.1 was a fingerprint that you were able to use.
5 You said that you don't have a match from what you have
6 available, correct?

7 A Yes, sir.

8 Q But you were able to rule out Mr. Butler, the
9 defendant in this case?

10 A Yes, sir.

11 Q 6.2 was a print of no value, I believe; is that
12 correct?

13 A No, sir, it was of value; it was not of value to
14 enter into the system.

15 Q Okay. Moving on to Number 7; where was Number 7
16 collected?

17 A Number 7 was from the quarter panel driver's side
18 and again there were two prints on here, both of them being
19 palm prints and both of them were identified to Dutson.

20 Q Number 8 off the Honda, where was that collected?

21 A Front corner side panel passenger side, it's a palm
22 print and it's identified as Pough, P-O-U-G-H.

23 Q Number 9 from the silver Honda, where was that
24 collected and what was your findings?

25 A Back right passenger door and it was no value.

James L. Hickman - Direct Examination by Mr. Graham

1 Q And Number 10, where was that collected?

2 A The back right passenger door. It was a palm print
3 and it was not identified.

4 Q From what you had available at this time; is that
5 correct?

6 A Yes, sir.

7 Q You were, however, able to exclude Mr. Butler, the
8 defendant, as being a contributor to that palm print?

9 A Yes, sir.

10 Q Now referring to State's -- that takes care of all
11 of the eight from the Honda, correct?

12 A Yes, sir.

13 Q Okay. State's 58, the two prints from the
14 Infinity, did you also do a comparison with those two?

15 A Yes, sir, I did.

16 Q Okay. And did you label those one and two for
17 purposes of your report?

18 A Yes, sir.

19 Q Print Number 1 from the Infinity, where was that
20 indicated as being collected from?

21 A Top of trunk.

22 Q So it would be the front or the back, the trunk?

23 A It doesn't say, but it looks like from the diagram
24 on here it's from the back.

25 Q From the back. Is that a palm or a fingerprint?

James L. Hickman - Direct Examination by Mr. Graham

1 A It was a palm print and it was not identified.

2 Q Were you able to exclude Mr. Butler, the defendant
3 in this case, as being a contributor for Number 1?

4 A Yes, sir.

5 Q Number 2 from the Infinity, the second fingerprint,
6 where was that collected from on the vehicle?

7 A It says interior side of front passenger window and
8 it is a fingerprint and it was identified as McClure.

9 Q As Terry McClure?

10 A Yes, sir.

11 Q Thank you, Mr. Hickman. Please answer any
12 questions the defense has for you.

13 THE COURT: Thank you, Solicitor.

14 Mr. Snell.

15 **CROSS-EXAMINATION**

16 BY MR. JAMES SNELL:

17 Q Mr. Hickman, just to make sure I'm clear. Of all
18 the prints you have tested, they were either all no match
19 or exclusive for Mr. Butler?

20 A Yes, sir.

21 Q Thank you. No other questions.

22 THE COURT: Redirect, Solicitor?

23 MR. GRAHAM: No, Your Honor.

24 THE COURT: Thank you. Thank you very much. Thank
25 you for being with us today. Any objections to the officer

Glen Ross - Direct Examination by Mr. Graham

1 being excused?

2 MR. GRAHAM: No, Your Honor.

3 THE COURT: Thank you, sir.

4 All right. Solicitor.

5 MR. GRAHAM: The State calls Glen Ross.

6 GLEN ROSS,

7 after having been duly sworn, testified as follows:

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

10 THE WITNESS: Glen Ross, R-O-S-S.

11 **DIRECT EXAMINATION**

12 BY MR. GRAHAM:

13 Q Mr. Ross, are you currently employed?

14 A No, sir.

15 Q Currently what are you doing?

16 A I am running for public office.

17 Q Which office is that?

18 A Coroner of Lexington County.

19 Q Back in April of 2014, where were you employed?

20 A Lexington County Sheriff's Department.

21 Q And what were you doing there?

22 A Crime scene investigator.

23 Q And how long have you been in law enforcement?

24 A Until I left to run for office, 26 years.

25 Q And how long have you been a crime scene

Glen Ross - Direct Examination by Mr. Graham

1 investigator?

2 A I've done crime scene and forensics for 16 years.

3 Q You were involved with collecting some evidence on
4 this case; is that correct?

5 A Yes, sir.

6 Q Did you have an opportunity to go to the autopsy of
7 Tycus Toland?

8 A Yes, sir, I did.

9 Q What date was that?

10 A 4/27 of 2014.

11 Q What's the purpose of a crime scene investigator
12 going to an autopsy?

13 A Evidence and documentation, chain of custody in
14 reference to things that you would photograph there at the
15 autopsy as well as clothing that needs to be collected or
16 other evidence taken from the -- the victim at that time.
17 You're there for a chain of custody for those items to
18 document and collect them and bring them back to the
19 sheriff's department.

20 Q One of the items that you collected at the autopsy
21 of Mr. Toland was some bullet fragments; is that correct?

22 A Yes, sir.

23 Q And you were present when those items were
24 recovered from Mr. Toland's body?

25 A Yes, sir.

Glen Ross - Direct Examination by Mr. Graham

1 (State's Exhibit Number 59 was marked for
2 identification.)

3 BY MR. GRAHAM:

4 Q Mr. Ross, let me show you what's been premarked as
5 State's 59 for identification and ask if you recognize that
6 item; if you need to cut into it I can get you a pair of
7 scissors.

8 A I'll have to do that.

9 Q What you've actually got is a bag within a bag
10 within a bag; does that look probably right?

11 A I can actually see it here where it says ballistics
12 and that's how it's packaged in Newberry when you collect
13 it.

14 Q So there's a -- when you -- you recognize that as
15 being the bag and the items you retrieved --

16 A Yes, sir.

17 Q -- from the bullet fragments?

18 A Yes, sir.

19 Q Now, that would have been sealed in several
20 different types of bags back and forth. Are those items
21 that are used by the Lexington County Sheriff's Department
22 and SLED as far as preservation of evidence?

23 A Yes, sir.

24 Q Okay. And everything looks properly sealed at this
25 time?

Glen Ross - Direct Examination by Mr. Graham

1 A Yes, sir.

2 (State's Exhibit Number 60 was marked for
3 identification.)

4 BY MR. GRAHAM:

5 Q Let me show you State's Number 60 and ask if you
6 recognize that.

7 A Yes, sir.

8 Q And is that a fair and accurate representation of
9 the fragments that were recovered from Mr. Toland's body?

10 A Yes, sir.

11 MR. GRAHAM: Your Honor, the State would offer
12 photograph 60 into evidence?

13 MR. JAMES SNELL: We object.

14 THE COURT: Sir?

15 MR. SNELL: We object. The prejudicial value
16 outweighs probative value.

17 THE COURT: All right. I would overrule that. The
18 allegations, of course, in the indictment further reviewing
19 Rule 403 and the standard I must apply or I do apply;
20 that's our standard and I find it to be admissible and
21 would not be inadmissible as a result Rule 403.

22 So 60 is in evidence.

23 (State's Exhibit Number 60 was entered into
24 evidence.)

25 MR. GRAHAM: Thanks, Your Honor. Permission to

Glen Ross - Direct Examination by Mr. Graham

1 publish?

2 THE COURT: You may publish.

3 BY MR. GRAHAM:

4 Q What is it that the jury is looking at here in
5 State's 60?

6 A Those are bullet fragments.

7 Q What is a -- when you say a bullet fragment, do you
8 know enough about ballistics to --

9 A It's a projectile from the shell itself where it
10 separated, and then as it went into the -- the victim, it
11 separated and broke apart in different pieces.

12 Q In addition to attending the autopsy, did you also
13 the following day, I believe, go to Yvonne Toland's house
14 at Savannah Highway in North?

15 A Yes, sir.

16 Q What was your purpose of going there?

17 A I was requested to go there by Investigator
18 Etheredge and Garrick. There was some swabs they needed
19 collected at that location.

20 Q And did someone indicate to you where you were
21 supposed to take swabs?

22 A Yes, sir, they did. The family did.

23 Q And what was the purpose of you taking swabs?

24 A The suspects, we were told when we got there that
25 they had sat at the table and talked and done some things

Glen Ross - Direct Examination by Mr. Graham

1 there at the table. So they indicated where they had sat
2 at the table and we tried to swab that particular area.

3 Q Let me show you two photographs, 55 and 56 and ask
4 if you recognize that, please.

5 A Yes, sir.

6 Q Referring to State's 55, that is a photograph of
7 what?

8 A A wicker chair.

9 Q Now, is that a chair that you swabbed on May the
10 8th, I believe, looking for what?

11 A Yes, sir, for DNA.

12 Q For DNA. Looking at the photograph, where on there
13 would you have swabbed?

14 A I would have swabbed the handles. It's commonplace
15 when you sit in a chair, you reach to sit down and you grab
16 the handles, you relax and hold on to the handle. So that
17 was the main focus.

18 (State's Exhibit Number 61 was marked for
19 identification.)

20 BY MR. GRAHAM:

21 Q Let me show you State's 61.

22 MR. GRAHAM: Your Honor, this will be marked for
23 identification to be used by a later witness.

24 BY MR. GRAHAM:

25 Q I ask if you recognize that, Mr. Ross?

Glen Ross - Direct Examination by Mr. Graham

1 A Yes, sir.

2 Q What is that?

3 A A swab from the chair that I took.

4 Q So when you take a swab, just briefly can you tell
5 the jury what that means?

6 A We have a little vile of distilled water that is
7 prepared and you wet the swab lightly, swab the area and
8 then you package it and it's taken back to the crime lab
9 where I stored it until I was able to put it into evidence
10 and it's packaged and sealed, it's heat sealed. It hasn't
11 been opened in reference to where I turned it in into
12 evidence.

13 Q The writing on the outside is --

14 A That's my writing.

15 Q -- and it tells --

16 A The swab from the chair.

17 Q Okay. Looking at State's Number 56, do you
18 recognize that photograph?

19 A That's the table that we were asked to swab.

20 Q And did you swab that table?

21 A Yes, sir.

22 Q And did you take the swab from where the family
23 indicated that you should take the swab?

24 A Yes, sir.

25 (State's Exhibit Number 62 was marked for

Glen Ross - Direct Examination by Mr. Graham

1 identification.)

2 BY MR. GRAHAM:

3 Q Okay. Let me show you another item that's
4 identified as 62 for identification to be used by a later
5 witness and ask if you recognize that?

6 A Yes, sir, that's the swab from the table.

7 Q And again your handwriting and it looks properly
8 sealed?

9 A It's heat sealed.

10 Q The same as the last item?

11 A Yes, sir.

12 Q And you collected the swab in the same manner this
13 time from the table?

14 A Yes, sir.

15 Q And you packaged both of those up and turned them
16 into the evidence room at the Lexington County Sheriff's
17 Department?

18 A Yes, sir.

19 Q Okay. No further questions. Thank you, Mr. Ross.

20 THE COURT: Mr. Snell?

21 MR. JAMES SNELL: No questions.

22 THE COURT: Thank you. Thank you very much, Mr.

23 Ross. We appreciate you being with us this morning.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Yes, sir.

Lilly Gallman - Direct Examination by Mr. Graham

1 Any objections to the officer being excused,
2 Solicitor?

3 MR. GRAHAM: None from the State, Your Honor.

4 THE COURT: Mr. Snell?

5 MR. JAMES SNELL: No, Your Honor.

6 THE COURT: All right. Solicitor?

7 MR. MCNAIR: The State would call Lilly Gallman.

8 LILLY GALLMAN,

9 after having been duly sworn, testified as follows:

10 THE CLERK: Have a seat right up there, ma'am.
11 Once you're seated, state your full name spelling your last
12 please.

13 THE WITNESS: Okay. My name is Lilly Smalls
14 Gallman.

15 **DIRECT EXAMINATION**

16 BY MR. GRAHAM:

17 Q Ms. Gallman, where are you employed, ma'am?

18 A I'm employed with the South Carolina Law
19 Enforcement Division, better known as SLED.

20 Q And what do you do for SLED?

21 A I'm employed as a DNA Analyst.

22 Q What is a DNA Analyst?

23 A My job is to receive evidence and to do
24 comparisons. I receive evidence and I receive standards
25 from individuals, being the subject or the victim in a

Lilly Gallman - Direct Examination by Mr. Graham

1 particular case. I develop a DNA profile from the
2 evidence, if possible, and I also develop a DNA profile
3 from the standards, which would be either the blood from
4 the victim or subject, or a buccal swab, which is a swab in
5 the mouth of the individual.

6 Once I have done a comparison, I submit a report in
7 detail as to whether the evidence matches the standards
8 that were submitted from the individuals.

9 Q What's your -- how long have you been in DNA?

10 A I've been in -- at SLED since January of 1990.
11 I've been doing DNA work for at least 30 years.

12 Q What's your background and education in DNA?

13 A I have a degree in Biology from the University of
14 South Carolina. Once I received my degree, I continued
15 working in the area of molecular genetics at the
16 University. Then I began working with SLED back in January
17 of 1990.

18 Q How many times have you been qualified as an expert
19 in DNA examination and comparison?

20 A At least 65 to 70 times.

21 MR. GRAHAM: Your Honor, the State would offer Ms.
22 Gallman as an expert in the field of DNA Analysis,
23 Examination, and Comparison?

24 THE COURT: Any voir dire in that regard, Mr.
25 Snell?

Lilly Gallman - Direct Examination by Mr. Graham

1 MR. JAMES SNELL: No, Your Honor.

2 THE COURT: All right. Again, ladies and
3 gentlemen, you previously heard this same instruction.
4 Ordinarily a person cannot testify to opinion testimony.
5 However, if they have, based on training, education or
6 experience, or qualifications in a particular field, art,
7 science, or profession, they would be allowed to give
8 opinion testimony and the bases of those opinions in that
9 particular regard if the Court qualifies them that way.

10 This -- this agent, Agent Lilly Smalls Gallman,
11 will be qualified as an expert in the area of DNA Analysis
12 and Comparison to give opinion testimony in those -- in
13 that area and the basis for those opinions. It does not
14 mean that you must accept the opinions, but it is evidence
15 for you, the jury, to use in any way you deem fit and
16 appropriate.

17 Thank you, Solicitor, you may continue.

18 MR. GRAHAM: Thank you, Your Honor. I neglected to
19 do it with the last two witnesses prior to Mr. Ross, but
20 the defense has stipulated that we do not need to prove or
21 discuss the chain of custody between the collection and the
22 analysis of items.

23 THE COURT: Correct, Mr. Snell?

24 MR. SNELL: Correct, Your Honor.

25 THE COURT: All right. Thank you.

Lilly Gallman - Direct Examination by Mr. Graham

1 Thank you, Solicitor, you may continue.

2 MR. GRAHAM: Thank you, Your Honor.

3 BY MR. GRAHAM:

4 Q Ms. Gallman, let me hand to you several objects and
5 ask if you recognize it, State's Number 54?

6 A Yes, I do. This item is SLED Item Number 20, which
7 is the buccal swab from Mr. Toland.

8 Q That's Vonkeith Toland?

9 A Yes.

10 Q And as part of your analysis, did you receive that
11 item?

12 A Yes, I did.

13 Q When you got it, was it properly sealed as it was
14 supposed to be?

15 A Yes, it was.

16 Q Let me show you State's Number 29 and ask if you
17 recognize that?

18 A This is SLED Item Number 15. You see where I wrote
19 the Item Number on here so I can make sure I had everything
20 correct. It is a swab from the handrail on the steps
21 leading into the front of the residence.

22 Q And then State's Number -- well, let me ask before
23 I move on. 29, was it properly sealed when you received
24 it?

25 A Yes, it was.

Lilly Gallman - Direct Examination by Mr. Graham

1 Q State's Number 28, do you recognize that?

2 A Yes, my initials are here also and this is SLED
3 Item Number 14, a swab from the metal frame of rear sliding
4 glass door.

5 Q 62 for identification; do you recognize that item?

6 A Yes, that's SLED Item Number 16, which is the swab
7 from the table.

8 Q And 61 for identification?

9 A Yes, SLED Item Number 17, which is the swab from
10 the wicker chair.

11 Q Talking about these items here, what, if anything,
12 did you do with those five items?

13 A I received these items for analysis. I attempted
14 to develop a DNA profile. I extracted DNA from these items
15 and attempted to build up a DNA profile from these items so
16 that I could compare them to the standard that I was given
17 -- the standards that I was given.

18 Q All right. So a buccal swab, which is SLED 20,
19 what is a buccal swab?

20 A A buccal swab, as I stated it's a -- it's just like
21 a Q-tip that you take and swab on the inside of a person's
22 mouth; and that way you pick out their cells and can use
23 that to generate a DNA profile.

24 Q Were you able to develop a profile from Mr?
25 Toland's buccal swab?

Lilly Gallman - Direct Examination by Mr. Graham

1 A Yes, I was.

2 Q Now, if we talk about full and partial type
3 profiles, what does that mean?

4 A We look at 16 different areas on the chromosome and
5 if I'm able to get a full profile, meaning that every area
6 I can see your DNA profile, then it's a full profile. If
7 it's a partial, which sometimes happens when you have a
8 small amount of DNA or the DNA is degraded, you will not a
9 get a DNA profile that's all 16 areas on the chromosome.

10 Q So for SLED Number 20, the buccal swab for Mr.
11 Toland, were you able to develop a partial or a full
12 profile?

13 A A full profile.

14 Q Referring to SLED Number 14, which is described as
15 a swab from the metal frame of the rear sliding glass door,
16 what, if anything, were you able to -- were you able to
17 develop a profile from that item?

18 A No, I was not.

19 Q No profile at all?

20 A No.

21 Q SLED Number 15, the swab from the handrail of the
22 steps leading in front of the residence, were you able to
23 develop a profile for that?

24 A Yes, I was.

25 Q Is it a full or a partial profile?

Lilly Gallman - Direct Examination by Mr. Graham

1 A A full profile.

2 Q Were you able to do a comparison between that
3 profile developed from the handrail of the steps leading
4 into the front of the residence to Mr. Vonkeith Toland?

5 A Yes, I was, and it matched him.

6 Q Okay. What does a match mean?

7 A That means that the evidence that I developed a DNA
8 profile from, which was from the hand railing, had the same
9 DNA profile as Mr. Vonkeith Toland.

10 Q Were you able to provide any type of numbers to go
11 along with that match?

12 A Yes. Once you establish that you have a match,
13 we're required to do a -- frequency of that particular
14 profile in populations. And I'm reading from my report and
15 it states that the DNA profile developed from Item 15
16 matches the DNA profile of Vonkeith Toland. The
17 probability of randomly selecting an unrelated individual
18 having a DNA profile that matches this item is
19 approximately one in 708 quadrillion.

20 Q That's a really big number, isn't it?

21 A Yes, it is. It's fifteen zeros.

22 Q Item Number, SLED Item 16, which is labeled a swab
23 from the table, were you able to develop a profile from
24 that?

25 A Number 16, I received very minimal DNA from that

Lilly Gallman - Direct Examination by Mr. Graham

1 sample. It appears -- I'll read from my report on that
2 item. Item Number --

3 Q 16.

4 A -- 16, Item Number 16 and Item Number 13 are in the
5 same place because it pretty much gave me the same results
6 and the DNA obtained from Items 13 and 16 are possible
7 mixtures of these two individuals. Due to low levels of
8 DNA, these profiles are not suitable for interpretation.
9 So I was not able to develop a full profile from either
10 Item Number 13 or 16 and they appeared to be mixtures, but
11 there was not enough information to utilize it to compare
12 to anyone.

13 Q So were you even able to compare it to Mr. VonKeith
14 Toland or any known standard?

15 A No, there was not enough information there.

16 Q Item Number 17, SLED 17, which is the swab from the
17 wicker chair, what, if anything, did you find when you
18 attempted to develop a DNA profile from that swab?

19 A Item Number 17 is a mixture of at least two
20 individuals and due to the inability to calculate
21 statistics, no comparison would be offered. If I'm not
22 able to give you a frequency or a number for that
23 particular item, then we will not offer a comparison
24 because it's a mixture and the information is there, but
25 I'm not able to use it to calculate a frequency.

Lilly Gallman - Direct Examination by Mr. Graham

1 Q So is it fair to say again that you did not develop
2 a profile that you were able to do any known comparisons
3 to?

4 A I was not able to -- it was not useful or able to
5 give you a comparison result.

6 Q You wouldn't be able to report anything out?

7 A That's correct.

8 Q Thank you, Ms. Gallman. Please answer any
9 questions the defense has for you.

10 THE COURT: Mr. Snell?

11 MR. JAMES SNELL: No questions, Your Honor.

12 THE COURT: Thank you. Thank you very much, Agent
13 Gallman. You may step down.

14 Any objections to Agent Gallman being excused from
15 the State?

16 MR. GRAHAM: No, Your Honor.

17 THE COURT: Defense?

18 MR. JAMES SNELL: No, Your Honor.

19 THE COURT: Thank you again.

20 All right. Your next witness, Solicitor?

21 MR. MCNAIR: Your Honor, the State calls Detective
22 Craig Rickman.

23 CRAIG RICKMAN,

24 after having been duly sworn, testified as follows:

25 THE CLERK: Have a seat please, sir. Once you're

Craig Rickman - Direct Examination by Mr. McNair

1 seated, state your full name spelling your last please.

2 THE WITNESS: My name is Steven Criag Rickman,
3 R-I-C-K-M-A-N.

4 **DIRECT EXAMINATION**

5 BY MR. MCNAIR:

6 Q Detective Rickman, where are you employed?

7 A Muscle Shoals Police Department in Alabama.

8 Q And how long have you worked there?

9 A Twenty-seven years.

10 Q All right. What is your current position?

11 A I'm an investigator.

12 Q Now, were you requested to assist on an
13 investigation by Lexington County Sheriff's Department
14 regarding Justin Butler?

15 A Yes, sir.

16 Q What were you asked to do?

17 A I was asked to make contact with Mr. Butler and
18 inquire of his whereabouts the prior weekend.

19 Q All right. And were you able to make contact with
20 Mr. Butler?

21 A Yes, sir.

22 Q How did you contact him?

23 A By phone.

24 Q All right. What was the date that you contacted
25 him?

Craig Rickman - Direct Examination by Mr. McNair

1 A It would been April 29th, 2014.

2 Q What telephone number did you call him on?

3 A -0391.

4 Q And when you called that number, did the individual
5 identify themselves as Mr. Butler?

6 MR. JAMES SNELL: Your Honor, we renew our previous
7 objection.

8 THE COURT: So noted. You may continue, Solicitor.

9 MR. MCNAIR: Thank you, Your Honor.

10 BY MR. MCNAIR:

11 Q When you called that number, what did you say?

12 A I identified myself --

13 THE COURT: I'm sorry, Solicitor, I don't think he
14 passed the last -- answered the last question because of
15 the objection.

16 MR. MCNAIR: Okay, Your Honor.

17 THE COURT: If you would repeat that last question
18 where the objection came?

19 MR. MCNAIR: Okay.

20 BY MR. MCNAIR:

21 Q When you called that number, did the person
22 identify themselves as Mr. Butler?

23 A Yes, sir.

24 Q All right. What did you tell them?

25 A I identified myself as a member of the Muscle

Craig Rickman - Direct Examination by Mr. McNair

1 Shoals Police Department, informed him that I'd been
2 contacted by authorities in Lexington County asking me to
3 contact him about his whereabouts the prior weekend.

4 Q Did he indicate that he was willing to speak to
5 you?

6 A Yes, sir.

7 Q Did you meet him on that same day?

8 A No.

9 Q When did you ultimately meet with him?

10 A The following morning.

11 Q Where did you meet with him on that day?

12 A He came to my office.

13 Q Who was present when you met with him?

14 A Just me and Mr. Butler.

15 Q All right. Was he in custody at that point?

16 A No, sir.

17 Q What did you advise him prior to speaking with him?

18 A I stressed to him that he did not have to speak
19 with me, he was not in custody, that he was free to leave
20 before we even began speaking or at any time during us
21 speaking. I even suggested or gave him the option of
22 waiting until Lexington County came to town and he could
23 speak with them directly.

24 Q After advising him of that, did he still wish to
25 speak to you?

Craig Rickman - Direct Examination by Mr. McNair

1 A Yes, sir.

2 Q All right. And what did you ask him about on that
3 occasion?

4 A I asked him about his whereabouts the prior
5 weekend.

6 Q And did he give you a statement regarding that?

7 A Yes, sir.

8 Q Was that statement memorialized?

9 A Yes, sir, I typed it up.

10 Q Okay. Now, as you were speaking to him, were you
11 typing up that statement?

12 A Yes, sir.

13 Q After you typed up that statement, what did you do?

14 A I printed the statement off, I handed it to Mr.
15 Butler and I asked him to look over it and see if there
16 were any errors and see if there was anything he wanted to
17 change, added to, corrected.

18 Q Did he review the statement you had typed?

19 A Yes, sir.

20 Q What was his response?

21 A He read it and said that yes, it is correct. He
22 asked me to add one last sentence, the very last sentence
23 on there. I then typed up that -- added that last sentence
24 to it, printed it off, handed it back to him and asked him
25 to read it again. He read it and said yes, this is

Craig Rickman - Direct Examination by Mr. McNair

1 correct.

2 Q Okay. Did he appear to have any trouble reading
3 that statement?

4 A No, sir.

5 Q I'm going to show you what's been premarked as
6 State's 53. Is that the statement that you typed up that
7 Mr. Butler gave you?

8 A Yes, sir.

9 MR. MCNAIR: Your Honor, we'd offer State's 53 into
10 evidence at this time.

11 MR. JAMES SNELL: And Your Honor, we would renew
12 our prior objections and would object to additionally the
13 written statement coming into evidence. It's a -- the
14 deputy typed up an oral --

15 THE COURT: Give me just a moment.

16 Mr. Foreman, ladies and gentlemen, step out
17 momentarily. Do not discuss the case during this brief
18 recess.

19 (The jury left the courtroom at 11:52 a.m.)

20 THE COURT: Tell me the -- I understand your
21 prior -- preserving your prior objections, and I would
22 reaffirm my pretrial rulings.

23 And what's the second basis of your objection, Mr.
24 Snell?

25 MR. JAMES SNELL: It's the introduction of a

Craig Rickman - Direct Examination by Mr. McNair

1 MR. MCNAIR: Thank you, Your Honor.

2 BY MR. MCNAIR:

3 Q Detective Rickman, when you met with Mr. Butler in
4 your office, did you type up a statement based on what Mr.
5 Butler told you?

6 A Yes, sir.

7 Q Did you show that statement to Mr. Butler?

8 A Yes, sir.

9 Q Did he indicate to you that statement was accurate?

10 A Yes, sir.

11 Q Did you ask him to sign that statement?

12 A Yes, sir, I did.

13 Q What was his response to you?

14 A He asked if he had to sign it; I told him no, he
15 did not; and he declined to sign it.

16 Q Did he indicate whether anything in that statement
17 was incorrect?

18 A Well, he declined to sign it. I asked him, I said
19 are you not wanting to sign it because something's wrong or
20 you just don't want to sign it and he said, no, it's
21 accurate, I just don't want to sign it.

22 Q And what, if anything, did he ask you to add to
23 that statement?

24 A He asked me to add the very last sentence on the
25 statement.

Craig Rickman - Direct Examination by Mr. McNair

1 Q All right. Will you please read that statement to
2 the jury?

3 MR. JAMES SNELL: Judge, I renew our prior
4 objections.

5 THE COURT: Thank you. I -- step back out, ladies
6 and gentlemen.

7 (The jury left the courtroom at 12:19 p.m.)

8 THE COURT: All right. I'm -- I'm going to reverse
9 myself based on State v. Lindsay 394 S.C. 354, the trial
10 court erred when it admitted the police officer's notes
11 regarding the defendant's second interview with the police
12 into evidence. Although the Court went on to find harmless
13 error, it's still error. So I am not going to allow the
14 written -- the typed document into evidence.

15 MR. MCNAIR: Your Honor, can you publish what he
16 wrote?

17 THE COURT: Of course, yes, he may -- he may
18 publish.

19 MR. MCNAIR: Okay.

20 THE COURT: But I'm not going to allow the written
21 document in. I hit that button early.

22 MR. JAMES SNELL: If I may --

23 THE COURT: Excuse me?

24 MR. SNELL: If I may, I guess we would just
25 preserve our prior objections we had in-camera.

Craig Rickman - Direct Examination by Mr. McNair

1 THE COURT: Prior objections preserved and State's
2 53 is not admissible in evidence.

3 MR. SNELL: Thank you, Judge.

4 THE COURT: Thank you.

5 (The jury entered the courtroom at 12:22 p.m.)

6 THE COURT: All right. Thank you.

7 BY MR. MCNAIR:

8 Q Detective Rickman, did you take notes of your
9 conversation with Mr. Butler?

10 A I typed as he talked.

11 Q And did you print out your notes and show them to
12 Mr. Butler?

13 A Yes, sir.

14 Q Did he indicate to you that your notes of your
15 conversation with him were accurate?

16 A Yes, sir, he did.

17 Q All right. Would you please read your notes for
18 the jury?

19 A I have come here today on my own free will to clear
20 up this situation with the police from South Carolina. I
21 understand that I'm free to leave at any time. I just want
22 to fully cooperate and get this resolved. I was contacted
23 yesterday, April 29th, 2014 by an individual that
24 identified himself as a detective from South Carolina.

25 Prior to this person calling me, he called my

Craig Rickman - Direct Examination by Mr. McNair

1 fiancée, Ashante Reid. This person briefly spoke with my
2 fiancée and she gave him my phone number. This person upset
3 my fiancée by telling her he needed to speak with me
4 concerning a murder. A short time later, the detective
5 called me on my cell phone. The detective accused me of
6 committing this crime in the State of South Carolina that
7 occurred sometime over the weekend of April 26th, 2014.

8 I informed the detective that I did not commit any
9 crime in South Carolina and that I've not even been in the
10 State of South Carolina for the last several years. On
11 Friday, April 25th, 2014, I went fishing on the Tennessee
12 River near the recording studio on Sheffield. I was alone
13 and fished that afternoon. I'm not sure of the time.

14 On Saturday, April 26th, 2014, I was at home on
15 Deerborn Avenue in Muscle Shoals while my fiancée and son
16 went to Gattman Park. After they went to the park, they
17 came back home and we all just hung out at our apartment.

18 On Sunday, April 27th, 2014, I was at home all day
19 with my family. We just chilled and spent the day
20 together. Again, I have come here on my own free will to
21 clear up this situation. I'm willing to cooperate in any
22 way. I will provide them with DNA, hair sample, whatever
23 they want, all they have to do is call and ask.

24 I understand that this statement will be faxed to a
25 detective in South Carolina. The only thing that I ask is

Craig Rickman - Cross-Examination by Mr. James Snell

1 that the detective from South Carolina does not call my
2 fiance anymore and talk to her disrespectful.

3 Q Thank you. Now, do you see the gentleman you spoke
4 to in court today?

5 A Yes, sir.

6 Q Is that the gentleman that gave you that statement?

7 A Yes, sir, with the red tie.

8 Q Okay. The defendant?

9 A Yes, sir.

10 Q Thank you, sir.

11 THE COURT: Thank you, Solicitor.

12 Mr. Snell.

13 MR. JAMES SNELL: Yes, Your Honor. Thank you, Your
14 Honor.

15 **CROSS-EXAMINATION**

16 BY MR. JAMES SNELL:

17 Q And, sir, when you spoke with Mr. Butler on the
18 phone the first time, he made some reference at that point
19 to -- to an attorney; is that true?

20 A He asked a question about an attorney, yes, sir.

21 THE COURT: What you talking about, the first time?

22 MR. JAMES SNELL: On the phone call.

23 THE COURT: The phone call?

24 MR. JAMES SNELL: The phone call.

25 THE COURT: All right. Thank you.

Craig Rickman - Redirect Examination by Mr. McNair

1 BY MR. JAMES SNELL:

2 Q The phone call on April 29th, 2014?

3 A Yes, sir.

4 Q Okay. And then you met with him in your office on
5 April 30th, 2014?

6 A Yes, sir.

7 Q And at that time, you did not provide him with
8 Miranda advisements, correct?

9 A No, sir, I did not.

10 Q And at that time, you did not specifically advise
11 him that he had a right to have an attorney?

12 A No, sir, I did not.

13 Q Thank you. No other questions.

14 THE COURT: Redirect, Solicitor?

15 **REDIRECT EXAMINATION**

16 BY MR. MCNAIR:

17 Q When you spoke to him, Mr. Butler was not in
18 custody, was he not?

19 A No, sir, he was not in custody.

20 Q He never at any time told you, I want an attorney,
21 did he?

22 A No, sir, he did not.

23 Q You never at any time told him he couldn't have an
24 attorney?

25 A No, sir.

Craig Rickman - Redirect Examination by Mr. McNair

1 Q Did you force or threaten him in any way to speak
2 to you?

3 A No, sir.

4 Q As a matter of fact, didn't he tell you several
5 times that he was there on his own freewill?

6 A Yes, sir.

7 Q Isn't that reflected in your notes that you just
8 read?

9 A Yes, sir.

10 Q All right. Thank you.

11 THE COURT: Recross?

12 MR. JAMES SNELL: Nothing further, Your Honor.

13 THE COURT: Thank you. Thank you very much,
14 detective. Thank you for being with us.

15 THE WITNESS: Yes, sir.

16 THE COURT: You may step down. Any objections to
17 the officer being excused?

18 MR. GRAHAM: No, Your Honor, may we approach.

19 THE COURT: Yes, sir.

20 MR. JAMES SNELL: No, Your Honor.

21 THE COURT: All right.

22 Thank you again.

23 (There was a bench conference out of the hearing of
24 the jury and the court reporter.)

25 THE COURT: All right. Thank y'all.

Chad Smith - Direct Examination by Mr. McNair

1 hope y'all had a pleasant lunch. We're continuing the
2 trial of the case by the presentation of evidence and
3 testimony by the State in its case in chief. If you would
4 please continue to give the parties your complete and
5 undivided attention.

6 Solicitor, you may call your next witness.

7 MR. MCNAIR: Thank you, Your Honor. The State
8 calls Chad Smith with SLED.

9 THE COURT: All right. If you'd come around and be
10 sworn.

11 CHAD SMITH,
12 after having been duly sworn, testified as follows:

13 THE CLERK: Have a seat. Once you're seated, state
14 your full name spelling your last please.

15 THE WITNESS: My name is Chad Smith, S-M-I-T-H.

16 **DIRECT EXAMINATION**

17 **BY MR. MCNAIR:**

18 Q Mr. Smith, where are you employed?

19 A I work at the SLED Forensic Laboratory in Columbia.

20 Q What is your position at SLED?

21 A I'm a Forensic Scientist assigned to the Firearms
22 Department Laboratory.

23 Q How long have you been in that position?

24 A A little over seven-and-a-half years.

25 Q And in that as part of your job, do you do firearm

Chad Smith - Direct Examination by Mr. McNair

1 identifications?

2 A Yes, sir.

3 Q What type of education or training have you had in
4 that regard?

5 A Well, my diagram starts, I earned a Bachelor's of
6 Science Degree in Biological Sciences from Clemson
7 University. I came on board with SLED in November of 2008
8 in the Firearms Department and began training as a Firearms
9 Examiner. The Training Program is taught in house. It is
10 supervised by a Court Qualified Examiner of the Firearms
11 Department. It involved extensive reading and studying,
12 there were multiple examinations and practical tests given
13 during this time.

14 I attended various classes and other courses in the
15 firearms field. And later in my training, I was able to
16 help other examiners with their own casework. At the end
17 of the Training Program, I received a Comprehensive
18 Multi-part Examination which I successfully passed and
19 began to receive my casework.

20 Q Thank you. And I know this is always a hard
21 question, but how many examinations, approximately, do you
22 think you've performed on firearms?

23 A Probably in the thousands, actual examinations.

24 Q And have you been qualified as an expert in General
25 Sessions Court before?

Chad Smith - Direct Examination by Mr. McNair

1 A Yes, sir.

2 Q How many times?

3 A Twenty-six times.

4 MR. MCNAIR: Your Honor, at this time, we'd offer
5 Mr. Smith as an expert in firearm identification?

6 THE COURT: Any voir dire, Mr. Snell?

7 MR. JAMES SNELL: No, Your Honor.

8 THE COURT: Again, ladies and gentlemen, y'all have
9 heard my instruction as to expert witnesses. This witness
10 will be qualified -- Agent Chad Smith, will be qualified to
11 give opinion testimony in the field of -- firearms
12 identification?

13 MR. MCNAIR: Yes, sir, Your Honor.

14 THE COURT: Firearm identifications. Thank you.
15 Thank you very much.

16 You may continue, Solicitor.

17 MR. MCNAIR: Thank you, Your Honor.

18 BY MR. MCNAIR:

19 Q Mr. Smith, can you explain to the jury what makes
20 firearm identification possible?

21 A Well the field of firearms identification is
22 actually a subset of Forensic Science. What we try to do
23 is determine if a firearms ammunition component such as a
24 bullet or a cartridge case is fired by a particular firearm
25 and what makes that possible is during the manufacturing

Chad Smith - Direct Examination by Mr. McNair

1 process of a firearm, just the tools that are involved in
2 the manufacturing process mark the firearm.

3 These are done not specifically by the manufacturer
4 or anything like that, it's just done with tools wearing on
5 the surfaces of the firearm or the individual parts of the
6 firearm. So those individual parts come in contact with
7 the firing part of a cartridge, such as a bullet or
8 cartridge case, are marked by those firearm pieces.

9 What happens is the markings are actually imprinted
10 or basically what we're looking for are scratches on the
11 bullet or cartridge case and what we can do is test, where
12 we have a firearm, we can test fire that firearm. It test
13 fires and compare those test fired bullets or cartridge
14 cases to the actual submitted evidence and try to determine
15 if it was fired by a particular firearm.

16 Q Now, are you able to tell whether a bullet
17 projectile was fired from a particular gun?

18 A Correct. Not all the time, but we attempt to
19 determine that.

20 Q Now, are you able to tell whether or not a shell
21 casing was fired from a particular gun?

22 A Right.

23 Q And from a bullet projectile are you able to
24 determine a caliber that gun was fired from?

25 A Depending on the condition of the bullet and how

Chad Smith - Direct Examination by Mr. McNair

1 much is left of it, defragmented, we try to determine what
2 caliber it was.

3 Q Were items submitted to the SLED Firearms
4 Department in this case?

5 A Yes, sir.

6 Q I'm going to show you State's Exhibit 30 through
7 34. Tell me if you can identify these items.

8 A These are five fired cartridge cases that were
9 submitted to the SLED Lab for examination.

10 Q All right. And when they were submitted to SLED,
11 did y'all sign your own identifying number to them?

12 A Yes. When they're submitted, they're given under
13 our protocols, a specific lab number which corresponds to
14 the case number of the agency submitting the evidence and
15 then also it is assigned its own item number.

16 Q Okay. And what SLED item numbers are those
17 exhibits?

18 A There are 7 through 11.

19 Q All right. I'm going to show you State's Exhibit
20 36 and can you tell me whether or not that was also
21 submitted to SLED for analysis?

22 A This was a pistol, Glock Model .22 that was
23 submitted for examination.

24 Q And what SLED item number is that?

25 A This is SLED Item 12.

Chad Smith - Direct Examination by Mr. McNair

1 Q Okay. I'll take that. And lastly what's been
2 marked for State's ID purposes as State's 59. Was that
3 also submitted to SLED?

4 A Yes, these are items or SLED item 5 and they are
5 various fragments, bullet fragments that were sent in.

6 Q Are those fragments that were recovered from the
7 autopsy?

8 A Yes, it's actually the submission document says
9 it's described as from -- coming from the head.

10 Q Now, were you involved in examining these items?

11 A I was. I was not the actual examiner assigned to
12 this case, but I was the examiner that reviewed Agent
13 Green's work in this case. It's part of our quality
14 control, in the laboratory is we have a peer review
15 process, which means that the examiner, when they're
16 assigned to a case and actually work the case, after
17 they're done reviewing their evidence and making
18 conclusions on their -- or these worksheets. We have
19 another examiner come in and go behind them and try to --
20 and look at the same evidence, test fires or whatever, and
21 reach their own conclusions. And so once conclusions are
22 met, the two examiners sign the worksheet and then the
23 examiner who is assigned the actual case, compiles his case
24 file, writes a report and then gives all that information
25 to the person reviewing it and then that person reviews

Chad Smith - Direct Examination by Mr. McNair

1 everything to make sure it's technically correct as well as
2 grammatically correct, et cetera and then the reports are
3 approved.

4 Q So did you agree with all of Agent Green's
5 conclusions in this -- in his report?

6 A Yes, sir.

7 Q He's not available this week because he had a
8 prepaid vacation; is that correct?

9 A Correct.

10 Q Now, let's start with SLED Item 5, that's Exhibit
11 59. Those are the items that you received, the fragments
12 that you received from the autopsy. What analysis was
13 performed on those and what conclusions were reached?

14 A Actually the Item 5 was made up of a fired bullet
15 jacket, a fired bullet core, another bullet jacket fragment
16 and a piece of lead. So all of that was submitted to the
17 lab as Item 5. So -- and actually you can't see them, the
18 pieces in here, but it would have been microscopically
19 examined to see if there's any identifying markings that we
20 can use to try to see if they can be matched to a
21 particular firearm; try to determine possibly what caliber
22 those pieces were. It's part of our examination, and
23 during the examination it was determined that the larger
24 part, the actual bullet jacket itself, which you can
25 imagine a jacketed bullet has an inner core, normally it's

Chad Smith - Direct Examination by Mr. McNair

1 made of lead, it's a soft material that has a harder outer
2 metallic surface and it's usually some sort of copper
3 alloy.

4 And so that jacket actually takes the markings of
5 the firearm barrel and that's what we're looking for
6 identification. So that bullet jacket was submitted and it
7 was determined that a particular caliber, it was either .40
8 Smith and Wesson caliber or a 10mm auto caliber. Both of
9 those cartridges used the fragment or bullet or we can't
10 really say if it's one or the other.

11 Q Was there enough there from the fragments to
12 determine what gun that may have been fired from?

13 A Based on the --

14 Q Other than caliber?

15 A -- right. The markings that were there, what we
16 can do is look at the overall part of the jacket and try to
17 determine -- when a bullet is fired from a particular
18 barrel, it picks up the rifling impressions. Rifling is
19 put by a manufacturer to impart a spin on the bullet. It
20 makes it more accurate as it spins towards its target.
21 Those rifling impressions are put on the bullet and the
22 numbers, lands, and grooves, which is part of that rifling,
23 can be counted and measured and that sort of thing and we
24 can take that information and try to determine, put it in a
25 data base and try to determine what firearm could have

Chad Smith - Direct Examination by Mr. McNair

1 fired the actual bullet. And a list was generated, based
2 on the information that we obtained from the bullet jacket.

3 Q Okay. Let's talk about SLED Items 7 through 11,
4 those were the shell casings. What analysis was performed
5 on those and what conclusions were reached?

6 A First we just physically examined them for what
7 sort of information is on the shell casing itself.
8 Cartridge cases have a head stamp area, which is the base
9 of a cartridge case, which normally tells you manufacturer
10 and what caliber those particular cartridge cases are.

11 So we can tell from these cartridge cases that they
12 are .40 Smith and Wesson caliber and there are several
13 different manufacturers represented in these cartridge
14 cases. And what we do is, we can look at the markings that
15 are put there by the firearm when it's fired, the actual
16 cartridge case is fired, and try to determine if they were
17 all fired by one gun or multiple firearms.

18 And what was concluded was that the -- the State's
19 Exhibit 7, that's my Item Number -- 30, 33, 31 and 34 were
20 all fired by one firearm. The State's Exhibit 32 was fired
21 by a second firearm. So --

22 Q And what firearm was that?

23 A The -- the firearm that was presented to me, which
24 is State's Exhibit 36 was -- did fire State's Exhibit 32.

25 Q All right. If I understand you correctly, Exhibit

Chad Smith - Cross-Examination by Mr. James Snell

1 32, SLED 11, matched the gun that was submitted to you?

2 A Correct.

3 Q Okay. All the other four shell casings came from
4 another gun and there was -- they all -- they all -- but
5 they all came from the same gun?

6 A Correct.

7 Q And you had no gun to compare those shell casings
8 to, correct?

9 A Right.

10 Q All right. Agent Smith, that's all I have at this
11 point. Please answer any questions that Mr. Snell may
12 have?

13 MR. JAMES SNELL: Thank you very much.

14 Your Honor, just -- just for the Court's
15 information for the record, we -- this witness is
16 testifying on a prior stipulation between us and the
17 solicitor's office due to the unavailability of the -- Mr.
18 Green, who was unavailable this week.

19 THE COURT: All right. Thank you. Thank you, Mr.
20 Snell. Thank you.

21 **CROSS-EXAMINATION**

22 BY MR. JAMES SNELL:

23 Q Your role in this is limited to simply being a
24 firearm examiner and -- back at the office, correct?

25 A Correct.

Chad Smith - Cross-Examination by Mr. James Snell

1 Q And, of course, you don't have any direct personal
2 firsthand knowledge of what happened in this case as far as
3 the shooting or the criminal charges against the defendant?

4 A I do not.

5 Q And -- and basically what your testimony -- I want
6 to make sure I understand correctly. Analyzing the bullet
7 fragments, you came up with the evidence of two firearms,
8 correct?

9 A Not the actual bullet fragments, but the cartridge
10 cases themselves.

11 Q I apologize, but your analysis indicated two
12 firearms?

13 A Correct.

14 Q One sample that you tested matched to the gun in
15 the evidence?

16 A Yes.

17 Q And the other samples, you didn't have any weapons
18 to match them to?

19 A Right.

20 Q Nothing further. Thank you very much.

21 THE COURT: Redirect, Solicitor?

22 MR. MCNAIR: Nothing further, Your Honor.

23 THE COURT: Thank you. Thank you very much, Agent
24 Smith. Thank you for being with us this afternoon.

25 THE WITNESS: Yes, sir.

Michael Phipps - Direct Examination by Mr. Graham

1 THE COURT: Any objections to the officer being
2 excused?

3 MR. MCNAIR: No, Your Honor.

4 THE COURT: You may step down. You may be excused.

5 THE WITNESS: Thank you.

6 THE COURT: All right. Solicitor?

7 MR. GRAHAM: The State calls Mike Phipps.

8 MIKE PHIPPS,

9 after having been duly sworn, testified as follows:

10 THE CLERK: Have a seat. Once you're seated, state
11 your full name spelling your last, sir.

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

13 **DIRECT EXAMINATION**

14 **BY MR. GRAHAM:**

15 Q Mr. Phipps, where are you employed?

16 A Lexington County Sheriff's Department.

17 Q And what do you with the Lexington County Sheriff's
18 Department?

19 A I'm currently employed as a Forensic Technology
20 Examiner doing any computer forensics and examinations on
21 digital media.

22 Q How long have you been in law enforcement?

23 A Seventeen years.

24 Q During that time, what various types of jobs have
25 you held?

Michael Phipps - Direct Examination by Mr. Graham

1 A I started out like most people on the road as a
2 patrol deputy; became a Corporal Shift Supervisor on the
3 road. Then I was promoted into the crime scene unit and
4 spent about twelve years in Crime Scene before I
5 transitioned into my current assignment.

6 Q When you say Forensic Technology Examiner, what are
7 you talking about?

8 A That's a term that our agency has assigned to
9 anyone that examines digital media in a forensic manner for
10 evidence. We look at cell phones, we look at computers,
11 thumb drives, GPS's, just anything that would have data on
12 it that might be of value to the investigation.

13 Q In addition, would it also include analyzing phone
14 records from phone companies?

15 A Right. That's part of the phone analysis. Not
16 only do we analyze the device itself and what information
17 comes off it, but we obtain records from the cell phone
18 provider that gives us additional information.

19 Q What kind of education or training do you have in
20 Forensic Technology Examination specifically with phone
21 record analysis and mapping and extraction of data from
22 phones?

23 A I've had a couple of courses, the earliest was back
24 in 2007, Four Skills for Investigation of Cellular
25 Telephones. Following up on that in 2014, Fiber

Michael Phipps - Direct Examination by Mr. Graham

1 Investigations, it's a basic cell phone investigative
2 course taught by the National White Collar Crime Center and
3 then following that, that was it specific to cell phones.

4 As far as the mapping and call history information,
5 I've had several other case courses that involve the
6 analysis of the data that comes off of the cell phone.

7 Q Have you ever -- how many -- what's a phone
8 extraction, when I say that; what does that mean?

9 A It's basically hooking the phone up to a piece of
10 hardware that forensically extracts as much information
11 from that device as you can without changing the phone,
12 changing anything on it, taking anything off or putting
13 anything on. That includes everything you could possibly
14 imagine, texting, photographs, recordings, any activities
15 that you do on the phone are tracked, just like a computer.
16 So you examine the phone in a manner similar to that that
17 you would with a laptop or home computer.

18 Q How many extractions have you done?

19 A Hundreds and hundreds.

20 Q Have you ever testified in court as an expert on
21 extractions from phones before under your title as a
22 Forensic Technology Examiner?

23 A Once for an expert in cell phone forensics January
24 22nd, 2015, for the State v. Henry Johnson case Eleventh
25 Circuit. Then again in March 2016 State v. Worth Cook for

Michael Phipps - Direct Examination by Mr. Graham

1 expert in cell phone mapping and an expert in cell phone
2 records analysis.

3 Q So you've been qualified as an expert involving
4 extraction and also analyzing and plotting for tower
5 information as well as the tower that used the phone during
6 the transaction?

7 A Yes, sir.

8 MR. GRAHAM: Your Honor, at this time, the State
9 would offer Mike Phipps as an expert in Forensic Technology
10 Examination to include the subsets of forensic extraction
11 and also cell phone analysis and mapping?

12 THE COURT: All right. Any voir dire, Mr. Snell?

13 MR. JAMES SNELL: No additional voir dire, Your
14 Honor.

15 THE COURT: Again, ladies and gentlemen, this
16 witness, Mr. Phipps, will be qualified as an expert in cell
17 phone forensics to include extractions, mapping, records
18 analysis, cell tower mapping and forensic technology.

19 All right. Thank you. Solicitor, you may
20 continue.

21 MR. GRAHAM: Thank you, Your Honor.

22 BY MR. GRAHAM:

23 Q Beginning with the extraction, let me show you an
24 object and ask if you recognize this object. And I'm going
25 to have it premarked.

Michael Phipps - Direct Examination by Mr. Graham

1 (State's Exhibit Number 63 was marked for
2 identification.)

3 BY MR. GRAHAM:

4 Q Investigator Phipps, is that your title?

5 A Yes, sir.

6 Q Investigator Phipps, looking at what's been marked
7 as State's 63 for identification, do you recognize that
8 object?

9 A Yes, sir, I do.

10 Q What is that object?

11 A This is a Samsung Galaxy S3 that I was given a
12 search warrant to examine.

13 Q Okay.

14 MR. GRAHAM: Your Honor, by stipulation from the
15 defense, this is the phone that was taken by the Alabama
16 authorities from Mr. Butler's residence in Alabama. They
17 have stipulated to that and also to the chain of custody
18 here today to Mr. Phipps.

19 THE COURT: All right. Is that correct, Mr. Snell?

20 MR. JAMES SNELL: It is, Your Honor. We renew our
21 prior objections to the those items but they're correct as
22 far as the stipulation as to the chain of custody.

23 THE COURT: All right. You're offering it into
24 evidence?

25 MR. GRAHAM: Just for identification, Your Honor.

Michael Phipps - Direct Examination by Mr. Graham

1 THE COURT: State's 63 for ID purposes only.

2 BY MR. GRAHAM:

3 Q So Investigator Phipps, when you got that item to
4 do an extraction, what does that mean?

5 A One of the other investigators draws up the search
6 warrant and will come to me with that warrant. In this
7 case, the item was already over in our evidence unit. I
8 will go over there, sign the item out, execute the search
9 warrant, which would involve, like I said, hooking it up to
10 technology that we have that allows us to pull that
11 information off and generate a hard copy report for the
12 investigators.

13 Q And did you in fact perform an extraction on that
14 device?

15 A Yes, sir.

16 (State's Exhibit Number 64 was marked for
17 identification.)

18 BY MR. GRAHAM:

19 Q Investigator Phipps, let me show you State's
20 Exhibit Number 64 and ask if you recognize that as being an
21 extraction report that you prepared, and while not an
22 entire extraction report, it is a report of information
23 relative to this case?

24 A Yes, sir.

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

Michael Phipps - Direct Examination by Mr. Graham

1 Sixty-four into evidence.

2 THE COURT: Mr. Snell?

3 MR. JAMES SNELL: Judge, we would renew our prior
4 objections to the -- that's been previously made on this
5 collection of information. We additionally believe that
6 the prejudicial value outweighs the probative value of the
7 contents.

8 THE COURT: May I see it please?

9 What is the purpose of this, Solicitor.

10 MR. GRAHAM: Your Honor, it has contact information
11 that will go to be able to use numbers obtained on other
12 records. It also has -- I probably should -- may I
13 approach, Your Honor?

14 THE COURT: Yes, sir. You want to step up here,
15 Mr. Snell?

16 (There was a bench conference out of the hearing of
17 the jury and the court reporter.)

18 THE COURT: All right. As to the 403 analysis, I
19 would find that its probative value is high and there is no
20 danger of unfair prejudice under the standard as to Rule
21 403. State's 64?

22 THE COURT REPORTER: Yes, sir.

23 THE COURT: Is in evidence subject to objections.

24 (State's Exhibit Number 64 was entered into
25 evidence.)

Michael Phipps - Direct Examination by Mr. Graham

1 THE COURT: You may continue, Solicitor.

2 MR. GRAHAM: Thank you Do you have State's 64.

3 I'm sorry.

4 THE COURT: That's all right. I apologize for
5 keeping it. I thought I was looking at a copy. Hard to
6 continue without that.

7 MR. GRAHAM: Thank you, Your Honor.

8 BY MR. GRAHAM:

9 Q The phone number associated with State's 64, the
10 phone taken from Mr. Butler's residence in Alabama is what?

11 A Area code -0391.

12 Q And the date of your extraction when you actually
13 looked at this device was what time?

14 A May 16th of this year at 9:39 in the morning.

15 MR. GRAHAM: Your Honor, with your permission, I
16 would like to use the overhead to publish this?

17 THE COURT: All right.

18 MR. GRAHAM: Your Honor, if I could have Mr. Phipps
19 come down, please?

20 THE COURT: You may, yes, sir.

21 You may step down, Mr. Phipps.

22 BY MR. GRAHAM:

23 Q Mr. Phipps, one of the contacts -- if you'll face
24 the court reporter. One of the contacts that you have come
25 along -- let me ask you a question first. Do you recognize

Michael Phipps - Direct Examination by Mr. Graham

1 State's 39 for identification?

2 A Yes, sir, I do.

3 Q And did you look through those records as part of
4 your analysis?

5 A Yes, sir.

6 Q State's 39 is Sprint phone records of telephone
7 number -0402. Did you also look -- do you recognize
8 State's 41 for identification?

9 A Yes, sir.

10 Q And are those records that you analyzed as well?

11 A Yes, sir.

12 Q And those were Sprint phone records for
13 -0391; that's actually this phone that we're talking
14 about, correct?

15 A Yes.

16 Q How about State's 50 for identification, do you
17 recognize that?

18 A I do.

19 Q And did you use those for your analysis as well?

20 A Yes, sir.

21 THE COURT REPORTER: He's got to speak up a little
22 bit more.

23 THE WITNESS: Yes.

24 THE COURT REPORTER: Thank you.

25 BY MR. GRAHAM:

Michael Phipps - Direct Examination by Mr. Graham

1 Q And that's Verizon phone records for -3791.

2 And lastly how about 45 for identification, do you
3 recognize that disc?

4 A Yes, sir.

5 Q And are those records --

6 THE COURT: What was the last number, Solicitor?

7 MR. GRAHAM: I'm sorry, Your Honor, 45.

8 THE COURT: 45.

9 BY MR. GRAHAM:

10 Q Did you also use this in your analysis as well?

11 A Yes, sir.

12 Q Okay. And this is Verizon phone number
13 -5436. So when you were looking through the phone
14 that came from Mr. Butler's residence, one of the contacts
15 you found was an 864 contact, correct?

16 A Yes, sir, it was.

17 Q What was the number for that contact?

18 A Area Code -3791.

19 Q And that is actually the -- we have those records
20 in State's 50 for identification you analyzed, correct?

21 A Yes, sir.

22 Q So in the phone from Mr. Butler's residence, how
23 was that contact saved; did it have a name, does it tell
24 you who it is?

25 A No.

Michael Phipps - Direct Examination by Mr. Graham

1 Q How was it saved?

2 A It's just the number one entry in the contact list
3 and it's been deleted at some point in time.

4 Q So there is no name associated with it in the
5 contact information?

6 A That's correct.

7 Q There was another additional contact related to
8 numbers that you found in your analysis as well; is that
9 correct?

10 A Yes, sir, there was.

11 Q What were the other -- what's the first number?

12 A This first number is area code -3587.

13 Q And who is the contact listed for that on the phone
14 from Mr. Butler's house?

15 A The names listed as Ashante.

16 Q And the next contact?

17 A The one below that is Area Code -3580;
18 that's the same one.

19 Q So that's the same number in there twice, correct?

20 A Correct.

21 Q Okay. And that's also for Ashante?

22 A Correct.

23 Q How many -- are you able to tell when the last time
24 that phone called or was contacted by the number associated
25 with Ashante?

Michael Phipps - Direct Examination by Mr. Graham

1 A This second column shows the last contact of
2 5/8/2014.

3 Q Does that report indicate how many times in the
4 recent history that that phone from Mr. Butler's house had
5 contact with the number associated with Ashante?

6 A Yes, sir, below that it indicates 631 times.

7 Q Below that, is there a Twitter Account?

8 A Yes, it ID'd a Twitter Account associated with that
9 same number.

10 Q That's the Twitter Account associated with
11 Ashante's number or the Twitter Account associated with the
12 510 number related to the phone?

13 A It should be Ashante.

14 Q Okay. What is the name on that account?

15 A BTW_IIMTAYY.

16 Q In the description of Ashante's name, there's a
17 source to Twitter. What is the name associated with the
18 source?

19 A J-O-N-A-T-H-A-G-E-N-E-R-A-L.

20 Q Jonah tha general?

21 A Yes.

22 Q All right. And one more contact. There's a
23 contact for an individual named L; is that correct?

24 A Correct. Under the name record, just the letter L.

25 Q And what is the number associated with L?

Michael Phipps - Direct Examination by Mr. Graham

1 A The phone number is area code 925-895-2790.

2 Q And are you able to tell how many times that was
3 contacted?

4 A It indicates 17.

5 Q Are you aware that that's the same number that's
6 located on State's Number 52 on the Enterprise rental
7 agreement that's the contact number for Terry McClure?

8 A I was advised that during the course of the
9 investigation.

10 Q So how many times was that number contacted by the
11 phone found in Mr. Butler's house that begins with 510?

12 A Which phone, now? I'm sorry.

13 Q I'm sorry. How many contacts were there between
14 the number associated with the individual names L, which is
15 Terry McClure on the Enterprise Agreement and this phone?

16 A Right. I mean this number had 17 contacts listed.

17 Q One more contact. What is that contact listed as?

18 A The name record shows SC as in South Carolina
19 Police Detective.

20 Q And the number associated with that?

21 A Area Code -3006.

22 Q Do you know who that number belongs to?

23 A No, sir.

24 Q The next page, which it shows entry 1617; what is
25 that?

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1 A Showing e-mails, the e-mail category of the cell
2 phone extraction report.

3 Q What is the -- what is that e-mail, who is --
4 what's it about?

5 A It's a E-ticket information receipt from Greyhound.

6 Q Does it give the name for the passenger?

7 A A Justin Butler.

8 Q And does it tell what days the travel are? Here at
9 the bottom.

10 A April 27, 2014 depart. Atlanta April 27th.

11 Q I believe the last thing on this extraction is --
12 those are -- what are Instant Message messages?

13 A They're just your standard text message that you
14 would send back and forth.

15 Q Okay. So that document is showing like six text
16 messages. 1633 is labeled as outgoing text; what does that
17 mean?

18 A It means the -- the record that this phone was
19 recovered from, there was an outgoing text from this phone
20 to another number.

21 Q And what was the date and time of the text?

22 A April 27th, 2014 at 11:39 a.m.

23 Q It says UTC minus four; what does that mean?

24 A That is a corrected time to -- it would be our time
25 zone here, not knowing the exact time zone that the device

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1 was in when it sent the text, there could be a discrepancy
2 there.

3 Q All right. So the message is outgoing from that
4 phone to who?

5 A Area Code 925-895-2790.

6 Q And that's the -- the L cite, that's actually the
7 contact name for that number, correct?

8 A Right, that's the only thing that was listed in the
9 contact for it so it just shows the letter out.

10 Q And what -- what was the text that was sent?

11 A The content is: Crib status, tap in when I get a
12 new charger.

13 Q The next text is an incoming text to that phone;
14 who is it from?

15 A Incoming from Area Code 925-895-2790.

16 Q The L again?

17 A Yes, sir.

18 Q What's the text content on that text?

19 A Aight. OMG, OMW, I'm sorry.

20 Q 1636 entry, that text is an outgoing text from that
21 phone to who?

22 MR. JAMES SNELL: Your Honor, we would renew our
23 prior objection.

24 THE COURT: Yes, sir. So noted.

25 THE WITNESS: Outgoing from this phone to L, the

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1 number listed as L.

2 BY MR. GRAHAM:

3 Q And the content of that text?

4 A I love you n-i-g-g-a.

5 Q The next text is an incoming next from L, correct?

6 A Correct.

7 Q The date and time on that text?

8 A April 27th, 2014 at 11:43 a.m.

9 Q And the content of the text?

10 A Love you too.

11 Q The next text, an outgoing text from the 510 number
12 to L again; what was the content?

13 A Did I leave you CD in car.

14 Q And the final entry of communication, text
15 communication between these two, is it incoming or
16 outgoing?

17 A It's an incoming text from L.

18 Q And the content?

19 A No.

20 Q You can have your seat back. Thank you.

21 We have discussed one of the phones that you
22 analyzed was State's 45 for identification. That is
23 -5436 and that is one of them that you analyzed?

24 A Yes, sir, it is.

25 Q Okay. Prior testimony has shown that was the

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1 number that was used to communicate with the victim,
2 Vonkeith Toland; were you aware of that?

3 A Yes, sir.

4 Q When your -- in your analysis of that number, which
5 is on this 45 for identification, were you able to pull all
6 of the phone calls for the time period for the data listed
7 on that?

8 MR. JAMES SNELL: Your Honor, we would renew our
9 prior objection.

10 THE COURT: Yes, sir. So noted.

11 THE WITNESS: Yes, sir.

12 BY MR. GRAHAM:

13 Q Let me show you, let me get it marked.

14 (State's Exhibit Number 65 was marked for
15 identification.)

16 BY MR. GRAHAM:

17 Q Let me show you State's Number 65 and ask if you
18 recognize that?

19 A Yes, sir, I do.

20 Q Now in addition, the records themselves, are the
21 records accurate for what you saw on that disc?

22 A They are.

23 Q In addition to the actual records, so it is showing
24 us the call is from there, but you pulled over or pulled
25 over was the dial digit number, the call direction, the

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1 call date and time, the call duration, the first serving
2 cell site and the last serving cell site and a calling
3 party name; is that correct?

4 A That's correct.

5 Q All right. The records actually contain a lot
6 more, but this information is accurate with what's on
7 there, correct?

8 A It is.

9 Q All right. And additionally what's been added are
10 columns for subscriber information from phone records.
11 So -- and you're aware that we've had cell phone providers
12 come in and authenticate the records and testify who the
13 owners of the records are, correct?

14 A Yes, sir.

15 Q And where known then that information was added,
16 correct?

17 A It has.

18 Q All right. Additionally the contacts from Butler
19 is another line that was added and it says contacts from
20 Butler -0391?

21 MR. JAMES SNELL: Your Honor, we object to the
22 leading.

23 THE COURT: You may continue, Solicitor.

24 BY MR. GRAHAM:

25 Q That's the item from -- those are the contacts from

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1 the extraction that we just discussed; is that correct?

2 A They are.

3 Q And then there is a last one that is the person
4 associated with phone and that comes through testimony
5 that's been here throughout the trial. You're aware of
6 that as well?

7 A I am.

8 Q Taking all that into consideration, is this a fair
9 and accurate representation of the records and the
10 testimony that's been presented in court?

11 A They are, yes, sir.

12 MR. GRAHAM: Your Honor, the State would offer this
13 into evidence at this time?

14 THE COURT: What number was it?

15 MR. GRAHAM: State's 65, Your Honor.

16 THE COURT: Thank you. Mr. Snell?

17 MR. JAMES SNELL: Again, we renew our prior
18 objection.

19 THE COURT: All right. State's 65 is in evidence
20 subject to previous objection.

21 (State's Exhibit Number 65 was entered into
22 evidence.)

23 MR. GRAHAM: Your Honor, if I could have Mr. Phipps
24 step down?

25 THE COURT: Yes, sir.

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1 BY MR. GRAHAM:

2 Q The color does not show up on this. Come over here
3 in front of the jury with me. This is State's Number 65.
4 So for instance from the records you have, when was the
5 very first activity on this phone at all?

6 A Right where your thumb is.

7 Q I mean before -- actually the very first, not
8 connection with anybody, the actual first time this phone
9 recorded any kind of communication whatsoever?

10 A March 27th, 2014, 10:04 a.m.

11 Q Okay. Are you aware of when this phone was
12 activated?

13 MR. JAMES SNELL: Your Honor, I'm not sure the
14 whole jury panel can see that presentation.

15 THE COURT: I can't -- I can't make it any bigger,
16 Mr. Snell. They can pass it among members of the jury. It
17 is a copy. If that's an objection? There's nothing I can
18 rule on.

19 MR. JAMES SNELL: I just wanted to bring it to the
20 Court's attention, I think the body was standing in the way
21 of the --

22 THE COURT: Well, typically I let lawyers try their
23 cases.

24 MR. JAMES SNELL: Yes, Your Honor. I apologize.

25 THE COURT: No, you don't owe me an apology, I

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1 just -- I'm not a director, I'm a judge.

2 BY MR. GRAHAM:

3 Q We'll try this two times, once over here and once
4 over here.

5 Can you explain in general terms what this shows,
6 what this document is showing?

7 A As we discussed, this first left side is
8 information from what we call the CDR, Call Detail Records.
9 The cell phone provider provides that to us for a
10 particular number. In that we have the dial digits, the
11 first column there; call direction, whether it's incoming
12 or outgoing call; the date and time of the call; how long
13 it lasted and then the cell site information.

14 Cell phone providers assign a numerical value to a
15 particular tower. We then have to take that numerical
16 value and translate it into a latitude and longitude,
17 that's not listed on here. From this value you see here,
18 this number, we can determine geographically where that
19 tower is located. Then the calling party number and then
20 as it progresses through, we see just the first instance of
21 activity on the -- on the phone where you actually have
22 some incoming and outgoing phone conversations.

23 Q Go down here and repeat that?

24 A Here with the dial digit meaning that that digit --
25 those numbers were actually punched into the keypad on the

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1 phone, and the cell phone provider records that
2 information, the direction, incoming, outgoing.
3 Additionally it will also say things like routed or voice
4 mail meaning that the party you're trying to reach wasn't
5 available. Usually it's the party you do the records for
6 and then gets routed to the voice mail. Call, date, time,
7 duration in seconds, again the cell site information. Down
8 here you'll see numbers, the calling party number meaning
9 if it's an outgoing call, then the calling party will be
10 who the record is actually for, in this case for 404 area
11 code number and if it's an incoming, it will indicate on
12 the outside it's trying to call in.

13 Q So for instance, the very first -- so this is all
14 the calls, not texts, this is just calls that you were able
15 to obtain from the records that were provided by --

16 A Verizon.

17 Q -- Verizon in this case for that number, correct?

18 A Yes, sir.

19 Q So the very first activity on this phone was at
20 what date and time?

21 A The -- well, the first date and time of any
22 references on the account are 3/27/2014.

23 Q And how -- from the record can you tell who called
24 who and what happened?

25 A Correct. The first calls down here towards the

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1 middle show a star, in this case, a star 211 and star 611
2 are the first recorded activity on the phone and then
3 underneath that is the first outbound call to a number.

4 Q So what was the first date of anything going
5 outbound on this phone?

6 A March 22nd, I'm looking sideways here, I'm sorry.
7 April 23rd.

8 Q All right. So the very first phone call was
9 incoming or outgoing that shows that it was connected?

10 A Outbound star 211 was the dial -- the numbers
11 dialed on the device.

12 Q Do you know what 211 does?

13 A No, sir.

14 Q The next one is star 611; do you know what that
15 does?

16 A No, sir.

17 Q All right. The first call to a phone number is
18 what?

19 A It's an outbound call, the dial digit in this case
20 is Area Code -6404.

21 Q Is that number through testimony been identified
22 with anybody?

23 A Yes, sir.

24 Q Who?

25 A 707 is Terry McClure.

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1 Q The color has a meaning, correct?

2 A Correct. In this case it didn't get color coded,
3 but we use sort of an ink color to indicate any calls for
4 Terry McClure, his actual phone number.

5 Q So what was the duration of that first call that
6 was connected on this phone?

7 A Eight seconds.

8 Q Can you step down this way?

9 The second call that was made, can you show the
10 jury where that is and talk about that call?

11 A The second call below that to the same number
12 outbound, same date, April 23rd, 2014 at 12:43 p.m.

13 Q And the duration on that?

14 A 915 seconds.

15 Q So if you're looking at State's Number 65 -- have a
16 seat. Thank you.

17 Looking at State's Number 65 as we start to go down
18 through the calls, the first two -- let's just go through
19 first several connecting calls where there's a recorded
20 time showing that something occurred. You just testified
21 that the very first two calls, outgoing calls on April
22 23rd, 2014 to Terry McClure, correct?

23 A Correct.

24 Q All right. And what was the time of the second
25 call to Mr. McClure?

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- 1 A 12:43.
- 2 Q The next call on there is at what time and what
3 day?
- 4 A 1:01 p.m.
- 5 Q So approximately eighteen minutes later, correct?
- 6 A Correct.
- 7 Q And is that an incoming or outgoing?
- 8 A That's an outgoing.
- 9 Q And who does that number call?
- 10 A Which one?
- 11 Q We would be -- down here
- 12 A 1:02 p.m. in the afternoon is an outbound call to
13 Area Code -3791.
- 14 Q And that was the same 864 number that was saved on
15 the extraction from the phone that came from Mr. Butler's
16 house; is that correct?
- 17 A Yes.
- 18 Q The next call after that one is to who?
- 19 A Same number, outbound, within the same time period,
20 27 seconds.
- 21 Q And that's again to the 864 number that was saved
22 without a contact name, correct?
- 23 A Correct.
- 24 Q The next phone number?
- 25 A Area Code 404-69 -- it's an inbound call to this

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1 phone from Terry McClure.

2 Q And the length of that call?

3 A 350 seconds.

4 Q So continuing for calls solely on April 23rd, tell
5 me the order of what's coming in after that call?

6 A After that call there's additional -- a routed call
7 from Terry McClure, another inbound call for 197 seven
8 seconds and then another routed call for 202 seconds and
9 then there's an outbound call from this phone to Terry
10 McClure.

11 Q All right. This continues to record every phone
12 call made or received on this phone, correct?

13 A Correct.

14 Q What's the last date and time that a call was made
15 or received on this; how far do these records go?

16 A They end at April 26th, 2014 at 5:02 p.m.

17 Q So there's only calls from April 23rd to April
18 26th?

19 A Yes, sir.

20 Q Now, additionally for example -- so we've talked
21 about Mr. McClure's number being identified that 864 number
22 that was saved in his contacts being identified. Were
23 there other numbers from contact information that you were
24 able to identify for this phone that was used to either
25 make or receive calls to?

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- 1 A Yes.
- 2 Q And who was that individual?
- 3 A Koontz Ashley.
- 4 Q And the phone number associated with that one?
- 5 A 825 Area Code, 848-6070.
- 6 Q 925?
- 7 A I'm sorry, area code 925.
- 8 Q That also was a contact I believe his cousin,
- 9 Ashley, off of this extraction, correct?
- 10 A Correct.
- 11 Q And there's also showing a -- some subscriber
- 12 information, there's also showing that this phone during
- 13 that time period had contact with a 404 number, correct?
- 14 A Yes, sir.
- 15 Q And what is that number and who is that individual?
- 16 A Area code -9703 listed as Ladondra Ellis.
- 17 Q And then additionally on the 26th, does it show
- 18 phone calls relative to the victim in our case?
- 19 A They do. On the 26th at 11:16 a.m. there's an
- 20 outbound call to area code -5730 listed as Vonkeith
- 21 Toland.
- 22 Q So as far as incoming and outgoing calls that
- 23 connect, it covers a time period of April 23rd to April
- 24 26th of 2014, correct?
- 25 A Correct.

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1 Q And the first several -- the very first phone call
2 made out on this was to a number associated with Terry
3 McClure?

4 A Correct.

5 Q And the second -- the third and the fourth were
6 actually going to an 864 contact that was in this phone,
7 correct?

8 A Correct.

9 Q In addition to call detail record, which is what
10 that is -- let me show you another document and ask if you
11 recognize this?

12 (State's Exhibit Number 66 was marked for
13 identification.)

14 BY MR. GRAHAM:

15 Q Investigator Phipps, State's 66, do you recognize
16 that?

17 A Yes, sir, I do.

18 Q And did that come from the text content that was
19 contained on the records provided for --

20 A The Verizon records for -5436.

21 Q Thank you. Yes. Is that correct?

22 A Yes, sir.

23 Q All right. Now this is text content specifically
24 from or to or the numbers associated with Mr. McClure, the
25 number associated to or from Ladondra Ellis, the 864 number

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1 that was saved in the contact of the phone found at Mr.
2 Butler's residence, the 510 number and also text content
3 the number associated with our victim, Vonkeith Toland; is
4 that correct?

5 A Yes, sir.

6 Q There was other information, but this was the
7 relevant information, correct?

8 A That's correct.

9 MR. GRAHAM: And, Your Honor, the State would offer
10 66 into evidence at this time.

11 MR. JAMES SNELL: Your Honor, we have objections to
12 the probative value and believe some portions are not
13 relevant.

14 THE COURT: What portion, what line are you
15 specifically referring to, Mr. Snell?

16 MR. JAMES SNELL: It was the provision, I think it
17 was the witness, Ellis. Basically the communications that
18 were between the --

19 THE COURT: Witness?

20 MR. JAMES SNELL: I'm sorry, not the witness,
21 but --

22 THE COURT: The name Ellis?

23 MR. JAMES SNELL: Yes, Your Honor. Basically the
24 communications -- the communications that were between --
25 allegedly between Mr. McClure and Mr. Butler. Those other

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1 names, which we object on relevancy for those items.

2 THE COURT: Step out please, ladies and gentlemen.

3 Do not discuss the case during this brief recess.

4 (The jury left the courtroom at 3:08 p.m.)

5 THE COURT: All right. On page one of State's

6 Exhibit Number 66, the third entry from the bottom

7 4/24/2014, 16:36 hours, from the number -5436, name

8 Justin Butler to -9703, name Ladondra Ellis, is that

9 what you're referring to?

10 MR. JAMES SNELL: Yes, Your Honor.

11 THE COURT: It says, hello this L brother. He told

12 me you were expecting my call when I get close. I'm about

13 an hour away so if you could call me when you get a chance.

14 And that's not relevant; that's your objection.

15 MR. JAMES SNELL: Yes, sir.

16 THE COURT: All right. Solicitor?

17 MR. GRAHAM: Your Honor, the -- if I remember,

18 right, Detective Sergeant Mefford testified that he made

19 contact with Ladondra Ellis and received information that

20 allowed him to go to the Greyhound Bus Station and he

21 retrieved videos, which we didn't show, but he also

22 retrieved the tickets and that's how he was able to know to

23 go to the Greyhound Bus Station was from communication with

24 Ladondra Ellis and this text is commensurate with that

25 time, Your Honor. It would go to corroborate that.

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1 THE COURT: Corroborate that the defendant made
2 contact with Ms. Ellis, who is the same individual that the
3 officer contacted?

4 MR. GRAHAM: Correct, which led him to --

5 THE COURT: For him to track back to Greyhound?

6 MR. MCNAIR: Correct.

7 THE COURT: All right. Your objections now, Mr.
8 Snell? Any other objections?

9 MR. JAMES SNELL: No, Your Honor.

10 THE COURT: All right. Then I would take that as
11 being circumstantial evidence and corroborated and,
12 therefore, relevant. And then on the second page, midway
13 down I see the date 4/24/14, same day as on the third from
14 the bottom on the first page. 1809 is the time from
15 number, I'm just going to state the last four digits of the
16 number, 5436, name Justin Butler to 9703 name Ladondra
17 Ellis; I should be there in five minutes.

18 Again, Solicitor, that's the same theory; you're
19 showing contact between Ms. Ellis and Mr. Butler that led
20 to the Greyhound Bus Station.

21 MR. GRAHAM: Correct, Your Honor.

22 THE COURT: All right. All right. I would allow
23 that also.

24 Now any other entries on the State's Exhibit 66 as
25 to objections on relevancy, Mr. Snell?

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1 MR. JAMES SNELL: If I may.

2 THE COURT: Yes, sir.

3 MR. JAMES SNELL: Your Honor, I think the 4/24 on
4 the first page.

5 THE COURT: Uh-huh (affirmative response).

6 MR. JAMES SNELL: Greenwood ACC, Your Honor.

7 THE COURT: All right. I see that on the -- on the
8 first page and four times -- five times on the second page.

9 Can you explain that, Solicitor.

10 MR. GRAHAM: Your Honor, I'm sorry, you have my
11 copies so I didn't know which ones he's talking about. The
12 Greenwood account owner, Your Honor, is the -- Detective
13 Garrick was talking about trying to figure out who the
14 owner was of that telephone number, which is -3791.
15 The records that we got in that Mr. Phipps has looked up
16 and that was communication between someone who we believe
17 to be in Greenwood because of the location of the cell
18 towers related to it. The account owner by the subscriber
19 information I believe was Cierra on that one. Detective
20 Garrick attempted to locate the actual owner and was unable
21 to, but the plotting information that will come up once we
22 move past this, which will be next, will show that this
23 phone, that 864 Greenwood phone was in the Greenwood area
24 and I believe that Detective Garrick testified that Mr.
25 Butler has family or relatives in the Greenwood area.

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1 The mapping will show that all of the phones being
2 Mr. McClure's phone, the 707 number, the 510 number
3 associated with Mr. Butler from his residence, and the 404
4 number associated with Mr. Butler with communication with
5 Vonkeith Toland, all end up in the Greenwood area. This
6 coordinates -- this shows communication and content between
7 Mr. Butler and the individual on the phone in Greenwood,
8 but the next witness will explain what some of the words
9 mean, but it has to do -- I mean it will be the State's
10 intention, Your Honor, that one of them was that Mr. Butler
11 stayed at the house.

12 I think there's a text that talks about I'm going
13 to slide up on you tonight or something like that and
14 there's also some of the text content in the State's
15 opinion and the testimony of an expert will talk about
16 getting a gun or what could be a gun from somebody in
17 Greenwood.

18 THE COURT: So what y'all have done is just unable
19 to identify Cierra, unable to get a name of the individual
20 who was the owner or operator of -3791; y'all have
21 just simply chosen the Greenwood account on a question
22 mark?

23 MR. GRAHAM: Yes, Your Honor.

24 THE COURT: That phone?

25 MR. GRAHAM: That is correct. If you want us to

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1 change it, we can get it reprinted with Cierra on that.

2 THE COURT: Well, let me ask you this. Tell me how
3 you know it's Greenwood?

4 MR. GRAHAM: Because of the plotting, when
5 Detective Phipps goes to plot that phone number during this
6 time I questioned it, they all come together in Greenwood.

7 THE COURT: All right. So -- so the cell tower
8 mapping, what the phone -- what cell tower the phone is
9 located?

10 MR. GRAHAM: Correct. We don't actually the
11 tower -- and Mr. Phipps, correct me if I'm wrong, but the
12 text content we don't have tower location.

13 THE COURT: All right.

14 MR. GRAHAM: For the phone calls that are around on
15 these dates and times which encompasses a three day period,
16 puts the Greenwood phone -- we're calling the Greenwood
17 phone in Greenwood by cell tower mapping from calls made to
18 the 404 number and to the 707 number and two other numbers,
19 Your Honor.

20 THE COURT: So this -- this would be Greenwood
21 Cierra, I mean basically?

22 MR. GRAHAM: Yes, Your Honor.

23 THE COURT: All right. Anything further Mr. -- as
24 to the Greenwood account on or question marked. Mr. Snell?

25 MR. JAMES SNELL: No, Your Honor.

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1 THE COURT: I'm going to -- I'm going to allow the
2 entry Cierra Greenwood account owner or Greenwood ACC
3 Owner. Are there other entries on here, Mr. Snell, as to
4 State's Exhibit 66?

5 MR. JAMES SNELL: Your Honor, I would object on the
6 prejudicial outweighs probative value for a lot of the, not
7 all, but a lot of the contents of the text messages.

8 THE COURT: A lot of the what?

9 MR. JAMES SNELL: Content of the text messages.

10 THE COURT: I can only rule on what you object to.
11 I can't rule on a lot of the content. I have to rule on it
12 item by item.

13 MR. JAMES SNELL: Yes, Your Honor. The -- the --
14 and it's -- and it's -- the first thing is a general
15 objection to bias of it outweighs its -- I think their
16 references, there may be some drug references.

17 THE COURT: Well, direct -- please direct my
18 attention to what you're referring to?

19 MR. JAMES SNELL: April 23rd, 2014.

20 THE COURT: All right.

21 MR. JAMES SNELL: 15:58.

22 THE COURT: 15:58. Bro, you can bring the nickel
23 with you tomorrow?

24 MR. JAMES SNELL: Yes, Your Honor.

25 THE COURT: Well, there's testimony already in

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1 evidence as to drugs, both as to statements allegedly made
2 by Mr. -- Mr. Butler to Mr. Vonkeith -- to Mr. Vonkeith
3 Toland and tell me, I don't know what a nickel is. I know
4 a dime ain't worth a nickel anymore, but I don't know what
5 a nickel is.

6 MR. JAMES SNELL: And -- and -- and my
7 understanding that's an expression for a unit or measure of
8 drugs.

9 THE COURT: All right. I will deny that motion as
10 far as 403 analysis. All right. Other's?

11 MR. JAMES SNELL: 20 -- 4/23/2014 at 21:19.

12 THE COURT: 21:19, all right.

13 MR. JAMES SNELL: There's some reference, kind of
14 what could be construed as a racial slur and it's
15 communication between African Americans, but I don't -- I
16 don't see what the probative value, you know, the meaning
17 of that content is and there's potential offense that some
18 juror may take or that could create a prejudicial result.

19 THE COURT: What about that, Solicitor? 4/23/14,
20 21:19; this is a text, correct?

21 MR. JAMES SNELL: Correct, Your Honor. That was
22 texts that we were associating from the defendant to Mr.
23 McClure. I mean, I don't know that the word adds anything
24 or takes anything away. It is the word he chose to use.
25 If --

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1 THE COURT: Well, Mr. Snell is alleging that the
2 word would perhaps offend African American jurors on the
3 jury and it is a word that would have been texted and used
4 by Mr. Butler in a text to Mr. McClure as I understand it?

5 MR. JAMES SNELL: I understand, Your Honor. I
6 don't have -- we can take a Sharpie and mark that out, Your
7 Honor.

8 THE COURT: All right. Redact that word. Any
9 others?

10 All right. Redact that.

11 Next, Mr. Snell?

12 MR. JAMES SNELL: And, Your Honor 4/24 at 10:05.

13 THE COURT: All right. And what about that?

14 MR. JAMES SNELL: There is a, maybe, I guess a
15 term, B-I-T-C-H.

16 THE COURT: The word bitch is in there, yes, sir.

17 MR. JAMES SNELL: Yes, Your Honor, and the same
18 thing, I would not want that to be considered offensive to
19 some of the jurors and be prejudicial as being degrading or
20 negative towards women or --

21 THE COURT: Well, then you want me to take the
22 B-I-T-C-H in and have it say, the blood have the K-U-M come
23 get me. What you want me to have -- put in there, a blood
24 have, lady, I --

25 What about that, Solicitor?

Michael Phipps - Direct Examination by Mr. Graham

1 MR. GRAHAM: Your Honor, I understand the
2 objection, but it is what he said. I don't know what to
3 change it to other than to wipe it out and leave it white.

4 THE COURT: All right. Remove the word B-I-T-C-H,
5 redact it.

6 Next and 4/24/2014, 11:29 redact the word
7 B-I-T-C-H.

8 Any others on the first page?

9 MR. JAMES SNELL: No, Your Honor?

10 THE COURT: How about page 2.

11 MR. JAMES SNELL: No, Your Honor.

12 THE COURT: All right. Any other objections as to
13 66, besides previous objections?

14 MR. JAMES SNELL: Your Honor, if I may, on the
15 first page.

16 THE COURT: Yes, sir.

17 MR. JAMES SNELL: April 24th, 2014.

18 THE COURT: Yes, sir.

19 MR. JAMES SNELL: Where it says the first line is a
20 blood.

21 THE COURT: I'm not redacting that.

22 MR. JAMES SNELL: No other -- no other specific
23 objections on that grounds. We would renew our previous
24 objection to cover the phone data.

25 THE COURT: All right. Based on the pretrial

Michael Phipps - Direct Examination by Mr. Graham

1 ruling?

2 MR. JAMES SNELL: Yes, Your Honor.

3 THE COURT: All right. Or in-camera ruling,
4 whatever you call it. If you'd redact those words, I think
5 B-I-T-C-H twice and the other word on 4/23/2014, 21;19,
6 correct?

7 MR. GRAHAM: You want me to do it, Your Honor, with
8 a Sharpie or by computer.

9 THE COURT: I want you to do it where it's
10 redacted.

11 Court will be in recess.

12 You may step down, Mr. Phipps. Do not discuss your
13 testimony.

14 (A brief recess was observed.)

15 THE COURT: Anything before we bring in the jury?

16 MR. GRAHAM: I'm still waiting for the document to
17 come back.

18 THE COURT: All right.

19 MR. GRAHAM: But I don't plan on publishing it with
20 this witness, I just need to get it in.

21 THE COURT: Say it again?

22 MR. GRAHAM: I do not plan on publishing it with
23 this witness, I just need to get it into evidence.

24 THE COURT: All right. Anything from the defense,
25 Mr. Snell?

Michael Phipps - Direct Examination by Mr. Graham

1 MR. SNELL: No, Your Honor.

2 THE COURT: Thank you. We need to wait on the
3 document.

4 (There was a pause in the proceedings.)

5 MR. GRAHAM: All right. Your Honor, we're ready.

6 THE COURT: All right. Bring us our jury.

7 (The jury entered the courtroom at 3:44 p.m.)

8 (The witness returned to the stand.)

9 THE COURT: All right. Welcome back.

10 Solicitor, you may ask your next question.

11 MR. GRAHAM: Your Honor, I think at the time we
12 broke, I was trying to introduce State's Number 66 into
13 evidence.

14 THE COURT: All right. 66 is in evidence subject
15 to previous objections and redactions as ordered by the
16 Court.

17 (State's Exhibit Number 66 was entered into
18 evidence.)

19 MR. GRAHAM: Redactions were accomplished.

20 THE COURT: All right. A redaction means that I
21 have ordered that certain segments of State's 66 is not
22 admissible. So don't hold that for or against the State,
23 for or against the defense because you may see parts that
24 are -- I don't know if they're blacked out or whited out,
25 what have you, but it has been -- has been redacted by the

Michael Phipps - Direct Examination by Mr. Graham

1 Court.

2 All right. You may continue, Solicitor.

3 BY MR. GRAHAM:

4 Q Just very briefly, Investigator Phipps, looking at
5 State's 66, this is the text content from the 404 phone,
6 correct?

7 A From the Verizon records, yes, sir.

8 Q Okay. The very first entry that we have in here is
9 at what date and time?

10 A April 23rd at which is 2:04, I mean 1404.

11 Q And who is it from and to?

12 A It's from Terry McClure, -0402 number to
13 Justin Butler.

14 Q And that goes -- how does that compare with the
15 first telephone calls on the same number that were on
16 State's 65?

17 A The outbound calls to Mr. McClure on the phone
18 record is on the 23rd at 1:01 p.m.

19 Q Now the times that are on State's 66 are in
20 military time?

21 A Yes, sir.

22 Q The times on State's 65, those are in regular
23 people time with a.m. and p.m., correct?

24 THE COURT: Regular people time?

25 MR. GRAHAM: Regular people time.

Michael Phipps - Direct Examination by Mr. Graham

1 THE COURT: Rephrase that question. Non-military?

2 BY MR. GRAHAM:

3 Q Non-military?

4 A Yes, sir; that's correct.

5 Q So can you explain to the jury military time?

6 A It's -- it's the way of tracking time without using
7 the a.m. and p.m. marker so after you go past noon, the --
8 the numbers keep counting up rather than going to one
9 o'clock it would be 1300.

10 Q Okay.

11 MR. GRAHAM: Your Honor, this document will be
12 published with another witness.

13 THE COURT: All right.

14 BY MR. GRAHAM:

15 Q Moving on, Investigator Phipps, we talked about all
16 the records that you reviewed. Did you have the
17 opportunity to review movements of the phone?

18 A Yes, sir, I was asked to look at tower data and
19 plot those -- that activity.

20 (State's Exhibit Number 67 and Number 68 was marked
21 for identification.)

22 BY MR. GRAHAM:

23 Q Okay. So specifically let me show you two items
24 and ask if you recognize them.

25 A Yes, sir.

Michael Phipps - Direct Examination by Mr. Graham

1 Q Do you recognize State's Number 67?

2 A Yes, sir, I do.

3 Q And did you prepare that document?

4 A I did.

5 Q And those are from the phone records that have
6 previously been admitted for identification?

7 A Yes, sir.

8 Q And which specific phones, for the purpose of
9 State's 67, and 68 did you look at?

10 A The -- the call records in this instance are for
11 the --6536 number for Mr. Butler. Also referencing
12 an additional number --0391.

13 Q The 510 number, is that the number that the
14 extraction came from, from the phone found in the residence
15 that Mr. Butler lived in?

16 A It's the same one, yes.

17 Q The 404 number, that's the number that Vonkeith
18 Toland testified that he spoke with Mr. Butler on, correct?

19 A I'm not sure of the testimony. I know from the
20 course of our investigation that's what was determined,
21 yes, sir.

22 Q So State's 67 is those two phone records for
23 incoming and outgoing calls for a certain time period,
24 correct?

25 A Yes, sir, they are.

Michael Phipps - Direct Examination by Mr. Graham

1 Q What's the time period that State's 67 covers for
2 those two phones?

3 A April 24th, 2014, from 8:59 a.m. to 4:10 p.m. and
4 it's in Central time, Daylight time.

5 Q Now, are these all the calls that were made during
6 that time or just selected ones?

7 A Just selected ones.

8 Q Why did you select these?

9 A They are either incoming or outgoing calls to
10 various parties that came up and have been identified
11 during the course of the investigation.

12 Q So what specific information for those two phones
13 are you showing on State's 67?

14 A There's a call that shows the date and time. The
15 next column over is the direction is whether it's incoming
16 or outgoing; and then again, like we had on the other
17 document, it's either the -- the number that's being called
18 or the the number that's calling in from the outside. The
19 next column over is the time lapse in seconds and then a
20 tower number.

21 Q And does this fairly and accurately represent
22 information that you pulled from the records that have been
23 previously admitted for those two numbers?

24 A Yes, sir.

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

Michael Phipps - Direct Examination by Mr. Graham

1 State's 67 into evidence.

2 MR. JAMES SNELL: We renew our prior objections.

3 THE COURT: Subject to prior objections, State's 67
4 is in evidence.

5 (State's Exhibit Number 67 was entered into
6 evidence.)

7 BY MR. GRAHAM:

8 Q Now, once you pulled out selected calls for those
9 time periods for those two phones, were you able to
10 actually able to map the movement of those phones?

11 A Yes, sir.

12 Q Let me show you State's 68 and ask if you recognize
13 that?

14 A Yes, sir.

15 Q Did you prepare that?

16 A I did.

17 Q And does that fairly and accurately show the towers
18 that were used by those two phones during the time period?

19 A For the ones that are represented in the chart,
20 yes, sir.

21 Q And would it assist you in explaining to the jury
22 the movement of those two phones during that time?

23 A It will.

24 MR. GRAHAM: Your Honor, the State would offer 68
25 into evidence?

Michael Phipps - Direct Examination by Mr. Graham

1 THE COURT: Mr. Snell?

2 MR. JAMES SNELL: Your Honor, subject to our prior
3 objections.

4 THE COURT: Subject to prior objections, State's 68
5 is in evidence.

6 (State's Exhibit Number 68 was entered into
7 evidence.)

8 MR. GRAHAM: Your Honor, could I have Investigator
9 Phipps step down?

10 THE COURT: Yes, sir.

11 BY MR. GRAHAM:

12 Q All right. Looking at State's 67 briefly would you
13 explain to the jury what these columns are so they'll
14 understand it when they're looking at it later?

15 A The first row is the date and time. The second row
16 over is the direction of the call whether it's incoming or
17 outbound call. Then the to and from that reads from left
18 to right and that number either called from, to the other
19 number or vice versa. So you just read it straight across
20 left to right.

21 Then you have a time called and it's in seconds and
22 then a tower, the numerical value for a tower that
23 corresponds to the towers that are marked on the map.

24 Q Have you also created a key, I see this is color
25 coded, is there also a key that you created?

Michael Phipps - Direct Examination by Mr. Graham

1 A Yes, sir. We had so many phones in play that we
2 tried to color code them just to visually give you some
3 idea of who you're dealing with.

4 Q And do you have document up here?

5 A I don't know if we've got one.

6 Q Do we have -- we'll worry about that as we go. So
7 this map represents what?

8 A This is Alabama, we're up in sort of the
9 northwestern corner, quadrant of Alabama and the call
10 history for these two phones, the 404 and the 510 phones,
11 start off in this upper left corner.

12 Q So the very first call during this time period is
13 what?

14 A April 24th at 8:59 a.m. and the colors that are
15 involved here, we've got sort of a dark blue purplish as it
16 appears on here, then a very pale blue. The 404 is the
17 darker color. 510 is a lighter colored numbers. So
18 whenever you see a particular tower, in this case the 7328
19 tower, it being light blue means that the 510 phone was
20 connected to that tower.

21 Q Investigator Phipps, if I look at State's 65 which
22 is evidence, that was the call detail records for this?

23 A Yes.

24 Q The background actually contains a key that matches
25 up with this, correct?

Michael Phipps - Direct Examination by Mr. Graham

1 A Yes, sir.

2 Q All right. So the color code means what in this
3 chart that we're looking at -- for this one the purple
4 means that it corresponds with this over here; is that
5 correct?

6 A That's correct, yes, sir.

7 Q And what can you tell me about the movement of that
8 phone for this time period?

9 A Again, the first call was at 8:59 a.m. on the 24th.
10 It was an inbound call from Mr. McClure to that number
11 starting right there.

12 Q Okay.

13 A Following that --

14 Q Sequentially, where is the next tower it hits?

15 A 328.

16 Q Then the next tower sequentially after that?

17 A 302.

18 Q And you've also got something labeled up here in
19 gray, what is that?

20 A It's a Greyhound Bus Station in the Athens,
21 Alabama.

22 Q And now the next time you have -- when's the first
23 time during this time period you have phone activity for
24 the 510 number?

25 A 510 number occurs at 11:41 a.m. on the 24th.

Michael Phipps - Direct Examination by Mr. Graham

1 Q And is that indicated on here on Tower 7328?

2 A Yes, sir.

3 Q And these are the same networks or different phone
4 networks?

5 A Different phone networks.

6 Q All right. And then what do we see down here; it
7 looks like there's purple and blue together?

8 A Right. There's two towers that are very close. In
9 some instances you can have different networks on the same
10 tower or as you would see them around town, they can be
11 right across the street from each other. So we have a dark
12 blue, a light blue and then we also have another gray
13 location that we have up here for another Greyhound Bus
14 Station.

15 Q So what, if anything, can you tell me about the
16 phone activity for both of those numbers on Tower 79 and
17 tower 7426 for those two numbers when they're in the
18 vicinity of the Greyhound Bus Station?

19 A 79 and 7426 occurs from the time period of 12:43
20 p.m. on the 24th through 1:35 p.m. so during that time
21 period, multiple calls transacted on those two towers for
22 that location.

23 Q So is it fair to say that during the time period
24 you just talked about that both phones are in that area at
25 the same time?

Michael Phipps - Direct Examination by Mr. Graham

1 A Correct, yes, sir.

2 Q Moving on, we see multiple towers that are on 510.
3 Are those chronologically in order of moving from 7478 to
4 7501 to 7513 on or to the next Greyhound Bus Station?

5 A That's correct, yes.

6 Q All right. What, if anything, are you showing up
7 here around the Greyhound Bus Station in Gadsden, Alabama?

8 A Again you have two towers close together in close
9 proximity to the Greyhound Bus Station. The first calls on
10 the 7537 tower occurs at 2:38 p.m. and they remain in that
11 area through 2:45 p.m., both phones.

12 Q Both phones. And as we continue on, where are the
13 next towers that get hit chronologically?

14 A Again just moving down the 7549, 44, 100 and moving
15 on down to I-20.

16 Q Now, down here there's a -- one tower that looks
17 like it's two colors; what does that mean?

18 A In this instance, the two different cell phone
19 providers actually have their equipment physically on the
20 same tower so we represented it with a split color so you
21 have two different providers accessing the same physical
22 location.

23 Q What are -- what's the time of those two different
24 phones accessing that --

25 A It was 3 --

Michael Phipps - Direct Examination by Mr. Graham

1 Q -- tower?

2 A The 8:48 tower was used first at 3:45 p.m. and then
3 it runs through 3:51 p.m. for the 510 number.

4 Q So very close in time?

5 A Yes, sir.

6 Q Okay. Now, after this before we move on to another
7 map, chronologically and movement wise, where do these two
8 phones go?

9 A They move into Georgia; that was the state line
10 right here.

11 Q If you'll have a seat. Before we proceed --

12 (The Court was returning to the bench from watching
13 the witness demonstration on the tower diagram.)

14 MR. GRAHAM: I'm sorry.

15 THE COURT: That's quite all right, Solicitor.

16 Thank you.

17 BY MR. GRAHAM:

18 Q Investigator Phipps, before we follow these two
19 phones, the 404 and the 510 in Georgia, can you tell me the
20 707 number that's attributed to Terry McClure; did you have
21 an opportunity to review those records as well?

22 A Yes, sir. I also obtained those records from the
23 cell phone provider and plotted those locations. That same
24 morning, his call activity starts in California and then it
25 goes to Dulles Airport in Virginia, and then into Georgia

Michael Phipps - Direct Examination by Mr. Graham

1 Q Specifically where in Georgia did he first appear
2 at the 707 number?

3 A The airport in Atlanta, Georgia.

4 Q Let me show you a -- two more documents and ask if
5 you recognize them?

6 (State's Exhibit Number 69 and Number 70 were
7 marked for identification.)

8 BY MR. GRAHAM:

9 Q State's 69, do you recognize that?

10 A Yes, sir, it's a table I produced.

11 Q And is that a table that combines the two previous
12 phones we talked about, the 404 number, the 510 area code
13 and now are you starting to include the 707 Area Code?

14 A Yes, sir.

15 Q And again, are these selected calls or every call?

16 A Selected calls.

17 Q Just to show movement of the phones?

18 A Yes, sir.

19 Q Okay. What's the time that is covered in this
20 document in State's 69?

21 A This one covers April 24th, 2014 from 6:19 p.m.
22 through 8:43 p.m.

23 Q And do those fairly and accurately reflect the
24 records that you pulled from the items that are previously
25 in evidence?

Michael Phipps - Direct Examination by Mr. Graham

1 A Yes, sir.

2 MR. GRAHAM: Your Honor, the State would offer 69
3 into evidence?

4 MR. JAMES SNELL: Your Honor, we would renew our
5 prior objection.

6 THE COURT: All right. 69 is in evidence subject
7 to the previous objections.

8 (State's Exhibit Number 69 was entered into
9 evidence.)

10 BY MR. GRAHAM:

11 Q State's Number 70, do you recognize this?

12 A Yes, sir.

13 Q And is that a map that corresponds with the towers
14 that were used for the calls you selected for those three
15 phone numbers?

16 A Yes, sir.

17 MR. GRAHAM: Your Honor, the State would offer 70
18 into evidence at this time?

19 MR. JAMES SNELL: We would renew our prior
20 objection.

21 THE COURT: All right. 70 is in evidence subject
22 to previous objections.

23 (State's Exhibit Number 70 was entered into
24 evidence.)

25 MR. GRAHAM: And if I could have Mr. Phipps step

Michael Phipps - Direct Examination by Mr. Graham

1 down, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. GRAHAM:

4 Q Investigator Phipps, referring to State's 70 again,
5 what is the time period and the dates we are covering here?

6 A Again, April 24th, 2014, from 6:15 p.m. to 8:43
7 p.m.

8 Q And that would pick up three phones, correct?

9 A Right. We're now in Eastern time where previously
10 we were in Central time in Alabama.

11 Q So State's 68, when it says it ended at 4:10 p.m.
12 you've got CDT?

13 A Central Daylight Time, yes, sir.

14 Q So when we move over to this one now, we're in
15 which time zone?

16 A Eastern Time Zone. Same time zone we're all in.

17 Q So how does that relate to --

18 A There's one hour's difference between the two.
19 They're one hour ahead or behind.

20 Q So 4:10 p.m. here would actually translate into
21 5:10 here?

22 A Correct.

23 Q Okay. Looking at State's 69, as far as movement of
24 these three phones, what can you tell the jury?

25 A For the Central Atlanta area, the first occurrence

Michael Phipps - Direct Examination by Mr. Graham

1 of Mr. McClure's number occurred at 6:19 and it was at
2 Tower 1607, which will be down here in the airport area
3 right there.

4 Following that, there was a 404 number outbound
5 from Mr. Butler at 6 -- at 6:20 p.m. on Tower 395 up here
6 by the Greyhound Bus Station.

7 Q And then -- so the 404 number is first used up here
8 by the Greyhound Bus Station, the 707 with Mr. McClure is
9 down by the airport?

10 A Correct.

11 Q Okay. What does the rest of this tell us?

12 A This phone, the 404 phone and then ultimately the
13 510 number also moves down into this area and they're both
14 in this general location for a period of time.

15 Q At what point, do these three phones leave this
16 area and where do they travel to next?

17 A At 8:43 p.m. is the last local call to this general
18 area and then they proceed sort of northeast towards South
19 Carolina.

20 Q You can have a seat. Thank you.

21 (The Court was returning to the bench from watching
22 the witness demonstration on the tower diagram.)

23 MR. GRAHAM: I have two more maps, Your Honor and
24 two more documents.

25 THE COURT: This one and one more?

Michael Phipps - Direct Examination by Mr. Graham

1 MR. GRAHAM: This one and one other.

2 (State's Exhibit Number 71, Number 72, Number 73,
3 and Number 74 were marked for evidence.)

4 BY MR. GRAHAM:

5 Q Let me show you State's Number 72 and ask if you
6 recognize that.

7 A Yes, sir, I do.

8 Q You want the other one first?

9 A This is the 27th.

10 Q Okay. Well we'll go ahead with that one. What is
11 State's 72?

12 A It's again the same geographical area, the downtown
13 Atlanta area, but for April 27th instead of the 24th and
14 it's showing those same two phones belonging to McClure and
15 one of them, the 510 number re-entering that downtown
16 Georgia area.

17 Q So when we left off on the two previous exhibits,
18 you said they were traveling to South Carolina here, that
19 was on the 24th. Now we're on the 27th and we're traveling
20 away?

21 A Yes, sir.

22 Q Now, one of the phones has disappeared because you
23 don't have records for it, correct?

24 A That's correct.

25 Q You only at this point have records for the 510,

Michael Phipps - Direct Examination by Mr. Graham

1 707 -- the 510 number and the 707 number?

2 A Right.

3 Q The 404, what happened to those?

4 A Those call records ended in South Carolina.

5 Q Okay.

6 MR. GRAHAM: Your Honor, the State would offer 72
7 into evidence.

8 MR. JAMES SNELL: We would renew our prior
9 objections.

10 THE COURT: Subject to previous objection, State's
11 72 is in evidence.

12 (State's Exhibit Number 72 was entered into
13 evidence.)

14 BY MR. GRAHAM:

15 Q Additionally, State's 71, did you prepare that map?

16 A Yes, sir, I did.

17 Q And does it fairly and accurately depict the
18 information contained in 72 to explain movement of those
19 two phones?

20 A Yes.

21 Q The State would offer 71 into evidence?

22 MR. JAMES SNELL: Renew our prior objections.

23 THE COURT: Subject to previous objections, State's
24 71 is in evidence.

25 (State's Exhibit Number 71 was entered into

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1 evidence.)

2 MR. GRAHAM: Your Honor, if I could have the
3 witness step down?

4 THE COURT: Yes, sir.

5 BY MR. GRAHAM:

6 Q Investigator Phipps, the previous two, 69 and 70
7 and the time that we ended on those was April 24th at 8:43
8 p.m. and you said from there, they move into South
9 Carolina, correct?

10 A That's correct.

11 Q All right. When we're looking at State's 71, we've
12 now gone to April 27th which is after the murder and the
13 burglary, correct?

14 A Yes, sir.

15 Q What does this show us?

16 A Again this is showing at 3:56 a.m. on the 27th,
17 this is the first occurrence of any activity for these
18 phones in the downtown Georgia area. The first occurrence
19 is on the 510 number at 3:56 and there's multiple --
20 there's multiple calls or activity on that same number
21 throughout the morning until 9:59 a.m.

22 The first occurrence of the 707 number is at 12:21
23 p.m. down here at the airport.

24 Q All right. So although we don't have maps, if you
25 know, where does the 707 number go later on after this time

Michael Phipps - Direct Examination by Mr. Graham

1 period?

2 A It reappears in the Charlotte area by the airport
3 in Charlotte and then reappears again in California.

4 Q The 510 number is up here by the Greyhound Bus
5 Station on the 27th from 3:56 a.m. somewhere to 8:43 p.m.,
6 correct?

7 A Correct.

8 Q After 8:43 p.m. on the 27th, where does the 510
9 number that was the phone taken from Mr. Butler's house go?

10 A That one travels towards -- towards the west into
11 Alabama.

12 Q Okay. If you will have a seat.

13 (State's Exhibit Number 75 and Number 76 was marked
14 for identification.)

15 Let me show you several more documents.

16 Investigator Phipps, let me show you some documents and ask
17 if you recognize them, what's been premarked as State's 73;
18 what is that?

19 MR. JAMES SNELL: Your Honor, I'm going to object
20 to this document and the other data to its relevance.

21 Number one, we renew our previous objection. Number two,
22 the documentation and supported data is not backed up with
23 any testifying records custodian and we do not believe that
24 the -- that there's a basis for their -- for foundation.

25 THE COURT: All right. What are these documents,

Michael Phipps - Direct Examination by Mr. Graham

1 BY MR. GRAHAM:

2 Q Investigator Phipps, looking at what's been
3 premarked as 75 for identification, do you recognize that?

4 A Yes, sir.

5 Q And have you had an opportunity to review it?

6 A I did, yes, sir.

7 Q And do those contain records from AT&T?

8 A They do, yes, sir.

9 Q Related to telephone number -8366?

10 A Yes, sir, they do.

11 Q And are those the kind of records similar to the
12 ones that we got in the other from Verizon and Sprint for
13 the other numbers?

14 A Correct, they all present in a little different
15 manner, but yes, it's considered a call detail record which
16 has incoming and outgoing calls.

17 Q Specifically for what we're talking about today,
18 among other things, it contains call detail records and
19 tower locations with dates and times of use?

20 A Yes, sir.

21 Q And is this the kind of information that would
22 assist you in mapping and explaining as we have on the
23 other phones?

24 A Yes, sir.

25 MR. GRAHAM: And, Your Honor, the State would

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1 move -- well it's 75 for identification, but under 76, we'd
2 ask that these be allowed to be authenticated and to a
3 allow Mr. Phipps to use them in discussions of State's 73
4 and 70?

5 THE COURT: Subject to your objections, Mr. Snell?

6 MR. JAMES SNELL: Yes, Your Honor.

7 THE COURT: All right. 75, 76 and 70 --

8 MR. MCNAIR: Seventy -- 76 is the affidavit that
9 would be in evidence. 75 is for identification, Your
10 Honor.

11 THE COURT: Correct. All right.

12 (State's Exhibit Number 75 and Number 76 were
13 entered into evidence.)

14 MR. GRAHAM: And then jumping back, Your Honor --

15 BY MR. GRAHAM:

16 Q 73 was the document -- did you prepare that
17 document?

18 A Yes, I did.

19 Q Does it contain calls from 510 information, 404
20 information, and 707 information, and now the AT&T records
21 of the number associated with VonKeith Toland,
22 -8366?

23 A It does.

24 Q And does that fairly and accurately represent
25 selected calls that you took from those four different

Michael Phipps -- Direct Examination by Mr. Graham

1 phone numbers?

2 A It does, yes, sir.

3 Q And what's the time period that this covers?

4 A From April 26th, 2014 from 12:19 p.m. through 5:18
5 p.m.

6 MR. GRAHAM: Your Honor, the State would move
7 Seventy-three into evidence?

8 THE COURT: Subject to previous objection?

9 MR. JAMES SNELL: Yes, Your Honor.

10 THE COURT: 73 is in evidence.

11 (State's Exhibit Number 73 was entered into
12 evidence.)

13 BY MR. GRAHAM:

14 Q State's Exhibit 74, do you recognize that being the
15 map corresponding to the times in 73?

16 A Yes, sir.

17 Q And does it help you explain the location and
18 movement of those phones or location of phones at those
19 specified times?

20 A It does, yes.

21 MR. GRAHAM: Your Honor, the State would move 74
22 into evidence.

23 THE COURT: 74 is in evidence subject to objection?

24 MR. JAMES SNELL: Yes, sir.

25 (State's Exhibit Number 74 was entered into

Michael Phipps - Direct Examination by Mr. Graham

1 evidence.)

2 (State's Exhibit Number 77 and Number 78 were
3 marked for identification.)

4 BY MR. GRAHAM:

5 Q Prior to publishing those, Mr. Phipps, Let me have
6 you look at another set and ask if you recognize these two
7 documents, what's been premarked as State's Seventy-seven
8 and Seventy-eight; do you recognize those two documents?

9 A Yes, sir, I do.

10 Q All right. 77 is a compilation of phone, specific
11 calls showing time and tower location and tower location
12 access for what phone numbers?

13 A -5436 also -0391 and then also
14 -0402 and then finally -3791.

15 Q All right. The 864 is a new number that you're
16 beginning to track at this time, correct?

17 A Yes, sir.

18 Q All right. And that's the number that was saved in
19 the contact of the 510 phone taken from Mr. Butler's
20 residence in Alabama, correct?

21 A Yes, sir, that's correct.

22 Q All right. What, if anything --

23 MR. GRAHAM: Your Honor, the State would move 77
24 into evidence and 78, which is a map to go along with 77.

25 MR. JAMES SNELL: Your Honor, we would renew our

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1 prior objections.

2 THE COURT: All right. Subject to previous
3 objections, 77 and 78 is in evidence.

4 (State's Exhibit Number 77 and Number 78 were
5 entered into evidence.)

6 BY MR. GRAHAM:

7 Q Investigator Phipps, similar to what we talked
8 about in the past, when I'm holding 78 for the jury, just
9 in general terms, can you tell me what the time period is
10 covered in this map?

11 A It starts at 10:20 p.m. on the 24th in the upper
12 left hand corner of the map which is in the upstate of
13 South Carolina. There is an outbound from the 510 number
14 to an 864 number, that we haven't spoken about.

15 Q Okay. What can you tell me on State's 78 when I
16 look over in this area which has Towers 177, 456, 187, 178
17 and 188, I see a bunch of colors in a short location of
18 distance; what is that telling us?

19 A That's in the town area of Greenwood. There's
20 three towers, actually four towers, in that municipality
21 there and all these -- all four phones were connecting to
22 those towers in that geographical area over a long period
23 of time.

24 Q So is it fair to say that all four of those phones
25 are in that geographical area at the same time during this

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1 time period?

2 A Yes, sir.

3 Q Okay. So this time period ends on April 26th at
4 11:48; where do we go next?

5 A Down into Lexington County.

6 Q And is that what we were showing on State's 74?

7 A Yes, sir.

8 MR. GRAHAM: Your Honor, if I could have Mr. Phipps
9 step down?

10 THE COURT: Yes, sir, you may step down.

11 BY MR. GRAHAM:

12 Q All right. So the date and time looking at State's
13 74, we're now when?

14 A April 26th at 12:19 p.m. is where it starts out at
15 in the top left corner on the map.

16 Q That's right after lunch?

17 A Correct.

18 Q Okay. Tell me what the movement of the phones are
19 on this day?

20 A On this day we have the 510 number and the 707
21 number that are coming down from the top left down into the
22 center of Lexington County.

23 Q The 510 is represented in pink on this map?

24 A Correct. No, the 510 is the light blue, the 707 is
25 the pink.

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1 Q And purple is?

2 A Purple is the 404 number.

3 Q Okay. So for example, when I'm here in Batesburg,
4 Leesville at 251, Tower 251 and 259, what is that telling
5 me or telling the jury?

6 A Well it -- it around twelve o'clock or just after
7 12:30 Tower 251 and 133 sequentially are hit. First 251
8 and then 133 and then it moves on down.

9 Q All right. Now there's some gray markers on here;
10 what do those designate?

11 A Locations that were applied to this map. This
12 being Bushberry Road.

13 Q And there's also another one for the bottom right
14 of 674?

15 A Correct, Savannah Highway in North, South
16 Carolina.

17 Q And are those accurately where they need to be on
18 this map?

19 A Yes, sir.

20 Q All right. So what are the movements of -- well we
21 have two in the red; what are those showing or three in red
22 actually?

23 A Right. These are AT&T towers for the additional
24 number -8366 phone number that we started tracking.

25 Q So what can you tell about the location of the

Michael Phipps - Direct Examination by Mr. Graham

1 towers that that phone used and what time period was it?

2 A It's first appearance is at 1:01 p.m. down here on
3 this -- AT&T doesn't assign a number to the tower so I just
4 gave it a designation, Tower C, we're calling it and it
5 corresponds to the C listed on the chart. So it starts off
6 here and moves up.

7 Q So what is the last time that there's a tower
8 location for the number, the -318 number associated with
9 Vonkeith Toland?

10 A The very last entry on the call detail record is at
11 3:35 p.m. on the 26th on this Tower A location.

12 Q All right. As far as the other three phones that
13 you're tracking, can you in general terms explain the
14 movement of what's happening during the time period on
15 State's 74?

16 A They move down to the North location, Tower 284 is
17 in use through 3:12 p.m. here. Additionally the -- the
18 -5436 number at 5:02 p.m. is -- that's going back
19 out. Never mind. The last location for 3:12 p.m. would be
20 down here at Tower 284. From that point they start moving
21 back out up the same route that they entered that area of
22 Lexington.

23 Q Can you provide the times -- so at 3:12 p.m. which
24 phones are near Savannah Highway, which phones had
25 activity there?

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1 A Well, they're there through from 1:13 p.m. on Tower
2 82, it's a 404 number and it runs through 3:12 p.m. on the
3 510 number. So in this area until that time period.

4 Q All right. The 911 call I believe was testified to
5 have come in around 4:30 or so, 4:23. What activity do you
6 have after 4:23 as far as --

7 A The very next entry after that time period is 4:56
8 p.m. that's on Tower 133.

9 Q Which phone are we referring to at that point?

10 A That is the 510 number.

11 Q And the 510 number is in the?

12 A The blue.

13 Q In the blue?

14 A Yes, sir.

15 Q How about the next activity for the 510 number?

16 A The next one, 510 is on Tower 251 at 5:02.

17 Q Up here?

18 A Yes, sir.

19 Q And then how about the 707 number?

20 A 707 number, 5:02 on Tower 251, which is back up
21 that way.

22 Q All right. From here I believe you previously
23 testified we soon run out of records for the 404, correct?

24 A Correct.

25 Q The 707 number goes back to where?

Michael Phipps - Cross-Examination by Mr. James Snell

1 A The 707 number will -- they both track back to the
2 Atlanta area. 707 number goes dead in Atlanta, reappears
3 in the Charlotte area and then from the Charlotte area, it
4 reappears in California.

5 Q The 510 number, what does it do?

6 A 510 it basically takes a reverse path that we saw
7 going back into Alabama.

8 Q Thank you, Mr. Phipps. Please have a seat.

9 MR. GRAHAM: Your Honor, that's all the questions
10 that I have for Mr. Phipps.

11 THE COURT: Thank you.

12 Mr. Snell?

13 **CROSS-EXAMINATION**

14 **BY MR. JAMES SNELL:**

15 Q Mr. Phipps, your role in this case is limited just
16 to analysis of the phone records and the material that you
17 testified to; is that correct?

18 A And the acquisition of the physical device as well,
19 yes.

20 Q And you don't have any direct, personal, first-hand
21 knowledge of the incident, the shooting of either Mr.
22 Toland?

23 A No, sir.

24 Q Thank you. No other questions?

25 THE COURT: Redirect?

Janice E. Ross - Direct Examination by Mr. Graham

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

2 THE COURT: Thank you, Mr. Phipps.

3 All right. Solicitor, call your next witness.

4 MR. GRAHAM: The State calls Dr. Janice Ross.

5 JANICE ROSS,

6 after having been duly sworn, testified as follows:

7 THE CLERK: Have a seat, Doctor. Once you're
8 seated, state your full name spelling your last for the
9 record.

10 THE WITNESS: Janice Edwards Ross. R-O-S-S.

11 **DIRECT EXAMINATION**

12 BY MR. GRAHAM:

13 Q Dr. Ross, how are you employed, ma'am?

14 A I am a Forensic Pathologist with Newberry Pathology
15 Associates.

16 Q What is a Forensic Pathologist?

17 A A Pathologist is a doctor with four years of
18 college and four years of medical school, a total of five
19 years in the training in the field of Pathology as opposed
20 to something like surgery or pediatrics. A Pathologist
21 learns how to diagnose diseases by looking at tissue either
22 under the microscope; you learn how to do an autopsy and
23 define cause of death; and we are trained to use the
24 laboratory blood work for the diagnosis of diseases.

25 A Forensic Pathologist is trained in doing a

Janice E. Ross - Direct Examination by Mr. Graham

1 forensic -- excuse me, a forensic autopsy. We are trained
2 to identify patterns of injury and to take specimens for
3 the court of law and for toxicology.

4 Q What's your -- let me ask you a question. Have you
5 testified as an expert in Forensic Pathology before?

6 A Yes.

7 Q How many times?

8 A In the State of South Carolina over 200 times.

9 MR. GRAHAM: Your Honor, would offer Dr. Ross as an
10 expert in the field of Forensic Pathology.

11 THE COURT: Questions?

12 MR. JAMES SNELL: No questions, Your Honor.

13 THE COURT: Thank you. And again, ladies and
14 gentlemen, you've heard my instruction on expert witnesses.
15 Dr. Janice Ross would be an expert in the field of Forensic
16 Pathology authorized to give her opinion in that area and
17 the basis of it. Thank you very much.

18 Solicitor?

19 MR. GRAHAM: Thank you, Your Honor.

20 BY MR. GRAHAM:

21 Q Dr. Ross, did you have an opportunity to perform an
22 autopsy of Tycus Toland?

23 A Yes, I did.

24 Q What was the date and time of your autopsy?

25 A It was April 27th, 2014, and we started the autopsy

Janice E. Ross - Direct Examination by Mr. Graham

1 at 9 a.m.

2 Q In general terms and for Mr. Toland specifically,
3 how do you begin an autopsy? What's the first thing you
4 do?

5 A The body is brought to us in a body bag in the
6 morgue at Newberry County Memorial Hospital. We open the
7 bag and I take inventory of clothing. We take photographs
8 of the clothing. Then take the clothes off and look at the
9 body externally. I take photographs, clean up any kind of
10 debris that might be interfering with out identification of
11 any injuries.

12 In this case, it was an apparent gunshot wound to
13 the head. So we did an x-ray of the head and found bullet
14 fragments in the head.

15 Q The bullet fragments, were those collected by a
16 member of the Lexington County Sheriff's Department to take
17 to SLED?

18 A Yes.

19 Q Okay. Before we get to the gunshot wound, in your
20 external examination, did you see anything else of
21 significance?

22 A No, I did not.

23 Q Okay. If I asked you what a defensive wound is;
24 what is that?

25 A These are wounds just as it relates to a defensive

Janice E. Ross - Direct Examination by Mr. Graham

1 mechanism usually if somebody is coming at you, you or some
2 weapon is coming at you, you defensively put your arms up.
3 So a defense wound be an injury to the forearms or the
4 hands usually.

5 Q In the examination of Mr. Toland, did you find any
6 defensive wounds?

7 A No, I did not.

8 Q So you mentioned there was a gunshot wound to the
9 back of the head; is that correct?

10 A It was in the back of the head, yes.

11 MR. GRAHAM: Your Honor, may I have Dr. Ross step
12 down to show the jury where the wound was?

13 THE COURT: Yes, sir, of course.

14 BY MR. GRAHAM:

15 Q Dr. Ross, using me, can you show the jury where the
16 entrance wound was on Mr. Toland?

17 A Yes, it was just above and a little bit behind the
18 right ear, right about here.

19 Q You said that you took an x-ray; is that correct?

20 A Correct.

21 Q What was the purpose of that?

22 A To see where the -- to see if there was any bullet
23 fragments in the head and where they might be located.

24 Q In addition to the x-ray, did you also do an
25 examination to determine the type of bullet?

Janice E. Ross - Direct Examination by Mr. Graham

1 A Yes, I did.

2 Q Okay. What did your -- what was your determination
3 of that?

4 A The bullet went from the right side of the head
5 towards the left side of the head, from back to front and
6 the fragments were found in the base of the skull basically
7 behind and below the left eye. So it's going right to
8 left, front to back and slightly downward.

9 Q Thank you, Doctor, you may have a seat.

10 The bullet did not exit Mr. Toland's head; is that
11 correct?

12 A Correct.

13 Q Were you able to determine the distance of how far
14 away the gun was when it was fired from Mr. Toland's head?

15 A No, I did not. I could not.

16 Q Based on your autopsy, were you able to determine
17 the cause and manner of Mr. Toland's death?

18 A Yes..

19 Q And as an expert in the field of Forensic
20 Pathology, what was your finding?

21 A A laceration of the brain due to the gunshot wound
22 to the head.

23 Q How quickly would he have died?

24 A Within minutes, within five or six minutes.

25 Q Would there have been any voluntary movement after

1 the gunshot?

2 A He would be immediately unconscious.

3 Q Thank you, Doctor. Please answer any questions
4 that Mr. Snell has.

5 THE COURT: Mr. Snell?

6 MR. JAMES SNELL: No questions.

7 THE COURT: Thank you. Thank you very much,
8 Doctor, you may step down and you may be excused.

9 All right. Perhaps now would be a good time,
10 ladies and gentlemen, to take our evening recess. I would
11 remind you during this recess, do not discuss this case
12 with anyone, fellow jurors, family, friends or anyone else.
13 Do not read, watch, listen to any news accounts about the
14 case, should there be any. Do not do any independent
15 research or any research on the internet. Remember to keep
16 an open mind. Do not begin your deliberations until you
17 are directed to do so by the Court.

18 I think we'll start back at 9:30 in the morning.
19 9:30 in the morning. So I'd ask you to be back promptly at
20 that time. You're now excused.

21 I hope y'all have a pleasant evening. Thank you.

22 (The jury left the courtroom at five o'clock p.m.)

23 THE COURT: All right. Thank y'all Court will be
24 in recess until 9:30.

25 MR. JAMES SNELL: Your Honor, in regards to the

1 proposed charges --

2 THE COURT: E-mail them to my clerk.

3 MR. SNELL: Thank you.

4 (Court was in recess until the following morning.)

5 THURSDAY, JUNE 9, 2016

6 THE COURT: All right. Solicitor, anything before
7 we bring in our jury?

8 MR. GRAHAM: No, Your Honor, except.

9 I don't know -- Brian Zwolak is the State's last
10 witnesses -- last witness for the case before we rest. The
11 State's going to attempt to call Brian in as an expert in
12 street culture and language. A lot of his experience comes
13 from working intelligence with gangs and interviewing gang
14 members and looking at social media for gang members and
15 people related to gangs. So I don't -- I'm concerned about
16 during the voir dire of qualifying him as an expert, if
17 that -- if the defense is going to claim that's
18 prejudicial. We're not going to make any claims that Mr.
19 Butler or Mr. McClure in front of the jury. We're not
20 going to make any claims that they are affiliated with
21 gangs or this is a gang related crime.

22 THE COURT: All right. It's just the
23 interpretation of the kind of language that is on the -- on
24 the text.

25 MR. GRAHAM: Correct, Your Honor.

1 THE COURT: All right. Well let's see what Mr.
2 Snell says.

3 Mr. Snell, good morning.

4 MR. JAMES SNELL: Good morning, Your Honor. I
5 would certainly believe that any reference to a gang, I
6 mean the word at all is prejudicial. I think any reference
7 to a term like street or street language, street talk is
8 prejudicial. If they want to, you know, use the term slang
9 I don't -- i think that's generic enough that there's --

10 THE COURT: If they want to do what? I'm sorry.

11 MR. JAMES SNELL: Use the term slang, I think
12 that's probably generic enough that it doesn't have any
13 prejudicial effect. I think my understanding is there's
14 one word they're trying to get a definition of.

15 THE COURT: That would be the word?

16 MR. GRAHAM: It is more than that. We were going
17 to have him go through the entire text. One of the words
18 of course would be hammer, hamma, hammy, but there is a
19 translation honestly just to explain why all the text are
20 happening.

21 THE COURT: Well, I think, of course you have to
22 lay a foundation to qualify your expert. I think what I'll
23 do is allow the qualifications full and complete. At that
24 point however, I think I will give the jury a limited
25 instruction similar to what I would do if a defendant chose

1 to exercise his right not to testify. Although the experts
2 qualifications, the foundations is part of the foundations
3 the qualification may go to his familiarity. Again, lingo
4 that -- that's the only purpose of that testimony and the
5 word gang or any consideration that the defendant was in a
6 gang is not relevant and it's not correct, it's not correct
7 and should not even be discussed in the jury room, as I say
8 as I would do when -- when a defendant failed to testify.

9 So I think that's the way I would handle it and
10 that just goes to his background and it has no association
11 with this defendant in any manner whatsoever. It's just
12 solely for the purpose of explaining certain terms that
13 were used in the texts and for no other purpose whatsoever,
14 should be discussed in the jury room and is not an issue as
15 to guilt or innocence of the defendant.

16 Solicitor?

17 MR. GRAHAM: I believe that would be appropriate,
18 Your Honor. I know I was actually --

19 THE COURT: That it would be inappropriate?

20 MR. GRAHAM: No, that it is appropriate, Your
21 Honor. I was going to -- if your -- unless Your Honor
22 doesn't think I should when Mr. Zwolak was up there, I was
23 going to ask him if this language was used by people who
24 aren't in gangs as well.

25 THE COURT: Sure.

1 MR. GRAHAM: It is. I think the remaining question
2 that I have is is the actually what -- will he be qualified
3 as an expert in. My thought was to offer him as I wasn't
4 going to say gang, it was going to be street culture and
5 language. Mr. Snell is objecting to that, so I don't quite
6 know --

7 THE COURT: Well, you know, every -- every area of
8 society has its own vocabulary. If I knew medical
9 vocabulary, I'd be a doctor and not a lawyer. Lawyers have
10 their own vocabulary, officers have their own vocabulary,
11 clerks of court of course have their very own colorful
12 vocabulary. So it's - you know that -- that's what
13 vocabulary is. I mean a craftsman, a carpenter, what have
14 you. They all have their own vocabulary. If I go talk to
15 a mechanic about my car, which I do often, I don't know his
16 vocabulary. They can -- they can make up parts and I say
17 oh yeah, let's replace that. I don't even know what it is.
18 It might not even exist. So, I mean, if it's vocabulary or
19 interpretation purposes I'm going to allow -- I'll give
20 that limited instruction, Mr. Snell, subject to your
21 objection, I would imagine.

22 MR. JAMES SNELL: Yes, Your Honor. Subject to our
23 objection, Thank you.

24 THE COURT: All right. Thank you, Mr. Snell.
25 Let me see if I can find that case. I had it

1 pulled up yesterday. State v. Price 368 S.C. 494, the
2 Court qualified an officer. He was qualified as an expert
3 in gangs and gang activity. However, one of the opinions
4 he gave was not based on his qualifications and the basis
5 of his opinion was only hearsay testimony of informants,
6 which, of course, would take him outside of his area of
7 expertise and was strictly hearsay.

8 Parallel to that case, as I say, if the officer is
9 qualified or some witness is qualified I'm going to give
10 that limited instruction to the jury.

11 All right. Anything further?

12 MR. GRAHAM: No, Your Honor.

13 THE COURT: This your last witness?

14 MR. GRAHAM: Yes, sir.

15 THE COURT: Before -- before we bring
16 the jury out, then let's bring Mr. Butler around please.

17 Come with him, Mr. Snell.

18 Madam Clerk.

19 THE CLERK: Yes, sir.

20 THE COURT: Will you order the jury lunch?

21 THE CLERK: You want me to have them menus, Your
22 Honor.

23 THE COURT: I will leave it to your good judgment.
24 However you want to do it, Madam Clerk.

25 THE CLERK: All right, sir.

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1 in its case in chief as you recall. I would ask you to
2 please continue to give the parties your complete and
3 undivided attention. Solicitor, you may call your next
4 witness.

5 MR. GRAHAM: Thank you, Your Honor.

6 The State calls Brian Zwolak.

7 THE COURT: All right. If you'd come around and be
8 sworn for us please.

9 BRIAN ZWOLAK,
10 after having been duly sworn, testified as follows:

11 THE CLERK: Have a seat please sir.

12 THE WITNESS: Thank you.

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

15 THE WITNESS: My name is Brian Swolak Last name is
16 spelled Z-W-O-L-A-K.

17 THE COURT: That's exactly how I spelled it.

18 All right. Solicitor.

19 I just misspelled Brian probably.

20 **DIRECT EXAMINATION**

21 **BY MR. GRAHAM:**

22 Q Mr. Swolak, where are you employed, sir?

23 A I'm employed at the South Carolina Criminal Justice
24 Academy.

25 Q And how long have you been with the Criminal

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1 Justice Academy?

2 A One year next week.

3 Q What do you do there?

4 A I'm a gang instructor.

5 MR. JAMES SNELL: Your Honor, we object.

6 THE COURT: All right. So noted. I would renew my
7 previous in-camera ruling, Mr. Snell.

8 BY MR. GRAHAM:

9 Q Let's go through your experience in law
10 enforcement. When -- when did you first get into law
11 enforcement?

12 A I moved down here from New York after graduating
13 from college with a Bachelor's Degree in Criminal Justice
14 in 2007 working for the City of Columbia Police Department.

15 Q What did you do for the City of Columbia Police
16 Department when you first started?

17 A I was hired as a patrol officer. I worked in North
18 Region of City of Columbia. I worked a lot of street
19 crimes cases there and after two years on the street, I was
20 moved to investigations in North Region working primarily
21 burglaries and dealing a lot with the organized crime
22 aspect in burglaries. While doing that I interviewed
23 multiple individuals both involved in gangs and not
24 involved in gangs, but that's when I was promoted to
25 investigator and moved to the Gang Unit in 2011 as an

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1 investigator.

2 Q What was your responsibilities as an investigator
3 in the Gang Unit in Columbia Police Department in 2011?

4 A From 2011 to June of 2015, I was an investigator
5 with the Gang Unit. I did intel on street gangs. I worked
6 violent crime cases and gathered intel and documented gang
7 members and tracked and assisted patrol in all the other
8 aspects of the Columbia Police Department when it came to
9 organized crime and street gang.

10 Q And how long did you hold that position?

11 A From July 2011 through June 2015.

12 Q And then is that when you joined the Criminal
13 Justice Academy?

14 A Right. We actually -- a year before I left, I'd
15 been working towards starting a Midlands Gang Task Force in
16 Richland County where then we started working as the --
17 working the entire county and in June 2015, I went to the
18 South Carolina Criminal Justice where a position opened up
19 to teach on street gang.

20 Q What formal training do you have on either gang or
21 street culture and language?

22 A Okay. In 2011, I attended the Criminal Gang
23 Overview for Law Enforcement which was a class at the
24 Criminal Justice Academy as well as Law Enforcement
25 Response to Gangs in the Community and Graffiti

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1 Recognition, all those were taught at the Criminal Justice
2 Academy. I went to Meridian, Mississippi to the airbase
3 there and I took a Basic Gang School and Investigations; as
4 well as went back again for the advanced Criminal Gang
5 Investigations and Interview Class at Meridian, Mississippi
6 at the airbase there. I have attended the World Gangs of
7 the Low Country Training Conference in South Carolina and
8 taken Gang Investigations and Prosecution Techniques that
9 was put on by the Federal Government.

10 I have also taken Law Enforcement and Terrorist
11 Acts which I'm an actual trainer in for Terrorism and
12 Organized Crime that was offered by HIDA as well as Federal
13 Government Training. I'm part of the South Carolina Gang
14 Investigator's Association and have been a part of that.
15 I'm actually a Training Officer for that -- for that group
16 as well. I teach and have attended training.

17 My total amount of gang related, street culture
18 related training is 225 hours roughly, or a little over
19 that. And now I teach classes while also attending and
20 working with agencies around the state helping start gang
21 units and helping with investigations and train officers
22 with documentation, intelligence gathering and stuff like
23 that when it comes to --

24 Q What classes have you been approved to teach?

25 A I am -- I have taught the Gang Specialist Class,

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1 which is by the Gang Investigator's Association. Pretty
2 much what that class does is it gives somebody a special
3 certification in the gangs in South Carolina and street
4 crimes. Also I teach Criminal Street Gang Investigations,
5 which is a class offered by the Criminal Justice Academy,
6 which is a two-day class. I teach it at the academy as
7 well as travel around the state and assist agencies by
8 teaching them at their agencies.

9 Criminal Gang Overview for Law Enforcement, which
10 is taught to basic students in the academy as well as
11 already certified law enforcement detention officers;
12 Criminal Gang Overview for SRO's, which is an SRO block of
13 class which deals with street gang culture and street
14 culture; Gang documentation, Gang documentation is a
15 day-long class that I teach that deals with how to track
16 intelligence and legally document individuals as gang
17 members, so whether they are gang members or not,
18 everything is done appropriately as far as putting them in
19 data bases and what not.

20 Q How many interviews have you conducted that you
21 think would lean to your ability to explain slang street
22 culture and languages used?

23 A Between actual formal interviews and investigations
24 as well as field contacts, hundreds.

25 Q In addition to that, have you also or do you also

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1 review social media?

2 A I do. I assist. I've actually assisted a lot of
3 agencies now, while I'm at the state. And then when I was
4 at the city going through social media opened source
5 internet sites to stay up with culture as well as assist us
6 with when we're interviewing and documenting, once again,
7 not just gang members, but other aspects of street culture
8 during investigations.

9 Q How about music lyrics or music videos?

10 A Since I started and actually before that, while
11 I've been in law enforcement, we utilized music videos,
12 analyzed the lyrics to once again just like everything else
13 in culture, things change to keep up with current trends
14 and slang used on the street and all that which once again
15 relates to gang members and non-gang members at the same
16 time.

17 MR. GRAHAM: Your Honor, at this point, the State
18 would offer Brian Zwolak as an expert in street culture and
19 language?

20 THE COURT: All right. Mr. Snell, any voir dire?

21 MR. JAMES SNELL: No voir dire, but we would renew
22 our objection as to the qualifications field.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury panel, again normally a person cannot give opinion
25 testimony. Normally when a person testifies they must

Brian Zwolak - Direct Examination by Mr. Graham

1 testify as to what they saw, heard, sensed by smell or
2 something of that nature. However, there is an exception
3 when someone is qualified because of education, experience
4 or training, they are permitted to give their opinions in
5 certain areas if the Court qualifies them that way.

6 This witness will be qualified in the area of
7 street culture and language to give opinion testimony in
8 that area. That does not mean that you must accept the
9 opinion, but it is evidence for you, the jury, to use in
10 any way you deem appropriate.

11 Additionally, ladies and gentlemen, I'm going to
12 give you what is known as the limited instruction
13 concerning this testimony: As you heard, the officer's
14 background and history and training, you hear the word gang
15 many, many, many times and, of course, that word can be a
16 buzz word in and of itself. There is no association, no
17 association whatsoever between this defendant, Mr. Butler
18 and membership in or association with any gang whatsoever.
19 The -- the issue about whether or not Mr. Butler is a
20 member of, or associated with any member of a gang is not
21 relevant to the trial of this case, and that particular
22 issue is not an issue.

23 And that area of gangs should not even be
24 discussed, Mr. Foreman, by you or any of the ladies and
25 gentlemen in the jury room at the time of your

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1 deliberations.

2 I'm allowing this evidence solely for the purposes
3 of interpreting street culture and language and as you all
4 know, being American Citizens of Lexington, South Carolina,
5 people are tried based on the evidence, not whatever their
6 status may be. They're not tried because of a label
7 whatsoever. Even if they were, Mr. Butler does not have
8 that label whatsoever.

9 So it's street culture and language and you give it
10 the weight and the value, whichever you deem appropriate,
11 during your deliberations and your determinations of the
12 facts and in this case and no other purpose whatsoever.

13 All right. Thank you. Thank you very much, ladies
14 and gentlemen.

15 Thank you, Solicitor. You may continue.

16 MR. GRAHAM: Thank you, Your Honor.

17 BY MR. GRAHAM:

18 Q Mr. Zwolak, looking at State's 66 that's in
19 evidence, do you recognize that?

20 A Yes.

21 Q And have you had an opportunity to review that
22 before?

23 A I have.

24 Q And what is that document?

25 A It is text messages.

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1 Q What's the phone number that those text messages --
2 those text messages were pulled off of?

3 A Area code -5436.

4 Q And what's the date range that that covers?

5 A The first text message on this list is dated 4/23
6 of 2014 and it's going through 4/25 of 2014.

7 MR. GRAHAM: And, Your Honor, I have two board
8 blowups. They're not in evidence but they're exact copies
9 of Mr. Swolak has, they are State's 66, but I'd like to
10 show the jury so when he testifies they'll be able to see
11 them as well?

12 THE COURT: All right. And you're using these
13 for -- yes, Mr. Snell, I'm sorry?

14 MR. JAMES SNELL: I was ask if I could view them.

15 THE COURT: Of course, yes, sir.

16 MR. SNELL: Okay.

17 (There was a pause.)

18 THE COURT: All right. Mr. Snell?

19 MR. JAMES SNELL: Your Honor, we'd renew our
20 previous objections before that were raised per our
21 in-camera.

22 THE COURT: All right. And, Solicitor, you're just
23 using these for demonstrative purposes only.

24 MR. GRAHAM: Correct, Your Honor, the actual
25 State's 66 contains the information that will go back to

Brian Zwolak - Direct Examination by Mr. Graham

1 the jury.

2 THE COURT: All right. Subject to your previous
3 objections, however, B would be for demonstrative purposes
4 only.

5 Thank you, Mr. Snell.

6 BY MR. GRAHAM:

7 Q Investigator Zwolak, let's begin at the beginning
8 and work our way down through the --

9 THE COURT: Let me ask you, Solicitor, have you got
10 a copy of 66 please?

11 THE WITNESS: If you want I can stand up there, AND
12 he can --

13 MR. GRAHAM: Your Honor, if I can have the witness
14 step down and --

15 THE COURT: Of course, yes, sir. Thank you. Thank
16 you so much. Give me a minute. I'm coming down there too.

17 (The Court was moving to see the demonstrative
18 evidence.)

19 THE COURT: Y'all want to switch sides for the
20 Court Reporter.

21 MR. GRAHAM: Keep your voice up.

22 THE COURT: You know who's in charge in here.

23 BY MR. GRAHAM:

24 Q All right. Investigator Swolak, starting at the
25 beginning, the first text at 4:23 on April 23rd, 2014, at

Brian Zwolak - Direct Examination by Mr. Graham

1 1404, 2:04 p.m. there is an incoming text to this number.

2 In looking up at the content, help me figure out what's
3 being said.

4 A Who's this?

5 Q The next text is one minute later and it's an
6 outgoing text; what's the response?

7 A Jonah --

8 MR. JAMES SNELL: We renew our prior objection to
9 this type testimony.

10 THE COURT: To what, I'm sorry?

11 MR. SNELL: This type of testimony.

12 THE COURT: All right. Yes, sir, I renew my
13 previous ruling.

14 Thank you.

15 THE WITNESS: Jonah.

16 BY MR. GRAHAM:

17 Q The next one is one minute later?

18 A I'm in class bra, is like brother, call you in an
19 hour. Brother, not necessarily meaning actual brother.

20 Q Eight minutes later there is an outgoing text?

21 A That, I'm not sure.

22 Q And again, the same time period there is a incoming
23 text?

24 A This your line; asking, you know, is this your new
25 number.

Brian Zwolak - Direct Examination by Mr. Graham

1 Q An outgoing text one minute later.

2 A Yes, it is.

3 Q Another outgoing -- no, an incoming text one minute
4 later.

5 A Okay. All right. Okay.

6 Q Now down to 3:58 p.m. or 1558 p.m. an outgoing
7 text.

8 A Pretty much brother friend or whoever he's talking
9 to, can you bring that nickel with you tomorrow. In my
10 experience, nickel can be used to -- in terms of quantity.
11 I've also heard it referred to in terms of a firearm, but
12 most, in my experience, mostly its going to be quantity.

13 Q The next text approximately three minutes later is
14 an outgoing text again?

15 A When we get to South Carolina, I got you for sure.
16 Then okay, followed.

17 Q The next text down on 2119 hours on the 23rd or
18 that would be 9:19 p.m. there is an outgoing text from a
19 phone associated with Mr. Butler; what does that say?

20 A She's good on it. Go get the whip, car, before you
21 get there. By that time, they will be closed unless you
22 get there from the airport.

23 So they're talking about before -- get that whip
24 before you get there; the car, before they're closed unless
25 they get it from the airport. So they're talking about

Brian Zwolak - Direct Examination by Mr. Graham

1 where they get a car because the airport rental place will
2 be closed.

3 Q One minute after, at 9:20 p.m. there's an incoming
4 text?

5 A I'm gonna check.

6 Q And now moving on to 22:36 which would be 10:36
7 p.m. on the 23rd?

8 A What's the word; what's going on.

9 Q The next one is about sixteen minutes later and
10 that is an incoming text with the phone associated with Mr.
11 McClure?

12 A A phone number, and just stating that that's
13 sister's number. Once again sis can be sister, it can be
14 friend that's a female, it depends, and then stating her
15 names.

16 Q And then immediately one minute later there's a
17 response?

18 A What's that for? Asking what do you mean.

19 Q And moving on to the next day --

20 A Just --

21 Q Okay. The next one.

22 A A blood have to come get me first from the bus
23 station.

24 So in my experience a blood, once again not saying
25 anybody wrote this has anything to do with gangs, but

Brian Zwolak - Direct Examination by Mr. Graham

1 normally that would refer to a gang member.

2 First from the bus station, because they're going
3 to beat you there. I got hammy with me.

4 So pretty much stating come to get me from the bus
5 station because that person is going to beat them there.
6 And then hammy with me. Hammy, that type of word I've
7 heard used for a firearm.

8 Q Now, when you say that type of word, have you heard
9 that word specifically used as a firearm?

10 A Hamma, variations of and unlike a lot of words
11 there are variations to every word and how people write it.

12 Q And that text was an outgoing text; is that
13 correct?

14 A Yes.

15 Q From Mr. Butler?

16 A Butler to --

17 Q To McClure?

18 A Terry McClure.

19 Q And the time and the date on that one was what?

20 A 4/24/2014 at 10:05 in the morning.

21 Q All right. Following up on that, what would be the
22 next one which is one minute later?

23 A Okay.

24 Q And then 11:29 a.m. on the morning of April 24th
25 what's said?

Brian Zwolak - Direct Examination by Mr. Graham

- 1 A Send me a number; a phone number.
- 2 Q At 15:42, Mr. McClure is now texting back to Mr.
- 3 Butler, what is provided there?
- 4 A A phone number, then Ladondra and saying her yours
- 5 now so saying, I am sending that person's number to her.
- 6 Q Moving on to now 16:46, 4:46 p.m. on the afternoon
- 7 on the 24th, there is an outgoing text?/
- 8 A Yes, sir. Hello, this L brother. You told me you
- 9 were expecting my call. When I get close, I'm an hour away
- 10 so if you could call me when you get a chance.
- 11 Q And that was sent to Ladondra Ellis?
- 12 A Yes.
- 13 Q The next text approximately an hour later so now
- 14 5:46 p.m. on April 24th, another outgoing text. This time
- 15 from Mr. Butler and it's going to a phone that's been
- 16 associated with the Greenwood area?
- 17 A Yo, did you get the ad.
- 18 Q What is an ad?
- 19 A An ad can be what we've seen ad is something for
- 20 sale.
- 21 Q The last one on this one April 24th, the afternoon
- 22 at 5:49 so three minutes after that last text there's
- 23 another outgoing text this time going to Ladondra Ellis;
- 24 what does that one say?
- 25 A Say we should be there about thirty minutes,

Brian Zwolak - Direct Examination by Mr. Graham

1 probably a little before -- before that; a little bit
2 before thirty minutes..

3 Q Looking at the text of Ladondra Ellis compared to
4 the text of Mr. McClure, do you notice any difference in
5 the languages?

6 A A little. Obviously with -- with some of this
7 stuff, you can see that the zeros in there, but would
8 normally be someone using a flip phone or texting quicker,
9 other than that there's a little bit less slang, I guess,
10 in those than the rest of the text messages.

11 Q In your experience what's the use of slang?

12 A Normally the use of slang changing that up other
13 than just popular cultural in general coming up with
14 different ways to say things. A lot of times when things
15 are talked about that someone wouldn't want to come right
16 out and say, you know, quantity is nickel, and things like
17 that. Hammy or hamma someone wouldn't want to say gun. So
18 a lot of times they will utilize -- individuals who utilize
19 slang terminology to hide what general public a lot of
20 times would, you know, see.

21 MR. JAMES SNELL: I object.

22 THE COURT: Overruled.

23 BY MR. GRAHAM:

24 Q Mr. Zwolak, moving to this second page of text
25 starting with the first one which is on the afternoon of

Brian Zwolak - Direct Examination by Mr. Graham

1 April 24, 2014 at 5:55 p.m. there was an incoming text from
2 a number associated with an unknown person in Greenwood.
3 So the last conversation to the person in Greenwood was an
4 outgoing text?

5 A Yo, did you get the ad.

6 Q This incoming text; what's the response there?

7 A Pretty much says no, my people didn't answer.
8 Trying to get another one. So whatever was for sale or
9 whatever they were trying to get, it didn't work out so
10 they're just trying to find something -- something else.

11 Q One minute later, Mr. Butler is sending a response
12 to the Greenwood people; what is that?

13 A Let me know as soon as possible.

14 Q Moving down to ten minutes later on the early
15 after -- early evening of April 24th at 6:06 p.m. the phone
16 associated with that person in Greenwood sends a text to
17 Mr. Butler; what is that?

18 A Just stating let me know what's going on and what's
19 it's going to take because he's got something going on this
20 weekend in Columbia, North Carolina he's supposed to be at.

21 Q All right. At the same time or the same minute at
22 least in time stamp wise, there's another outgoing text to
23 that same number.

24 A Leaving with them tomorrow, bro.

25 Q All right. That was the incoming.

Brian Zwolak - Direct Examination by Mr. Graham

1 So, okay. One minute later, Mr. Butler is texting
2 out.

3 A He's pretty much telling them, you know, if you got
4 to leave, go handle your business; do what you've got to
5 do.

6 Q Moving down to one minute later, the text to
7 Ladonra Ellis, I'm sorry I skipped a line. The other one
8 to Greenwood a minute later?

9 A But I'm going to slide up by you tonight; I'm going
10 to meet up with you tonight I'm going to come over your way
11 tonight.

12 Q All right. The next one down a minute later to
13 Ladondra Ellis?

14 A Should be there in five minutes. I should be
15 there.

16 Q All right. So then thirty-five minutes later at
17 6:44 p.m. on April 24th, 2014 an incoming text from that
18 Greenwood number.

19 A From Greenwood to Butler. Are you going to need a
20 hamma to fix that or no.

21 Are you going to need a firearm to fix that or no.

22 Q What's a hamma?

23 A Hamma is the most -- the term that means, that I
24 see the most is for firearms. When I've seen it used in --
25 in video, music videos, in social media, in interviews,

Brian Zwolak - Direct Examination by Mr. Graham

1 in -- during investigations and other ways that, you know,
2 we kind of intercept communications back and forth, that's
3 that's --

4 Q In your background of this case, did you come
5 across music videos where Mr. Butler was performing?

6 A I did.

7 MR. JAMES SNELL: I object.

8 THE COURT: Overruled.

9 BY MR. GRAHAM:

10 Q In one of those videos, did you see him performing
11 with another person by the name of Little Howie?

12 A I did.

13 Q When you were researching Little Howie, did you
14 find Little Howie performing in a music video with an
15 individual by the name Little Rossie?

16 A I did.

17 Q Did you have an opportunity to view a -- a music
18 video containing those individuals?

19 A Yes, I did.

20 Q And during your view of that, did you find the use
21 of the word Hamma, H-A-M-M-A, used in those lyrics?

22 MR. JAMES SNELL: Your Honor, I'm going to object.

23 THE COURT: Yes, sir. I would sustain that
24 objection. I don't think that's relevant to this
25 particular defendant.

Brian Zwolak - Direct Examination by Mr. Graham

1 BY MR. GRAHAM:

2 Q Is there any other meaning for the word hamma that
3 you have come across other than a gun?

4 A No.

5 Q The response sent from Mr. Butler to the Greenwood
6 person one minute after that text; are you going to need a
7 hamma to fix that or not, is what?

8 A Most likely.

9 Q All right. Moving on down, we're now picking up
10 texts between Mr. Butler and Vonkeith Toland. What's
11 provided there?

12 A An address.

13 Q And then the next day at 12:22 in the afternoon an
14 address, what is the address?

15 A Savannah Highway, North, South Carolina.
16 29112, and then come tomorrow cuz.

17 Q And what does that mean?

18 A Just come over tomorrow. And once again cuz is
19 just a term friend.

20 Q Next to the last response from Mr. Butler to Mr.
21 Toland?

22 A Damn because I'm on the freeway now. You want me
23 to just go to the mall out there and show, wait a minute, I
24 know I'm last minute with you.

25 I'm getting up with you last minute. What do you

Brian Zwolak - Cross-Examination by Mr. James Snell

1 want me to do.

2 Q And the final response, which is at 8:42 p.m. on
3 the 25th?

4 A Just asking if he's left.

5 Q Thank you, Mr. Zwolak, You can have a seat back on
6 the stand.

7 A Yes, sir.

8 (The Court returns to the bench.)

9 Mr. Graham: Your Honor, that's all the questions
10 that I have for Mr. Swolak.

11 THE COURT: All right. Thank you. Thank you,
12 Solicitor.

13 Mr. Snell.

14 MR. JAMES SNELL: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 BY MR. JAMES SNELL:

17 Q Just briefly, your role in this case has been
18 limited to just looking at that series of text messages and
19 offering your comments?

20 A Yes, sir.

21 Q Okay. And just a couple of questions. Just
22 specifically you testified regarding the use of the term
23 blood?

24 A Yes.

25 Q You also would be, of course, familiar that blood

Brian Zwolak - Cross-Examination by Mr. James Snell

1 is a term used to denote some type of friendship or even
2 some other types of casual associations?

3 A It doesn't necessarily mean that the person writing
4 it is a gang member, and yes.

5 Q You've heard of somebody being called a young
6 blood?

7 A I have, but most of the terminology, once again the
8 person doesn't necessarily have to be in a gang that says
9 that. It could be; it could not.

10 Q Are you actually familiar with the television show,
11 Bloodline?

12 THE COURT: What is that show?

13 MR. JAMES SNELL: Bloodline.

14 BY MR. SNELL:

15 Q The show means blood in another context?

16 A I don't think so.

17 Q On Netflix?

18 A Yes, it has to do with family.

19 THE COURT: What's Netflix? Ask your next
20 question, Mr. Snell.

21 BY MR. JAMES SNELL:

22 Q With regard to the text, I understand that in the
23 series of texts, the text alleged to be from Mr. Butler
24 used the word hammy?

25 A Correct.

Brian Zwolak - Cross-Examination by Mr. James Snell

1 Q Okay. And you testified that -- that you
2 associated the word hammy being a variation of hamma, which
3 you only knew to mean a gun?

4 A Correct.

5 Q Okay. Have you ever -- are you familiar that hammy
6 is also a -- a -- has other terminology or other meanings
7 including being an acronym for a type of recreational
8 drugs?

9 A What I -- what I read it in was in the context that
10 the conversation was in. When we did out investigations,
11 pretty much everything you do is read the conversation,
12 read what's going on and that's how you associate. There's
13 of course different terms for different things, but in that
14 context, in my experience, that's what that -- that term is
15 used for.

16 Q But that term can also be an acronym -- you also
17 understand it can be an acronym for a type of recreational
18 clutch in drugs?

19 A Uh-huh (affirmative response).

20 Q So that term is not exclusively used in a firearm?

21 Q Correct. Thank you. No other questions.

22 THE COURT: Redirect, Solicitor.

23 MR. GRAHAM: No, Your Honor.

24 THE COURT: Thank you. Thank you very much,
25 officer. You may step down.

1 Any objections to the officer being excused?

2 MR. GRAHAM: None from the State, Your Honor.

3 MR. JAMES SNELL: None from the defense.

4 THE COURT: Thank you. You may be excused.

5 THE WITNESS: Thank you.

6 THE COURT: Again, ladies and gentlemen, I'm going
7 to revisit and reiterate my limited instructions to you.
8 You give the testimony the weight and value you deem fit
9 and appropriate. However, this has no association with Mr.
10 Butler in gang activity, being a member of a gang or
11 associated with any individual that is a member of a gang.
12 He is solely an expert that's testified as to street
13 culture and language and if you use it all, you use it
14 solely for that purpose.

15 And I will tell you further and completely when I
16 instruct you on the law at the end of the case, that you do
17 not have to accept the opinion or the basis of an opinion
18 of any expert, even though it may be uncontroverted. You
19 and you alone are the sole judges of the facts. Thank you.
20 Thank you very much.

21 All right. Solicitor, you may call your next
22 witness.

23 MR. GRAHAM: Your Honor, that was the State's last
24 witness and the State would rest.

25 THE COURT: All right. The State rests. All

1 right.

2 Then you have motions, Mr. Snell.

3 MR. SNELL: We do, Your Honor.

4 THE COURT: All right. Thank you. Thank you very
5 much.

6 Mr. Foreman, ladies and gentlemen, you have heard
7 that the State has now rested. You've heard all of the
8 evidence and the testimony from the State that you're going
9 to hear in its case in chief. I am now required to speak
10 with the attorneys outside of your presence. So I would
11 ask you to please go to your jury room and do not discuss
12 the case during this brief recess. Thank you. Thank you
13 very much.

14 (The jury left the courtroom at 10:42.)

15 THE COURT: All right. Mr. Snell?

16 **MID-TRIAL MOTIONS**

17 MR. JAMES SNELL: Your Honor, we just begin by
18 renewing all the -- our previous motions previously made
19 including during the first day of testimony, we made a
20 motion for mistrial based on the late disclosure of the
21 statement. So we would move -- we would renew that motion
22 as well as the motion for trial on those grounds as well as
23 the grounds previously argued since and before during the
24 duration of the trial.

25 THE COURT: All right. And your next motion?

1 the evidence that the State has presented a timeline prior
2 to Mr. McClure and Mr. Butler's arrival on the Bushberry
3 Road property. He has -- would only raise the possibility
4 of a suspicion and it's insufficient to meet the burden of
5 a directed verdict and the evidence in the record is that
6 from the witness, Mr. Vonkeith Toland was that Mr. Butler
7 appeared surprised by the initial shooting. There's been
8 no evidence up to that point -- you know once we get to
9 that point, there's the shooting and we've got a witness
10 that says he went and got a gun, pointed it at him, but up
11 until that point, there's no evidence of any type of,
12 beyond suspicion, of a type of plan and we believe the
13 State's failed to meet the necessary burden considering
14 those grounds as well.

15 THE COURT: Thank you, Mr. Snell. As to your first
16 motion renewing all previous trial -- renewing all your
17 previous motions during and -- during the trial including
18 the motion for a mistrial, I would renew all my previous
19 trial rulings both as to the mistrial and any and all
20 evidentiary rulings or otherwise that I made.

21 In reviewing the motion for directed verdict, the
22 trial court is concerned with the existence of evidence,
23 not its weight. If the evidence presented merely raises a
24 suspicion of the accused guilt, the trial court should not
25 refuse to grant a directed verdict motion. However, the

1 trial court must submit the case to the jury if there is
2 any direct and/or substantial evidence, any substantial
3 evidence which reasonably tends to prove the guilt of the
4 accused or from which his guilt may be fairly and logically
5 deduced. Ruling on a motion for a directed verdict, the
6 trial court must view the evidence in the light most
7 favorable to the State.

8 Our duty is not to weigh the plausibility of
9 parties competing explanations, rather we must assess
10 whether in the light most favorable to the State, it was
11 direct and/or substantial circumstantial evidence from
12 which the jury could infer the defendant's guilt. Although
13 the jury must consider alternative hypotheses, the trial
14 court must concern itself only with the existence or
15 non-existence of evidence from which a jury could
16 reasonably infer guilt. This objective test is founded
17 upon reasonableness.

18 Accordingly and ruling on a directed verdict
19 motion, the State -- where the State relies on
20 circumstantial evidence, the Court must determine whether
21 the evidence presented is sufficient to allow a reasonable
22 jury to find the defendant guilty beyond a reasonable
23 doubt.

24 As to the directed verdict motion, in reviewing the
25 various witnesses that have testified both crime scene

1 officers, investigative supervising officers, investigating
2 officers, both in South Carolina and Detective Rickman from
3 Muscle Shoals, expert testimony, the victim's testimony as
4 to the attempted murder, further identification testimony
5 photographic lineup as Ishi Toland and in-court
6 identification and in-court identification by Ms. Toland,
7 who also testified, I would find that there is substantial
8 both direct and substantial circumstantial evidence.

9 You have these individuals on course of conduct and
10 communication by cell and by text from two locations in our
11 country; one in California, the other in Alabama. That
12 plan or scheme is -- spans I would say approximately a two
13 thousand mile area or two-thirds of our country and
14 thereafter those two individuals confer converging at a
15 point in -- in Atlanta, Georgia, and text messages between
16 them. The review of those text messages, the reasonable
17 meaning of those text messages. Now, while on the scene,
18 the issue of surprise or not surprised, I'm not concerned
19 with the weight of that testimony, only its existence,
20 although I listened very closely and intently to Mr.
21 Vonkeith Toland in that regard.

22 Considering also the law of the hand of one is the
23 hand of all and also considering along with that, the issue
24 of mere presence, I would find there is direct and
25 substantial circumstantial evidence as to the murder, as to

1 the attempted murder, as to the burglary in the first
2 degree and as to the possession of a weapon during the
3 commission of a violent crime.

4 Therefore, I respectfully deny the motion of
5 directed verdict as to all indictments charged.

6 Mr. Snell, do you need a few minutes to talk with
7 your client as to his right to testify or not to testify or
8 is he prepared now to convey that information to the Court.

9 MR. JAMES SNELL: If we could have just a few
10 minutes, Your Honor.

11 THE COURT: All right. Thank you. We'll take ten
12 minutes. Thank you. Thank you very much.

13 (A brief recess was observed.)

14 THE COURT: All right. Mr. Butler, if you'd come
15 back around please.

16 Madam Clerk, place Mr. Butler under oath.

17 JUSTIN BUTLER,
18 after having been duly sworn, testified as follows:

19 THE COURT: Mr. Butler, have you had the
20 opportunity during this recess to discuss your right to
21 testify or not to testify with your attorney?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you need any more time to talk with
24 your attorney about that?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: And have you made your decision?

2 THE DEFENDANT: I have.

3 THE COURT: Is it your decision?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Made of your own free will and accord.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And what is your decision?

8 THE DEFENDANT: I would like to testify.

9 THE COURT: Do what?

10 THE DEFENDANT: That I would like to testify.

11 THE COURT: You will testify?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. Thank you. Thank you very
14 much. You may return to your seat.

15 Anything from the State before we bring in our
16 jury?

17 MR. GRAHAM: No, Your Honor.

18 THE COURT: From the defense?

19 MR. JAMES SNELL: No, Your Honor.

20 THE COURT: Thank you.

21 (The jury entered the courtroom at 11:12 a.m.)

22 THE COURT: Welcome back, ladies and gentlemen, as
23 you heard before the break, the State has rested. You have
24 heard all the evidence and testimony you're going to hear
25 in the trial of this case from the State. The defense now

1 may present evidence and testimony, call witnesses, if the
2 defense chooses to do so. A criminal defendant in South
3 Carolina always is presumed to be innocent regardless of
4 the seriousness of whatever the charges may be. A criminal
5 defendant in South Carolina never has to prove himself or
6 herself innocent. The State of South Carolina bears the
7 burden of proving its case by proof beyond a reasonable
8 doubt. However, a criminal defendant may present evidence
9 and testimony if they choose to do so.

10 So we will now turn our attention to Mr. Snell.

11 Mr. Snell, does the defendant intend to present any
12 evidence or testimony?

13 MR. JAMES SNELL: We will, Your Honor. We would
14 call Justin Butler.

15 THE COURT: All right. Mr. Butler, if you would
16 come around and be sworn please.

17 Solicitor and Mr. Snell, step up here momentarily.

18 (There was a bench conference out of the hearing of
19 the jury and the court reporter.)

20 JUSTIN BUTLER,
21 after having been duly sworn, testified as follows:

22 CLERK: Please have a seat, sir. Once you're seated,
23 state your full name spelling your last, please.

24 THE WITNESS: Justin Antonio Butler. B-U-T-L-E-R.

25 THE COURT: All right. Mr. Snell?

Justin Butler - Direct Examination by Mr. James Snell

DIRECT EXAMINATION

BY MR. JAMES SNELL:

Q And, Mr. Butler, I'm going to stand back here just so you can remember to talk loudly enough so everyone in the jury can hear, okay?

A Yes, sir.

Q First thing I guess, kind of tell us about -- a little bit about yourself; where are you from?

A I'm originally born in Pocatello, Idaho and I moved to California when I was three years old.

Q When were you born?

A 1991, 1991.

Q Okay. And how old are you today?

A I'm currently 24 years old.

Q Kind of tell us about your upbringing; who raised you and --

MR. GRAHAM: Objection, relevance.

THE COURT: Overruled.

BY MR. JAMES SNELL:

Q You may answer.

A My mother and my grandmother. My father was murdered when I was 12 years old and my mother and my grandmother.

Q Where did you go to school?

A I went to school in California and I also attended

Justin Butler - Direct Examination by Mr. James Snell

1 school in Alabama as well and a semester here in Greenwood,
2 South Carolina; and, in fact, I got my diploma in Alabama.

3 Q Now, do you have family in South Carolina?

4 A Yes, I do. I have an aunt and two or three little
5 cousins. They stay in the Greenwood area.

6 Q What kind of work have you done?

7 A As far as --

8 Q What kind of jobs have you had?

9 A I did a lot of car washes and a few handyman jobs
10 as well as sold cars. And I recently started my own
11 business in 2013 that's LAR Corporation, I'm an artist, a
12 song writer, producer as well and I do shows.

13 Q Tell us what kind of shows; what kind -- what kind
14 of music are you involved in?

15 A A lot of rap and R&B.

16 Q Where do you typically do your shows?

17 A Wherever pays.

18 Q Do you do any locally?

19 A As far as locally, California locally or South
20 Carolina locally or --

21 Q In South Carolina?

22 A Yes, I can't say this area here, but the Greenwood
23 area.

24 Q And -- and up until, you know, at the time that the
25 incident in this case in April of 2014, where were you

Justin Butler - Direct Examination by Mr. James Snell

1 living?

2 A I was staying at Dearborn Avenue, Muscle
3 Shoals, Alabama.

4 Q And who did you live with?

5 A I stayed with my fiance and my son.

6 Q And I guess the -- how often do you have to travel
7 for your musical shows?

8 A Frequent.

9 Q Can you give us an idea of how many times per year
10 for example you may be on the road?

11 A Probably out of the month I may perform maybe
12 locally I would say two or three times a month. Like I
13 said, I'm from California so I definitely perform there as
14 well as South Carolina, as well as Atlanta, as well as
15 Nevada, Las Vegas Region.

16 Q All right. Now, Mr. Butler let me ask you, back
17 when you were younger, did you ever have an occasion to get
18 into some trouble?

19 A Yes, I did.

20 Q Okay. And back when you were approximately 15 or
21 16 years old, did you get a -- a drug charge?

22 A Yes, I did.

23 Q And then later when you were closer to 18, did you
24 get an actual felony charge?

25 A Yes, I did.

Justin Butler - Direct Examination by Mr. James Snell

1 Q Now can you tell us -- first of all, we've heard
2 some testimony about Alphonzo, excuse me Alonzo --
3 A Alonzo.
4 Q Alonzo Walker?
5 A Right.
6 Q Alonzo. Can you tell us if you know him?
7 A Yes, I know him.
8 Q How do you know him?
9 A From California. We -- he's a little bit older
10 than me, but from around town.
11 Q Do you know Terry McClure?
12 A Yes, I do.
13 Q Tell us about how did you come to meet Terry?
14 A We stayed in, I'd say around the same area
15 neighborhood when I was probably 14 or 15 years old.
16 Q How old is Mr. McClure?
17 A I couldn't necessarily say, probably 27, 28.
18 Q Okay. So he's three or four years older than you
19 are?
20 A Correct.
21 Q How would you come to get acquainted with Vonkeith
22 Toland?
23 A I met him through Alonzo Walker.
24 Q Tell us about that?
25 A He sold cars and he sold cars to Alonzo and I seen

Justin Butler - Direct Examination by Mr. James Snell

1 most of the cars that he has received from him and they
2 seem -- they seem pretty good, decent cars, and he told me
3 how he purchases these cars, you know, and basically he
4 trades them for marijuana and other than that. I came in
5 contact with him and we discussed a vehicle. The first
6 vehicle that we ever discussed probably was a Magnum, I
7 believe and I came out -- I came to some little car lot in
8 the middle of nowhere. I can't exactly say, I'm not from
9 the area, so I couldn't necessarily put a pin point on it,
10 but I met him there, we looked at it, the Magnum, it had
11 some -- some problems or issues, some steering wheel
12 problems and something else was wrong with it, I believe
13 the brakes or something like that, and I didn't end up
14 purchasing the car. But I told him specifically before --
15 this car has to be able to be drove back with me so I can,
16 first of all purchase it.

17 Q Mr. Butler, let me get you back up just a little
18 bit. When did you first ever talk to Vonkeith Toland,
19 approximately what year and what month?

20 A I can't necessarily say when the month, but maybe
21 2013, the end of 2013, I believe.

22 Q Did you ever have any -- did you ever meet or have
23 any conversations or dealing with Tycus Toland?

24 A No, sir.

25 Q How many times, I guess, you were testifying before

Justin Butler - Direct Examination by Mr. James Snell

1 that you had traveled close to here to look at a car?

2 A Correct.

3 Q When was that?

4 A Maybe the end of 2013.

5 Q Between 2000 -- between that meeting and April of
6 2014, how many times did you meet Vonkeith Toland?

7 A Three times.

8 Q All right. And tell us about, what was the reason
9 for those meetings?

10 A To purchase a vehicle or to look at a vehicle
11 because prior to the first initial meeting, the car -- the
12 car or cars weren't properly ready to -- weren't properly
13 functional for me to drive back to Alabama. So like I said
14 before, I didn't purchase them.

15 Q What was your -- back in April of 2014, what was
16 your reason for coming into South Carolina?

17 A I had two shows. I had one in Greenwood; they both
18 play in Greenwood. I had one day that I arrived,
19 initially; and the second one was the day after that one.
20 So it was probably Thursday and Friday. I had one as soon
21 as I got here at Greenwood and I had one the next day.

22 Q Did -- did you come to South Carolina with Terry
23 McClure?

24 A Yes, I did.

25 Q Why did Mr. McClure go with you?

Justin Butler - Direct Examination by Mr. James Snell

1 A Because we do music and like I said, I am the owner
2 of my own small business, LAR Corporation and that was one
3 of my artists and we did music together.

4 Q Was he participating in your show?

5 A Yes, he was.

6 Q Now, you had some -- you communicated with Mr.
7 McClure using a cell phone?

8 A Yes, I did.

9 Q Did you -- did you talk to him on the phone or did
10 you also use text messages?

11 A Both.

12 Q Back during this time, how many phones did you
13 actually have -- did you keep with you?

14 A Two.

15 Q Why did you have two?

16 A To conceal a few things from my fiance as far as
17 females.

18 Q Now, in your texts -- in your conversations with
19 Mr. McClure, we heard what we've seen you referred to
20 something -- you referred to a nickel?

21 A That is -- the nickel is \$500.

22 Q All right. Tell us why were you in -- why were you
23 texting Mr. McClure about \$500?

24 A I was going to reimburse him for coming out there
25 and performing with me because we would have got paid for

Justin Butler - Direct Examination by Mr. James Snell

1 the show.

2 Q Now, what does hammy stand for?

3 A It's an abbreviation. Unfortunately it is drugs --
4 drug related. Hash -- is a cough syrup. Molly is a form
5 of -- not a form, you can take it and put it in your mouth
6 and take it, add marijuana and yeyo would put in the yellow
7 for -- the y would be for the yellow, but it would be a
8 pain pill.

9 Q So hammy is basically a term for a grouping of
10 drugs?

11 A Correct.

12 Q All right. And why were you -- why were you
13 telling him that you were bringing that with you?

14 A So that I could sell that so that I may buy the car
15 that I was supposed to look over -- to go to look at.

16 Q So was your deal or your conversation or your
17 understanding with -- and did you talk -- when you were
18 talking about buying cars were you talking to Vonkeith
19 Toland or someone else?

20 A I believed it to be Vonkeith.

21 Q Okay. Did you ever talk to Tycus Toland about
22 cars?

23 A No, sir.

24 Q All right. Was it your understanding with -- when
25 you were coming out here to meet with Vonkeith, were you

Justin Butler - Direct Examination by Mr. James Snell

1 going to be buying the car with cash or buying it with
2 drugs?

3 A With cash, but it could have been vice versa; it
4 could have been either one, but I was purchasing with cash.

5 Q Back on April 26th, 2014, how much cash did you
6 have with you?

7 A A little bit over \$6,000.

8 Q Where did you have it?

9 A In my pocket.

10 Q All right. How did you get -- I guess, tell me
11 this, where were you and -- where were you staying before
12 you came to the Toland household?

13 A I was staying at a motel in Greenwood, South
14 Carolina across the street from like a Rite Aid. I forgot
15 the exact name of it.

16 Q Where was Terry McClure staying?

17 A He was staying with me as well.

18 Q How did y'all get from that motel in Greenwood to
19 the Toland household?

20 A We drove.

21 Q What kind of -- whose vehicle did y'all drive?

22 A It was a rented vehicle, so I can't say whose
23 vehicle it was. It was a Rent-A-Car vehicle.

24 Q Who -- who rented -- who rented the car?

25 A I didn't necessarily go to the booth or something

Justin Butler - Direct Examination by Mr. James Snell

1 like that, but it was a female there with us, so I don't
2 know if she put it in her name or he put it in his name.

3 Q And who actually drove the car?

4 A We both did.

5 Q Now, where did you -- where were you -- first of
6 all what kind of car were you coming to look at that day?

7 A It was an Infinity with Lamborghini doors on it and
8 it's two front doors flipped up. It was M something. I
9 can't put the last two numbers on there, but it was an M
10 something, I don't --

11 Q You say the doors flipped up, what do you mean?

12 A They, you know, it looked like it could fly away
13 type. You know they lifted up, Lamborghini type, you know
14 butterfly doors.

15 Q All right. So you drove from and -- from Greenwood
16 to look at the car with the wing doors?

17 A Correct.

18 Q Had you seen pictures of the car before?

19 A Yes, he sent me a picture of it.

20 Q All right. Where was -- where were you expecting
21 that car to be?

22 A At the address that was given to me at his, I
23 believed it was his mother's house.

24 Q Now, why did Terry -- why did Mr. McClure go with
25 you?

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1 A Because he was with me. We were supposed to -- we
2 performed and was supposed to perform. That's why he was
3 with me and that's why I was with him at the -- that.

4 Q All right. So to the best of your knowledge, was
5 Terry McClure having any conversations with Vonkeith Toland
6 separately about this trip?

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

8 Q Was Terry McClure talking to anybody else about
9 this trip?

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

11 Q I guess, just tell us what happened when you got
12 to -- to the Toland house?

13 A We made three stops -- or at I mean the mother's
14 house?

15 Q The first house, yes, sir?

16 A Okay. We pulled up, we parked, somebody opened the
17 front door and said come on in; we came on in. I sat down
18 in a chair by the front door, I don't know if that was a
19 porch or if that was add-on. I don't know whatever it was,
20 but I sat in a chair and talked with Vonkeith for a second
21 or two. Everybody was playing cards. I wasn't, I was
22 watching music videos on my phone sitting by the door to
23 the back of the front door, but there's like another door
24 inside that door that leads into the house.

25 Q Who -- who was there?

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1 A Well, I can't -- I don't know these people, so I
2 don't -- I can't say names, but I know Vonkeith was there,
3 I was there, Mr. McClure was there, there was a little,
4 little girl in there and a little baby like, two years old,
5 one or two years old, Von saying this is my son. She was
6 there and the mother was there, I can't say who else was
7 there.

8 Q And you know, we've heard -- we've heard some
9 testimony through the trial from some of the Toland family
10 that say they were in the house and they saw you there.
11 You saw those -- did you see those same people in the
12 house?

13 A I can't say that I did, but I can't say necessarily
14 that they didn't see me even though I didn't acknowledge
15 them, you know.

16 Q Right. Well, how -- how many people total were
17 there?

18 A I can't put a number on it. People were coming in
19 and out, in and out, in and out kind of thing. Everybody
20 didn't stay there who was in there. Like I said, people
21 coming in and out in and out.

22 Q What was -- I guess how was everybody getting
23 along?

24 A Very cordial. Everybody was, you know, like we
25 heard earlier, everybody was getting along. Everybody was

Justin Butler - Direct Examination by Mr. James Snell

1 playing cards.

2 Q Any -- any problems whatsoever?

3 A Not that I'm aware of.

4 Q How long were you there?

5 A Probably -- probably a little over an hour or maybe
6 longer than that. I can't necessarily say. It wasn't
7 quick because Vonkeith ended up leaving and I was waiting
8 on him to return from -- I can't -- I can't say it was 10,
9 15, 20 minutes. It was nothing like that, it was well over
10 an hour.

11 Q All right. Where -- where -- when you got to the
12 house, were you expecting the car to be there?

13 A Yes, sir.

14 Q All right. Who told -- how -- I guess how did you
15 come to find out the car wasn't there?

16 A Came to find out that Vonkeith, later on like when
17 I pulled up and we spoke for a second and he was like, The
18 car ain't here. We got to go get it. We got to go get it.
19 Like all right, but he said he had to leave for a second so
20 I had to sit and wait for him to return back.

21 Q All right. So during this hour period that Mr.
22 McClure is playing cards and you're watching videos,
23 Vonkeith is -- that's when he is running his errand or he's
24 out of the house?

25 A He was playing cards as well for a second, but then

Justin Butler - Direct Examination by Mr. James Snell

1 he left.

2 Q All right. Who -- who decided that it was time to
3 leave?

4 A Vonkeith decided it was time to leave when he came
5 back and said you guys ready to go; well that's when he
6 came back from wherever he went to.

7 Q All right. What happened next?

8 A We went outside to leave. I actually asked him
9 could I use the restroom and I urinated on the path. He
10 said, okay urinate and I did so on the side of the house on
11 the right-hand side. He said it was okay. I used the
12 restroom. He said hold on for a second.

13 He pulled back around in a gray, burgundy
14 Challenger and they pulled around in a silver -- silver
15 Honda and they both got into separate cars. Vonkeith drove
16 the Challenger and the other guy with the dreadlocks, he
17 drove the Honda. I drove the, I don't know what it was, it
18 was a rental, so I don't know, it was a little truck to the
19 next location.

20 Q All right. So who -- who all went to -- when you
21 say the next location, where was the next place?

22 A I can't -- like I said, I'm not from that area.
23 I'm not from out there. It was like the middle of nowhere.
24 Like I said, it was a little trailer in some type of bushes
25 there, I don't know if it was a freeway, I don't know if

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1 it's a dirt road, not a dirt road, but I don't know, like I
2 said, I don't know if it was a freeway or I mean -- yeah, a
3 freeway or something like that. I don't know what it was,
4 but it was --

5 Q Was the next place, was that -- the next place you
6 went, was that where the car actually was?

7 A No, sir.

8 Q Okay. The next place you went was it a house, was
9 it a store?

10 A No, we actually then followed -- followed the guy
11 with the dreads and we followed Mr. Vonkeith and we
12 followed him to -- to the next place and it was like a
13 little -- it was a trailer as well.

14 Q What was the -- why did y'all go there?

15 A I guess that's where the car was. That's where the
16 car was, at the end of the day, that's where the car was.

17 Q And was that the trailer that you heard testimony
18 about before that had the perimeter fence?

19 A Correct.

20 Q And the dogs?

21 A Correct.

22 Q Who all, just give us the names of who were the
23 folks that were -- that went from the Toland house playing
24 cards to that trailer?

25 A Me, Mr. McClure, the individual I was riding with;

Justin Butler - Direct Examination by Mr. James Snell

1 the guy with the dreadlocks, and Vonkeith.

2 Q And the gentlemen with the dreadlocks, was that
3 Tycus, that later be Tycus Toland?

4 A Yes, sir.

5 Q Now, at any point up until now, what kind of
6 discussions -- did you have a plan with Terry McClure to
7 rob anybody?

8 A No, sir.

9 Q Did Terry McClure tell you he was going to rob
10 anybody?

11 A No, sir.

12 Q Were you aware of any type of bad blood or beef or
13 conflict between Terry McClure and anyone in the Toland
14 family?

15 A Not that I'm aware of, no, but nobody knew each
16 other like that to have any bad blood towards one another.

17 Q What happened, I guess, when you got -- the trailer
18 you're talking about, that's been referred to as the
19 property on Bushberry Road?

20 A Correct.

21 Q Okay. So tell us -- first of all, describe it to
22 us, kind of from your perspective, what did you -- what did
23 you see?

24 A When we first, I believe it was a gated fence. I
25 can't necessarily put a height on it. It was a pretty high

Justin Butler - Direct Examination by Mr. James Snell

1 fence, wooded. He had to basically unlock the gate or
2 he -- Vonkeith had to unlock the gate for us to get in the
3 vicinity of where the trailer was located. It was like
4 down a little dirt path road and the trailer was down at
5 the bottom of it, bottom of the slope.

6 Q All right. Was the -- was the car that you were
7 coming there to look at, was it there?

8 A Yes, sir.

9 Q Okay. When you -- when you pulled in and parked,
10 what did you do next?

11 A Everybody, they -- everybody got out of the car and
12 we engaged in conversation. I believe they started to
13 smoke. I don't -- I didn't smoke. They started to
14 smoke --

15 Q Who started to smoke?

16 A The two individuals, Vonkeith and the brother. I
17 don't know if Terry McClure did; he probably smoked as
18 well. Like I said --

19 Q What were they smoking?

20 A Marijuana. I wasn't going to say anything about
21 that. Everybody engaged in conversation. We then
22 proceeded to the Infinity and he popped the hood, unlocked
23 the car, popped the hood.

24 Let me move back. Before that, he tried to start
25 the car and it didn't start. So that's why he popped the

Justin Butler - Direct Examination by Mr. James Snell

1 hood because the battery or the alternator was out and we
2 were -- wiggles something like, you know, the cables or
3 something of that nature and the car started up. I got in
4 the driver's seat. I got in first, nobody else entered the
5 car at that point in time because we was letting the car
6 warm up and I was trying to, you know, give it the gas to
7 get the -- the thermostat, you know, get the engine warm or
8 what not.

9 And after that, we all -- we all entered the car
10 and started messing with the little gidgets and gadgets
11 showing me, you know, how to work things in the car. As
12 far as like a little touch screen inside and there was some
13 type of gidgets and gadgets. He started showing me that
14 and how to work those things. I then -- I then asked him
15 about the fuel gauge because it was on -- he asked me if
16 this is the car -- you know, the fuel gauge is broke and I
17 said okay. So after that I test drove the car. We all got
18 into the car and I took a test drive; I drove the car.

19 Q Who is we; you said we all entered the car, who
20 rode in the car with you?

21 A Me, I was driving; Mr. McClure, he was in the
22 passenger seat; Mr. Vonkeith Toland, he was in the backseat
23 on McClure's side I believe.

24 Q Why did -- what did Tycus Toland do?

25 A He stayed there for some reason. I don't

Justin Butler - Direct Examination by Mr. James Snell

1 understand; I don't know why, but he was coming too. I
2 don't know. He stayed there.

3 Q All right. Tell us about the test drive.

4 A I pulled out the gate -- pulled out of the gate.
5 Well, then he had to get out and close the gate -- I mean
6 open the gate because it was closed once again. Opened the
7 gate and I turned right and drove down the street, testing
8 the brakes going at a certain speed, you know, hitting the
9 brakes, testing the brakes. I go down to a dead end; you
10 either have to left or right and I then made a u-turn and I
11 come back and do the same thing with the brakes, trying to
12 hit the brakes because prior to that car, like I said, the
13 Magnum, the brakes weren't good. So like I said, I go
14 to -- go back to the house, park the car and return the
15 keys to Mr. Vonkeith.

16 Q How long were y'all gone?

17 A I'd give or take say about five to ten minutes;
18 about five or ten minutes maybe.

19 Q All right. What were you -- what were you wearing?

20 A I was wearing a polo shirt, a polo shirt, an orange
21 polo shirt. I was wearing I believe some white jeans,
22 white jeans or black jeans and I was wearing purple and
23 orange -- purple and orange Nikes. Nikes were Foamposites.

24 Q So you were in a lot of bright colors?

25 A Correct.

Justin Butler - Direct Examination by Mr. James Snell

1 Q All right. Did you have any gloves on?

2 A No, sir.

3 Q Did Terry McClure have gloves?

4 A No, sir.

5 Q Anybody?

6 A No, sir.

7 Q And basically did you have anything on trying to
8 cover your face, any kind of sunglasses or a low hat or
9 anything like that during this whole time?

10 A No, sir.

11 Q All right. At any point prior to going on the test
12 drive, did they invite you in the trailer or in the house
13 for any reason?

14 A No, sir.

15 Q Did you go in the backyard behind the trailer for
16 any reason?

17 A No, sir.

18 Q How far away when -- when you drove in or you rode
19 in, who was driving -- when you and Terry McClure first got
20 there, who was driving?

21 A I was driving.

22 Q How many cars -- I guess, did you -- were you out
23 there to look at?

24 A Particularly that Infinity, just that one.

25 Q Did you look at any other cars?

Justin Butler - Direct Examination by Mr. James Snell

1 A Not at that time, but prior to me -- to them -- to
2 that day, I looked at multiple cars.

3 Q All right. When you got back after test driving
4 the Infinity, what happened next?

5 A Like I said, I parked the car. Everybody exited
6 the car. I returned the keys back to Mr. Vonkeith. After
7 that, everybody was just sitting around. I can't say
8 sitting around, they were like on their phones either
9 engaging in conversation. I then and Mr. Vonkeith, we
10 both -- he got on the phone and walked this way. I went
11 to -- back to the cars with them because I didn't have a
12 plug-in charger. I had to put my phone on the car charger.
13 So that's what I was on the way to go do.

14 Q All right. What -- what -- which car were you
15 going to charge your phone in?

16 A In the car that we arrived in; in the car that I
17 was driving at that time.

18 Q Was that the rental?

19 A Yes, sir.

20 Q What were you -- why were you wanting to charge
21 your phone then?

22 A So when I can do the numbers on the speedometer. I
23 believe the speedometer had about 80 or 85,000 miles and I
24 was trying to see exactly how much to the point of that
25 year how many miles was that car supposed to have.

Justin Butler - Direct Examination by Mr. James Snell

1 Q What does that mean by, you were going to do the
2 numbers?

3 A According to the mileage with something like that,
4 it's 15,000 miles per year or something like that give or
5 take; and it was well below it and I was -- that was
6 surprising. That was surprising good. So that's what I
7 was doing.

8 Q Were you trying to figure out how much that car was
9 worth?

10 A Correct.

11 Q How -- how do you -- how do you determine that
12 using your phone?

13 A I actually averaged the mileage on that particular
14 car. I looked it up on that particular car and then went
15 under salvage and the majority of the cars that he deals
16 with, that's why I deal with -- was going to deal with him
17 because the car is worth, it's a low mileage car and
18 salvaged I can get it for a low price.

19 Q What was the price of the Infinity?

20 A The price was -- he initially said around 7,000 or
21 something like that and then I was going to be willing to
22 give him six, but then he said no, he could go to salvage
23 on it, so I tried to crunch the numbers some more trying to
24 get it a little cheaper.

25 Q Now had -- had -- have you ever offered him

Justin Butler - Direct Examination by Mr. James Snell

1 marijuana for a car before?

2 A Yes, I have.

3 Q What did they do -- what's -- you say they,
4 specifically, did you offer Vonkeith Toland marijuana?

5 A Specifically Vonkeith Toland, yes.

6 Q And what did he -- what -- what was the response?

7 A It was fine and he was good to go, but the Magnum
8 that I initially came out there for, you couldn't turn the
9 steering wheel; it was bent. You know what I mean, it was
10 bent in and you couldn't turn and I didn't end up getting
11 it, and it was some type of piece missing or something.

12 He let me test drive that car as well. I took it
13 to the Auto Zone or something -- some type of auto parts
14 store and they plugged it in and told me that it was
15 something -- a faulty something in there and the piece
16 would cost me about \$800 or something like that, so I
17 didn't end up getting the car because it was not properly
18 functioning.

19 Q All right. When you got back and were sitting in
20 the rental -- you were actually inside the rental car to
21 charge your phone?

22 A Yes, I did.

23 Q Okay. You were sitting in the car; where was Terry
24 McClure?

25 A Behind me. They were, I don't know if they was

Justin Butler - Direct Examination by Mr. James Snell

1 moving around the cars or how the cars were parked or
2 placed, but they were at the bottom. Like I was -- we were
3 parked at the top area close to the fence. The Infinity
4 and the trailer was at the bottom, to the bottom right. We
5 were parked at the top left.

6 Q Was he inside the car or outside the car?

7 A They were outside the car, I believe.

8 Q And they're not sitting in the passenger seat?

9 A No.

10 Q Now again, since -- after the test drive, what
11 conversations did you have with Terry McClure; what were
12 y'all talking about?

13 A Me and him?

14 Q Yes, sir.

15 A No, we didn't have no conversation. Everybody was
16 right there so everybody would have -- everybody would have
17 engaged in a conversation, but, no we had no private
18 conversation going.

19 Q When you walked back to the rental car, what did
20 Vonkeith Toland and Terry McClure do?

21 A As I walking off, Vonkeith was walking off because
22 he had a phone call. He answered his phone; he had a phone
23 call and he went -- I guess he didn't want us, you know to
24 know his business, so he went to the left -- the left side
25 of -- the left side of the trailer, which is basically a

Justin Butler - Direct Examination by Mr. James Snell

1 lined up to where we were parked -- where the car was
2 parked at, the rental car was parked on the left-hand side
3 to the back area and I was on my way to the car and sitting
4 in the car.

5 Q What -- what -- what was Tycus Toland doing?

6 A They were both, him and Terry McClure were both by
7 the Infinity or somewhere in that vicinity down there in
8 the back behind -- behind there in the right -- in the
9 bottom right corner.

10 Q So they're -- from where you're sitting, you're
11 looking -- they're behind?

12 A Yes, sir, to my right, behind me to my right.

13 Q Okay. What happened next?

14 A I was sitting in the car, I can't put a time, but
15 for a period of time or anything like that, maybe for a few
16 minutes and I hear dogs start barking, they wasn't barking
17 like when everybody was just chilling. The dogs come over
18 and then I hear a shot go off?

19 Q How many shots?

20 A I hear one, initially one shot.

21 Q Okay. What -- what did you see happen?

22 A I didn't see nothing happen, I was in the vehicle
23 at the time charging my phone.

24 Q Why didn't you see anything happen?

25 A Because it was to the back of me, the bottom right

Justin Butler - Direct Examination by Mr. James Snell

1 corner.

2 Q Other than the dogs barking, did you hear any kind
3 of loud noises of fight, scuffle, yelling?

4 A I didn't personally hear it. That doesn't mean it
5 couldn't have been, but I didn't hear anything like that.

6 Q Was the rental car, was it turned on; was it
7 running?

8 A No, the car didn't have to be running for the
9 charger to charge.

10 Q All right. What happens after you heard the shot,
11 what did you do next?

12 A Actually -- when the initial shot went off, that
13 was -- that was my reaction.

14 Q What did you see when you -- did you turn around
15 and look behind you?

16 A Yes, I did. I seen Vonkeith coming from -- from
17 the back or the side of his trailer running towards Terry
18 McClure and then I hear -- I didn't see, but I heard
19 multiple more gunshots.

20 Q All right. Did you see Tycus -- did you see Tycus
21 Toland at that time?

22 A No, I did not.

23 Q Okay. Did you actually see the shots fired?

24 A No, I did not.

25 Q All right. What -- what did Vonkeith Toland do?

Justin Butler - Direct Examination by Mr. James Snell

1 A After then --

2 Q Well -- well, he said -- okay. So you said he's
3 running -- what's he running towards?

4 A He -- he's running towards the front of the
5 Infinity, in front of the house because he was on the side
6 back. Okay. So this is the side of the trailer and this
7 is what -- this is where the car was parked. He was
8 running this way towards the front of the car, front of the
9 house, front of the car because the car was parked in front
10 of the door.

11 MR. JAMES SNELL: If I may ask the witness to step
12 down and point on the diagram?

13 THE COURT: Yes, sir.

14 BY MR. JAMES SNELL:

15 Q Mr. McClure, I'm going to ask you to come down and
16 look at -- and explain -- that's been labeled as State's
17 Exhibit 27.

18 Okay. First of all, can you show us -- does this
19 look like the scene or the mobile home as you recall it?

20 A The mobile home, this is the front door and this is
21 the vehicle parked here.

22 Q Okay.

23 THE COURT REPORTER: Y'all are going to have to
24 swap places. That way I can hear him. He needs to face
25 me.

Justin Butler - Direct Examination by Mr. James Snell

1 MR. JAMES SNELL: Face you?

2 THE COURT REPORTER: Thank you.

3 MR. JAMES SNELL: You're welcome.

4 BY MR. JAMES SNELL:

5 Q Okay. What is this vehicle here?

6 A Like I said, if that's the front door and that is
7 the Infinity there.

8 Q What vehicle is this here?

9 A That would be the Honda.

10 Q Okay. Where was the rental car that you were
11 sitting in?

12 A I can't say that it was perfectly lined up with it,
13 but it was up here somewhere closer to the fence than the
14 other was.

15 Q Okay.

16 A There was the front entrance fence and it was
17 closer to the front of the fence.

18 Q I'm going to get you to step back a little bit so
19 everybody on the jury can -- can see.

20 All right. So when you -- you said before that
21 Vonkeith Toland came running back. Where was he at before
22 you heard the first shot?

23 A Before I heard the first shot, we both were
24 going -- I was going -- he was going this way.

25 Q Okay.

Justin Butler - Direct Examination by Mr. James Snell

1 A I came to the car to get in to charge my phone and
2 he was on this side of the house going towards it like
3 that.

4 Q Okay. When you're sitting in the car, you're
5 facing out this way?

6 A Correct.

7 Q All right. When you saw -- when Vonkeith was
8 running, what was he running towards?

9 A He was running towards this way in front of his
10 house, in front of this vehicle here.

11 Q Okay. What -- and then what happened next?

12 A After I see him running towards this way, like I
13 was here, I hear multiple shots. I take cover once again
14 to try to figure out where these shots are coming from and
15 then I believe he runs back this way and after that, I
16 don't see anymore.

17 Q All right. What -- what did -- what did you do?

18 A I'm trying to start the car and go but no keys are
19 in the car because Mr. McClure had the keys.

20 Q All right. Where was -- what did you see Terry
21 McClure do?

22 A I can't say I seen him because like I said, after
23 they both were right here in this vicinity here and he ran
24 this way, I believe they both ran this way. I didn't see
25 anything beyond that point.

Justin Butler - Direct Examination by Mr. James Snell

1 Q Okay. All right. And when you say he ran back
2 this way, you mean did he go behind the trailer?

3 A Yes.

4 Q All right.

5 MR. GRAHAM: Objection, speculation.

6 THE COURT: Sustained.

7 BY MR. JAMES SNELL:

8 Q When -- when you -- when he -- when he went
9 running, will you show the jury on the board what direction
10 they went running?

11 A They went to the right.

12 Q On the board, can you point on the board where they
13 went?

14 A They went this way.

15 Q Okay. What did you -- what happened next?

16 A After that, I can't -- I turned around and I see
17 Mr. McClure coming back to the vehicle.

18 Q Okay.

19 A After that we leave.

20 Q All right. Did -- were there any more gunshots?

21 A No. There was only, I'd say about four or five
22 shots. I can't say anything like that.

23 Q Did the shots all happen while Vonkeith was running
24 toward Terry McClure or some of the shots happen at
25 different times?

Justin Butler - Direct Examination by Mr. James Snell

1 A They could have happened at different times, but
2 I -- like I said I heard the shots. I heard the initial
3 shot, I heard multiple shots right here in this area, and
4 then possibly could have been more shots when they were in
5 the back, but I can't be sure.

6 Q How long was Terry McClure gone from the time he
7 went to -- when you said, from the time he ran in this
8 direction, how long was he in that area?

9 A Give or take a minute or two at the longest, maybe
10 two, two and a half, three minutes, maybe.

11 Q Did you get out of the car?

12 A No, I did not.

13 Q I'm going to ask you to take your seat back.

14 When Terry McClure came back to the car, what did
15 he have with him?

16 A He didn't have anything, not that I'm aware of. I
17 didn't see anything personally in hand or on his
18 belongings.

19 Q And --

20 A What was that?

21 Q I'm sorry.

22 A I mean that doesn't take the fact away it could
23 have been in a pocket, in his hands. I didn't see it with
24 my eyes; I didn't see it.

25 THE COURT: Answer the question. Don't speculate.

Justin Butler - Direct Examination by Mr. James Snell

1 Ask that question again and have the witness answer the
2 question.

3 BY MR. JAMES SNELL:

4 Q What did Terry McClure have with him when he came
5 back to the car?

6 A Nothing.

7 Q At any point during this time, did you have a gun?

8 A No, I did not.

9 Q At any point did you talk to Vonkeith Toland after
10 the shots were fired?

11 A No, I did not.

12 Q After the shots were fired, did you ever -- did you
13 and he at any point step out of the car?

14 A No, I did not. I just transferred to the passenger
15 side.

16 Q Why did you transfer to the passenger side?

17 A I didn't have the keys and Mr. McClure drove the
18 car; he had the keys and jumped in the driver's seat.

19 Q All right. Did you ever go in -- at any point
20 ever, go inside that trailer?

21 A No, I did not. The only trailer I entered was his
22 mother's.

23 Q Did you kick the door in?

24 A No, I did not.

25 Q Okay. Were you ever walking around the trailer

Justin Butler - Direct Examination by Mr. James Snell

1 talking to Vonkeith during this time; I'm sorry, talking to
2 Terry McClure during this time?

3 A No, I was not.

4 Q Did you ever get to -- did you ever see Tycus
5 Toland after he was shot?

6 A No, I did not.

7 Q Okay. Did you shoot Tycus Toland?

8 A No, I did not.

9 Q Did you shoot Vonkeith Toland?

10 A No, I did not.

11 Q Did you threaten Vonkeith Toland?

12 A No, I did not.

13 Q Other than you, Vonkeith Toland, Tycus Toland,
14 Terry McClure, was there anybody else there?

15 A Multiple dogs; that was it.

16 Q As far as people?

17 A Just us four.

18 Q When you left, what did you know about Vonkeith
19 Toland's condition?

20 A I didn't know anything about it.

21 Q Did you do anything at all, including the smallest
22 of anything to help Terry McClure plan any type of robbery
23 or shooting?

24 A No, I did not.

25 Q Did you have any indication in your mind, any

Justin Butler - Direct Examination by Mr. James Snell

1 indication from any sources whatsoever that Terry McClure
2 was planning or capable of this shooting?

3 A No, sir.

4 Q Did you -- did you -- when you left with Terry
5 McClure, did you take anything with you?

6 A Just my person, just me.

7 Q And I want to be -- I want to be clear with you --
8 was there any indication that Terry had given at all that
9 he was agitated, upset, plotting, any kind of warning that
10 he -- that this was something that might happen?

11 A No, sir.

12 Q What did -- what did Terry McClure tell you
13 happened?

14 A I didn't ask and he didn't tell me.

15 Q Why?

16 A Because, that's what I said -- I mean I didn't ask.
17 I heard shots, I didn't ask. I really didn't want no parts
18 of it, you know, I didn't ask.

19 Q What do you think might have happened if you had
20 asked or pried into what happened?

21 MR. GRAHAM: Speculation.

22 THE COURT: Sustained.

23 BY MR. JAMES SNELL:

24 Q Did you get -- did Terry McClure ever give you
25 anything that came out of -- from the Tolands?

Justin Butler - Direct Examination by Mr. James Snell

1 A No, sir.

2 Q No money?

3 A No, sir.

4 Q No drugs?

5 A No, sir. If I may? I had my own drugs, I
6 didn't -- no, sir.

7 Q All right. Where did you go after y'all left?

8 A We went to Greenwood.

9 Q All right. And what happened after y'all got back
10 to Greenwood?

11 A I was ready to get out and go my own separate way,
12 but I decided not to and then we went back to Georgia and I
13 left.

14 Q You went back home?

15 A Yes, sir.

16 Q All right. Did you ever get an occasion to talk to
17 the police in Alabama?

18 A Yes, I did.

19 Q What did you tell them?

20 A I told them that I went fishing and I told them
21 that I was working on music. I didn't want to get
22 involved, be involved in anything that may have -- may have
23 or may have not occurred. I told them I went fishing, sir,
24 and was working on music.

25 Q Was it true?

Justin Butler - Direct Examination by Mr. James Snell

1 A No, it was not.

2 Q Why did you tell the police that?

3 A Because I didn't want no involvements in, like I
4 said, what may have or may have not happened.

5 Q What did you tell the police, the Lexington County
6 Police or Sheriff's Department about what happened?

7 A I told them the same thing.

8 Q Now, you -- did you offer to let them take a DNA or
9 other type of sample from you?

10 A I offered the State of Alabama, the people from
11 Muscle Shoals Police Department from Muscle Shoals, I
12 offered them, if he wanted to take some hair, DNA or
13 anything like that and they said no, we don't want that at
14 this time.

15 Q Why did you -- why did you make that offer?

16 A Because I felt like that was information, maybe the
17 right thing to do even though I lied about not being there,
18 I definitely didn't know DNA -- that it -- what it was
19 supposed to be --

20 Q Would your DNA or anything like that connect you to
21 the actual shooting?

22 A No, it would not.

23 Q And, Mr. McClure, are you guilty of any involvement
24 in the murder of Tycus Toland?

25 A I don't know what -- I'm Mr. Butler -- I don't

Justin Butler - Cross-Examination by Mr. Graham

1 know.

2 Q Please forgive me. Mr. Butler.

3 A Yes, sir.

4 Q Are you guilty at all in any involvement in the
5 murder of Tycus Toland?

6 A No, sir.

7 Q Are you guilty at all in the shooting of, the
8 serious shooting of Vonkeith Toland?

9 A No, sir.

10 Q Did you -- are you guilty of any involvement in any
11 type of breaking in or burglary of that mobile home on
12 Bushberry?

13 A No, sir.

14 Q At any point during this, did you yourself possess,
15 hold, present, point, or threaten anyone with a gun?

16 A No, I did not.

17 Q Thank you very much. Answer any questions the
18 State has for you?

19 THE COURT: Solicitor?

20 MR. GRAHAM: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. GRAHAM:

23 Q Mr. Butler, you also go by the name, Jonah McCoy?

24 A That's correct, that's my stage name.

25 Q You also have a Twitter account or some kind of

Justin Butler - Cross-Examination by Mr. Graham

1 social media account as Jonah the General, correct?

2 A I do.

3 Q So you admit today for the first time to anybody in
4 law enforcement that you were in South Carolina when this
5 happened, correct?

6 A That's correct.

7 Q You admit that you were at Bushberry Road when
8 Tycus Toland was murdered, correct?

9 A That's correct.

10 Q You admit that you were at Bushberry Road when
11 Vonkeith Toland was shot multiple times, correct?

12 A That's correct.

13 Q You admit that you were at Bushberry Road when
14 that house was burglarized, correct?

15 A Correct. I can't say if it was burglarized at that
16 exact point in time, but I was there when this incident --
17 when the shootings happened, correct.

18 Q So it's your testimony you never went in that
19 house?

20 A That is correct.

21 Q Do you know of any reason why Vonkeith Toland would
22 lie about that?

23 A I couldn't possibly say, but I'm not lying about
24 going in the house.

25 Q Just like you didn't lie when you talked to the

Justin Butler - Cross-Examination by Mr. Graham

1 police three different times, right?

2 A I talked to the police twice.

3 Q Well, you talked to the police three times. Do you
4 remember talking with Detective Garrick on the phone when
5 you were in Muscle Shoals and he was in South Carolina?

6 A That's correct.

7 Q Like you save it on your phone, the 510 phone, as
8 South Carolina Detective, right?

9 A That's correct.

10 Q And you told him that you were with, I believe your
11 mother and your brother and that you had never been to
12 South Carolina and were not in South Carolina, correct?

13 A That is incorrect.

14 Q So you deny that you told Detective Garrick on the
15 phone that you don't know anything about what happened?
16 Did you tell him you don't know anything about what
17 happened on Bushberry Road?

18 A I did.

19 Q Did you tell him you'd never been to South
20 Carolina?

21 A I didn't tell him that, I told him that I had
22 actually stayed in Greenwood, South Carolina to be
23 properly, correctly about that. I told him that.

24 Q So if Detective Garrick testified that you said you
25 never went to South Carolina, he would be lying?

Justin Butler - Cross-Examination by Mr. Graham

1 A He'd be lying.

2 Q Did you tell him you were in South Carolina at the
3 time of this murder?

4 A I didn't tell him that, no.

5 Q You denied being here, didn't you?

6 A I did.

7 Q So you're a liar, correct?

8 A If you want to say.

9 Q No, I'm asking you, are you a liar?

10 A Have I lied; yes, I have lied.

11 Q Did you lie to the detective on the phone about
12 this case; yes or no?

13 A I did. I lied about me being there.

14 Q You lied about being there and about knowing
15 anything about it, correct?

16 A I did.

17 Q You lied to protect yourself, didn't you?

18 A I did.

19 Q You lied to protect Mr. McClure, didn't you?

20 A No, I did not.

21 Q You did not, just to protect yourself?

22 A I didn't know parts of it, sir.

23 Q Because you wanted to protect yourself, correct?

24 A Because I didn't want no parts of it.

25 Q Why didn't you want any part of it?

Justin Butler - Cross-Examination by Mr. Graham

1 A Because I believe something happened there and I
2 didn't -- I didn't want to be involved in any of that
3 there.

4 Q You didn't want to get in trouble, correct?

5 A Not necessarily in trouble, I didn't want to be
6 implicated in something that I didn't do.

7 Q What does implicated mean if not being in trouble?

8 A In something.

9 Q Okay. You lied, didn't you?

10 A About what?

11 Q Being there and knowing anything about what
12 happened?

13 A I lied about being there. I lied about not being
14 in South Carolina at the time. I lied about being going
15 fishing. At the time I didn't know exactly what happened
16 so I did not lie about what happened because we didn't
17 discuss anything after that point, sir.

18 Q He asked you if you knew anything about what
19 happened at a murder on Bushberry Road and you said I don't
20 know anything, correct?

21 A At that time I didn't know anybody was murdered,
22 correct.

23 Q Okay. So are you a liar or not; yes or no?

24 A Have I lied? Yes.

25 Q Are you a liar to the detective in South Carolina;

Justin Butler - Cross-Examination by Mr. Graham

1 yes or no?

2 A I lied to him, correct.

3 Q The second time you talked to Detective Craig
4 Rickman, you lied to him as well, didn't you?

5 A I don't recall who Detective Rickman is.

6 Q Well, he's the one from Muscle Shoals, Alabama that
7 testified that you went into the police department in
8 Muscle Shoals and spoke with him?

9 A In Muscle Shoals, correct.

10 Q And he asked you about a murder, a shooting, and a
11 burglary on Bushberry Road in South Carolina, correct?

12 A Yes, he did.

13 Q And you told him, I don't know anything about it,
14 correct?

15 A He didn't necessarily say anything about a burglary
16 or anything like that. He said that somebody was killed
17 and he didn't say anything about a burglary or he didn't
18 say anything about anything else except somebody was killed
19 and South Carolina would like to speak with me about the
20 incident that happened.

21 Q And you told them you don't know anything about it,
22 correct?

23 A That's right.

24 Q You lied to him, didn't you?

25 A Yes, I did.

Justin Butler - Cross-Examination by Mr. Graham

1 Q And you told him you haven't been to South Carolina
2 in several years; isn't that correct?

3 A That's correct.

4 Q Well, that was another lie, wasn't it?

5 A That was.

6 Q So you again lied to protect yourself because you
7 didn't want to be -- you lied to stop yourself from being
8 implicated, correct?

9 A That's correct.

10 Q Then after you were placed under arrest and
11 transported to South Carolina, you spoke with Detective
12 Todd Garrick in person, didn't you?

13 A I did.

14 Q They served warrants on you, didn't they?

15 A They did.

16 Q And they told you that you were being charged with
17 the murder of Tycus Toland, correct?

18 A Correct.

19 Q They told you that you were being charged with
20 shooting Vonkeith Toland, an attempted murder, didn't they?

21 A They did.

22 Q They told you that you were being charged with
23 burglary, didn't they?

24 A They did.

25 Q They told you you were being charged with

Justin Butler - Cross-Examination by Mr. Graham

1 possession of a firearm during the commission of a violent
2 crime, correct?

3 A They did.

4 Q And you told him, I don't know anything, correct?

5 A Not exactly those words.

6 Q What did you tell them?

7 A I told them I didn't kill anybody, I didn't shoot
8 anybody, I didn't -- I don't burglarize and I did not
9 burglarize anybody house.

10 Q So if he said you -- if he said you told him, I
11 don't know anything about any of this, he would be lying?

12 A Correct.

13 Q And you didn't tell him you'd never been to South
14 Carolina?

15 A No.

16 Q If he testified you'd never been to South Carolina
17 and that's what you told him, is he lying again?

18 A He's definitely lying because like I said before, I
19 stated that I went to school in Greenwood, South Carolina.
20 I informed him of that multiple times, sir.

21 Q Any reason why Detective Rickman and Detective
22 Garrick would lie on you?

23 A Not -- no, not that I'm aware of.

24 Q But it's your testimony that they are, correct?

25 A In those statements, yes.

Justin Butler - Cross-Examination by Mr. Graham

1 Q All right. You said that you lied to Detective
2 Garrick on the phone and you lied to Detective Rickman in
3 person because you didn't want to be implicated in
4 something?

5 A Correct.

6 Q That's why you didn't tell the story that you told
7 the jury today, correct?

8 A Can you repeat that for me one time.

9 A You didn't tell the story that you told today --
10 the reason that you didn't tell Detective Garrick -- I'm
11 sorry. The reason you didn't tell Detective Garrick on the
12 phone or Detective Rickman in person was because you didn't
13 want to implicate yourself, correct.

14 A That is correct.

15 Q So tell me why after you're served with warrants
16 and implicated, you had an opportunity to tell Detective
17 Garrick what happened and you didn't say a word about what
18 you've testified to today; explain that?

19 A Because I had rather discuss that with -- with the
20 attorney because words has, like I said, been tossed and
21 turned and I would like to be present with an attorney at
22 any time, you know, especially when I'm being charged with
23 something and not being questioned about something, I'm
24 being charged with something. I'd like for an attorney to
25 be present at the time before I give any statements, sir.

Justin Butler - Cross-Examination by Mr. Graham

1 Q Well, you agreed to speak to them, correct?

2 A That's correct.

3 Q He read you your Miranda Rights and you waived
4 those rights and agreed to speak with them?

5 A No, I agreed to the Miranda Rights and I said I was
6 not talking.

7 Q You said you're not talking; is that all you said?

8 A That's it as far as I believe, as far as I
9 remember, yes.

10 Q So you remember him reading you Miranda Rights and
11 you not saying anything else other than I'm not talking?

12 A That was at the end of the conversation I said I
13 don't know nothing, I didn't burglarize a house, I
14 didn't -- I didn't shoot anybody, I didn't have any
15 knowledge of these things.

16 Q After you lied to them?

17 A After I lied to them.

18 Q Well, they read your rights, you waived them, you
19 first said that you were going to talk and you wanted to
20 have an attorney and do that later. Now, you're saying you
21 did talk to them and what you told them was I don't know
22 anything about this, I've never been to South Carolina,
23 correct?

24 A That wasn't a direct comment, that was something
25 like I was speaking; it wasn't in a direct conversation

Justin Butler - Cross-Examination by Mr. Graham

1 because it was him and another individual in there as well
2 and it wasn't a direct conversation; it was just something
3 like saying I don't know nothing. I didn't -- I didn't --
4 that's what I said.

5 Q Okay. That's a lie?

6 A No, that's not a lie because I did not do what
7 these -- what I'm being charged with.

8 Q You told him you didn't know anything about it and
9 you're telling the jury a whole story that explains a whole
10 lot about what you knew about it. You had the opportunity
11 to tell Detective Garrick all that you knew and you chose
12 to say I don't know nothing, correct?

13 A Correct.

14 Q So you lied to them, correct?

15 A I did.

16 Q But yet three different times you lied to the
17 police and you've come into court today and tell a story
18 for the first time, admit you're a liar and you expect
19 these people to believe what you're saying now?

20 A I truly believe that they should because I was
21 there and I'm admitting that now that I was there and that
22 nobody else can tell me different, can say different of
23 where I was and what I did while I was there.

24 Q Well, that's not what you -- at the time I agree
25 with you, because you knew Tycus Toland was dead and you

Justin Butler - Cross-Examination by Mr. Graham

1 thought Vonkeith Toland was dead but Vonkeith Toland didn't
2 die, did he?

3 A He didn't pass, but I didn't know that his brother
4 passed or where the guy was at that time. I didn't know he
5 even got shot. I didn't know he was dead. I didn't know
6 any of that.

7 Q Why did you cut your dreads before you came to
8 court?

9 A I cut my dreads about a year and a half ago.

10 Q Why?

11 A Because they started falling out due to the length
12 that was accumulating from the -- in the County Jail.

13 MR. JAMES SNELL: Your Honor, objection, relevancy.

14 THE COURT: Overruled.

15 BY MR. GRAHAM:

16 Q So were you coming to South Carolina to buy a car;
17 you weren't coming to South Carolina to do a robbery,
18 right?

19 A Not at all, sir.

20 Q Okay. Were you coming to South Carolina to buy a
21 car or were you coming to South Carolina to perform a
22 concert?

23 A Perform and then purchase this vehicle.

24 Q So your plan was to perform two concerts?

25 A Yes, sir, one when I first got initially here that

Justin Butler - Cross-Examination by Mr. Graham

1 night and the one -- and then the day after.

2 Q The days you're talking about are the 24th and the
3 25th of April, Thursday and Friday?

4 A That's correct.

5 Q And what kind of venue was this?

6 A The average R&B, Rap type of venue at a club -- at
7 clubs.

8 Q Did you have to, I mean -- and I have no idea how
9 it works, how do you -- what kind of contracts do you have
10 with people you have performed?

11 A These would be either know a person, that's
12 promoting or they -- somebody that owns the club like an
13 event coordinator or somebody that owns a club. They would
14 probably contact with the person who may be performing at
15 that time or around that date and you would come perform.

16 Q So who was the promoter for your performances on
17 the 24th and 25th?

18 A Tiffany Ebolt (phonetic).

19 Q Now, did you have your contract with her or did you
20 have it with the clubs themselves?

21 A With her, she was the event coordinator at that
22 time.

23 Q Okay. Can you show me a copy of a contract that
24 you had with her or any e-mails you had with her confirming
25 that this happened?

Justin Butler - Cross-Examination by Mr. Graham

1 A It was a verbal.

2 MR. SNELL: Objection, relevancy.

3 THE COURT: Overruled.

4 BY MR. GRAHAM:

5 Q Any contracts or e-mails with her?

6 A It was verbal.

7 Q Any handbills of performances that happened?

8 A Handbills as far as --

9 Q Anything that shows the advertisement that you were
10 coming to South Carolina to Greenwood to do a performance
11 on the 24th or 25th?

12 A I'm sure there should have been.

13 Q You don't have any here with you today though?

14 A No, I do not, sir.

15 Q How much did you get paid?

16 A I got paid give or take \$1,000 together both.

17 Q For two nights?

18 A For two shows, correct.

19 Q What time were the shows at?

20 A What time was they at?

21 Q Yes, sir.

22 A The first initial was at a club, a bar that was
23 give or take around one o'clock the time we went on; and
24 the second one give or take was around the same time,
25 12:30.

Justin Butler - Cross-Examination by Mr. Graham

- 1 Q And how long were you on stage?
- 2 A About ten minutes.
- 3 Q So you're paid a thousand dollars for ten minutes
- 4 work?
- 5 A That's correct.
- 6 Q Did the thousand dollars cover everything that you
- 7 were responsible for in your contract?
- 8 A Yes.
- 9 Q So Terry McClure, he goes by the name L too,
- 10 correct?
- 11 A Bundy.
- 12 Q L. Bundy, correct?
- 13 A Correct.
- 14 Q You have him in your phone as L though, correct?
- 15 A Yes, an abbreviation, yes, sir.
- 16 Q Now he's an artist for you; is that correct?
- 17 A That is correct.
- 18 Q What's the name of your corporation?
- 19 A LAR Corporation.
- 20 Q And where's the paperwork that shows that that
- 21 company exists; did you bring that to court?
- 22 A I did not, but I can provide that.
- 23 Q But you don't have it today?
- 24 A No, sir.
- 25 Q Do you have any contracts showing that L, Mr.

Justin Butler - Cross-Examination by Mr. Graham

- 1 Terry McClure is under contract with you?
- 2 A No, I do not.
- 3 Q Did he perform too?
- 4 A Yes, he did.
- 5 Q How long did he perform and on what nights?
- 6 A We performed together.
- 7 Q So he was on the stage with you for ten minutes
- 8 both nights?
- 9 A Correct.
- 10 Q You got \$1,000, correct?
- 11 A That is correct.
- 12 Q And you split that money with him?
- 13 A No, I did not. I paid for him to come out there so
- 14 we could get his name out there.
- 15 Q Okay. So how much did you pay?
- 16 A How much did I pay him?
- 17 Q Yes.
- 18 A I didn't pay him anything. I paid for the ticket
- 19 for him to come.
- 20 Q How much were -- how much were the tickets to get
- 21 there?
- 22 A I initially gave him -- I gave him \$500.
- 23 Q And that's supposed to cover airfare out there and
- 24 back?
- 25 A Yes, it is.

Justin Butler - Cross-Examination by Mr. Graham

- 1 Q How about the rental car; did you pay for that too?
- 2 A No, I did not.
- 3 Q He did?
- 4 A Yes, he did.
- 5 Q So he's actually losing money by coming to South
- 6 Carolina, correct?
- 7 A Not necessarily. It is an investment in yourself.
- 8 Q He lost money on this business venture under your
- 9 testimony, correct?
- 10 A Did he lose money? He spent money because he -- I
- 11 can't say who -- I can say rented the car.
- 12 Q Well, you just said he did?
- 13 A It was him and another female, sir. So --
- 14 Q Who paid for the car?
- 15 A I can't say, I wasn't at the desk when the car was
- 16 paid for.
- 17 Q Any idea why anybody other than him would pay for
- 18 the car?
- 19 A Not at all.
- 20 Q You would agree with me that if he paid for the
- 21 car, he lost money on this particular trip, correct?
- 22 A I would say he invested money, sir.
- 23 Q I hear what you're saying, but on this trip, he
- 24 lost money, correct?
- 25 A I would again say that I believe he invested.

Justin Butler - Cross-Examination by Mr. Graham

- 1 Q I don't care about investment for the future; I'm
2 asking whether he netted a profit or netted a loss on this
3 trip?
- 4 A He wouldn't have loss.
- 5 Q So you got paid \$5,000 in cash, excuse me, \$1,000
6 in cash?
- 7 A That is correct.
- 8 Q How much money did you bring with you?
- 9 A I brought -- brought \$700.
- 10 Q You brought \$700?
- 11 A Correct.
- 12 Q So when you got on the bus in Alabama, you had \$700
13 on you?
- 14 A Correct.
- 15 Q You made a \$1,000 while you were there?
- 16 A That is correct.
- 17 Q Did you carry drugs on the bus with you?
- 18 A I did.
- 19 Q What kind of drugs did you carry?
- 20 A Hash, Activis is cough syrup, molly, marijuana and
21 Largos.
- 22 Q So how much drugs did you bring with you?
- 23 A I don't know how you would --
- 24 Q Dollar amount, street value?
- 25 A I'd say 4 to \$5,000 worth.

Justin Butler - Cross-Examination by Mr. Graham

1 Q 4 or \$5,000 worth of street drugs?

2 A Correct.

3 Q And you weren't concerned about Greyhound finding
4 those drugs?

5 A I was concerned, but I did it anyway.

6 Q You weren't concerned about dogs sniffing the
7 drugs?

8 A I was, sir, but I did it anyway.

9 Q You did it anyway. So even though there's a risk
10 associated with it, you took the risk?

11 A I did.

12 Q Because you thought the end justified the means?

13 A I wouldn't say those words, no.

14 Q Why did you take all the drugs on the Greyhound bus
15 to South Carolina?

16 A So I could sell them to individuals in South
17 Carolina so that I may purchase this vehicle that I was
18 coming for.

19 Q Why didn't you sell the drugs in Alabama?

20 A We get more in South Carolina.

21 Q Why didn't you mail the drugs; it would have been
22 safer, wouldn't it?

23 A I don't know; that's the way I chose to do it at
24 that point.

25 Q So who's the person that you sold the drugs to?

Justin Butler - Cross-Examination by Mr. Graham

1 A I really don't want to disclose his name, but do I
2 have to disclose his name?

3 Q I asked you the question.

4 THE COURT: Excuse me a minute. You've taken the
5 witness stand.

6 THE WITNESS: Oresse.

7 BY MR. GRAHAM:

8 Q Oresse who?

9 A I don't know his last name.

10 Q What's his contact information; where does he live?

11 A In Greenwood.

12 Q You know his phone number?

13 A No, I do not.

14 Q Well, you've been hearing the testimony, is that
15 the person who's on these charts? Is that who you were
16 texting about is that where you stayed; I'll slide up on
17 you tonight?

18 A Yes.

19 Q All right. So this text here, I'm going to slide
20 up on you tonight, going to -3791, that phone
21 belongs to who?

22 A Oresse.

23 Q Oresse. Spell that for me?

24 A O-R-E-S-S-E, I believe.

25 Q And you sold him all the different types of drugs

Justin Butler - Cross-Examination by Mr. Graham

1 that you had?

2 A That is correct.

3 Q And you're saying that combination of drugs, that's
4 where you're coming up with the word, hammy?

5 A That is correct.

6 Q Now this drug transaction was between you and
7 Oresse; Mr. McClure had nothing to do with it, correct,
8 because this was money for the car, right?

9 A He don't have nothing to do with it.

10 Q The drugs that you brought up to sell to Oresse was
11 for you to turn around and buy the car with, correct?

12 A That is correct.

13 Q So Mr. McClure had no interest in that, correct?

14 A I was going to let him know that I did have that
15 just so he could be on the up and up of me having these.

16 Q Well, why would he care?

17 A Because we both were -- we ended up being together
18 and I wouldn't want him to, you know, you know basically
19 having no parts of, you know, he know that I had these so
20 if anything was to happen or we get pulled over or anything
21 like that, I had these. I acknowledged that I had these,
22 me on my person, I had these.

23 Q You're just letting him know because you're a good
24 friend?

25 A I'm just letting him know.

Justin Butler - Cross-Examination by Mr. Graham

1 Q Because you don't want him to be surprised if you
2 get stopped and have all those drugs?

3 A That is correct.

4 Q You don't want to implicate him without him knowing
5 what's going on?

6 A At some point, yes, sir.

7 Q So when I'm looking here on the text messages,
8 these -- these are yours, you sent these, didn't you?

9 A That is correct.

10 Q And you received them, correct?

11 A That is correct.

12 Q All right. So the one that you, that Terry McClure
13 sends to you that says, you bring that nickel with you
14 tomorrow; it's not talking about a nickel gun, is it?

15 A No, it ain't. No, it is not, sir.

16 Q It's talking about \$500?

17 A That is correct.

18 Q And that \$500 was for what?

19 A For reimbursement.

20 Q For what?

21 A For his transportation to the state.

22 Q And you're telling him so your response was when we
23 get to South Carolina, I've got you for sure, meaning
24 you're going to give him the five hundred when you get to
25 South Carolina?

Justin Butler - Cross-Examination by Mr. Graham

1 A That is correct.

2 Q You already had the 700 on you; you could have
3 given it to him earlier though, right?

4 A I could have, yes.

5 Q Then later on there's a text you're sending out to
6 Terry that says she got the whip; we're talking about a
7 car, right?

8 A That is correct.

9 Q Before you get there, by the time you get there
10 they're going to be closed unless they get it from the
11 airport, and keep going down and down; well, let's talk
12 about this one on 4/24/2014 at 10:05 in the morning. This
13 says, she's going to come get me first from the bus
14 station. I'm for sure beat you there and I got hammy with
15 me and you're saying h-a-m-m-y is the drugs?

16 A That is correct.

17 Q That's not a gun either is it?

18 A That is correct.

19 Q Okay. Tell me what a hammy is again; h stands for
20 what?

21 A Hash.

22 Q A stands for what?

23 A Activis.

24 Q M stands for what?

25 A Molly.

Justin Butler - Cross-Examination by Mr. Graham

- 1 Q M stands for what?
- 2 A Marijuana.
- 3 Q And y stands for?
- 4 A Yellow -- yellow which indicates the pill color of
- 5 the narco.
- 6 Q And what happens when you put all that together?
- 7 A Abbreviated, that's what it comes out, sir.
- 8 Q So each of those drugs is separate?
- 9 A That is correct.
- 10 Q None of them are joined together?
- 11 A That is correct.
- 12 Q So I can spell any word with any type of drug by
- 13 just using the first letter?
- 14 A You can spell anything and they'd understand what
- 15 it --
- 16 Q Okay. It's not like a combination though?
- 17 A Not at all.
- 18 Q So if you weren't bringing yellow with you, you
- 19 would put h-a-m-m?
- 20 A No, not necessarily because that's what we know the
- 21 y stands for, yellow.
- 22 Q I understand. If you're not bringing the yellow,
- 23 you just wouldn't have typed it in; it would have said
- 24 h-a-m-m?
- 25 A Correct.

Justin Butler - Cross-Examination by Mr. Graham

1 Q If you weren't brining the hash, it would have said
2 a-m-m-y?

3 A Correct.

4 Q If you weren't bringing -- well, now it gets
5 confusing. What happens if you're not bringing marijuana
6 or mollie? How do they know if you just spelled h-a-m-y
7 how is anybody supposed to know whether you got marijuana
8 or molly

9 A Because that would have been discussed prior.

10 Q So you discussed this prior with them on the phone
11 so you knew what you were bringing?

12 A We did, sir.

13 Q You did?

14 A We -- we had the conversation, correct.

15 Q Okay. So he knew already that you were bringing
16 the stuff?

17 A Not everything.

18 Q Well, which is it; did you have a conversation
19 about the drugs you were bringing or not?

20 A We did.

21 Q Okay. Not we, you told him the drugs you were
22 bringing, correct?

23 A Not everything. I didn't disclose every drug that
24 I said I was bringing, sir.

25 Q Well what did you tell him?

Justin Butler - Cross-Examination by Mr. Graham

1 A I told him that I was going to bring the hash, the
2 activis, the mollie and the marijuana.

3 Q So he knew that you were bringing enough drugs to
4 get in trouble, right?

5 A Yes, sir.

6 Q So if this doesn't mean a gun, why in the world did
7 you need to send this again; why did he need to know that
8 you were bringing yellow with you when he knew that you
9 were bringing all the other drugs?

10 A That was just to keep him informed.

11 Q To do the right thing?

12 A No, to keep him informed. I can't say it's the
13 right thing, but to keep him informed.

14 Q All right. So when you send to, I'm sorry --
15 what's the guy who bought the drugs name?

16 A Oresse.

17 Q Oresse. 4/24/2014 at 5:46 p.m. you texted him, Yo,
18 did you get the ad?

19 A Correct.

20 Q What is it you're trying to buy?

21 A That's a address.

22 Q What address, for what?

23 A Of where I was supposed to be exactly meeting.

24 Q Had you never sold to them before?

25 A I had, but different places.

Justin Butler - Cross-Examination by Mr. Graham

1 Q All right. So you're texting him asking where I am
2 supposed to meet you to sell you the drugs?

3 A Correct.

4 Q Well, ask me why his response is hell no, my people
5 ain't answering. I'm trying to get another one?

6 A I guess the place that we were supposed to meet up
7 was not okay to go to.

8 Q So that didn't have anything to do with a gun?

9 A Not at all, sir.

10 Q He's just trying to find another place for you all
11 to do your drug business?

12 A Correct.

13 Q You texted him and said I'm going to slide up on
14 you tonight. You were going to meet up with him, right?

15 A That is correct.

16 Q But you didn't know where to go?

17 A I talked to him on the phone.

18 Q Okay. How about this text, Greenwood texted you so
19 you tell him I'm going to slide up on you tonight; did you
20 know where you were going by that time; had you called and
21 talked to him and you knew?

22 A I knew of an area he may be at at the time.

23 Q Did he tell you where to meet him?

24 A Area wise, yes, not an exact location, not an
25 entrance.

Justin Butler - Cross-Examination by Mr. Graham

1 Q Explain to me this, why 36 minutes after the
2 conversation, where you say I'm going to slide up on you
3 tonight; why does Oresse text you, you're going to need a
4 hammy to fix it or not? What does that mean?

5 A He asked me if I needed hammer. That indicates
6 what -- I didn't get anything from him.

7 Q So he did ask you if you wanted a gun?

8 A He asked me, yes, he asked me that.

9 Q You going to need a hammer to fix it or not. So he
10 asked you do you need a gun to take care of something,
11 right, to fix it or not?

12 A For my own personal use for these shows to protect
13 myself, yes, sir.

14 Q Oh, so you needed a gun to protect yourself?

15 A - During these transactions.

16 Q I'm sorry, the transactions with Oresse?

17 A No, sir, with me going to perform at these shows
18 with this amount of money that I have from the money that I
19 got from Oresse earlier.

20 Q So when he talks about the fix it or not, what's he
21 talking about; what problem needs to be fixed?

22 A I don't know, sir.

23 Q You don't know?

24 A No, sir.

25 Q But you responded back most likely, so you did know

Justin Butler - Cross-Examination by Mr. Graham

1 when you texted him, didn't you?

2 A I had to call him.

3 Q The text is one minute after. You didn't talk to
4 him in between?

5 A I did, sir.

6 Q So if you called him, why did you need to text him?

7 A So I could figure out what is he talking about; can
8 I fix it or not.

9 Q Show me on the calls where you called him in
10 between 1844 and 1845 on April 24th, 2014?

11 A Where are the dates -- where are the dates located?
12 Oh, I see them.

13 Q April 24th, 2014?

14 A Where is the 510 number?

15 Q His number?

16 A My 510 number.

17 Q You called him on the 510 phone?

18 A I did.

19 Q Oh, but I thought these texts are on the 404 phone?

20 A They are, but I called him on my 510 number.

21 Q But I thought the 404 was to keep business separate
22 from your girlfriend?

23 A Business as far as females, sir.

24 Q Well, then why are we talking to Terry McClure on
25 this phone; he's not a female?

Justin Butler - Cross-Examination by Mr. Graham

1 A He's not.

2 Q Why are we talking to a drug dealer in Greenwood;
3 he's not?

4 A He's not.

5 Q Why are we talking to Vonkeith Toland about buying
6 a car on this phone?

7 A I don't know, sir.

8 Q Because the truth is you didn't get that phone to
9 talk to a female?

10 A I had multiple phones like that, sir.

11 Q This phone was for the purpose of planning this
12 robbery and committing it, wasn't it?

13 A No, sir.

14 Q This phone was activated on March 15th; is that
15 correct?

16 A I don't know exactly when it was activated.

17 Q Well, if the phone company said it was March 15th,
18 you wouldn't argue with that, would you?

19 A No, sir.

20 Q From the document in your hand, when was the first
21 time you made a call on that phone?

22 A Would this be the first number at the top here?

23 Q Those are people calling in to you.

24 A I'm saying with this right here.

25 Q You agree with me that the first outbound call that

Justin Butler - Cross-Examination by Mr. Graham

1 you made wasn't until April 23rd, correct?

2 A Correct.

3 Q Who does that number belong to, -6404?

4 A I don't recall that number, sir.

5 Q 707 is a California area code, isn't it?

6 A It is.

7 Q Is that Alonzo Walker maybe or somebody associated
8 with him?

9 A I couldn't say. I don't -- I don't know anything
10 about that.

11 Q Isn't that when you called to get the number for
12 Vonkeith Toland?

13 A I don't believe so.

14 Q You agree with me that all the next calls are calls
15 to Terry McClure and to Greenwood and then you got cousin
16 Ashley, she's your cousin; that's not a girl that you were
17 doing anything with; that's your cousin, right?

18 A That's correct.

19 Q Terry McClure, the Greenwood number, Terry McClure,
20 Terry McClure, so on. When you started using this phone,
21 it wasn't to call a girl to hide from your fiance, it was
22 to call Terry McClure and the people in Greenwood and set
23 up this robbery, wasn't it?

24 A No, it was not, sir.

25 Q So what's the number of the girl you were calling?

Justin Butler - Cross-Examination by Mr. Graham

1 A When I go places, I eventually -- I'm sure there's
2 more calls in that phone where I do get numbers.

3 Q You had a chance to look through the phone stuff,
4 right?

5 A Briefly.

6 Q Your attorney showed it to you?

7 A He did.

8 MR. JAMES SNELL: Your Honor, as to attorney/client
9 privilege --

10 THE COURT: It's not attorney/client privilege;
11 that's not a conversation. That's not privileged
12 information. He's asking him if he had the opportunity to
13 review it. Ask him that question again.

14 BY MR. GRAHAM:

15 Q Did you have an opportunity to look through your
16 phone records on the 404 number?

17 A I did briefly, yes.

18 Q There weren't any conversations in there with a
19 girlfriend were there?

20 A Not with a girlfriend, no.

21 Q Or a girl that you were cheating on your fiance
22 with, was there?

23 A No, there wasn't.

24 Q There are no texts in there to a girl that you were
25 cheating on -- you were hiding from your fiance, was it?

Justin Butler - Cross-Examination by Mr. Graham

1 A No, there wasn't.

2 Q But you testified that was the purpose of that
3 phone?

4 A It was.

5 Q But that's not what you used it for?

6 A What do you mean, that's not what I used it for.

7 Q That's not what you used the phone for; you used
8 the phone to make contact with Terry McClure. You used the
9 phone to talk to a person in Greenwood and you used this
10 phone to arrange your transportation and used that phone to
11 set up a meeting with Vonkeith Toland?

12 A I used that phone to do all those things instead of
13 staging a robbery, but what you were saying, no; but I did
14 use the phone to talk with these individuals, yes, I did.

15 Q But nothing on here you needed to hide from your
16 fiance, did you?

17 A Drug-wise as well too, yes, but other than that,
18 no.

19 Q What did you do with the 404 phone; you threw it
20 away, didn't you?

21 A No, I actually still had it. I don't know if they
22 recovered it at the house or not, but I do have it.

23 Q So the police -- the Alabama Police did a search
24 and they found your 510 number, your 404 was in the house
25 and they just missed it?

Justin Butler - Cross-Examination by Mr. Graham

- 1 A Possibly, yes. I still had that phone.
- 2 Q Do you have it with you today?
- 3 A No, I do not.
- 4 Q So did you sell the drugs?
- 5 A Yes, I did.
- 6 Q Did you get a gun?
- 7 A No, I did not.
- 8 Q But you said I most likely need one?
- 9 A I didn't retrieve one, no, sir.
- 10 Q Okay. So when you said most likely, what did he
- 11 mean by to fix it or not, you said you talked to him on the
- 12 phone in that minute between those two texts?
- 13 A It must been misplaced or something like that or
- 14 mis-something. I don't --
- 15 Q So this isn't accurate?
- 16 A The hammer part may be, the end of it, fix it or
- 17 not, I don't know what he meant fix it or not.
- 18 Q Well, I thought you called him to straighten that
- 19 out?
- 20 A I did, but when he sent the text, I didn't know
- 21 what he was talking about.
- 22 Q When you talked to him, what did it mean?
- 23 A Of his text.
- 24 Q Oh he told you I made a mistake about the fix it or
- 25 not?

Justin Butler - Cross-Examination by Mr. Graham

1 A Yes, that's what he say.

2 Q So he just asked you really do you need a gun?

3 A Do I need a gun.

4 Q And you got it straightened out, but that was a
5 mis-text because you were curious to know what he was
6 talking about, that's why you called him?

7 A After I sent that text message, correct.

8 Q Well, you said most likely -- and you didn't call
9 him in between, you called him after?

10 A Correct.

11 Q So you were mistaken when you said you called in
12 between those two texts?

13 A Correct.

14 Q That wasn't a lie?

15 A That wasn't a lie, that was just mis-sight, yes,
16 sir.

17 Q So how much money did you get from selling drugs to
18 Oresse?

19 A To an exact amount, I got about \$4500.

20 Q So you had \$4500 exactly, correct?

21 A From him, yes.

22 Q Didn't you testify on direct that you brought
23 \$6,000 with you to buy the car?

24 A That is correct. Everything that I went --
25 everywhere I went, everything that I brought with me to

Justin Butler - Cross-Examination by Mr. Graham

1 this place, I had that much on me. I had the money that I
2 brought. I had sold the drugs and I had the \$700 that I
3 had.

4 Q So how much money did you have on you after selling
5 the drugs?

6 A Give or take about 1,000. I had 52 and then after
7 about 62 minus the 500 that I had to give to Terry McClure.

8 Q So 5,700?

9 A Correct.

10 Q How did you pay for bus tickets?

11 A Credit card, my Visa.

12 Q How did you pay for the hotel rooms?

13 A I had a prepaid Visa I believe. It was in my
14 wallet. I don't know if they got that or not.

15 Q How did you pay for food?

16 A With my prepaid Visa.

17 Q Who paid for gas?

18 A McClure paid for gas.

19 Q So you got more money -- he invested more money?

20 A Correct.

21 Q So you had \$5200 in cash to go by a \$6,000 car,
22 correct?

23 A He wanted 7,000.

24 Q Oh, I'm sorry, a \$7,000 car?

25 A He wanted \$7,000 for the car, correct.

Justin Butler - Cross-Examination by Mr. Graham

1 Q And you brought 5,700 to do that?

2 A I was definitely going to try spend less than what
3 he's asking for.

4 Q I hear you, but you only have \$5,700 to buy a car
5 that somebody told you \$7,000, correct?

6 A Correct.

7 Q And the fact that you looked the mileage of the
8 car, the mileage was good so that actually meant the price
9 was going to go up, didn't it?

10 A At that time, yes, but he said it was salvaged, so
11 it would depreciate the price, sir.

12 Q So when you testified on direct that you traveled
13 with \$6,000, you weren't talking \$6,000 in cash, you were
14 talking 700 in cash and drugs?

15 A Drugs. He probably -- you could make more off of
16 the people how you sell it, but drug-wise, that's what I
17 made from it.

18 Q My question was, when you testified on direct, you
19 said that you traveled with \$6,000. You didn't travel with
20 \$6,000?

21 A Cash, no.

22 Q So we all got to be real careful about our words,
23 correct?

24 A That is right.

25 Q When you say something, you better mean what you

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1 say so people don't get confused?

2 A That is right.

3 Q So when you tell people that you were never in
4 South Carolina, or you don't know anything, you should be
5 careful about saying things like that when it's not true,
6 shouldn't you?

7 A I should have done that, yes.

8 Q So your testimony is that you were in the car, must
9 have been real simple, all the way to the Bushberry Road
10 House to where this happened and you have no -- and your
11 testimony is you have no idea that there was going to be a
12 robbery; you had no idea there was going to be a shooting?

13 A No, sir.

14 Q But you do have a gun yourself, don't you?

15 A No, I do not.

16 Q Didn't you get one from Osrah --

17 A Oresse.

18 Q Thank you. Didn't you get one from Oresse?

19 A No, I did not get one from Oresse.

20 Q Oh, so when you said most likely, later on you said
21 No, I don't have any --

22 A No, sir.

23 Q So you were carrying all that money, somehow you
24 weren't worried any more and didn't need to protect
25 yourself?

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1 A Because I was leaving that area where I was
2 staying, yes, sir.

3 Q Well, you spent the night in Greenwood after the
4 concert on the 24th, correct?

5 A Correct.

6 Q You spent the night in Greenwood on the 25th after
7 the concert; at the motel, that's what you said?

8 A Yes, sir.

9 Q So if somebody knew they could bet all their money,
10 they could have robbed you in Greenwood?

11 A They could have.

12 Q So you weren't leaving the area, you stayed there?

13 A I was leaving the club area where the clubs --
14 where they're located at, yes, sir.

15 Q But that conversation has nothing to do with a gun
16 for a rivalry or a murder; it has to do with
17 self-protection for you?

18 A At that point in time, yes.

19 Q And although you said most likely, the end result
20 is you didn't get one?

21 A That is right.

22 Q Terry McClure didn't get one?

23 A That is right.

24 Q When you're talking about a hammy and coming to
25 South Carolina, you're talking about drugs; you're not

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1 talking about a gun?

2 A That is correct.

3 Q When you're talking about a nickel, you're talking
4 about money and you're not talking about a gun?

5 A That is correct, sir.

6 Q Terry McClure didn't bring a gun on the plane, did
7 he?

8 A No, he did not, sir.

9 Q You helped him get a gun in South Carolina, didn't
10 you?

11 A No, I did not, sir.

12 Q So where did he get one?

13 A I don't know, sir.

14 Q He didn't know anybody in South Carolina, you did;
15 your family, your friends?

16 A That is correct, but I didn't get a gun for him,
17 sir; and I didn't see him with a firearm, sir.

18 Q You never saw him with his gun?

19 A No, I did not.

20 Q Never?

21 A Not while I was with him, no.

22 Q So your story -- let's go to Bushberry Road.

23 You're test driving a car, you're looking at a car, you're
24 in the car, no bad blood going on with anybody, right?

25 A No, sir.

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1 Q You got the keys with you or you don't have the
2 keys with you?

3 A To which vehicle?

4 Q The rental car that you drove?

5 A I didn't have the keys, no, sir.

6 Q You drove the rental car though, correct?

7 A I did.

8 Q You drove it to the Bushberry Road house, didn't
9 you?

10 A I did.

11 Q But you didn't keep the keys?

12 A I did not.

13 Q Why is that?

14 A Because when I test drove the car, I gave them back
15 to Terry McClure at that point in time, sir.

16 Q Did you have to have the ignition turned on to
17 charge your phone?

18 A No, I did not.

19 Q So you're sitting in the car, your back is to,
20 looking at State's 27; do you recognize that?

21 A Yes, sir.

22 Q And I believe that you said that you're parked, was
23 it alongside the Honda?

24 A Further.

25 Q Further over here?

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1 A It's further to the left side, sir.

2 Q Over here?

3 A My left. My left, sir. Not all the way that far,
4 but it was closer to the main gate. Yes, sir. Not that
5 far, but closer.

6 Q Headed out?

7 A Correct.

8 Q You're in the car, front seat or back seat?

9 A I'm in the front seat.

10 Q Driver or passenger?

11 A I'm in the driver's seat.

12 Q But you don't have the keys?

13 A No, I do not, sir.

14 Q And why did you leave the keys behind?

15 A I gave them to Terry McClure when I test drove the
16 car.

17 Q I understand you did that, why?

18 A I don't know why, I just gave them to him.

19 Q And you're in there charging your phone, no bad
20 blood going on among anybody?

21 A Nobody knew anything like that to have any bad
22 blood, sir. So, no, sir.

23 Q And you don't know whether Terry McClure's got a
24 gun or not?

25 A No, sir.

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1 Q Let me clear up something. I meant to ask this
2 earlier. Your attorney asked you about a charge for a
3 felony in California in '09, right?

4 A Yes, sir.

5 Q It wasn't a charge, it was a conviction, correct,
6 you were convicted in a felony in '09?

7 A That is correct.

8 Q And it wasn't a charge in 2007 for possession of
9 cocaine to sell, it was a conviction, correct?

10 A That is correct.

11 Q So on Bushberry Road, you're in the car, no bad
12 blood and you don't know whether Terry McClure has a gun or
13 not and you hear a gunshot?

14 A That is correct.

15 Q And what did you do?

16 A Like I'm saying, I -- you know what I mean.

17 Q You ducked and looked?

18 A Ducked and looked to the left. I mean I couldn't
19 see anything to the right side of me. I was hanging out,
20 not completely hanging out, but I was, you know, in the
21 chair in the front seat like this. The car -- the car is
22 facing this way, the Infinity is behind me to the right
23 side, the Honda is to the right side of me. I'm like, I'm
24 facing forward and then --

25 Q You heard a gunshot and you turned around; what do

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1 you see when you turn around?

2 A I then see Vonkeith come from the side of the right
3 side, would be my right side.

4 Q Your right side if you're facing the house?

5 A If I turned around it would be my right side.

6 So --

7 Q You're facing the road, the house is behind you --

8 A Correct.

9 Q -- which side is he coming from, your right or your
10 left?

11 A I'm facing the road, it would be my left.

12 Q Your left?

13 A Correct.

14 Q So then you turned back and look out through the
15 window and you see Vonkeith coming from here, from the side
16 of the house?

17 A From the side of the house. I can't necessarily
18 say the back of the side.

19 Q The side of the house and he's running?

20 A He run towards the front of the house.

21 Q What's Terry McClure doing?

22 A I couldn't see, but like I said, I heard shots
23 after that, I didn't see him.

24 Q For the first shot, you turn around, do you see
25 Tycus?

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1 A No, I do not. I didn't look.

2 Q You don't look back over here?

3 A I look, but I don't see anybody right there at that
4 one time.

5 Q All you see is Vonkeith running and I think you
6 said toward the Infinity or the house, kind of between
7 those two; is that correct?

8 A That is correct.

9 Q Then what happens next?

10 A I hear multiple gunshots. I didn't see anything,
11 but I heard --

12 Q How many did you hear?

13 A I'm going say two or three.

14 Q Two or three?

15 A Yes, sir.

16 Q Okay. When you saw Vonkeith Toland running around
17 the house, did he have a gun in his hand?

18 A Not to my knowledge, no.

19 Q You didn't see it?

20 A I did not.

21 Q You would have seen it if he'd had one, wouldn't
22 you?

23 A I would have seen it if he had a gun, yes, I would.

24 Q Okay. So he's running around the house, he doesn't
25 have a gun, you hear -- you're seeing him run and looking.

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1 You hear multiple gunshots, how many, three, four, two, how
2 many?

3 A I'm going to say two or three.

4 Q Two or three more gunshots. Do you see where those
5 are coming from?

6 A No.

7 Q When you see Vonkeith, how far this way do you see
8 him run? Does he make it to the Infinity?

9 A Yes.

10 Q Does he take it to the middle of the Infinity?

11 A He eventually made it, I can't say to the middle,
12 but to the front and then like I say, he then -- to the
13 front of the house where the stairs, referring to the
14 stairs.

15 Q Right in front of the stairs at the end of the
16 Infinity?

17 A Maybe so.

18 Q Okay. You see him there. Is he still running the
19 last time you see him?

20 A Yes.

21 Q And he's running?

22 A Not, no, not running this way, no, sir. The last
23 time I see him run, he's going the opposite way.

24 Q Okay. So you saw him running; did you hear the
25 gunshots while he was running and you saw him; did you see

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1 him running --

2 A Well, he was running behind this house, yes. When
3 he was coming this way, I heard that shot.

4 Q When you heard the gunshots, what did he do?

5 A I think he then ran the other way.

6 Q He turned around and started running back?

7 A That is correct.

8 Q All right. And you saw him run there, heard
9 gunshots and you're watching all this. He turned around
10 and he starts running back, correct?

11 A Correct.

12 Q All right. He didn't have a gun and he didn't
13 shoot the gun, correct?

14 A Not to my knowledge, no.

15 Q So either Tycus Toland shot the gun, Terry McClure
16 shot the gun, or somebody off in the woods shot the gun?

17 A That is correct.

18 Q But it was the same sound as you heard for the
19 first shot; it didn't sound like a different gun, did it?

20 A I don't know, I couldn't say.

21 Q Just gunshots?

22 A Just gunshots, but I don't know.

23 Q He started to run back this way, what's Terry
24 McClure doing?

25 A He starts running as well.

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1 Q He's chasing him, same direction?

2 A I can't say he was chasing him. I don't know if he
3 was trying to run to come this way to leave the scene or to
4 head to where they was at. I didn't see him chase him down
5 like, I didn't see him, you know, following him or shooting
6 him.

7 Q You saw Vonkeith Toland run up here when the
8 gunshots, multiple gunshots, two or three happened, you see
9 him turn around and start going back around the side of the
10 house on the right if we're looking at the front, correct?

11 A That is correct.

12 Q At the same time you see Terry McClure go in the
13 exact same direction that Vonkeith Toland is going to the
14 right side and around the house, correct?

15 A He ran that way. I can't say that he went behind
16 the house or anything like that, but if -- they was both
17 running toward that direction, yes, sir.

18 Q Terry McClure had a gun in his hand or not?

19 A I didn't see that, sir.

20 Q Tycus Toland, you never saw again, correct?

21 A That is correct.

22 Q You don't know what happened?

23 A No, I do not, sir.

24 Q People are shooting off guns and people are running
25 back and forth and you don't do anything but sit there.